



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 9 December 2020

Session 5



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Pàrlamaid na h-Alba

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

32nd Meeting 2020, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

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

Annie Wells (Glasgow) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lesley Forsyth (North Ayrshire Council)

John Mair (Forestry and Land Scotland)

Elisabeth Manson (Dumfries and Galloway Council)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament
**Local Government and
Communities Committee**

Wednesday 9 December 2020

[The Convener opened the meeting at 09:45]

Interests

The Convener (James Dornan): Good morning. I welcome everyone to the 32nd meeting in 2020 of the Local Government and Communities Committee. Please ensure that all mobile phones are on silent.

I remind members that, as usual, broadcasting staff will operate your camera and microphone, so please allow a short pause after being called on to speak to allow them to do so.

Before we start, I would like to welcome Gordon MacDonald to the committee. Gordon has replaced Gail Ross. On behalf of all the committee members, I would like to thank Gail for all her work and to wish her well on her appointment to the Public Audit and Post-legislative Scrutiny Committee.

On his first appearance as a committee substitute last week, Gordon declared that he had no relevant interests, but I believe that he has something that he would like to add, so I ask him to update his relevant interests.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Further to my previous declaration of interests, I apologise to the committee for omitting to mention that my wife is a local government councillor.

The Convener: Thank you very much, Gordon.

I remind Gordon and all other members to declare any relevant interests as and when they arise at future committee meetings.

**Decision on Taking Business in
Private**

09:46

The Convener: Under agenda item 1, the committee is invited to consider whether to take agenda items 4, 5 and 6 in private. Items 4 and 5 are consideration of the evidence that we will hear under items 2 and 3, and item 6 is consideration of our work programme.

As we are meeting remotely, rather than asking whether everyone agrees, I will instead ask whether anyone objects. If there is silence, I will assume that members are content. Does anyone object?

That is agreed. Items 4, 5 and 6 will be taken in private.

Community Empowerment (Scotland) Act 2015: Post- legislative Scrutiny (Parts 3 and 5) (Community Wellbeing)

09:47

The Convener: Under agenda item 2, the committee will take evidence as part of its post-legislative scrutiny of parts 3 and 5 of the Community Empowerment (Scotland) Act 2015. Today, we are taking evidence from three public bodies that participated in the committee's survey on the effectiveness of parts 3 and 5 of the 2015 act. We are keen to explore some of the issues that they raised.

I welcome John Mair, director of estate development, Forestry and Land Scotland; Lesley Forsyth, senior manager, North Ayrshire Council; and Elisabeth Manson, community planning and engagement manager, Dumfries and Galloway Council. Thank you all for being here today. Please note that we have just over an hour for this session.

I will provide some brief technical information. There is a pre-arranged questioning order, and I will call each member in turn to ask their questions for up to nine minutes. It would help broadcasting staff if members could indicate who their questions are addressed to. We might have a short amount of time for supplementary questions at the end.

I ask the members of the panel, as there are three of you, to indicate clearly if you wish to answer the question that has been asked—for instance, by raising your hand. Please do not feel that you must answer every question if your views are generally in line with points that have already been made. Please also give broadcasting staff a second to operate your microphone before you speak. Thank you.

I should have mentioned earlier that we have received apologies from Annie Wells, although she hopes to join the meeting later on.

I will begin by asking you to explain what community empowerment means to your organisations and how they measure empowerment in the communities that they work with. Elisabeth Manson, would you be happy to start?

Elisabeth Manson (Dumfries and Galloway Council): Yes, thank you, convener. Good morning, all. Thank you for the opportunity to join in your discussions.

Community empowerment is certainly a priority for Dumfries and Galloway Council, and we have been very supportive of that approach for a

number of years. For us, it is very much about making the most of communities and enabling people to achieve their potential within their own locality.

With regard to how we measure community empowerment, we have a number of different approaches to community empowerment, and we use annual reports and assessments in particular to look at how we are delivering on those approaches. The community asset transfer annual report, for example, does not just tell us how many buildings and how much land we have transferred; we also survey people to see how they found the process and what their level of satisfaction is with the support from the council and its approach.

As you will see, we have not had many participation requests, but we engage with community groups on how they feel about the range of tools available to them, which includes not only participation requests but ward events and community conversations. We assess people's satisfaction levels with all those tools—for example, we ask whether they feel that they had an opportunity to contribute and were able to influence their council and councillors.

I hope that that gives the committee a flavour of Dumfries and Galloway Council's views.

The Convener: It does indeed—thank you. Would Lesley Forsyth like to come in at this stage?

Lesley Forsyth (North Ayrshire Council): I would be delighted to do so—thank you for the opportunity to speak to the committee today.

In the same way as our colleagues in Dumfries and Galloway, North Ayrshire Council puts our citizens at the heart of what we do, and that—*[Inaudible.]*

We have a range of mechanisms, as most councils do, to enable us to make empowerment something that does not have to be done by request but is part and parcel of our day-to-day work. That includes community empowerment in respect of our own finances, through participatory budgeting. That is becoming more and more the norm for all our services, not just through grants but by engaging with people on how they would like core budgets to be spent across the council. We have just participated in a range of budget engagement sessions with our chief executive and council leader, which have been online sessions with our communities.

That approach goes through to our community asset transfer team, which is very busy and is groaning at the seams. That is a credit to our communities, which clearly feel empowered to take on those assets to make them the best community assets possible.

I believe that our low number of participation requests is evidence of how involved people feel through our locality partnerships. We have six of those partnerships, in which our elected members and community representatives are on an equal footing. As a bonus, in monthly chitchats with our communities, local people can engage on matters that affect their own areas, which helps with that balance.

That all contributes to having not just an empowered community in our area, but citizens who have real pride in their community and who are aware of the routes into the decision-making processes and the factors that directly affect them and their aspirations for the future. As an authority, we believe that we are here to work with our communities to get them empowered to the point at which they can fulfil those aspirations. Like everybody else, we probably struggle to understand how we evaluate that. In some cases, it is about a feeling, rather than hard facts or statistics that we can supply to the Scottish Government. However, we have many case studies as evidence; they are very effective in that regard.

Recently, we have been incredibly proud of the results of our best-value report; we went through the audit process just prior to lockdown, and the results came in at the point of lockdown. Again, that highlighted our good practice around community empowerment, and various processes in our localities across North Ayrshire were shown to be an area of strength for us.

The Convener: Thank you for that full response. When you said that the number of participation requests has been low because you already include the local community, I saw that Elisabeth Manson was nodding her head vigorously, which is interesting. Perhaps John Mair would like to give us his views on how the process is going.

John Mair (Forestry and Land Scotland): Forestry and Land Scotland engages with communities at various levels. When we bring out the land management plans, we involve communities on what we plan to do with the forests. Having that level of engagement and consultation during the land management plan process is an important part of our engagement with local communities across the country. With regard to how we engage with communities on allowing them to use the forests well, there are a lot of lease opportunities that allow them to access the forest and take part in activities there.

Community asset transfer is an important part of what we do. We have a dedicated team that is involved in that side of things. We do voluntary notifications for asset disposals and engage with the community at the first part of that process,

which is when we consider the disposal of any assets.

Our community asset transfer request team can engage with communities early on to work through and develop proposals, taking a hands-on approach to the community engagement and CAT process.

How we measure that is a good question, because it is about way more than just transferring an asset; it is about what then happens with that asset and how that improves a community's wellbeing and, a lot of the time, its ability to generate economic and social benefits. As one of the other witnesses said, it is sometimes hard to measure that. However, based on feedback, projects such as the Fairy Pools car park and the Carron Valley community woodland have gone on to deliver tangible benefits in a very short time, which is encouraging.

We hope to capture more of that as the process goes on, because some of those are instant improvements and some will take time to develop and grow. Being able to continue to monitor that is important in relation to being able to demonstrate the long-term benefits to communities.

The Convener: It is interesting that you have all said it is difficult to gauge the impact.

Although the 2015 act has been in place for a number of years now and community ownership continues to grow, the national performance framework—which, I suppose, is one of the few ways that we have of identifying this type of feeling—tells us that the sense of community empowerment is reducing across Scotland and is significantly lower than it was in 2013. Does anyone have any insights that could explain that trend?

Lesley Forsyth: Increasingly—certainly in North Ayrshire—there are more people who wish to take ownership of assets and be involved in major things such as community wealth building initiatives, the Ayrshire growth deal and other big-ticket items. Equally, we have more people who are happy to take part in our formal processes.

However, I am not convinced that those things bring about a sense of community, cohesion or civic pride. That could be where people feel slightly disengaged. The feeling might not be about their empowerment levels, and instead could be about how they feel about society in general, their own town, civic pride and their sense of belonging.

In North Ayrshire, we are trying to do all that we can at a local level to provide—[Inaudible.]—our areas, especially our areas of deprivation, in which people live in critical situations. It is very difficult for them to feel empowered in a situation in which

they are affected by poverty. During the pandemic, people have potentially felt further away from being empowered.

Across North Ayrshire, through our engagement with our communities and community groups, we see more and more people who wish to be involved in and take ownership of issues in their local area—from flower beds to running town halls right through to decision-making processes and being part of arm's-length external organisation boards. Therefore, I am struggling to give you a formal answer to that question, and I apologise for that.

It would be interesting to find out how we could be part of the solution, and if the Scottish Government is keen to explore that we would be keen to help and to offer support with anything that might come through from it. We would be keen to work on and explore the connection that we have with communities and find out whether that really is what people feel at the local level.

Elisabeth Manson: I concur with the view that there are wider influences on how people feel about their empowerment. It is not necessarily only about community empowerment through assets and participation with public bodies, but about the wider poverty agenda and issues that people read about in the media that will make them feel that they do not have—[Inaudible.]

People's expectation about involvement has risen during recent years. We need to make sure that we are supporting groups from all levels of society and from different places. That is a helpful reminder that empowerment is for everyone across our region.

10:00

The Convener: A couple of issues have been raised that I am sure my colleagues will bring up later. Could John Mair respond? I will then move on to the deputy convener.

John Mair: From our perspective, it is quite different around the country. We touch on different areas, and I think that some communities feel very empowered, whereas others feel much less so. I wonder whether there is a more positive role for someone—there could be a pastoral role for someone to encourage communities to understand some of the powers that they have and how they are empowered by them, to be more involved and to look at how they can achieve that. Part of that may be to do with communication and encouragement.

As other contributors have said, there is a general feeling that there is a lack of power in the deprived areas, specifically to do with driving and

developing economic benefits and trying to get life back into those remote, rural communities.

Sarah Boyack (Lothian) (Lab): It has been good to read the witnesses' written submissions and I am interested in the initial presentations that they have given to the committee. Thank you for those contributions.

Why are so few participation requests being submitted in North Ayrshire and Dumfries and Galloway? Before the evidence session, we might have thought that that was because you were not enthusiastic about receiving them. That is because of the evidence that we heard from community groups last week as well as written evidence that we have received.

Is there a cultural difference? Both your councils have a community participation officer and it feels as though there is a culture of encouraging participation. Are there lessons to be learned from what you were doing before the Community Empowerment (Scotland) Act 2015 and what you have done to change? It is striking that North Ayrshire has had only three participation requests. Do you think that that is due to the organisational culture being open? Could you tell us about those three requests, how you have processed them and what the outcomes were?

Lesley Forsyth: To answer the first question, when planning any new strategy, project or development, it is now considered good practice to include stakeholder reference groups from the very start. We are about to invest hugely in a project in Ardrossan that includes a massive new community and school campus. Before a plan was even in place, we set up a lot of engagement with our communities and stakeholder reference groups. The networks are already there. People have been invited and are asking to be involved, and there are ways that they can do that.

I would always hope that that eliminates the need for people to feel that they have to submit participation requests, as they are already at the heart of the matter before a brick has even been laid. For me, that is about good practice. I cannot comment on whether that is as a result of the Community Empowerment (Scotland) Act 2015, but I cannot say that the act did not help to push everyone to understand that it is good practice for people to be involved in any decision making that is going on near them and that affects their future. For the Ardrossan campus, that applies from the early years groups right through to the senior citizens across the area who are involved in the project.

Of the three requests that we have received, two came from the same very small neighbourhood in Ardeer, and both related to the Ayrshire growth deal. Indeed, members from both

those groups are on both of the committees that made the very simple request to be involved in the growth deal. They saw the publicity and the high-powered media presence that that generated. When it reached that higher level, the local community immediately said, and quite rightly so: “We want a piece of that, and we want to be involved.” On both occasions, that has happened. I would defend what we did and say that it was more to do with timing; the community may have felt that the discussions about the Ayrshire growth deal were further down the line than they were. As soon as that deal was mooted in the local and national press, both those local groups wished to be involved—and they now are.

The third request was to do with a large development at Lochshore in the Garnock valley. The group that was already there saw it as a bit of a threat to some of the work that it was doing and it wanted more information, so a working group was set up.

In the three cases, it was easy to put solutions in place. None of them was in any way controversial, and things were resolved amicably. However, I go back to the point that it is about having a culture of engagement from the start that means that people do not feel the need to use a legal mechanism to get that engagement.

Sarah Boyack: Elisabeth Manson from Dumfries and Galloway, you have had only one participation request. Do you have an officer who enables people to make participation requests? Can you give us a bit of background about your participation request and what happened to it?

Elisabeth Manson: Yes. The picture was very similar to that described by Lesley Forsyth in North Ayrshire. Interestingly, when we introduced the participation request procedure and strategy, we used exactly the same timing and approach that we have for community asset transfer, meaning a single point of contact, and a clear flow-chart procedure so that people can understand how it works.

At the time, we had a conversation about how it was almost a failure of the council’s engagement approach if people had to resort to their entitlement. Because we had not enabled people’s engagement and involvement in other ways, we should not necessarily need people to go down the formal route in order to be involved in our activity.

Again, like other councils, we have other mechanisms that take the same approach. We have ward events at which people can ask to meet their local ward members to talk about any subject that is not already under a programme of engagement. We have community conversations about various issues that are perhaps very local,

such as street scene services, public conveniences, customer service centres and participatory budgeting. We have a stakeholder approach to impact assessments. I hope that the committee can see from that that we have a number of routes that people can take to get involved.

The one participation request that we had was about greater involvement across the council with all aspects of its engagement. We facilitated the group making that request to be part of our community planning participation and engagement group, which brings together engagement officers from a range of organisations working across the region. They share best practice, and they also have a programme of engagement activities so that we can be sure that we are complementary.

We have also trained more than 200 officers across partners, elected members, board members and, importantly, our equality groups in engagement techniques so that part of the outcome of the group’s participation request is that its members are now members of that group and they are able to influence and work with engagement officers across the region. We were delighted that we were awarded the Consultation Institute’s UK council of the year last year for our investment in that programme of work and training.

Sarah Boyack: You are both positive about the impact of the community engagement work that you are doing. I think that I have only two minutes left, so can you summarise what you think the benefits of putting in that investment are for the councils as well as the communities? We are not getting that same energy and culture shift in the experience of many community groups across the country. If you are selling this idea to other councils, what are the big benefits for them as well as for their communities? I will pick Lesley Forsyth first and then come back to Elisabeth Manson.

Lesley Forsyth: I do not mean to be flippant about this, but the key thing for me is the difference between our residents being customers of the council and being citizens of North Ayrshire. It is a cultural shift. It is not about being a customer who phones up and demands what they want the council to do; it is about having true engagement. Simply put, it is the difference between somebody phoning up to complain about the drain outside their house getting blocked by leaves every autumn and phoning up to say that they are keen to be involved in their local pick-up-litter group, helping to keep the drains unblocked. For me, it is about the difference that is made through a cultural shift from customers to citizens—it is about going on that journey. It is a parent-child relationship. The gains and the benefits that we get as a council are phenomenal.

I am not saying that it is not a harder shift sometimes, working with our communities—of course it is—but it is a different kind of hard work and it is such a rewarding piece of work to do. That is the huge thing for me: going from being a customer to being a citizen.

Sarah Boyack: That is really well put. Elisabeth, do you have a similar kind of enthusiasm? We want this to be captured by everybody. What are the benefits?

Elisabeth Manson: Absolutely. We have just started work on a peer learning video. We are seeing health and wellbeing benefits and economic benefits, and people are much more engaged through their volunteering. There are financial benefits for the council and the community, too.

One of the things that we have introduced is the use of a social value tool. We have already seen this year that there is a £3.47 return for every £1 discount that we are giving on a community asset. That is a tangible demonstration of the value that such measures can bring. For some assets, such as legacy buildings and land, if the council does not have to maintain them, there is a clear financial benefit to the public body.

Alexander Stewart (Mid Scotland and Fife) (Con): I have some questions about asset transfer. We have taken some evidence from community groups and, without question, frustration came through from them about the mutually beneficial outcomes that people are trying to achieve when an asset is transferred. It would be good to get a few words from each of you about how you deal with that process in your organisations and about how communities and public bodies work together to ensure that a mutually beneficial outcome can be achieved through asset transfer.

John Mair: As regards the benefits for the community, the discussion that we would have as part of the transfer would be to explore the benefits for the community and the community's ambitions—what it would want to do with the asset. That is often translated into some form of discount on the price, so that the benefits that would be brought through the transfer can be reflected in what we can then offer as part of the package. Engaging with the community in that way would be the most obvious approach. The dialogue and discussions that we have with communities all the way through are intended to help them to understand how they can get the best out of the assets and how to demonstrate the case.

A key aspect is the sustainability of the community's ambitions. That is a strong part of the dialogue that we have with them. Things can

always start off well, but people need to continue in that way all the way through, delivering the benefits and ensuring that they are not being overly ambitious but have a clear, sustainable way of delivering. That is an important aspect, and that forms much of the dialogue that we have with communities.

Elisabeth Manson: Part of our process is the stage 1 expression of interests. That is where our ward officer—we have one for every ward in the council—works with the community group, to ensure that the transfer is the right thing for the group and the community, that the business plan is developed and that community engagement is undertaken as part of developing the community asset transfer request.

We have a very strong third sector interface, which works well with groups about their business plans, constitutional arrangements and funding. We have recently had positive conversations with the new South of Scotland Enterprise agency about its involvement in working with community groups to support the development of their business plans.

There is a similar story about the long-term implications of sustainability, which is something that we are working on. We have recently had a scrutiny review on the long-term implications and the importance of repeating that social value tool in future years to make sure that the business plan and the way in which the asset is being used delivers on the mutual benefit that was identified at the start of the process.

10:15

Lesley Forsyth: I apologise—I get super-excited about community asset transfers because I think that the mutual benefits are heightened, not only as a result of the final piece of paper but as a result of the process that our groups go through. As Elisabeth Manson said, it is a process—people do not just put in their paperwork one day and have the transfer approved a couple of weeks later. We work with them to build that capacity; they are better and stronger by the end of the process because they have worked through and been questioned on their constitution, business plan, financial stability and so on. I have beautiful case studies that I could share with you that extol the benefits that people feel they have gained from the process.

At the very hard end, a number of our community asset transfers have related to historical leases that community groups have had in place with the local authority prior to community asset transfers being a thing—for example, a group may have had a 20-year lease of a bowling green. I will be blunt: instead of paying us a £500

per year lease, if they go through a community asset transfer and pay a small amount, it would be theirs for ever, so there is a longer-term financial gain from doing that.

I will be honest: although we have a list of assets that are able to be asset transferred and which we would be happy to engage with community groups on, we have never been proactive in pushing buildings out for community asset transfer, as other councils may have done. We have always felt that that process puts pressure on a community to think that they have to do the right thing for the building or they will wonder what will happen to it. We have never taken that approach and will always work with our community groups; in many cases it is not a building that is on our asset register and groups ask us what the chance of a community asset transfer would be, and we explore that with them.

The mutual benefits are measurable for us in some ways in relation to that social return and financial return, but it is the journey and capacity building of the groups to become more empowered and do more things in their community that is the huge thing that clearly comes through—certainly from the groups that I have had the privilege to work with.

Alexander Stewart: Lesley Forsyth and John Mair both talked about enthusiasm and sustainability. Lesley talked about people feeling that, if they do not take on board an asset, such as a building or location that was once in the council's ownership, it will be lost to the community; they feel that if a community group is not the building's future, it will vanish. That has been evidenced as we have progressed. Ensuring that the outcomes are measured and that both parties get what they want from the process would be beneficial. Going back to the sustainability that John talked about when you explained what your role and responsibilities are, how do you measure that sustainability and how do you support that going forward for the organisations that have gone through that journey and process?

John Mair: Similar to the other contributors, I think that it is important to make sure that a strong business plan is part of the process and to be clear about the strength of community engagement and support. The building blocks at the start will dictate the success further downstream. It is important to make sure that those building blocks are well put together, well articulated and well thought out, and that the resources that are required to maintain that are clearly set out at the start. That spadework is the important part, because that will drive everything else that flows from that point.

We are very careful, and it takes time. Our questions involve a learning curve for

communities. It is done step by step. I can imagine that sometimes the timescale will feel quite frustrating to them. However, it is important that the right questions are asked, in order to ensure that communities are not taking on something that will ultimately not deliver or will just slide away, and that it delivers the benefits and opportunities that they have set out to achieve. That early work is critical.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I thank the witnesses for their contributions. I apologise in advance if my connection drops out, as it has already done that a few times.

The convener made the point that the view that we are hearing from councils in this evidence session is quite different from that of many previous witnesses. Both believe that there are explanations for the small number of participation requests and asset transfer requests, but some councils believe that that is a mark of success, whereas many people feel that they cannot properly access councils or that, given their previous experience, it is not worth the candle.

It has been suggested that a very low number of participation requests is a mark of the success of the two councils' engagement strategies. Have those strategies come about as a result of the Community Empowerment (Scotland) Act 2015 or has the act been, in essence, a dead letter in that respect? Were the strategies always there or are they a response to the 2015 act?

Lesley Forsyth: I might have touched on that, and I thank you for the opportunity to explore it further. As you know, it is very hard to identify the people who do not come forward—it is easier for us to engage with those who do, but it is very hard to judge why people do not.

To me, the key driver is a belief that North Ayrshire Council has engagement and the co-design and co-creation of services in its culture and at its very root. That in itself precludes people from feeling that it is necessary to use legislation in order to be engaged and come forward. It is a chicken-and-egg situation, but I think that that was already the case.

However, the 2015 act has certainly given us a policy framework on which to host our culture. We believed that it was good practice and we worked with the Consultation Institute to look at good practice. We have rolled out the approach to our community planning partners, such as the police and fire and rescue services. All our community partners are very focused on having our communities at the heart of their decision-making and ways of working.

The 2015 act has boosted that approach. It has given the culture a place to reside in, a meaning

and a context whereby we can say that it is not just about good practice—or what we as officers think is good practice—but that it has been proved to have merit and is the expectation of our government and governing structures.

I see the two as being in tandem. That may be why we in North Ayrshire feel that it is a particular success that our practice and culture are in complete alignment with policy and law and that we can use them in a way that is mutually beneficial, rather than the policy and law being for people to use as a result of being disengaged or wanting to become engaged. We can work with both in parallel. The culture goes along with the policy and the law.

Keith Brown: Is there a single point of contact for community participation and asset transfer requests? If so, at what level in the council does that exist?

Lesley Forsyth: There is one route into the council and the process is the same for everyone. The initial engagement paperwork comes in, and then a single point of contact is allocated to each group. The single point of contact can vary. Although I am the lead for all community asset transfers, the individual groups come not to me but to the person in our community empowerment team who is best placed to support them. That might be down to the geography or it might be thematic. If a sports organisation is looking at the asset transfer of a football field, the contact might be somebody who is more aligned with sports. The single point of contact is tailored to the request that comes in, whether it is for participation or community asset transfer.

Keith Brown: Elisabeth, do you have a view on whether the 2015 act has had an impact?

Elisabeth Manson: We have had a similar journey to some other councils. We had already worked on our participation and engagement strategy—we have a youth participation strategy and a parental engagement strategy—so we were already on that journey across all services in the council. However, the strength of legislation has given a profile and, potentially, a backbone to the work that we were doing. It has given it a real boost.

There has also been work at national level because of the nature of the legislation. There has been evaluation work that brings people together to discuss and share their experiences. That has been a helpful and complementary element to the programme of work.

We have a senior manager who is responsible for both community asset transfer and participation requests, and a ward worker then picks up the individual contact. They are based in the localities so, in general, they know the community groups

and the people involved. That gives them a degree of confidence and it helps with a number of things, not just the PR or CAT.

Keith Brown: John, can you say anything about a single point of contact? A previous witness said that they feel that it is the most important thing. If they have to go to different people for different things, they feel that they get lost in the system, so it is important to have a single person with clout. How do you deal with it?

John Mair: Rebecca Carr, who was due to be here today but could not make it, is the main conduit through which we engage with community interests. We also have another dedicated resource, Craig, who gets involved in that. They have oversight of pretty much everything that we do on community engagement, which is really important. It means that we deal with communities consistently and they get the same messages. Also, Rebecca and Craig can learn from what has worked, what has not worked and what could be done better. That learning process is important.

Having that team in place is really important. It responds to the recommendation that there should be a conduit through which community requests can flow so that people have that single point of contact and can get consistent advice and engagement. We have that, and it is an important part of how we operate.

Keith Brown: Okay—thanks for that. Lesley Forsyth mentioned a less tangible effect of a successful asset transfer, which is the community feeling empowered. In a previous evidence session, we heard about a project that really seemed to empower a community, which felt that it could change things and make a difference. Will each of you give an example of that and an example of an asset transfer that has not worked, where the council has had to step back in?

Lesley Forsyth: I am happy to do that. I will answer the second question first. We have never had an asset returned and had to step back in, although we have some measures in place around that. For example, we agreed to a high profile town-hall asset transfer and the decision letter was sent out only a week or two before lockdown. As you can imagine, the funding dominoes that were lined up are now very precarious, but we have a process in place with that group. Our legal department has worked with a lawyer to make sure that, should the transfer not come to fruition as is set out in the business plans, the structures and the planning that was put in place ready for it, we have a safety net—that is the best way to phrase it.

That has not happened so far and we are still being proactive, but we were conscious that the landscape in which the asset transfer was agreed

changed dramatically in March, so we have taken cognisance of that. The asset has not come back, but we have a mechanism to make it happen just in case, in order to give the group that security—I think that that is the best word to use.

10:30

I could fill the rest of the time telling you wonderful stories about what our asset transfers have meant to many groups. If it is all right, I will share one with you. It concerns a hall that was transferred to a brass band. The band was a long-serving pillar of the community and the members were keen to have their own premises.

I could see the joy on the faces of the younger members, who had not been involved in the form filling or any of the work. They immediately had a sense of belonging and a sense of place, and they had somewhere to organise and store their instruments safely, rather than having to keep them in boxes under people's beds or in garages. The young people were able to articulate to me, probably better than any of us could, what it meant to them to have somewhere to call their own. It was not just a place for rehearsals to take place. They said that people who struggle to be in crowds were able to go there for one-to-one tuition and that they could have concerts there. The joy that they felt demonstrates what it means to people to have such assets.

The Convener: Keith, have you finished your questions?

Keith Brown: Yes, unless Elisabeth Manson wants to comment. I think that she is desperate to comment, convener.

Elisabeth Manson: I am indeed. I will pick out one example for you, which is the Dumfries Men's Shed. Taking on an asset has enabled that group to expand its range of services and the work that it does. It has worked on reducing social isolation and it is going to do some diversion work with school pupils, particularly those who are facing challenges at school. The group is excited about that intergenerational work and it is getting support from the local health service. It is bringing things together. That is a positive example of the empowerment and increased confidence that members experience.

Like Lesley Forsyth, we have not had an asset come back into council ownership.

Andy Wightman (Lothian) (Green): Under section 82 of the Community Empowerment (Scotland) Act 2015, on asset transfer request decisions, public authorities are required to go through a fairly complex decision-making process to balance all the advantages and disadvantages. How easy have you found it to apply that decision-

making process and come to decisions on asset transfer requests that are clear and not substantially disputed?

Lesley Forsyth: The process, the engagement that is required and the journey that our groups go on mean that there is a clear understanding of the benefits. As Liz Manson mentioned, when we deal with particular groups, they are eloquent in telling us about the health and education benefits, the social return on our investment and what it will mean to our young people or senior citizens, so all the information comes through in that process.

In all the asset transfers that I have worked on—there have been several—I have never had an occasion when anything has been other than positive. A lot of work is required of people to make an asset transfer happen, and they do not do it flippantly. They come at it for the right reasons, with the community at the heart of it and the asset being used to its maximum potential for the community, whether it is a football field or a building. It is quite cathartic to see how people can do that.

As Liz Manson said, the men's shed movement is one of the best examples as it highlights the strands of additionality that can come through the community asset transfer process, what that means to groups, and the level that it can take them to in their operation. We have worked through that closely with groups and I have never had an issue in proving what it means to groups to make the decision. It has never been anything other than simple to show that a proposal is a great idea.

If a group came in and that was the case, the robust process that we have to work through requests would clearly highlight the fragilities. In such a case, we would probably explore an alternative route for the group.

Andy Wightman: Liz, do you have any observations on the decision-making process?

Elisabeth Manson: We have a two-stage decision-making process. First, the request goes to our area committee, the members of which will know the asset and the group and will bring local insight to the discussion. The area committee then makes a recommendation to the strategic committee, which ultimately makes the decision. We had a review of our procedure at the end of last year and we have just completed a scrutiny review of the long-term implications and complex CATs. That is the area that I want to explore with the committee.

Where we have had straightforward CAT requests that have involved one community group and one asset, it has been straightforward, as Lesley Forsyth said. The information and evidence that is presented to members includes a business

case that sets out the community engagement that the group has carried out. This year we introduced the social value tool, and we also give the market price of the asset so that members are aware of the financial implications.

The work that we are doing is likely to add the social value tool to the decision-making process for all community assets, as well as a scoring panel. We have used a scoring panel for complex CATs. For example, we have had a CAT where two community bodies applied for the same property, a CAT where we had a below-market-value offer and a market-value offer, and a CAT where we had a below-market-value offer and a CAT offer. We call those complex CATs. In each case, we used an interservice scoring panel to give the elected members additional information on which to base their decision.

The scrutiny review also identified that we might need more information about property condition so that members can take that into account.

The officers' role is to provide members with information and evidence but, at the end of the day, as one of the members said, it is about an investment of faith in a community group and a belief that the community can take an asset and develop it in the long term. At present, we simply do not know the long-term implications of doing that. It is a judgment and an investment by the public body in the community group and the community.

Andy Wightman: Thank you for those comments. In the interests of time, I will move on.

Lesley, you mentioned a case that you are working on in North Ayrshire, which involves a town hall. That will almost certainly be part of the common good fund. How do you deal with common good properties in relation to asset transfer? Have you had to deal with any? If so, what have been the issues?

Lesley Forsyth: The town hall was indeed part of the common good. We have worked with our legal colleagues to have it alienated from the common good, and that has been achieved. As Elisabeth Manson said, some CATs are more complicated than others. Where they involve common good land or assets, there are processes and mechanisms in place to deal with that. Our legal team has been tested by the process, but the asset has been successfully alienated. The community asset transfer could not have been approved without that having taken place.

Andy Wightman: Liz, have you encountered any problems in that respect in Dumfries and Galloway?

Elisabeth Manson: The position in Dumfries and Galloway is similar. Where a request involves

a common good property, we go to the common good sub-committee of the area committee for it to make a determination as well. That is covered in our disposal and acquisition policy.

Andy Wightman: Convener, do I have a minute for a question to John Mair?

The Convener: Yes.

Andy Wightman: One of the issues with asset transfer is that you are taking an asset that is owned on behalf of, in the case of councils, the citizens who live in the council area and, in the case of an asset owned by Scottish ministers, which you manage, land that is owned by all the people of Scotland and you are transferring it to a very small subset of the people of Scotland. How do you balance those interests when you are making decisions about asset transfer?

John Mair: That is a good question. Part of the dialogue that we have with the community focuses on making sure that they understand the nature of what they are taking on the management of and making sure that it is managed well. Land, in particular, has to be managed, so part of the dialogue that we have with the community is to make sure that it is managed as well as it would have been had it still been held by Forestry and Land Scotland, which is an important aspect. Communities can then deliver the add-on benefits rather than just do what we could do.

If all they were proposing to do was what we would do, we would argue that we were best placed to do it. However, if there are real add-on benefits and deliverables, then it is both/and. As long as that is demonstrable, that is an important part of the decision-making process.

Although we have agreed most of the transfer requests that have come through to us, there has been a lot of conversation during that time to ensure that, as I said, when an asset is transferred, everything is realistic and deliverable. How that interacts with what we might have round about it is important as part of that understanding. In the decision-making process that we go through, we identify all the potential issues and manage those as part of both the decision-making and transfer processes.

Gordon MacDonald: I have a couple of questions on asset transfers. The Colinton Village Enterprise community group, in my area, recently took over a coach house that has now become a community heritage hub. The group received £48,000 from the Scottish land fund. Given that the witnesses have experience of quite a lot of asset transfers in the process of their being either evaluated or concluded, can they say how important the Scottish land fund is to community transfers?

Lesley Forsyth: The Scottish land fund is one of the options that many of our community groups look at, especially when they are looking for adaptations or renovations to be done to the asset. The majority of our groups who take on an asset take on one that is in pretty good condition, and their aspirations are to mould and change it to fit for them. Certainly, there are a host of potential funders for that, and the Scottish land fund is one of them.

We have an issue, though, that it is prudent for me to mention. When our groups are going through the process of community asset transfer, there is a hiatus point when they do not actually own the asset. However, some large funders wish them to have ownership before they make an application. There is therefore a bit of chicken-and-egg backwards and forwards sometimes, because the groups cannot make an application to some larger funders until they own the asset. If any leeway or potential relaxation in that position could be found, that would help.

When funds are required for adaptations and building works for our community assets, though, our funders are involved left, right and centre to make that viable. The groups have the capacity to take over those assets and we know that that makes sense socially and economically. Big investments like that in the £48,000 band and above are becoming few and far between for our assets, which make major contributions to their areas and to the vibrancy of our communities. However, as I said, the larger funders are important—left, right and centre—to our community asset transfers.

10:45

Elisabeth Manson: The Scottish land fund and the lottery are among a number of funders that are important to community groups. When we speak to community groups at the first stage, when they express an interest, we often talk to them about whether a lease would be a better route to try before taking on full ownership.

Some funders require a group to own an asset before it can get funding from that source. That also plays into the decision about which option is suitable for a group and a community. Our third sector interface can be helpful in making sure that community groups are able to access the most appropriate funding and to maximise that funding to develop their business plan.

Gordon MacDonald: You touched on the possibility of long-term leases for community assets before groups go on to make a purchase. What are the factors that groups take into account as they decide whether they will purchase an asset or take a long-term lease? If groups do

lease properties, is that at a peppercorn rent or a commercial one? What are the benefits?

Elisabeth Manson: We often discuss lease arrangements if volunteers have not previously been responsible for an asset and we are still building their capacity and skills. The community may also be testing out its own sustainability. It has been a good way to let communities test the water before they take on full ownership.

We have short-term management agreements as well as long-term leases, and we talk to groups about which type of agreement they want to try. If a short-term agreement works well, they can take on more but that does not have to be a commercial lease. That is part of the discussion.

We have been developing a standardised lease that has some of the basic elements. Then we have a conversation with the group. They might have someone in the community who is fire service trained and can take on responsibility for health and safety. They might have someone else who is an electrician, who might take on the outside lighting. We talk them through what they are able to take on and what the council retains. Over time, they are able to take on more and have an appetite to do so.

Gordon MacDonald: I can see the benefits of gradually learning how to look after a property. In the past, councils have rented property out to community groups at peppercorn rents. Is that the kind of arrangement that you would enter into for a long-term lease?

Elisabeth Manson: When a group gives us a business plan, it puts in what it proposes to pay and the conversation with the committee is about whether the council chooses to accept that. It could be a peppercorn rent, a commercial rent or something in between. That is part of the dialogue that we have.

Lesley Forsyth: Some of our groups—the men's shed group being one—belong to national organisations that do not encourage their local members to take on full asset ownership; instead, they encourage long-term leases. The law allows a CAT lease rather than a CAT ownership. Several of our groups have gone through that, and we write into the agreement an option to purchase at a later stage. That allows groups the opportunity to test the water without our having to go through an agreement again.

In the same way as a value is given to land or property for an asset transfer, we would take a small percentage of the commercial lease value on the basis of a formula that is to do with social value and return. A group would pay what has historically been called a peppercorn rent, but that would be based on the commercial rent after the factors that we have learned about have been

taken into account, which relate to the community benefits of having an asset.

The cost would be a fraction of a commercial rent, but the group would still have a short-term or long-term lease, as I said. Over time, we have built up lots of options—which we, in North Ayrshire, call a portfolio—for helping groups to get through the stages to where they would like to be and, most importantly, where they are comfortable being.

Gordon MacDonald: Does John Mair have anything to add about the funding of asset transfers?

John Mair: For transfers at scale, the Scottish land fund is a critical part of the equation. When communities are dealing with quite large amounts of money—it can be hundreds of thousands of pounds—the Scottish land fund plays and has played a critical part in making things happen.

Across the community spectrum, we have 90-odd leases and almost 120 agreements. It is not the only way to proceed but, for assets of scale and ownership requests, the Scottish land fund is important when we get into the hundreds of thousands. The renewables community benefit payments that quite a few communities have benefited from have also had a big impact on their ability to make transfers or deliver projects through transfers. For transfers of the scale that we are often involved in, the Scottish land fund has been a critical element.

Andy Wightman: I will follow up my questions to Lesley Forsyth, from North Ayrshire, about the disposal or alienation of a town hall. Will you write to the committee to explain the legal basis on which that alienation took place? That would be helpful.

The Convener: I have a follow-up question on Lesley Forsyth's fabulous reference to people being citizens, not customers. There has been talk of the market value of properties. Are properties always offered at market value? If they are offered more cheaply, how often does that happen? Meeting the market value would be a big issue for some community organisations that might benefit a community and, therefore, a council.

Lesley Forsyth: In all the asset transfers that I have dealt with, we have never requested the market value. As Elisabeth Manson said, sometimes the asset and the property condition report mean that it would be better to go for a nominal sum of money, because of what the council could carry on incurring otherwise. For best value, the town hall that we mentioned went for £1, but, in most cases, the sum is about 10 per cent of market value once we put the social value into the equation.

The Convener: That is great. Does Elisabeth Manson have a response?

Elisabeth Manson: A property would rarely go for its market value—community groups often offer £1—but we always ensure that elected members are aware of the market value in the covering report. When we were going to transfer industrial units, we noted that there was a revenue income to the council from them. Elected members need to know the position before they determine whether to make a transfer for the nominal figure that a community group has offered.

The Convener: [*Inaudible.*] That is helpful.

I thank the witnesses for a useful evidence session, which we will finish now. We plan to hold concluding evidence sessions with the Convention of Scottish Local Authorities and the Scottish Government, and we will report to the Parliament in the new year. The witnesses can now leave the meeting by pressing the red telephone icon.

I remind committee members that we will remain in public for the next agenda item. I suspend briefly for the witnesses to change over.

10:54

Meeting suspended.

11:03

On resuming—

European Charter of Local Self-Government (Incorporation) (Scotland) Bill: Stage 1

The Convener: At agenda item 3, the committee will take evidence on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. This is our concluding evidence session on the bill at stage 1. I welcome Andy Wightman, the member in charge of the bill; Neil Ross, solicitor, Scottish Parliament; Andrew Mylne, head of the non-Government bills unit; and Vanda Knowles, senior assistant clerk, Scottish Parliament. I thank you all for being here.

We have allocated about an hour for the session, in which we have a number of issues to discuss with you. A pre-arranged questioning order is in place and I will call each member in turn to ask their questions for up to nine minutes. Andy Wightman will need to please state clearly if he wants to bring in an official to answer any questions. We might have a short amount of time for supplementary questions at the end. Everyone will need to give broadcasting staff a second to operate their microphones before they speak.

Andy Wightman: I thank the committee for its work in scrutinising the bill. I will briefly set out why I introduced it and what it seeks to achieve. As the committee is aware, the European Charter of Local Self-Government is an international treaty whose substantive articles are set out in the schedule to the bill and which guarantees a set of basic freedoms and protections for local government across the 47 member states of the Council of Europe.

As things stand, the treaty does not have the force of law in Scotland unless and until it is incorporated into Scots law. Article 2 of the treaty states:

“The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.”

The Council of Europe has noted that such recognition does not exist in Scotland. Thus, arguably, we are already in violation of the charter by not giving it the full force of law. As things stand, we are bound to comply with the charter as an international legal instrument, but there is no means to ensure compliance, because it is not part of domestic law and is thus not justiciable.

It is important to stress, as other witnesses have done, that the bill is not sanctions driven. It is designed to change the culture of compliance, principally through sections 3 and 8, which mandate continuous reflection on the extent of compliance by Scottish ministers, with any MSP introducing a public bill required under section 8 to

consider the extent to which that bill complies with the charter.

Incorporation of the treaty has long been argued for by COSLA, which was involved in drafting the charter back in the 1980s and whose 2014 commission on strengthening local democracy recommended incorporation. The consultative steering group on the Scottish Parliament argued for incorporation in 1999 and lamented the fact that it had not happened in its 20th anniversary report in 2019.

The United Kingdom is at the bottom of the league table of European countries in having done nothing to give legal effect to the charter, and the bill remedies that.

I welcome questions from committee members.

The Convener: To what extent, and how, does the bill support the process of further devolution of local government?

Andy Wightman: By

“further devolution of local government”,

do you mean the devolution of further powers?

The Convener: Yes—of further powers to local government.

Andy Wightman: In and of itself, the charter does not require that. It sets out a set of basic freedoms and principles that should govern local government. It incorporates that into law, and any violation of it is thus challengeable. However, the extent to which local government has certain powers is up to the national legislature. That is the case throughout Council of Europe member states. The charter does not set any duties or expectations regarding any specific functions that should be devolved to local government.

One could argue that, in improving the culture of compliance, the bill is designed to strengthen local government and, to that extent, it would add weight to arguments from those—including me—who believe that local government should have more powers. In and of itself, however, the charter does not do that.

The Convener: Would you say that the bill sends out a message more than giving further powers—further devolution of powers—to local government? In their submissions, many witnesses have suggested that the main benefit would be to send out a message of parity between the Scottish Government and local government. Is it about sending a message, or would there be more practical or tangible outcomes from the bill?

Andy Wightman: I have heard witnesses say that it sends a message. I have also heard the Scottish Government say that it would mark a significant constitutional change. I argue that it is

somewhere in the middle. It is not a bill that merely sends a message. It sends a message—a very important political message—and it incorporates an important principle, but it also has substantive legal effect.

At the moment, if any local authority or citizen believes that the charter is not being complied with in any way, they can reference that in any court proceedings, but the court cannot rule on that question, because the charter is not part of Scots law. The court might say, “That is all very interesting, but there is nothing we can do about it.” Giving legal teeth to the charter is the main means by which the bill seeks to strengthen local government. In doing so, it sends a very strong signal.

I agree with the convener on the parity of esteem that should exist between different spheres of elected representation—as one witness stressed to the committee the other week, that is very important. Just as the Scottish Parliament has a founding statute in the form of the Scotland Act 1998, and various protocols in place to ensure that its powers are not undermined—although there is political dispute about that now and again—so the bill seeks to extend the same principle to local government, which is that its basic freedoms and powers should be protected in law.

The Convener: Would the bill expand in any way the work that already goes on between the Scottish Government and local government, or would it simply give local government the confidence that it is supported by law?

Andy Wightman: The bill would go some way towards creating that parity, in the sense that, in any discussions that take place between local government and central Government—those discussions go on all the time, week in, week out—it would strengthen the hand of local government to know that it had the legal force of a charter sitting behind it. In other words, it would set boundaries on the extent to which Government could seek to interfere, intervene with, remove or modify the powers and duties of local government. The knowledge of where those boundaries lie should assist in those discussions.

At present, those boundaries do not exist, and those discussions and their outcomes are very much dependent on a political process. Where a Government might feel hostile to local government, it is quite free, through Parliament, to enact legislation that would harm local government, and the charter would prevent that. The bill would strengthen that dialogue, give local government more confidence and ensure that Government could not overreach.

The Convener: I have one final question. Do you think that the Scottish Government’s actions on further local devolution have been constrained by the fact that the charter is not currently enshrined in legislation?

Andy Wightman: No, they have not been constrained—if anything, they have been liberated. Without the backstop and legal protection of the charter, and without those fundamental rights being enshrined in law, Government and Parliament are free to do almost anything that they like, so the effect has been the opposite. Incorporating the charter will, in fact, constrain the executive and Parliament in modest but important ways.

Sarah Boyack: I have a couple of questions about the potential difference that the bill could make. How would your bill change the relationship between the Scottish Government and local government on funding, for example? What new powers would it give local government in respect of the ability to have new income streams?

How would it impact on that relationship? Where the Scottish Government has policies and pays for funding for local government to implement them, and local government says, “We’ll do that, but it’s not enough money,” and regarding the general funding that the Scottish Government passes on to let local government do its work in delivering services, how would the balance of power change? What are the practical implications for financial issues?

Andy Wightman: That raises an important question. The financial provisions in article 9 of the charter are those that Council of Europe monitoring missions have found or observed are not being complied with. Professor Himsforth referred to the fact that compliance with article 9(3) is perhaps “precarious”.

The charter does not influence the relationship between central Government and local authorities directly. Obviously, on finances, that relationship, as with the relationship between the UK Parliament and UK Government and the Scottish Government, will continue. At article 9, the charter sets out a series of principles and rules that would, if the bill is enacted, become law. That would constrain the freedom of central Government to do as it wishes and impose on local government against the latter’s wishes or interests. I cannot comment on the likelihood of those being invoked, as that would be for local authorities to look at in future.

11:15

Those principles are framed in fairly broad terms. For example, article 9(1) of the charter says:

“Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”

It would be up to a court to determine what that means. Article 9(3), which Professor Himsworth referenced, says:

“Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.”

The extent to which they have that power is arguable.

Those are important provisions in the charter that I think will change the dynamic of future discussions about finance. They would probably rule out some of the more adventurous approaches that the Government has taken, such as putting a penny or two on the council tax and hypothecating that for spending on attainment in schools. That is not the Scottish Government's tax; it is local government's tax. Those kinds of initiatives have not been taken very often, but they will probably slowly die away. Article 9 provides a framework within which the financial negotiations would take place. At the moment, they take place with no real framework; there is just custom and practice and a set of expectations.

Sarah Boyack: That is helpful, because it is one of the things that colleagues in local government are strong on. They want the capacity to share resources, but they also want the capacity to have agency over the decisions that they might make with regard to additional financial income.

Can you give us examples of situations where the bill, if enacted, could be used to challenge Scottish Government action or inaction in relation to local government? Do you have practical issues that it would be useful for us to consider when looking at your bill?

Andy Wightman: I do not want to speculate, because the bill, at heart, is about making the charter justiciable, making it part of Scots law and therefore making compliance with it—by Scottish ministers and others—a matter of obligation in law. There are articles in the charter that require consultation on boundary changes, for example. That is already provided for in statute, so that will make very little—

Sarah Boyack: I missed a word; you said something about changes.

Andy Wightman: There is provision in the charter that local communities shall be consulted on boundary changes of areas and wards. As I understand it, that is already done, so the charter will not make much difference in that regard.

However, it would be a fairly egregious breach of article 9(3) if, for example, the Government were to decide that the council tax rate should be set by Parliament, because non-domestic rates are already set by Parliament. The practical impact is that, if the Scottish Government or Parliament overstepped the mark or clearly overreached, that would be stopped and prevented. The culture would ensure that that would not happen in the first place. Those are some practical implications.

In a sense, one could answer your question properly only by, in 10 or 20 years, looking back and asking those who were part of negotiations between local government and central Government whether the culture changed and whether they felt constrained or emboldened—depending on the side of the negotiating table they were sitting on—by the incorporation of the charter 10 or 20 years previously.

Sarah Boyack: So, in effect, you see incorporation of the charter as resetting the dial in the relationship between central and local Government. Some witnesses have been concerned that they do not want to see us looking back over previous and historical decisions, but your emphasis is that, from where we are now, incorporation resets the relationship. Is that right?

Andy Wightman: That is a fair characterisation of part of my motive for doing that, as I reflected in my opening remarks. When the consultative steering group sat in 1998 and 1999 and set out the basic architecture of the Scottish Parliament, the charter had just been ratified by the UK Labour Government in 1997 and 1998, so the group had an unquestionable expectation that the Parliament would incorporate the charter but, 20 years later, it was disappointed.

Obviously, over those 20 years, changes have taken place in local government. We have had the introduction of multimember wards, which are good; councillors are now paid; and there have been a number of other initiatives that have strengthened and improved the relationship. However, that fundamental framework has not been put in place, and that is disappointing.

In that context, I would say that, yes, incorporating the charter will reset the relationship and provide an opportunity to strengthen local democracy, which is why COSLA's commission on strengthening local democracy was clear that the charter should be incorporated.

Alexander Stewart: During the evidence sessions, we have had some discussion about the role of an overseeing commissioner. Do you think that such a post should develop? We have had some evidence from people who are not in favour of having an overseeing commissioner, because

they suspect that direct legal action would be more appropriate. What do you think?

Andy Wightman: I have noted that that issue has come up; in fact, it came up in the consultation that I did on the draft proposal in 2018. When consultees were asked whether they would prefer compliance with the charter to be policed, as it were, by means of a commissioner or by means of a direct route to the court, 58 per cent said that they would prefer a commissioner and 42 per cent said that they would prefer the court route.

I rejected that view for a number of reasons. One was that of expense. I am not sure that we want more commissioners—we already have quite a few. More fundamentally, because the bill would make the charter part of Scots law, it is not really for commissioners—individuals who are appointed by the Queen, on recommendation of Parliament—to rule on whether the action of ministers or any statutory provisions of devolved legislation are compliant with the charter and thus lawful. That is the routine day-to-day work of the courts. Therefore, to the extent that any questions that arise in relation to compliance will be questions about whether something is compliant with the law, they should, naturally, go straight into the judicial system, because that is its job.

The other reason why I rejected the commissioner route was that it could encourage more complaints. It would be an easier route, presumably, and people could write in making all sorts of perhaps frivolous complaints. That would be against the spirit of the charter. The bill is not meant to create a means of complaining about or punishing local government—that is not the spirit of the charter. Rather, it is designed to change the culture. As a backstop, obviously, the charter is justiciable, and there can be challenges in the courts, but no one would do that lightly.

I maintain that the commissioner route is not the route to go down, and I would not support any amendments in that regard.

Alexander Stewart: If the bill becomes an act, what role or relationship to it, if any, do you see for the Local Government and Communities Committee?

Andy Wightman: That question involves speculation about what a future committee might want to do. If I were a member of this committee in five or 10 years' time, I would probably ask COSLA and local authorities when they appeared before us on any specific issue—or perhaps an annual basis—to reflect on the changes that incorporation has made. I would simply seek their views on the question. Of course, section 3 of the bill also makes provision for the Scottish ministers to report on the steps that they are taking to

promote local self-government. I imagine that the committee would take an interest in that report.

The committee, as a committee of Parliament, would continue its scrutiny role, but that role would be enhanced by the fact that we would be living in a different era, in which the basic powers and freedoms of local government are no longer set merely by legislation that the Parliament passes but are set within this framework. I anticipate that the committee would be interested in questions about what discussions have been taking place between local government and the Scottish Government about compliance with the charter, where the points of tension have been, what practices have changed and so on.

Alexander Stewart: My final question is about the cost implications. Has any further work been done on understanding the cost implications of the bill?

Andy Wightman: We set out the cost implications in quite extensive detail in the financial memorandum. That was a point that the Scottish Government raised in its evidence. Rather cheekily, I took the opportunity to point out that, in the financial memorandum for its United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill—which does a similar thing to my bill, in that it incorporates an international treaty—the equivalent potential costs are discussed in one paragraph, whereas the financial memorandum for my bill discusses its financial implications in 20 paragraphs.

I think that the financial memorandum is robust. The bill does not impose or directly bring about any direct costs on any party. The main costs that might be incurred would be any costs involved in local authorities, COSLA and the Scottish Government familiarising themselves with the charter. However, they should already be familiar with it. You heard the cabinet secretary say that she considers that the Scottish Government is already compliant with it, so I presume that there is a process within Government that is already monitoring compliance, and COSLA was involved in drafting the thing, so it is very familiar with it. Therefore, I do not think that those costs will be significant.

The significant costs would arise from any litigation that might be initiated by any party. Of course, that is the case with a lot of legislation that the Parliament passes. When we make new laws, we have to accept that those laws could be subject to litigation.

The question of how many cases might arise is a matter of speculation and judgment. We take the view that the number is likely to be minimal. As I have said, it is not a sanctions-driven bill; it is designed to encourage a culture of compliance,

but with a backstop. I think that there are 200 or so judicial review cases every year, most of which are on things such as immigration—there are modest numbers that relate to the prison service, and a dozen or so relate to planning. I would not rule out the possibility of judicial reviews but, of course, the decision about whether to get involved in litigation is a judgment that must be taken by the relevant parties, most likely local authorities themselves, and no local authority would lightly petition for judicial review. It is an expensive process, and it would only really happen at the end of a long process in which people had attempted to resolve any differences.

In short, the financial memorandum is robust and the committee need have no concerns about the cost implications of the bill.

Gordon MacDonald: Mr Wightman, you have mentioned that the bill is intended to do more than send a message, because it has substantive legal effect, and you have said that it could lead to court proceedings, although you do not envisage that many will take place. What do you see the potential sanctions for non-compliance being, if there are to be any beyond a declaration of incompatibility?

Andy Wightman: The bill seeks to make the charter law. Therefore, if the Scottish ministers act incompatibly with the charter, they are acting unlawfully. Any allegations that ministers are acting unlawfully or beyond their powers can be judicially reviewed. That is what judicial review is there for: essentially, it is to review the decisions of decision makers.

The sanctions are the standard sanctions that are available in judicial reviews—reductions, quashing, declarators and so on, all of which exist at the moment. The only one that the bill introduces is the declaration of incompatibility. Again, that is not a new sanction either, because the drafting is taken from the Human Rights Act 1998. Ultimately, the courts have the power only to say that something is unlawful. They would have the power to quash secondary legislation, where the parent act did not permit that but, other than that, they would not have the power to strike down any legislation; that is something that would be beyond the powers of the Parliament to give the courts. However, the impact of a declaration of incompatibility should be fairly powerful. If the courts were to rule that ministers had acted unlawfully, that would be a fairly damning judgment, and there would be political consequences. Even if the Government decided not to do anything, I am sure that the Parliament would put pressure on it to do something.

That is part of the culture of compliance and the bill not being a sanctions-driven bill. We have not sought to include any new sanctions or

punishments, partly because we cannot, due to the limits of the Parliament's devolved competence. The available sanctions are the standard sanctions that are available under judicial review.

11:30

Gordon MacDonald: The Law Society of Scotland's written evidence mentioned the potential need to extend the commencement period beyond six months. What is your view on that?

Andy Wightman: I do not agree that more than six months would be needed. I indicated in response to a question from Sarah Boyack that the Scottish ministers, the Scottish Government and local authorities are already familiar with the charter. There is not much to it—it is just a couple of pages long—and there is not a great deal to become familiar with.

Commencement dates matter, because a bill cannot become law the day after royal assent if things need to be done. In this case, one practical thing needs to be done. Under section 8, members are required to

“make a statement about the extent to which”

a bill that is introduced to Parliament

“is compatible with the Charter”.

Subsection (2) says:

“The Parliament must publish any statement”.

The Parliament needs to take time to consider how it will do that in practical terms. For example, will that be incorporated into the standing orders?

We took the view that six months is enough time for the Parliament to consider the only substantive practical thing that the bill requires. If the bill goes through the parliamentary process and gets royal assent in March or April, it would be enacted in September or October. That is a perfectly reasonable timeframe.

Gordon MacDonald: The committee has taken a wealth of evidence from a range of organisations. Having heard some of that evidence and read the *Official Reports*, are you considering lodging any amendments at stage 2?

Andy Wightman: Obviously, as the member in charge of the bill, I am in listening mode during stage 1. The Law Society of Scotland and the Delegated Powers and Law Reform Committee have made a recommendation on section 6 and remedial action, which I am paying attention to. I am interested in the committee's views on that, if it has any.

As the committee has heard, the cabinet secretary has said to me that she is interested in

having discussions on sections 3, 4 and 8. At last week's Local Government and Communities Committee meeting, she said, if I heard her correctly, that the policy areas are not substantive, that she is looking for some clarity on my intentions, and that there might be some minor technical drafting amendments. We will have those discussions next week. The Scottish Government is seeking some clarity and the Delegated Powers and Law Reform Committee and the Law Society of Scotland have drawn my attention to potential amendments to section 6. Other than in those two broad areas, I do not have any amendments in mind just now. However, I am waiting to hear what the committee has to say.

Keith Brown: Andy Wightman mentioned at the start of the session that the matter has been going on for a long time. I remember proposing incorporation at COSLA 20-plus years ago and supporting it at council. Andy said that the UK has done nothing on it, and that the bill will remedy that. However, as a matter of fact, that is wrong, is it not? The UK is not proposing to do anything—this is about Scotland, or am I getting that wrong?

Andy Wightman: I am sorry for any misunderstanding. What I am saying is that the UK has done nothing to incorporate the charter. If the Scottish Parliament decides to do that, part of the UK will remedy that.

Keith Brown: In effect, as I think you mentioned, the bill would make something justiciable that is currently not justiciable. That is its main purpose and point. The evidence that we have taken on it veers between, on one hand, people saying that it is a dead duck because nothing would happen to anybody—we have had warm assurances to that effect—and, on the other, people saying that it would result in legal action. Some people fear that incorporation would just lead to a series of legal measures being taken by councils, maybe of different political persuasions from the Scottish Government of the day, and that that would basically pour public funds down the throats of lawyers. Which of those responses is closer to the mark? Would the bill have no effect or a lot of effect, in terms of legal action being taken against the Scottish Government?

Andy Wightman: I think that I heard all of the question, although I had a bit of a struggle because of the audio quality.

I do not accept either of those characterisations. As I think I said earlier, I do not accept that the bill is a dead duck or that it would just send a political message, but neither do I think that it would lead to extensive litigation. I do not accept either of those perspectives. It will not surprise the committee to learn that I see the bill lying somewhere in the middle.

I know that a number of committee members have been councillors in the past. If they have had any involvement with their councils petitioning for judicial review, they will know that it is not a process that is undertaken lightly, and that the council has to agree to do that in its corporate name. No political group—a Conservative group, a Labour group or whatever—may petition for judicial review in the council's name without the council authorising it. Long before one got to that stage, one would inquire as to whether there were other routes through which to seek to remedy an issue. That would lead to political dialogue with Scottish ministers and, perhaps, the Scottish Parliament.

Even if a council were to get to the prospect of petitioning for judicial review, extensive advice would come from senior council officials on the merits of that, the prospects of success and the associated costs. There are duties on councillors when it comes to taking legal action, and the council then has to seek the permission of the courts. It is not a process to be entered into lightly, or one that it is easy for a particular group that feels aggrieved to undertake. It has to be done in the name of the council, and councils do not do it very often.

I therefore do not believe that there is any basis for suggesting that a lot of litigation would be likely, or that there would be what I could characterise as politically motivated or frivolous litigation. I just do not believe that that would happen.

Keith Brown: Given that the bill would be so unlikely to result in much in the way of action, is not it the case that many people in local government would prefer instead to prioritise things such as full-time wages for councillors or things to do with the powers of local government, rather than something that would be likely to have little direct effect?

Andy Wightman: Obviously, councils can take forward any ambitions that they have in relation to having more powers or whatever, and bills can be introduced for Parliament to consider.

The important thing to observe is that the fact that, in my view, there is unlikely to be extensive litigation—the bill is certainly not designed to encourage that—does not mean that it would not have significant effect. I do not want to stretch the parallel between the bill and the Human Rights Act 1998, but the fact that there is not a lot of litigation under that act does not mean that it is not important that we have incorporated human rights. The act creates a culture of compliance because people know that it is there as a backstop.

In the context of the bill, decision makers would know that litigation was possible as a backstop,

which would change the culture and their approach to issues that they look at week in and week out. The fact that not a lot of litigation would be in prospect or contemplated would not mean that, on a week-to-week basis, the charter was not having a significant impact, in the same way that—as I said, I do not want to stretch the comparison—the Human Rights Act has fundamentally changed, for example, how the police operate. There is now a completely different culture of policing because of the Human Rights Act; the absence of actions against the police under human rights legislation does not mean that it has not had a powerful impact.

Keith Brown: I have a short final question. You mentioned the possibility of further amendments. To what extent can the committee be assured that, if we support the bill at this stage, it will not go off in a dramatically different direction through amendments?

Andy Wightman: I suppose that the committee could never be assured of that. Every member of the Scottish Parliament is entitled to lodge amendments at stage 2. I have indicated that I am not contemplating lodging amendments other than in the three areas that have been drawn to my attention by the Scottish ministers, to address the issue with section 6 that has been drawn to my attention by the DPLR Committee and the Law Society of Scotland, and to address any minor technical issues that might arise.

I cannot give any guarantee that the bill could not go off at all sorts of tangents, but I remind the committee that, at stage 2, the convener has the power to accept amendments or not, and amendments have to be within scope. I reassure the committee that, as far as Parliament's standing orders are concerned, bills generally cannot go off at a tangent at stage 2. I have had no indication that anyone is contemplating any substantive changes to the bill.

Sarah Boyack: I have a reasonably quick question. We have heard concerns about the litigation that might arise if the bill were passed. Will you give a brief overview of what the impact has been in other European states that have incorporated such legislation? Has there been a cultural shift or a resetting of the relationship, or has it led to lots of court decisions and challenges?

Andy Wightman: You want a brief answer to such a question? I have not done an extensive comparative analysis or study of the impact of the charter across Council of Europe member states. Professor Chris Himsworth, who gave evidence to the committee, has written a book about that, which members could read.

The Council of Europe has established monitoring missions to visit member states regularly. There have been two to the UK; there should be another next year. Findings from those missions have been incorporated into analyses of the extent of compliance across member states. In other countries, there has been litigation in which the charter has been invoked, but I do not know of any particularly high-profile cases.

It is difficult to assess any change in culture, because most Council of Europe member states have a legal system that is described as monist—in other words, international law automatically becomes part of domestic law; there is no requirement for legislation to incorporate it. We have a dualist system, which is relatively rare among Council of Europe member states. That means that we actively have to incorporate international law.

Countries with monist systems usually have constitutions. Basic freedoms and limitations on the extent to which federal or national Government or Parliament can interfere with the powers of local government are generally set out in the constitution, and are fairly long standing—by which I mean that they have existed for decades or, in some cases, centuries. France is an excellent example; there has been little change in French local government since the French revolution.

The impact of the charter on culture has been minuscule in many European countries, because the culture—in relation to the clear separation of powers, knowing where the boundaries are and the extent to which there can be interference—has been in place for a long time. You can see that by reading any random article of the French or German constitutions.

Comparisons can be made with countries such as Ireland and those in the rest of the UK, because they are most similar to Scotland, in the sense that the UK does not have a written constitution—although Ireland does, obviously. Therefore, the impact of incorporation, in relation to a culture change, might be more significant in Scotland than it has been in most member states.

The only exception that I will make to that is the culture shift that has taken place in eastern European states following the fall of the Soviet Union. The culture that those countries inherited had a particular character. The Council of Europe has been doing quite a lot of work to strengthen local democracy in emerging democracies, and the charter has had a significant role in that.

Sarah Boyack: That is really helpful.

The Convener: That was a short response to your question. *[Laughter.]* Thank you, Andy.

That completes our questions and concludes the evidence session. I thank Andy Wightman and his team for taking part in the meeting. The committee will report to Parliament on the bill early in 2021.

11:45

Meeting continued in private until 12:53.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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