



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Local Government, Housing and Planning Committee

Tuesday 19 November 2024

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
31st Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Emma Roddick (Highlands and Islands) (SNP)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ian Bruce (Ethical Standards Commissioner)

Lorna Johnston (Standards Commission for Scotland)

Andy Kinnaird (Scottish Government)

Margaret Main (Scottish Government)

Paul McLennan (Minister for Housing)

Anita Stewart (Scottish Government)

Suzanne Vestri (Standards Commission for Scotland)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 19 November 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the 31st meeting in 2024 of the Local Government, Housing and Planning Committee. Fulton MacGregor, Willie Coffey and Mark Griffin are joining us online. I remind all members and witnesses to ensure that their devices are on silent.

The first item on our agenda is to decide whether to take items 5, 6, 7 and 8 in private. Are members agreed?

Members indicated agreement.

Annual Report of the Ethical Standards Commissioner 2023-24

09:01

The Convener: The next item on our agenda is to take evidence on the Ethical Standards Commissioner's annual report for 2023-24. We are joined by Ian Bruce, who is the Ethical Standards Commissioner. Welcome to the meeting. I begin by inviting you to make a brief opening statement.

Ian Bruce (Ethical Standards Commissioner): Thank you, convener and members, for the invitation and for the opportunity to talk to you about the work of our office. I will keep the statement brief, to allow as much time as possible for questions. I trust that you have reviewed our most recent annual report, alongside the briefing papers that were provided to you for today's meeting, and that that will have given you an indication of the continuing progress that we have made as an office since I last gave evidence to the committee in December last year.

As the committee will be aware from evidence that I have provided previously, I prefer to rely on external independent validation of my work. The missing piece of the jigsaw is Audit Scotland's report on the 2023-24 reporting year, which was published just last week, so it was too late for inclusion in your papers for today. I have provided a copy to the committee clerks, in case the details are of interest to you.

Audit Scotland again conducted a wider-scope review to provide assurance on our governance and other aspects of our work that had previously been of concern. The headline findings were that the commissioner's office operated within its approved budget for 2023-24. Appropriate medium-term financial planning arrangements are in place, which demonstrate how services will continue to be delivered. A new strategic plan with clear objectives for improvement and a more strategic-looking senior management team are in place. Open and transparent governance arrangements are operating effectively. The vacancies that we were carrying have been filled, and increased capacity is making a difference. Complaints handling performance is improving and positive developments have been implemented to tackle the waiting list.

Additionally, Audit Scotland found good evidence that our arrangements demonstrate best value, as required by the ministerial guidance to accountable officers for public bodies and the Scottish public finance manual. I am pleased to say that, for the second year running, the auditors had no recommendations for us.

I was also provided with additional assurance this year by our internal auditors, who reviewed our cybersecurity arrangements and assessed our controls as substantial. We managed to obtain cyber essentials plus reaccreditation this year. Our financial arrangements were rated as strong. The auditors also reported positively on our work on implementing their prior recommendations.

I trust that that is of interest to the committee, and I am happy to answer any questions that members may have.

The Convener: Thank you very much for giving that statement and highlighting the key points. There are quite a lot of different bits to keep track of in the work, not just on what you are doing but the backbone administration and cybersecurity aspects.

We have a number of questions to tease out a bit of detail, and I will begin. During 2023-24, the number of complaints about councillors more than doubled when compared with the previous financial year—it was 344 versus 156. What are your thoughts on the reason for that rise? Should we be worried about ethical standards in local democracy?

Ian Bruce: Goodness! I will answer the second question first. I think that we should all be worried about ethical standards in local democracy. Some of this might appear to be anecdotal but, clearly, we have the numbers that sit under it. Yes, it concerns me. I have been in this post for a year and a half as commissioner and for two years as acting commissioner, and the impression that I get is that standards are not great and that certain issues are certainly driving up complaint numbers.

It might be of interest to the committee to know that even geopolitical events—things such as the conflict in the middle east and political commentary on it—drive up complaint numbers, even though those are not necessarily directly relevant to local communities. Perhaps a bit closer to home are debates on contentious matters. A good example is the debate that continues in respect of the rights of those who identify as transgender and those who hold gender-critical views. That drives a fair number of complaints to our office.

Over and above that, other matters that are perhaps more local to particular areas also drive up complaint numbers, such as contentious planning decisions. The financial constraints that councils face and some of the very challenging decisions that they are having to make, given the financial climate—for example, decisions on cuts to services—drive up complaint numbers as well.

The Convener: Your response that we should be worried is quite strong, and it is good to hear

some of the reasons for that at global level but also at local level, such as planning decisions.

Many of the complaints relate to the councillor code of conduct. In what ways could awareness of the code of conduct be raised among non-politicians, which could stem the flow of inadmissible complaints that you receive? I think that something like 80 per cent of complaints were inadmissible.

Ian Bruce: In the main, the issue lies with members of the public, as most complaints continue to come from them; they made up about 80 per cent of the complaints in the reporting year that we are considering. In the same year, possibly significantly, we also saw a rise in councillor-on-councillor complaints, with the share of those complaints rising from 10 to 17 per cent. The Standards Commission for Scotland, which you will hear from later, does a very good job in education and guidance, and works alongside the Improvement Service to help councillors to understand the provisions of the code and when it applies and does not apply. In the main, our issue is with members of the public.

We are doing more to improve awareness levels, because quite a lot of complaints are inadmissible. The sorts of things that people tend to complain about—I do not know whether raising their awareness would preclude them from complaining about these issues but we will certainly have a go—are to do with council decisions, the service that they receive from their local councillor, how frequently councillors respond to emails, whether they respond to emails and whether they are doing exactly what the constituent wants them to do. Those are the sorts of things that tend to be inadmissible, so the code simply does not apply in those cases.

The Standards Commission came up with a very helpful piece of guidance that councillors can use in discussions with their constituents. That is about when the code applies and about helping constituents to understand that such issues are not conduct issues but performance issues. For our part, we have just drafted three new easy-read guides, which we are about to publish on our website and which explain in the simplest terms what people can and cannot complain about. We hope that that will make a difference.

Over and above that, we have just refreshed our communications strategy, following the publication of our new strategic plan. Our intent at the moment is to put more accessible information into the public domain via LinkedIn and YouTube—short videos and so on—to help the public to understand what our role is, what the ethical standards framework is and when the code does and does not apply to the work of councillors.

There is definitely an education piece involved in that.

I must mention social media. As you will have seen from the annual report, in 2022-23, 20 per cent of complaints related to social media commentary, and the figure has gone up to 25 per cent. Sometimes, the code is engaged in relation to that and sometimes it is not, but it can be quite an unpleasant environment. If a councillor raises their head above the parapet and engages in debates, that can certainly generate complaints from members of the public.

The Convener: That is interesting detail. Can something be done on that when we move towards local authority elections? Maybe your guides could be sent along with the information that comes from the Electoral Management Board for Scotland, or there could be QR codes or something. However, it is not for me to come up with those solutions—that just popped into my mind.

Ian Bruce: It is a helpful point. It may be helpful to point out that the Standards Commission and I wrote collectively to the leaders of all political parties in the run-up to the most recent election to remind them of the importance of adhering to the provisions of the code. We had anticipated that there might be a spike in the numbers of complaints just prior to the election, but that did not materialise. Perhaps that letter made a difference—it is hard to tell.

The Convener: Thanks very much. I will bring in Willie Coffey, who joins us online.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Thank you for your opening remarks, Ian. My question is in the same area. Why do so many councillors complain about one another? When might you expect to see the fruits of the guidance being embraced and adopted by our local authority councillors? Will you also say a bit about whether awareness of conduct issues rather than performance issues, as you described, is a mandatory part of councillor training? Will you give us a little flavour of that to widen the discussion a bit?

Ian Bruce: In answer to your first question, one of the key issues that is driving the situation is the very challenging financial circumstances that local authorities find themselves in. Councils are having to make very difficult decisions about service provision, which leads to debates that, on occasion, are becoming personalised. We see, for want of a better expression, hotspots across the country, where councillor-on-councillor complaints are very prevalent, and those drive up the numbers. I would not say that it is across the board, as I do not think that it is. By and large,

conduct is fairly good, but the numbers speak for themselves: we have seen that increase.

When very difficult decisions have to be made and there are political disagreements, things can become quite fractious. That is wholly understandable. Where it becomes problematic and where the code becomes engaged is where discussions lapse into personal attacks, as opposed to attacks or challenges on policy positions that particular councillors have to take. It is very important for councillors to realise that key distinction. By all means, criticise the policy positions of your political opponents, but please do not personalise it.

As to whether training should be mandatory, I am sure that one could make a case for that. I have been running training in all sorts of areas for a long time and, in my experience, the people who tend not to need it tend to be the ones who are most keen to come along and participate. There is potentially scope to make training mandatory. We know that practices vary from local authority area to local authority area. How one would ensure that it sticks is another matter.

If you were going to go down that route, consideration should perhaps be given to whether one assesses the extent to which people have taken on board the training that they have received. For example, some training is available to people online and they can tick a box to say, "I have watched that presentation", but whether that will moderate their behaviour in the future is a different question. I hope that that helps.

09:15

Willie Coffey: It certainly does.

Do you spend a lot of your time basically dismissing complaints that do not fall within the scope of the code? Could you give us a flavour of the amount of work that you do in simply dismissing things that are not relevant?

Ian Bruce: It is a considerable amount of work. It was in the region of 60 per cent in the previous reporting year and it is sitting at roughly that level again. It depends—it varies from complaint to complaint—but some complainants, because they are fundamentally unhappy, deluge us with a considerable amount of material. That can run into hundreds and sometimes even thousands of pages, and we need to review all of that to assess whether there is any merit to the complaint.

We have to be thorough, because we have an obligation, to complainers and respondents, to properly assess the concerns that they bring to us. However, at the end of the process, we sometimes find that there is actually no merit to a complaint. So, yes—a fair amount of work is involved.

Willie Coffey: You will be aware that the committee recently agreed to support the Scottish Local Authorities Remuneration Committee's recommendations on councillor pay. Might there be an opportunity to take that further to include more mandatory elements in the councillor training regime, particularly on this issue? Could we put more into that mandatory bag of training for local authority councillors in return for that salary uplift, should it be awarded?

Ian Bruce: I have assisted the Scottish Local Authorities Remuneration Committee with its work. Representatives of that committee came to our office to ask whether, alongside the level of remuneration, conduct represents a barrier to people entering political life. We assisted that committee to an extent with the research that it was undertaking. It came up with what I think are excellent recommendations, and my understanding is that the Scottish ministers have accepted them. I anticipate that the implementation date will be January next year. From my perspective, that is all positive news.

To answer the second part of your question, anything that we can do collectively to drive up standards in public life can only be a good thing. I mentioned that some conduct inevitably represents a barrier to more diversity in public life, and that is not a good thing. We should do anything that we can to improve diversity, and if that means improving conduct at local government level, that is to be encouraged.

Willie Coffey: Thank you for that—it is much appreciated.

Meghan Gallacher (Central Scotland) (Con): Good morning. My first question is about waiting times, which, as the annual report outlines, reduced in 2022 and 2023. That, of course, is welcome, but how long are current waiting times from the beginning to the end of the process and what is being done to further reduce the length of time it takes to conclude a complaint?

Ian Bruce: We monitor this regularly. We have a senior management team in the office, and statistical information has to come to it every month from the team that handles complaints. Last year, the average wait for the first stage—that is, admissibility—was 4.6 months; currently, the wait time is about 4.9 months. That is the average time for reaching a decision on whether a complaint should go forward to investigation.

Investigation times have come down this year, which is a very good thing, but we feel that we need to do more about the initial waiting time. As you will know, the volume of complaints has been increasing, and that pattern has not changed in the current financial year. We are relatively close to where we were this time last year. Clearly, we

have a limited resource, and we need to dedicate it to whatever we feel our stakeholders find most important. You do not want an investigation to last particularly long, but similarly, you do not want to have to wait to get an initial decision from us, either.

We are piloting a couple of new measures. The complaints allocation plan, which has been running for the past five months, is a much more formal way of triaging complaints. We are now giving every complaint a red, amber or green—or RAG—rating and allocating them to the team of investigating officers, so that they all have a fair and balanced case mix and a proper understanding of how quickly they need to get through each stage of each of their cases. Their line managers discuss that with them every week to ensure that they are making good progress. The pilot seems to be working very well; we will assess its effectiveness at the start of the new year, but all things being equal—and if the staff feel that it is working well for them, too—it is likely that we will maintain it.

Because we feel, based on the figures, that we need to bring down waiting times, that means that we have to dedicate more resource to that end of the process. That might have a knock-on effect on investigation times, which might go up a wee bit—it is a balancing act for us. To that end, we have introduced a new duty investigating officer role, which rotates around the entire team. It started just this week, following a fair bit of consultation with the staff—after all, if we do not get buy-in from them, it is not going to work particularly well. We always take their input. What happens is that any new complaints that come in are immediately triaged, when, before, that was the sort of thing that tended to happen on a monthly basis.

We identify complaints on which we need further information, and we go out and contact complainers immediately so that the evidence is still fresh. We say, for example, “We need this additional information”, or “We need you to properly articulate your complaint, because we will not be able to put this to a respondent at this point.” We also need to identify the complaints that are out of scope, so that they can be dismissed immediately. Clearly, that will bring down average waiting times overall, because the quick dismissals are allocated on a cab-rank basis to the entire team, and their role is to get back to the complainant and say, “This complaint is not admissible.” As I say, it should bring down the overall waiting times.

We will continue to monitor the situation. We know that it is an issue, and an area that we definitely want to improve on.

Meghan Gallacher: Thank you.

I have a brief follow-up to that. Do you think that, with the influx of social media related complaints and the amount of councillor-on-councillor crime—or, I should say, complaints—that we have just heard about from Willie Coffey, waiting times could increase again, despite all the good incentives that you are putting in place?

Ian Bruce: They could, which is why it is incumbent on us to constantly look at ways of improving our own performance. I recently attended some Global Government Forum training on improving productivity in the public sector, because that is the only place that we can go. I certainly feel that we have sufficient resources to deal with what is in front of us, but that has to be a factor. We do need to improve on productivity.

It might be worth reminding the committee that a large proportion of the team is relatively new, including myself, as far as the office's complaints-handling function is concerned. Over time, all of us collectively are getting better at what we do and that will increasingly be the case. Between those two things, I think that we can handle and manage increases. It is certainly our intention to do so.

Meghan Gallacher: My final question goes back to the annual report, which states that of the three directions issued by the Standards Commission for Scotland, two have now expired or have been rescinded, and the remaining direction, which

"relates to reporting on all investigations' outcomes ... has an expiry date of 31 January 2025."

How confident are you that that outstanding direction will expire as planned, or do you think that there is a risk that it might not?

Ian Bruce: I do not view it as a risk, to be honest with you. My previous workforce planning was predicated on a few assumptions, such as complaint volumes and complexity staying relatively steady. Clearly, though, volumes are rising a bit. Another assumption was that the directions would remain in place.

The convener and executive director will be able to talk about the two that have lapsed or have been rescinded, as that was their decision, but my understanding is that they were happy to remove them. However, we wrote them on to the face of our manual—our procedures—and we operate as though they were in place. It is certainly my intention to continue to report to the Standards Commission in the future, whether or not that outcomes direction remains in place in January. If it is assured by my statement in public to that effect, I expect that the direction will probably be lifted, but, to my mind, it does not matter either way.

Meghan Gallacher: That is great. Thank you very much.

The Convener: Thanks very much, Meghan. I call Alexander Stewart.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning, sir. It is good to see you again.

I am delighted to see strong financial management being talked about in relation to the organisation, but within that, there are cost implications and increases. We are now looking at £1.5 million of expenditure in 2023-24, compared with £1.04 million in the past. That is quite a significant increase of more than 50 per cent over the year. We know that your workload has increased and that you are required to get rid of the backlog, as we have discussed at other committees that I have sat on, but can you explain the reasons behind the rise in costs and provide assurances that the increase, once again, represents value for money to the taxpayer?

Ian Bruce: Yes, of course. To paraphrase, it is best for me not to mark my own homework, but, as I have indicated, the auditors are happy that we are delivering best value, and that was with that budgetary increase.

I do not necessarily wish to dwell on the past—you have the papers before you and you know what the office's circumstances were like—but, going back to the recommendations of our prior auditor, Deloitte, I would just point out that it identified some significant issues in the office. I would remind members that the entire investigations team under my immediate predecessor left, and a proportion of the new staff who came in under my immediate predecessor left, too. That is what I inherited. Staff turnover over that two-year tenure sat at 133 per cent—and that is head count. Our budget was predicated on the number of staff that we had in the office at the time, and clearly it was low, because we were carrying a number of vacancies. One of the auditor's very urgent recommendations was that we needed to fill our vacancies, which I did as a matter of urgency as soon as I took up the acting commissioner post.

However, another of the auditor's key recommendations was that we needed to do some workforce planning, because it did not think that we had the resources that we needed to fulfil our statutory functions. At the same time as I was looking to recruit new people, I was conducting a really comprehensive workforce planning exercise, on the back of which I had to produce a compelling business case for consideration by the Scottish Parliamentary Corporate Body.

09:30

The workforce planning exercise was completed in May 2022, and the business case was submitted to the SPCB at that time. That was the earliest opportunity that I had to discuss it with the body, and it was in person. Believe me—I had a very robust discussion in front of all the members of the SPCB to justify the additional resources that I felt the office needed. It was a very comprehensive business case; yes, it related to investigations, but it also related to corporate services, because the auditor identified that we had issues with governance.

As I was the acting commissioner, we had a live vacancy on the public appointments side of the office that we had been carrying and which needed to be filled, too, and we also got some administrative support. The additional resource amounted to 7.6 full time equivalent staff; the SPCB agreed that we absolutely needed those resources, so the business case was approved. We went on to recruit from December 2022 and filled the posts by May 2023.

That was quite a complex explanation, but the knock-on effect is that that is where the increase in the budget comes from. It might be helpful to highlight that 80 per cent of my budget is staffing costs. We spend very little money on anything else, so inevitably, because of that increase in resources, the budget went up.

Alexander Stewart: You have touched on the public appointments section of your office. It has once again needed beefing up, and you have put in an additional three full-time members of staff to support it. It might be good to get a flavour of why that had to happen, the additional impact that they are going to have and whether it has tackled the work-life balance issue in the organisation. As you have said, it was struggling to cope with day-to-day running but, at the same time, there needed to be some flex in that respect. It would be useful to have a flavour of that, too.

Ian Bruce: By all means.

Actually, we have not increased the complement in public appointments that much. We were carrying a vacancy, because I was the acting commissioner and had previously been head of public appointments. That post had to be filled. I was at grade 5, and there was also a grade 4 post. We filled the grade 4, and the person who was acting for me ended up filling the grade 5 post. All that we have in addition is admin support—that is, one admin support person to support the work of the public appointments team.

As part of our bid, we had looked for another public appointments officer, because, clearly, we had a backlog in public appointments, too. We were so underresourced there. Moreover—and

you will know this from your work on the Standards, Procedures and Public Appointments Committee—we had plans to refresh the “Diversity Delivers” strategy, which had not been looked at since 2008, with a view to improving board diversity. We think that that is vital work; it has been happening incrementally, but we think that more progress needs to be made.

We had sought to fill a post permanently to take that work forward. After discussions with the team, I have concluded that we can surrender that post and get a contractor in to help us for a two-year period. After all, the SPCB has said to all office-holders, “If you can make savings, please do”, and we have found a way of doing that by relinquishing that particular post. Therefore, there has not been a great increase in resources on the public appointments side of things.

As for the work that we have been able to take forward, I would just note that surveys of applicants had lapsed; we have resurrected surveying board chairs on the effectiveness of their new people when they come on board; we are producing good practice guidance for panels again; and we are doing more training and outreach activity. All of those things, which are probably more than just nice-to-haves, have been resurrected and are making a difference to the appointments system.

Mark Griffin (Central Scotland) (Lab): Good morning. The annual report states that you were required to examine the appointment practices of one board during the year, and that resulted in a report of non-compliance with the code being made to the Scottish Parliament. Will you explain a bit more about that? It was the first case of that type since 2011. Will you give us a bit more detail on that instance?

Ian Bruce: I am very happy to do that. Funnily enough—although that is perhaps not the appropriate expression to use—it was in relation to appointments to the Scottish Local Authorities Remuneration Committee. It is not the selection panel that makes decisions on whom to appoint and whom not to appoint or decisions about the criteria for selection for particular positions that have to be filled. Those decisions rest with the Scottish ministers. They put together a selection panel and, depending on a number of factors, I decide whether to appoint a representative from my office to sit in as a member of the panel for the entire recruitment process.

In this particular case, they went out looking for people who had knowledge and experience that was relevant to the work of the SLARC, for obvious reasons. Given the nature of the work that it does, they were looking for people who had experience of serving as local authority councillors. A local authority councillor applied in

good faith for one of those roles and went through the entire process, and the panel found that individual suitable for appointment, as one of the most able people. At the far end of the process there was, in effect, a change in policy position, which was that, if you are a serving councillor, you have a conflict of interest and you cannot serve as a member on that particular board.

If the Scottish ministers had made that decision at the outset of the process and it had been included in the pack, which had said that serving councillors were disqualified, I would have had no issue with that whatsoever, because that is the prerogative of the Scottish ministers. However, the fact is that that was not done. Somebody went through the entire process in good faith and was considered to be the most able person for the role, and then right at the end of the process they were disqualified. To my mind and in the eyes of the code of practice, which I publish and which officials are meant to follow, that was fundamentally unfair to that individual. That is why I concluded that the code had been breached in a material regard.

However, as you observed, such instances are relatively rare. Officials work very hard to comply with the code and I certainly see the role of my office as being to support them in doing so.

Mark Griffin: That is really helpful. Thank you for expanding on that and giving us that update.

The next area that I want to touch on is the survey that you talked about last year, which you were planning to roll out to complainers and respondents. Your annual report says that, because the return rate was so low, you found it difficult to provide a robust analysis of the findings. Are you planning to continue that survey? Do you have any plans to try to boost the return rate?

Ian Bruce: Those are really good questions. The response rate is one of the things that I have found most disappointing. We are monitoring it, but the return rate this year has been really low as well. It is very disappointing. I am discussing with the senior management team what we can do to improve the rate. I am really not sure why it is so low. We have been running similar surveys on public appointments for a good many years, apart from during the hiatus that I described to your colleague Alexander Stewart, and response rates there are about 30 per cent. The response rate for the complainers and respondents survey is nothing like that. At the moment, we are looking at a return rate of 1 per cent in the current financial year. That is clearly not good enough and we need to find ways of improving it.

The reason why I find the low response rate so disappointing is that we get an awful lot of feedback from both respondents and complainers

directly to our office and to the investigating officer. Recently, at a hearing in person, I got really positive feedback from a respondent about the way in which we had handled their case. We need to try to find a way of translating that into getting people to fill out the survey. We are considering some options. At the moment, there is a link to the survey in the closure letters that we send people. We are thinking that we might try some of the things that commercial organisations do, such as putting a wee button into the email that we send people and giving them an opportunity to link through to it in that way. Another option is to gather up some of the feedback that we get from people in emails and other correspondence and include that in the annual report.

Maybe no news is good news, but it may help to provide assurance if I note that we also track formal complaints about us. Everyone is entitled to make a formal complaint about us as an office, alongside the other complaints that they can make. In the previous financial year, we had two of those, and in this financial year, we also had two. In all four cases, there was really not much substance. By and large, I think that people are happy with the way in which we treat them, but I understand that we should do more. Another reason for that is that the surveys gather demographic data, which is of real interest to me. Do women and people from a minority ethnic background who come into contact with us feel that we are treating them differently? Based on the current return rates, we cannot draw any conclusions.

Alexander Stewart: We have touched on councillor-on-councillor complaints, and we know that they represent about 17 per cent of the total. The committee has been looking at barriers to elected office and we have heard that female councillors face much more hostility and toxicity in the council environment. It would be good to get a flavour of whether female councillors are submitting more complaints than male councillors. Have you seen such a trend? Do you want to express your views on that?

Ian Bruce: That is a very good question. I have said to the committee previously that we definitely plan to do research in that area, and that is potentially something that we could do relatively quickly. I will take a note to look at that and come back to you on it, because it is a very good question.

My particular quandary at the moment is that, as I explained to your colleague Meghan Gallacher, far and away the majority of our resource genuinely has to be dedicated to complaint handling and bringing down waiting times. That is important to people. Once we have done that, it

will give us sufficient spare capacity to do the sort of research that I genuinely want to do. I think that it would be relatively straightforward for us to look at the gender split.

My impression is that there is a feeling out there from new, young female councillors in particular that they are entering a misogynistic environment. There is certainly anecdotal evidence of that. Whether they are all complaining about that is a different matter. Some of that conduct can be quite low level, and I have heard that people perhaps feel reticent about complaining. Relatively recently, I attended a monitoring officers workshop that was set up by the Standards Commission for Scotland, and I think that the views of monitoring officers are particularly relevant. The committee might wish to pursue that via the Society of Local Authority Lawyers and Administrators in Scotland to get its impression of what is going on on the ground.

The point that I need to come back to is that, even if it feels like relatively low-level conduct, that sort of thing can and will wear people down over time. As an office, following a referral, we can look at a course of conduct, as can the Standards Commission. If people feel that there is a lot of low-level stuff going on and it is undermining them, they should continue to keep a note of those things to form the basis of a course of conduct complaint, which we can look at.

There is sometimes a level of toxicity. I see behaviours that I feel are inappropriate, and those things are certainly barriers. I previously referred the committee to some research in this area, and recommendations have now come out from the Local Government Association following that. Most recently, in May, it produced a toolkit for councils to assess themselves on how well they are doing. It was the “Debate not Hate” research, as members may recall. The LGA is continuing to do work in this area, as is the Improvement Service.

09:45

I highlight that I was recently interviewed by Talat Yaqoob for Elect Her. I know from other work that the committee is doing in this area that members will be familiar with the work of Elect Her. It is conducting research on whether there are barriers to women entering political life. Interestingly, this time, it is taking an intersectional approach in that research. It is not just about whether you are female; it is also about whether you have a disability, a minority ethnic background and so on. I said to Talat Yaqoob that the committee will definitely be interested in the findings and recommendations that come out of that, and she has undertaken to be in touch with the committee once that research has been completed. We all recognise that it is an issue.

I saw that, when the committee wrote to all the political parties, one of the questions that you asked was whether toxicity in the debate is having an impact on people’s willingness to come forward and to stay in public life. From what I can see, the extent to which political parties police their own codes of conduct is patchy, and it also varies from council area to council area. My particular concern is about the lack of support for people who feel that they are not being supported and that they are exposed, some of whom are finding it very difficult to fulfil their roles. All that they are doing is trying to do their best for their constituents, but they are being subjected to conduct that they should not be subjected to.

The Convener: Emma Roddick has a supplementary question. She can then continue with her other question.

Emma Roddick (Highlands and Islands) (SNP): As a former female councillor, it is really good to hear about the willingness to look into whether women are making more complaints. Could that work also cover whether women are more often complained about, including where the complaints are found not to be admissible under the code?

Ian Bruce: Yes—absolutely.

Emma Roddick: Fantastic.

The commissioner and the Standards Commission for Scotland have written to the Scottish Government asking for changes to legislation, and one of the requests is for the inclusion of explicit powers for the Scottish Parliamentary Corporate Body to remove or replace an incumbent SCS member or the Ethical Standards Commissioner in the event of a serious performance, conduct or attendance issue. Will you discuss why that request has come forward now?

Ian Bruce: Sure. Again without wishing to dwell on the past, I think that it is important that, in the event that a commissioner—either me or a member of the commission—is operating ineffectively, everyone understands that there is a mechanism in place for their removal and that something can be done about it quickly. I would expect guidance to accompany that. It benefits no one if someone remains in post because there is a lack of understanding of what the mechanism is or how one might move quickly to ensure that the individual involved no longer fulfils the role.

Fundamentally, the Standards Commission and I are guardians of the ethical standards framework. I suggest that it is terribly undermining to have someone in such a post who does not exemplify the values that are anticipated from people operating in public life, so the request is important.

The Convener: That brings us to the end of our questions. We very much appreciate your giving your time to come and join us this morning and allowing us to ask for more details on the report and the work that you are doing. It has been great to hear about the improvements and innovation that you have introduced over the time that you have been in post. I very much appreciate that. It is also great to hear that you have a full raft of people who are all busy working through the process. I really like the innovations that you talked about with regard to the RAG rating, triaging and getting back to people more quickly once you understand whether complaints are admissible or not. It is really important to remove the need to wait from people's experience, so it is great that you are doing that. Thank you.

Ian Bruce: Thank you, convener and members. I appreciate the opportunity again.

The Convener: I will suspend the meeting briefly to allow a changeover of witnesses.

09:50

Meeting suspended.

09:55

On resuming—

Annual Report of the Standards Commission 2023-24

The Convener: We now turn to agenda item 3, which is an evidence-taking session on the annual report of the Standards Commission for Scotland for 2023 to 2024. We are joined for this item by Lorna Johnston, executive director of the Standards Commission for Scotland; and Suzanne Vestri, convener of the Standards Commission for Scotland.

When we come to questions, we will direct them to Lorna Johnston, but Suzanne Vestri should feel free to contribute. There is no need to turn on your microphones—we will do that for you, so that is one less thing to think about.

I invite Ms Vestri to make a short opening statement.

Suzanne Vestri (Standards Commission for Scotland): Thank you for inviting us here today. I am the convener of the Standards Commission. I have been a member of the commission since February 2022 and was appointed convener from May 2024. For the particular benefit of members who might be new to the committee, I set out that the role of the Standards Commission is to encourage high ethical standards in public life, including the promotion through a wide range of means and enforcement of the relevant codes of conduct, and to issue guidance to councils and devolved public bodies on how the code should be interpreted. The commission is also responsible for adjudicating on alleged breaches of the codes and, where a breach is found, the application of a sanction.

Following the conclusion of any investigation that he has undertaken into an alleged breach of the applicable code by a councillor or member of a devolved public body, the Ethical Standards Commissioner sends a report to the Standards Commission outlining his findings and his conclusions. The Standards Commission must consider his findings and then independently decide whether to hold a hearing, direct the commissioner to carry out further investigations or do neither, which essentially means that no further action will be taken on that complaint. We aim to make those decisions within five working days of receiving them from the Ethical Standards Commissioner. The commission will decide to take no action if it does not consider that it is in the public interest or proportionate to hold a hearing.

Hearings to determine whether the councillor or member concerned has breached their respective code are conducted by a panel comprising three

commission members, and are usually held in public. If a breach is found, the panel is obliged to impose a sanction, which can either be a censure, a suspension or a disqualification.

The commission has five part-time members appointed by the parliamentary corporation with the agreement of the Parliament. As convener, I am contracted to work the equivalent of three days a month, while the remaining members work two days a month. Members also sit on hearings panels as and when required.

In the year 2023-24, the Standards Commission received 50 referrals from the Ethical Standards Commissioner and held hearings into 16 of these. We aim to hold our hearings within six to 12 weeks of making the decision to hold a hearing.

The Standards Commission has one full time member of staff, Lorna Johnston. As the executive director, she is the accountable officer. She is assisted by a case manager, an office manager and an administrative assistant, all of whom are part time, with the overall staffing complement being equivalent to 3.1 full-time members of staff. As you will see from our annual report, we have a small staff team and budget, but get through a large volume of work.

I hope that this has been a helpful introduction and summary of the commission's remit. We very much appreciate the opportunity to discuss our work and are happy to answer any questions that the committee may have on the commission or any general issues concerning the ethical standards framework.

The Convener: Thank you. It was useful to hear the detail of the process and how you pick up and process the work from the Ethical Standards Commissioner.

Lorna Johnston, I have a broad question around the fact that the Standards Commission's annual report states that the organisation has had a positive impact on ethical standards in public life. Can you tell us specifically what has occurred for the Standards Commission to be able to state that?

10:00

Lorna Johnston (Standards Commission for Scotland): Of course. The main thing that we do in terms of the positive impact is our training and promotional work, which involves going out and doing training events for members of devolved public bodies and councillors. We ran a number of such events last year. We also do that through our guidance and advice notes. When we get intelligence through inquiries or cases that are referred to us, we can see the types of issues that arise, whether they involve confidentiality, respect,

social media or whatever, and we can create relevant guidance and e-learning. We held a couple of joint webinars with the Improvement Service last year that were targeted at some of those issues. We did one on social media and one on assisting constituents, and we have done one recently on confidentiality, because those are three areas where we were seeing a rise in complaints.

We have key performance indicators and service standards in place, but we also get a sense of our impact from the number of inquiries that we receive, through which we are able to help prevent breaches of the codes from occurring, which is, again, what we try to do with our training events. One of the things that shows that impact is the reduction in what I would describe as more inadvertent breaches of the codes. That is where the issue is less of a behaviour-type breach and may be, for example, a failure to register an interest within the time that is allowed or someone not deciding not to declare an interest that probably is a declarable interest—that is, a case in which there has not been a deliberate attempt to conceal the interest but the person has interpreted the code differently from the way that we would.

The types of cases that the Ethical Standards Commissioner receives tend to involve behavioural issues—for example, somebody has posted something on social media that they have not thought about, because they were angry or were responding to something. Our impact comes about through the work that we do to raise awareness of the codes and how to interpret the provisions.

The Convener: It is great that you make all that training provision. Do you have quite a good level of attendance?

Lorna Johnston: We do. I should have also said that we have standard training presentations and videos on the website that councils can use to train councillors, which means that our training provision does not necessarily involve us going out to see people. So far this year, we have been to two councils—Perth and Kinross Council and South Ayrshire Council—and we had really good attendance at both of those events. We have really good attendance when we do training for boards of public bodies as well.

I was quite interested to hear the Ethical Standards Commissioner's response to the questions about mandatory training. Most councils provide training on the code around the time of the election and when councillors first come into post, whereas we get training requests almost continually from boards of public bodies because of their turnover of members. My slight concern with the mandatory training for councillors is that they get a great deal of information straight after

the election. It is really difficult for them to deal with, and it covers a wide variety of subjects, some of which are quite technical, especially if the councillor is going to be on a planning or licensing committee. They have to take in quite a lot of information, so I am not convinced that mandatory training at that stage is appropriate. However, refresher training and having training available that they can access at any time is important.

The other thing about training is that the code covers a lot. There are seven sections to the councillor's code. It is quite wide-ranging. We have tried to break down some of our guidance and advice and training material—our e-learning modules for example—on specific topics that councillors can dip in and out of. For example, if they are concerned about whether or not they have to declare an interest, they can access quite a small part of the code at that time and that might assist them.

The Convener: I will bring in Emma Roddick briefly. She has a supplementary question on mandatory training.

Emma Roddick: I wanted to pick up on the issue of councillors getting quite a lot of information when they begin. Are you picking up that that is consistent in all places? It certainly has not been my experience. I think that, in some places, and particularly if you are elected in a by-election, you might just be handed the code and the standing orders, and that is it.

Lorna Johnston: My understanding is that, after the main election, almost all councils offer and provide that training. I am not sure about what happens in relation to by-elections but, as I say, we have training videos on the code available on our website that those councillors could access. All council monitoring officers are aware of that, so they should be telling their councillors about it. However, I can pick that up with monitoring officers.

The Convener: On the mandatory training process, I hear what you are saying around information overload. I certainly experienced that when I first started in this role as an MSP. Maybe there could be a drip-feed process over time that makes sure that, over a number of months, they do the training and are aware of the sections that are relevant. Getting a lot of information all at once is not useful because it does not necessarily go in.

Lorna Johnston: In our guidance on the code, we include scenarios and case examples. It is one thing to read or hear the information, but you need to apply it to the situations that you might find yourself in, and I think that that comes with experience as well. If you are getting an overload of information on day 1 about scenarios that you have never actually been in, it might be harder to

take it in than it would be if you had training a bit further down the line, or when you had an opportunity to refresh your training.

The Convener: When you joined us last year, you told us that it is hard to know whether standards of behaviour are deteriorating or if the public are just more aware that they can complain. We are interested to understand whether the commission has been able to do any research over the past year that provides further insight into this.

Lorna Johnston: Unfortunately, the answer is no. It is a capacity issue. We have not managed to do any research. We get a lot of information from the complaints that are referred to us, from the inquiries that we receive from councillors, officers, members of the public and from going out and doing our training events. As the Ethical Standards Commissioner mentioned, we hold a workshop with monitoring officers once a year, and one with standards officers of public bodies once a year. We tend to always ask them at those workshops what their experiences are. There is sometimes an impact with behaviours in a minority administration where perhaps colleagues are less inclined to call out behaviours because votes are needed. We hear anecdotally that the issues are not necessarily between parties; they can be within the same party. It is a bit of a mixed bag with behaviours.

The number of complaints that is being received is not necessarily the only indicator of behaviours because, as the Ethical Standards Commissioner pointed out, some of them—quite a large percentage—are simply not admissible. A better indicator is how many breach findings are being made, and the committee may be reassured to know that they are fairly consistent. We are not necessarily seeing huge increases in the number of breach findings.

The Convener: Thanks very much for that. I will bring in Alexander Stewart.

Alexander Stewart: You say in the report that you held 16 hearings and that the annual costs were about £337,000. On average, that is about £21,000 per hearing. Is that the case? Does each hearing cost as much as that? Are some hearings lengthier than others, or do they all follow the same structure and process? What value do you place on the hearing process? How do you ensure that you are spending the money in a proportionate way and getting best value for money?

Lorna Johnston: Our overall budget is £337,000. That is not the cost per hearing by any stretch of the imagination; that figure is our overall budget. Last year, our cost per hearing was around £1,800, and I think that 89 per cent of our

costs were staff and members' costs. The members' costs involve their time at hearings.

On getting value for money, we undertake a review after every hearing. Standards Commission members undertake a review at their next meeting following a hearing to discuss how it went with the decision making and how efficiently it was conducted.

We have in place a range of measures. We hold pre-hearing meetings to try to resolve any procedural issues and to make sure that the parties are aware of what the panel thinks is relevant evidence so that they are not trying to introduce—

Alexander Stewart: New things.

Lorna Johnston: Yes—stuff that is completely irrelevant.

We make improvements on how we conduct hearings all the time. We also carry out a review of the hearings at the end of each year.

I have lost my train of—

Suzanne Vestri: If we can hold the hearing online—if there are no witnesses, for example—we will do so. Obviously, that cuts down—

Alexander Stewart: Costs.

Suzanne Vestri: —time and money for everybody, but we are always very conscious that justice needs to be—

Alexander Stewart: Seen to be done.

Suzanne Vestri: —seen to be done, and that people who have complained or people who have an interest need to be able to attend to see that happen.

Lorna Johnston: We recently carried out a review in which we compared online hearings with in-person hearings, and we did some research on the advantages and disadvantages.

As Suzie Vestri said, the online hearings can be very useful and a really good tool in cases in which there is no real dispute about the factual basis and maybe the respondent accepts that they have breached the code. However, there is always the risk of technical difficulties if there are lots of witnesses. Someone's wi-fi not working can really throw the hearing and make it quite inefficient.

We also think that, with online hearings, gravitas might be a bit of an issue, with people perhaps not taking it quite as seriously. As Suzie Vestri said, it is about going out and justice being seen to be done. We hold our hearings in the locality where the respondent is based, so members of the public from that area and the local press can go along to watch, and they do.

Alexander Stewart: It is important that the opportunity is there for everyone—not just for the individuals involved but for those from the wider community—who wants to be involved in the process, whether that is local people or the media.

How many of the hearings are online?

Lorna Johnston: I think that five of the 16 hearings that took place last year were online. The decision to hold a hearing online is based very much on whether there is a dispute about the facts and how many witnesses there will be. It is not based on cost issues associated with, for example holding a hearing in Orkney, the Borders or somewhere further away.

We give a lot of information to local journalists before hearings. We publish that we are holding the hearing and we try to engage with local journalists to get a bit more coverage of the codes. I do not know whether that also contributes to awareness of the whole system or whether our doing a bit more media engagement contributes to a rise in complaints as well. However, we think that doing that is important.

Alexander Stewart: That is an important process.

Lorna Johnston: Yes.

The Convener: Speaking of things online, we have the opportunity in our committee to have members join us online. We will now go to questions from Willie Coffey, who joins us online.

Willie Coffey: Lorna Johnston, I want to ask you a bit more about potential emerging trends in the complaints process. Ian Bruce talked earlier about social media being one area where we are seeing a rise in complaints, and that their nature is more personal, with, for example, personal attacks and councillor-on-councillor complaints. Will you expand on that for the committee and explain what the emerging trends are in the whole complaints process or in the complaints domain?

10:15

Lorna Johnston: Yes. Of course, we do not see the complaints that are rejected as inadmissible by the Ethical Standards Commissioner. The ones that we see are those that he has undertaken an investigation on. As he said, with social media, we are seeing certain behaviour towards council officers. My understanding is that that is driven, in part, by some of the issues that we were talking about earlier, especially budget constraints and councillors perhaps being seen as trying to distance themselves from taking difficult decisions.

We have seen a couple of cases in the past year on breach of confidentiality and, again, those

tend to be linked to difficult decisions that the council is having to make because of budgetary constraints. We are seeing a few cases on declarations—this is, where someone has failed to declare an interest—but not as many. The complaints that we are seeing more of currently are about respect, bullying and harassment.

Willie Coffey: Are you seeing a regular increase in complaints in those areas that should give us cause for concern? Are there rising trends in some of those emerging issues? I will come back to you on the issue of training and whether that should be made mandatory.

Lorna Johnston: Over the past five years, we are gradually seeing more respect-type complaints, and within that is councillors' behaviour towards members of the public, their colleagues and council officers, as well as councillors perhaps getting a bit involved in operational management of the council.

We target training at those areas. The two webinars that we held with the Improvement Service last year were targeted. One was on assisting constituents, which was to explain how councillors can best go about assisting their constituents without getting involved inappropriately in operational matters while still being respectful towards officers. The other one was on social media. The Improvement Service led on how best to do things in that medium, and we covered what councillors could fall foul of and what they should avoid doing. Those webinars were well attended, and we had good engagement with the councillors who attended them.

Willie Coffey: I turn to training. Is training on the code of conduct for councils mandatory, or is it optional and they can choose not to participate in any such training?

Lorna Johnston: The adherence to the code is mandatory, so when they sign their—

Willie Coffey: I do not mean adherence to the code; I am asking about training.

Lorna Johnston: No, training on the code is not mandatory. My understanding is that when councils offer that training at the outset, quite often, they make it sound like it is mandatory and they really push and encourage councillors to attend it. I also understand that most new councillors attend and that there are not huge difficulties with regard to people refusing to attend. Sometimes, it can be the case that more experienced councillors do not go to refresher training because they think that they know it and that they do not need it. That tends to be more of an issue.

We have a policy on the application of sanctions, which includes the aggravating and

mitigating factors that we take into account if we find a breach of the code at a hearing. One of the aggravating factors in that is if training on the code was offered and not taken up.

Willie Coffey: That is really interesting.

You will be aware of the committee's support for the Scottish Local Authorities Remuneration Committee recommendations on councillor salaries and so on. If that recommendation is accepted, does that present an opportunity to introduce some of the training elements and make them mandatory?

I know that you said that we do not want to burden a newly elected councillor just coming in the door or after a by-election with a whole host of training requirements. However, could there be a managed training process, with mandatory components, during the first year of their being elected, for example? Is that something that we should perhaps look at in trying to embed some of that training in local authorities?

Lorna Johnston: I would not have any issue with that; that is a good idea. However, as the Ethical Standards Commissioner alluded to earlier, it is not necessarily about making people go along; it is about making the training compelling and interesting, and ensuring that there is buy-in is the more important bit. As the commissioner said, anyone can click on a button to say that they have watched the training or they can say that they went along to a session. However, were they concentrating, were they focused on it and was it interesting enough?

We try to include case examples in our guidance and in our advice notes to make things interesting. When we do our training events, we ask councillors to break into smaller groups to discuss various scenarios and whether those would be a breach of the code, and then we get them to consider what they would do if a certain factor was different. That way, we get them to really think about the provisions and how to apply them to themselves and to the situations that they might find themselves in.

The committee will recall that, when the councillors' and model codes of conduct were revised towards the end of 2021, one of the main changes was to write them in the first person. That was to try to create more engagement. Instead of being a written document saying, "You must do this. You mustn't do that", it became one that said, "I will do this" and "I understand this". The feedback that we have received is that the revised code is much easier to understand.

The Convener: Suzanne Vestri indicated earlier that she wanted to come in.

Suzanne Vestri: I wanted to comment on the trends in hearings. Lorna Johnston mentioned that behaviour towards officers was an issue. Last year at the committee meeting there was a question about councillors feeling that they were not able to scrutinise effectively. We have taken that on board, gone away and then briefed on that specifically. Some councillors were struggling to know how to scrutinise without being challenging and disrespectful. We have tried to work with councils to enable councillors to challenge and scrutinise more effectively.

Lorna Johnston: Tied into that is the right to access information and how councillors go about ensuring that they have the right information to do their role but are not asking for so much detail that they are then becoming involved in operational matters. That was one reason why we created, jointly with the Improvement Service, an advice note for councillors on the right to access information

Suzanne Vestri: Lorna Johnston flagged up breaches of confidentiality. That aspect is a concern. Where we have held hearings on breaches of confidentiality, those breaches have not always been inadvertent; sometimes, they have been deliberate. Again, that goes back to the point that Lorna and the Ethical Standards Commissioner made about councils having to make difficult decisions about service provision. We would be really concerned if that deliberate breaching of confidentiality was to continue.

The Convener: Thanks for bringing that to our attention.

I bring in Meghan Gallacher.

Meghan Gallacher: I am looking at a table from the Ethical Standards Commissioner's annual report titled "Exhibit 8—Details of reports referred to SCS in 2023/24 and their outcome". That shows that four cases were referred to the Standards Commission for Scotland, in which the commissioner had assessed that a breach had taken place but no further action was taken by the SCS. Will you talk us through certain scenarios that would lead to that outcome? Are there any trends as to what those particular cases could be?

Lorna Johnston: I looked up those four cases before coming to the committee. One thing to point out is that, when we are deciding whether to hold a hearing, the threshold is whether it is proportionate and in the public interest to do so. It is not whether there has been a breach, because that would be looked at in a hearing.

In two of the cases, it was considered that a hearing would not be proportionate. Those were registration of interest cases in which the people concerned were a bit late in registering an interest, they had apologised and they had placed the

interest on the register. It was considered that it was not in the public interest and proportionate to hold a hearing in those cases.

In the other two cases, we disagreed with the Ethical Standards Commissioner's conclusions. On one, we did not agree that the code even applied; on the other, we did not agree with how he had interpreted a provision about the registering of election expenses.

Meghan Gallacher: Do disagreements on outcomes happen often or is that rare? There were only four cases here, and I appreciate that two of them were not taken forward for other reasons, but I take it that that is a rare occurrence.

Lorna Johnston: No, not necessarily. At hearings, the panels can—I think that this happens fairly often—reach a different conclusion to the Ethical Standards Commissioner, or they reach the same conclusion but for different reasons. I do not think that there is necessarily anything concerning in that. That is why there is a separation of functions and why a second look at something is taken.

Sometimes that can be because people might give evidence to the Ethical Standards Commissioner differently to how they give evidence under oath or affirmation at a hearing, which can come across really differently. Sometimes, it is a matter of interpretation. Many of the provisions in the code are subject to interpretation. Respect, bullying and harassment are subjective. It can be that there is a difference in how things are interpreted. That is an important reason why there is the second line of scrutiny of those decisions at hearings.

The Convener: That is an interesting point about evidence and the difference between that given under oath and that not given under oath. It is interesting to hear that that is part of the process and is another reason why we might need the two stages that the process goes through.

I will bring in Emma Roddick with a couple of questions.

Emma Roddick: The table in exhibit 8 also shows that the Ethical Standards Commissioner referred nine reports in which he had assessed that no breach had taken place but the Standards Commission held hearings on those nevertheless. Will the witnesses talk us through the reasons for that?

Lorna Johnston: Included in those cases where the Ethical Standards Commissioner found there to be no breaches are ones in which he has, on the face of it, found a breach of the code but, in taking account of article 10 of the European convention on human rights, which is on the right

to freedom of expression, he has said that a formal finding cannot be found.

In some of those cases, the Standards Commission considered that it was proportionate and in the public interest to hold a hearing to explore the article 10 issues. The table is slightly misleading. For a number of those cases—I cannot remember the number that I worked out; I think that it was four of them—the Standards Commission found no breach in respect of some of the issues, taking account of article 10, but, because no breach was found in the other issues that were considered, they have been logged under that table as a no breach. Apologies that that table is slightly misleading.

It can be the case at hearings that the panels interpret the provisions or, in particular, article 10 differently to the Ethical Standards Commissioner. We talk to the commissioner all the time. We obviously send him the findings and discuss those with him with a view to everybody trying to learn from decisions and how cases are presented.

Emma Roddick: That is really helpful, and leads on to my next question. Your annual report refers to one of the cases in which article 10 comes into play. Can we get a bit more information on that situation and whether you believe that the code needs to be rewritten?

Lorna Johnston: I do not think that the code needs to be rewritten. The code requires councillors to behave with courtesy and respect when they are acting in that capacity or when they could be perceived as acting in that capacity. However, when assessing a formal finding on the code, the law says that you must take into account someone's right to freedom of expression under article 10 of the ECHR. That involves interpretation. We would prefer not to have to apply article 10 in that we would prefer that everybody behaved with courtesy and respect, and that we did not have to do that balancing act between courtesy and respect and the right to freedom of expression, but we do and that is the law. I do not think the code necessarily needs amending.

Matters are subject to interpretation. You cannot say, "In this situation, article 10 would provide protection, and in this situation, it would not." It is dependent on the individual facts and circumstances—whether the conduct was directed towards a fellow councillor in a political environment where you would expect more protection for your freedom of expression or whether it is individual correspondence from a councillor to a constituent in which less protection would be afforded to them. It is fact specific. Does that answer the question?

10:30

Emma Roddick: Yes. Do you feel that, in every case where article 10 of the ECHR has been relevant, there has been a consistent approach and that it is clear to everyone involved where the line is?

Lorna Johnston: I like to think that hearing panels have adopted a consistent approach. It is something that we are really careful about. We have guidance on article 10 and how panels apply issues surrounding article 10 at hearings. We like to think that it is consistent.

Article 10 is a really complex subject. Is the line clear to everyone? Probably not. However, the code is very clear on the behaviours that are expected on courtesy and respect. My view is that anyone who is behaving with courtesy and respect will not fall foul of the code, so they do not need to worry about article 10, essentially.

Emma Roddick: The fact that these complaints have been made and it is then found that there has not been a breach thanks to article 10 shows that, at least on the part of complainers, there is not that understanding. What more can be done to promote that?

Lorna Johnston: As the Ethical Standards Commissioner said, both organisations are doing more work to promote public understanding of the codes. We produced a card that councillors can give to constituents explaining what the councillors' code does and does not cover. That has been really well received. We have information on our website and videos for the public on what the codes cover and what they do not cover. We are doing as much as we can to educate the public.

It is subjective whether someone has been disrespectful. There are certain situations in which you will see complaints and think, "How could anybody think of that as being disrespectful?" I think that those people will make that complaint almost regardless of the information that you put out there.

Emma Roddick: Thank you. That is really helpful.

The Convener: I am just making a note to put that out on our socials in the future.

I will bring in Mark Griffin, who joins us online.

Mark Griffin: In England, a recent survey showed that 43 per cent of people trusted local councillors to work in the best interests of people in their area. Has similar research been done in Scotland, or do you plan on doing such research? From the Standards Commission point of view, how strong is the bond of trust between the public and our local councillors?

Lorna Johnston: The fact that there has been a reduction in the number of complaints about issues such as failing to declare interests, gifts or hospitality—such complaints relate to trust, because people want to trust councillors to make decisions in the public's best interests rather than in their own interests or the interests of their friends and family—perhaps indicates that there is a certain level of trust.

Given the rise in the number of cases relating to respect, you could argue that the public do not trust politicians to behave with respect and courtesy, but those types of complaints are different from those that relate to how public money is spent and the decisions that councillors make.

Suzanne Vestri: We have discussed the matter in the past. With my previous work hat on, I note that, to get the most effective sample, we would need to buy questions in a wider social attitudes survey but, as a tiny organisation, we do not have the financial resources to do that. The most cost-effective way of getting a sample of 1,000-plus members of the general public would be to include such questions in annual public surveys.

Lorna Johnston: On the comparison with England, it does not have the centralised system that we have. In England, complaints about councillors' behaviour go to individual councils, because there are no bodies like the Ethical Standards Commissioner and the Standards Commission, although there are such bodies in Wales and Northern Ireland.

Mark Griffin: The Ethical Standards Commissioner and the Standards Commission sent a joint letter to the Scottish Government to ask that legislation be amended to give the option of finding a breach without holding a hearing. Will you expand on the reason behind that proposal?

Lorna Johnston: It is about trying to secure best value. The proposal relates to cases in which the respondent accepts that they have breached the code, so it would be a way of making such a finding without holding a hearing. The Standards Commission would then have to hold a hearing—whether by letter or in person—only in relation to the mitigation and the sanction that would be applied. At the moment, we still have to hold a hearing in order to make a finding even if a respondent puts their hands up and says, "I should have declared that interest, and I absolutely accept that I've breached the code." We want the option not to have to do that.

Suzanne Vestri: It is almost 25 years since the bill that became the Ethical Standards in Public Life etc (Scotland) Act 2000 was passed. The changes that we have suggested are examples of where greater clarity might be needed or where

things could be managed more efficiently and effectively. We have learned those things over time. The changes are not indicative of a major underlying problem. They are just ways in which the system could be run better and more effectively for everybody concerned, including us and respondents or complainers.

Mark Griffin: Thank you.

The Convener: That certainly makes sense.

I will bring in Fulton MacGregor, who is also online.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. My questions follow on from Mark Griffin's line of questioning about the letter that was sent to the Scottish Government. The letter also proposes that legislation be amended to allow the SCS to consider previous breaches by a respondent when determining the sanction to be applied for any new contravention. Could you elaborate on the extent to which repeat offenders are a problem? What impact would the proposal have?

Lorna Johnston: Our sanctions policy already says that we will look at previous contraventions of the code that are of the same type, so the proposal is about making it clear in the legislation that we will do that. As Suzanne Vestri said, we considered what tweaks or improvements could be made to the 2000 act. It is not that we think that an essential thing is missing. We do not have huge difficulties with repeat offenders.

Fulton MacGregor: There are not a lot of repeat offenders—for want of a better term—or individuals who consistently come back to you.

Lorna Johnston: Not at all. Perhaps four years ago, we disqualified a councillor, and that was, I think, the first time that we had ever done so. The councillor had been before us twice before for the same type of issues. However, we have not had anything like that since.

Fulton MacGregor: That is great. The commission would like new powers to be included and a clear route for the Scottish Parliamentary Corporate Body to remove or replace an incumbent SCS member or the Ethical Standards Commissioner. Why is that amendment required?

Lorna Johnston: When we were considering potential improvements to the 2000 act, we thought that that clear route was missing. As the Ethical Standards Commissioner mentioned earlier, it might have been helpful if there had been a clear route to address some of the difficulties that there were with his predecessor. We certainly did not make the suggestion because we think that there is a problem with any of our commission members; it is purely about having a clearer route.

Fulton MacGregor: It will be reassuring for your members to have that on the record.

The Convener: Willie Coffey has a final question.

Willie Coffey: I should probably have asked Ian Bruce this question, but I will pose it to you. Do we know what proportion of complaints that were deemed not to be relevant came from councillors who had not undergone training on the code of conduct?

Lorna Johnston: We do not see complaints that are rejected as being inadmissible. We should bear in mind that quite a small percentage of complaints involve councillors complaining about other councillors. The vast majority come from members of the public. However, you would have to put that question to the commissioner.

Willie Coffey: Thank you. We will.

The Convener: That brings us to the end of our session. I very much appreciate the witnesses coming to give us a bit of detail on their report.

I will suspend the meeting to allow for a change of witnesses.

10:41

Meeting suspended.

10:46

On resuming—

Short-term Lets

The Convener: The next item on our agenda is evidence from Paul McLennan, the Minister for Housing, on the Scottish Government's short-term lets implementation update. The minister is joined by three Scottish Government officials. Andy Kinnaird is head of transforming planning; Margaret Main is a lawyer in the legal directorate; and Anita Stewart is the policy team leader.

Before we turn to questions from members, I invite the minister to make a brief opening statement.

Paul McLennan (Minister for Housing): Thank you, convener. I am grateful for the opportunity to speak on this year's short-term lets implementation update report and answer questions about the evidence that you have gathered from stakeholders.

I note that the committee received 19 responses in total. Just under half came from local authorities, under a third came from industry organisations and the remainder came from Government bodies, festival organisations and two community groups. Everything included in those responses mirrors views that have already been shared with the Scottish Government. We were confused by a few local authorities saying that we had not involved them, as we had and they contributed to the report. From reading some of the responses that the committee received, I think that there was perhaps a misunderstanding about the engagement that we did for the report and the committee's call for evidence.

As the report outlines, the feedback that we received broadly fell under the following headings: calls to improve guidance; calls to amend legislation; and asks that were out of scope. We have committed to actions to address the first two areas, and I note that the evidence that you received broadly endorses that approach.

Considerable feedback was gathered from a range of stakeholders and sources. We have been careful not to draw conclusions, as we feel that there is not yet sufficient data available to assess impacts.

The report provides early insights and information on initial short-term licence application levels across Scotland, considers current operational processes and identifies operational improvements, including Scottish Government actions, where appropriate. We have already made operational adjustments to the licensing scheme as a direct result of feedback from a range of stakeholders.

I understand that some groups within the sector want us to halt the present regulation and undertake a review. We have committed to on-going monitoring, but it would not be responsible to review regulation that has only just been implemented and is still in a transitional phase, especially for a sector that has invested in compliance and because licensing is meeting its purpose of ensuring consistent safety standards.

We will continue to work with and listen to stakeholders. I am pleased to inform the committee that, as well as the regular engagement that we already have in place, the first meeting of the guidance expert group that is being facilitated by VisitScotland will take place later this month.

We have already said that we are open to undertaking further consultation once the guidance work concludes. We cannot address that through guidance and we need to gather wider views before deciding how to proceed.

I am happy to answer any questions that the committee has.

The Convener: Thanks very much for that opening statement. I will begin with home sharing and letting, which came up when we considered the issue a while ago. I am interested to hear why you chose not to consider areas of significant stakeholder concern, such as the inclusion of home sharing and letting in the licensing regime, as part of the update process.

Paul McLennan: I will bring in Anita Stewart in a second because she has been dealing with that as well. When we set out the wider scheme, we talked about bed and breakfasts and guest houses—we have talked about them previously with the committee. With home letting, it was a case of seeing how that settled down. We have issued guidance to local authorities on that point.

The point that I made right at the very start is that the process is all about safety and compliance, which are of paramount importance in what we are looking for. I will bring in Anita Stewart to add to that.

Anita Stewart (Scottish Government): As members are aware, we have spoken to a range of stakeholders as part of this work. We heard from some organisations that run different home exchange models that they felt that that area should not be included. We wanted to look at that through the guidance work that we have planned, take wider views to understand what others feel about the issue and, after that, decide what steps to take next.

The Convener: There is a bit of a process before you might get to that place.

Anita Stewart: Yes.

The Convener: That is good to hear.

We have heard from short-term let providers that they have concerns that the Scottish Government has downplayed their concerns in the update report. I am interested to hear your response to that.

Paul McLennan: You will know, convener, that I was a member of the committee when we first discussed short-term lets, and I listened to some of the concerns about the issue at that time.

Government ministers have met the Association of Scotland's Self-Caterers on about 10 occasions—I have met it on seven occasions so far—so we are obviously listening to it regularly. We have also met and engaged with the Scottish Tourism Alliance. We have spoken to the likes of Booking.com, Airbnb and so on a number of times as well. Indeed, they met with the previous First Minister, Mr Yousaf, and the current Deputy First Minister, and they endorsed our approach of looking at the review, seeing what we need to do and seeing how things bed down.

We have been listening to providers. We might not have agreed with all the points that they have raised but we have certainly listened to them. We are not downplaying. As part of the process, we are saying that people should look at the implementation update and let things bed down a little. We have made changes already. We have listened and will continue to listen, and I have made that commitment when meeting providers.

We have also engaged with the Society of Local Authority Lawyers and Administrators. Local authorities are the licensing bodies, and we get feedback from the sector on the time taken to process applications and how those are assessed using local interpretation, on which we have tried to work with SOLAR.

We have worked with providers face to face and through local authorities to pick up issues that they have had with local authorities as well. We have issued further guidance, as required, following feedback from the ASSC and the STA, for example.

It is very much an on-going process and we have mentioned that to the providers regularly.

Meghan Gallacher: You mentioned committing to the review but you do not have any further actions at this point. However, we are a year on since the introduction of the short-term lets policy and there have been increases in rents and hotel prices. One platform showed that guest bookings during the Edinburgh fringe and the world-renowned festival dropped 13 per cent as supply constraints priced out guests and performers. Do you think that the short-term lets policy as it stands is working?

Rents and hotel prices have soared throughout our capital. The average hotel price in Edinburgh rose to a record high over the past year, increasing by 11.5 per cent, which is double the national average. What is your response to that? Do you understand the frustration of the sector, which feels that the Government is not moving quickly enough to resolve the issues with the short-term lets policy?

Paul McLennan: You raised a number of points. I think that Edinburgh needs to be looked at very much on its own. I had meetings with the Edinburgh International Festival and Edinburgh Festival Fringe and we tried to be as accommodating as possible with them about exemptions. We met the council as well. They were really positive meetings.

The Taylor Swift and Oasis concerts have been mentioned, and there is a capacity issue in Edinburgh. The council needs to undertake a piece of work on the capacity of the city. That is an important point. The issue of short-term lets was raised when Taylor Swift was here or when other events have happened, but there is a broader capacity issue that Edinburgh needs to look at. I have discussed that with the council: what can Edinburgh actually take?

It is a case of supply and demand. You might think that short-term lets have a role in that, but the much broader supply-and-demand issue is whether there is enough hotel space for a Taylor Swift or Oasis concert. The council needs to look at that. I do not think that trying to compare hotel space with short-term lets is the best comparison to make. Edinburgh needs to look at its capacity for events.

There is a similar situation with the Commonwealth games, for example. Part of the work that the Commonwealth games team and Glasgow will be doing is to look at the capacity for taking in visitors.

There needs to be a broader review, as we mentioned when we spoke to the festivals. There is a much broader issue for Edinburgh, and I think that you may argue that short-term lets are part of that. The council obviously has to look at the issue in the context of its short-term lets control area, which has nothing to do with licensing as such. Like any local authority, the council has the right, and was given authority from the Scottish Government, to look at having short-term lets control areas. However, the issue with Edinburgh is very much about capacity, and not just short-term lets.

The Convener: There is a little bit of interest in this area. Before I bring in Willie Coffey, I will go to Alexander Stewart and Emma Roddick with brief supplementaries.

Alexander Stewart: Minister, we are well aware of the organisations and structures that have issues with the scheme. One of the biggest is the Scottish Bed and Breakfast Association, which said that the scheme was

“by far the worst example of policy implementation”

that it has ever encountered. It saw it as “fragmented”, “inconsistent”, “arbitrary”, “onerous” and “costly”. Those are some of the areas that it has concerns about.

You talked about health and safety. Organisations such as the SBBA are compliant with health and safety rules already, with reference to inspection and enforcement. How do you respond to the SBBA’s analysis, which is relatively scathing about how the scheme has impacted its sector?

Paul McLennan: There are a number of points. I spoke to the SBBA too. I go right back to when the policy was brought in, when there was a discussion and decision as to whether the scheme was going to be a national scheme or, as with many licensing schemes in Scotland, whether it was going to be a local, or local authority, scheme.

It is up to local authorities to interpret the guidance and, at the beginning, each local authority interpreted it slightly differently. We have had meetings with SOLAR—the body that represents the licensing authorities in Scotland—on that. Guidance was issued about what to do if there was an issue around one authority interpreting part of the scheme differently from another. We tried to speak to SOLAR regularly.

I will bring in Anita Stewart to talk a little bit more about her involvement with local authorities. This is about trying to get national consistency but with local interpretation. Part of the review that we are talking about will look at that and see what we can do to further strengthen the guidance.

Anita, you spoke directly to SOLAR and so on. Do you want to say any more about the work that you have done on that point?

Anita Stewart: I think that the minister has covered very well the rationale behind the scheme being a local scheme, which mirrors other regulations that are in place for other types of businesses. You still have consistency in relation to safety standards across Scotland, but you also have the flexibility for local authorities to look at the circumstances in their area and decide whether there are any particular things that need to be taken account—indeed, they can look at particular applications.

We have worked with authorities to look at how we can facilitate a common approach, where that is possible. Members may have heard this before, but we worked with the Scottish Fire and Rescue

Service, for example, on taking a common approach to applications, to make the process better and more user friendly for the applicant, and for the body that processes the applications.

That work continues. It is not done in isolation. We are working on operational improvement, and the intention is to link up with VisitScotland and the industry advisory group.

I think that, at the moment, the main thing is for us to do the guidance review first, and then look at whether there are things that we may need to take more views on before deciding further actions.

11:00

Emma Roddick: Good morning. I want to pick up on the comments about exemption discussions with the City of Edinburgh Council. I am aware that Living Rent has raised concerns about exemptions being granted for most of the year for festivals and major events. I have to stay here in Edinburgh during the week quite a bit, and it seems that there is always an event. During events such as the Taylor Swift concerts, there were sofas going for four figures a night. Does the minister recognise that operators can easily make most of the money that they would make in an entire year during such events alone? Therefore, is it in the spirit of the scheme for exemptions to be granted in such circumstances?

Paul McLennan: I will clarify the situation. As far as I am aware, the only exemption that the City of Edinburgh Council had was for the Edinburgh festival and so on. I mentioned the discussions about exemptions that I had with the council, the festival and the fringe in relation to the capacity issues that Meghan Gallacher raised. The council may come back to us on the Taylor Swift concerts or the Oasis concerts. I am not aware of the situation as regards exemptions in those periods. I do not know whether Anita Stewart is aware of any other exemptions. I have mentioned the events that we would be looking at.

Whether we are talking about an Oasis concert, a Taylor Swift concert or any other big event, whether in Edinburgh, Glasgow or anywhere else, capacity has to be looked at as part of the planning for such events. Thought needs to be given to how much a city can take in relation to short-term lets, hotel spaces and whatever other capacity is available. That is a piece of work that needs to be done. That falls outwith my remit, but I would always push any local authority to consider what its capacity is to take in an additional 60,000 guests who might be staying for two or three days.

I do not know whether Anita Stewart has anything else to say about exemptions, but the only discussions that I have had have been about

the Edinburgh festival and the festival fringe, which, as you know, are long-established events.

Anita Stewart: Prior to the amendment to the licensing legislation that was made by Parliament this year, the legislation said that a licensing authority could decide to offer temporary exemptions and that, if it did, a host could apply for a temporary exemption, but it would be for a single period of no more than six weeks. The minister has alluded to the conversations that we had with the City of Edinburgh Council, but we also talked to other authorities to hear their views. We did so on the basis that we need to strike the right balance between the activity and how often it is undertaken, and whether that is something for which someone should apply for a full licence, or whether there should be more flexibility than is offered by an exemption for a single period of six weeks.

That is why an amendment was made to the licensing legislation earlier this year, which altered it to allow people to have an exemption for up to three periods, but the total could still not come to more than six weeks. We are still keeping an eye on that. We are monitoring the situation and speaking to different stakeholders about it. We can look at that, among other things that we might do after the guidance has been completed.

Emma Roddick: In the case of whole properties in particular, if a property is exempted for the festival period, does it not seem to be unlikely that it would be used for any other purpose for the rest of the year?

Paul McLennan: I am trying to understand the question. I will bring Anita in.

Anita Stewart: As you said, in Edinburgh in particular, there are many different events that happen throughout the year. The host will have to make a choice about what it is that they will ask to have an exemption from the requirement to have a licence for. Regardless of whether they want to do that over Hogmanay, the fringe or a different period, they cannot go over the maximum amount of six weeks in a calendar year.

Paul McLennan: A balance needs to be struck when it comes to providing flexibility, whether we are talking about exemptions for a couple of one-off events or for the festival, which runs for a month, but people probably start to come into the city about two weeks beforehand in order to start preparing and so on. It is a case of trying to provide that flexibility.

The discussions that I had with the festival and fringe organisations were about that six-week period, in which flexibility is key, given the extent to which visitor numbers increase. It is a case of achieving that balance, and that is part of the review that is being looked at.

The Convener: The next questions come from Willie Coffey, who joins us online.

Willie Coffey: Good morning. In your opening remarks, you said that, at the moment, you have insufficient data to draw firm conclusions. Of course, we know that some will have made up their minds in the absence of any data whatsoever. Can you give us a wee flavour of whether anything is emerging on the implications of the licensing regime in relation to its main aims, which are to ensure that properties are safe and standards are high, and that there is a route for people to raise cases of antisocial behaviour? Is anything emerging from the data that you have that would give us a positive indication that the regime is working?

Paul McLennan: A number of things are emerging. I remember discussing this issue as a member of the committee. In relation to applications, it was estimated that we were talking about 32,000 properties. At the moment, we are talking about a figure of about 30,500, although it is expected that that will go up to about 35,000. The figures are ahead of where we thought that they would be, but we must remember that the initial figures were produced during the Covid period, when there would have been businesses that were struggling to continue.

There has been a slight contrast between the situation in Highland, for example, where the numbers have been very high, and those in Glasgow and Edinburgh, where they have been slightly lower than expected. However, the City of Edinburgh Council has the short-term let control area, and Glasgow City Council is talking about managing the provision of short-term lets. That relates to short-term let control areas as opposed to licensing.

The tourism sector has been recovering reasonably well, although it continues to face the cost of living crisis and so on.

Broadly speaking, we are slightly ahead of where we thought that we would be. The number of short-term lets has fallen slightly, by around 1 per cent or so. There has not been a substantial drop. With regard to the wider impact, we will need to see what happens in the coming months, over Hogmanay, next summer and so on.

Anita, do you have anything to add?

Anita Stewart: I think that the minister has covered the safety point, which was represented in the implementation update report, from the perspective of the involvement in assessing applications of the Scottish Fire and Rescue Service, Police Scotland, which looked at the fit and proper person aspect, and the local authorities. Initially, for a lot of applications that they were helping to support, the range of

documentation that would have provided reassurance that checks on the safety requirements had been conducted was perhaps not there. That is set out in the report.

Anecdotally, Police Scotland has told us that the evidence that it provided to the committee on organised crime and so on at the end of 2021, prior to the legislation being passed, is still relevant and that the licensing scheme provides a mechanism for that to be tackled.

Paul McLennan: I have a few other statistics to mention. By the end of June, according to public registers and other information, 30,299 licensing applications had been made. The current figure is 34,285. There are local authorities that are still processing the data, so we expect that figure to be higher. The level of refusals—cases in which licences have not been granted—has been very low.

Broadly speaking, the number of applications that have been made is slightly ahead of what the estimates suggested prior to the inception of the licensing scheme.

Willie Coffey: I understand that the data that informs the implementation update report, which came out in August, goes up to the end of 2023, and that the report does not include the data from January 2024 to August 2024. Is there any reason why the data for that section of the current year was not included? We want the information to be as up to date and current as possible.

Paul McLennan: I will bring in Anita Stewart on that point, as she has been working on the figures over a period of time.

Anita Stewart: Mr Coffey, are you talking about the official statistics on short-term let licensing applications?

Willie Coffey: Could you update us on the position at the end of August?

Anita Stewart: At the end of August, the published statistics that were available to us took us up until the end of December 2023. Last month, we published statistics that took us up until the end of June this year. The intention is to publish the next statistics, which will take us up until December 2024, in around March or April next year. At that point, there will be the normal lag of a quarter in the publishing process.

I should add that my colleagues in the statistical team are doing a review, as part of which they are gathering views from different stakeholders about the frequency and the format of those publications in the future, because a lot of Scottish Government statistics are published annually, for example.

Willie Coffey: That is really helpful—you have cleared that up. Has anything emerged from the most recent data with regard to the main intentions of the policy that suggests that the policy is working or that it could perhaps be improved?

Anita Stewart: The minister highlighted the fact that the statistics that are available to us, which go up until the end of June, are a partial picture. We are expecting the figure to go up, but, last October, when the deadline for existing hosts closed, we were told anecdotally or informally by authorities that about 29,000 applications had been made. Now, using information from public registers and so on, the figure is more than 34,000. That shows that there is still a steady rate of applications coming in from new hosts. We know from talking to authorities, that, in the winter period, a lot of businesses will close and so on. Some operators might decide that they want to sell up and others will take over. Some previous operators might decide that they will do it less often and that they will apply for a temporary exemption rather than a full licence, while others might have had a break and might want to come back and apply for a full licence.

I think that that shows that we are still not seeing a full picture when it comes to understanding how the operators that were there prior to licensing starting are fully engaging with the current system and how many new operators are coming on board. In relation to the number of operators that are there, consistency and so on, licensing definitely provides assurance to guests who come to Scotland that certain checks will have been undertaken and that certain requirements will be in place when they stay in a short-term let.

Willie Coffey: Thank you.

The Convener: I will stay with members who are online and bring in Mark Griffin.

Mark Griffin: I have a couple of questions about the proposed expert group, minister. What will the remit of the group be, who will it report to, how will members be appointed and who will provide the secretariat?

Paul McLennan: I will bring in Anita Stewart in a second. The important point is that, right at the start of this process, we said that we would pull the expert group together. It will be incredibly important as we go through the implementation updates and discuss what we do going forward. We have met VisitScotland and a number of other groups that also have an interest in the matter. As for the expert group itself, Anita Stewart has been dealing with the remit, membership and timescales. I will bring her in and come back after she has given a bit more detail about the logistics and why we pulled the group together.

11:15

Anita Stewart: The purpose of the expert group is primarily to look at Scottish Government guidance on the licensing and the planning of short-term lets. A number of matters were raised with us through the on-going monitoring that we are undertaking, so we have those issues as a starter for 10. The purpose of the group will be to take those and anything else they find when they work through the different guidance that we have for licensing and planning, to determine and make recommendations to Government about any changes.

We have asked VisitScotland to convene and facilitate the group. It will be chaired by a director at VisitScotland and we have representation on the group from SOLAR, licensing authorities, planning authorities and industry. The brief will be of a very technical nature, as you would imagine. VisitScotland is co-ordinating that and the first meeting will take place at the end of this month. The expectation is that we will have the revised suggested guidance to the Scottish Government early in the new year.

Paul McLennan: Once the recommendations have come forward and we have had a look at them, I will be happy to write to the committee on that point.

The Convener: That would be helpful.

Mark Griffin: It is helpful to hear that one of the first issues that the expert group will look at is the crossover between planning and licensing. We have seen concerns in the written evidence about the interface between planning and licensing, and claims that they work separately and sometimes at odds with each other. Minister, do you have any early plans on how those two regulatory regimes could be streamlined when it comes to applying for short-term lets, and perhaps how they could work together better?

Paul McLennan: I will bring in Andy Kinnaird in a little while. We have had various proposals about how we make that process a lot quicker. Edinburgh, for example, has the ability to do that in the short-term lets control area, as has every other local authority. I know that Highland Council is looking at an area or two at the moment. That separate ability relates to a planning point of view.

On licensing, one of the keys things that has come up if a licensing application is going in is whether there is a material change of use. Again, it has been up to each local authority to look at that.

Anita Stewart talked about the broader review that the expert group, chaired by VisitScotland, will look at. The group will go into planning and licensing in a little bit more detail. I will bring in

Andy Kinnaird, because I know that he has been looking at the process of licensing and planning. He may want to make other comments, too.

Andy Kinnaird (Scottish Government): Thanks, minister. The opportunities and impacts of short-term lets are different in different parts of the country and even within different communities. It means that authorities can take different approaches to how they manage the planning aspects and how they choose to link or not link closely with the licensing regime. There is no obligation on licensing authorities to carry out a planning assessment in handling the licence, but there is recognition that some authorities will be more interested in using their planning controls than others. That leads to some different approaches across the country, but that is the nature of planning.

Paul McLennan: The important point, Mr Griffin, regarding the expert group being pulled together, is that it will look at all that in a little more detail. We will see what recommendations the group comes up with. It is down to the interpretation of each local authority in terms of planning and not just regarding short-term lets. They will have different interpretations of planning guidance and I think that that is the key thing. We will listen to what the expert group says and obviously discuss it with planning colleagues also.

Alexander Stewart: The committee has heard concerns about a lack of enforcement action against unlicensed operators, potentially due to the licensing authority being unable to recoup enforcement costs. Do you have any plans or is there anything in the pipeline to support authorities wishing to take enforcement action?

Paul McLennan: Again, I will bring in Anita Stewart on the specifics. Enforcement was raised early in our discussions. It very much depends on what the actual issue is that requires enforcement. The subject was discussed with Police Scotland and I know that Anita Stewart has talked with local authorities about that and about what we need to do. Enforcement has not been widely abused or used at this particular time.

Issues very much depend on whether it is Edinburgh or the Highlands, for example. Again, the review will look at whether enforcement is a significant issue. I will bring in Anita Stewart, but I am aware that there have not been issues in any significant numbers. It will be very much down to where the local authority is, what the issue is and what we need to do to make sure that that is okay.

Anita Stewart: The Civic Government (Scotland) Act 1982 sets out quite clearly what the enforcement process is for licence holders; it is quite an established process.

If you are asking about enforcement against unlicensed operators, the report outlines that Police Scotland's local teams have been working with licensing authorities to look at that, recognising that this is a transitional period. There is an approach here to consider proportionate action and to take an encourage-and-educate approach, with the last resort potentially being enforcement. That is what we are hearing across Scotland when we talk to authorities.

It has taken time for that to develop, across different areas, depending on the existing relationships between the licensing authorities and the police and how they were already taking enforcement action for other licensing regimes. Over time, I think that we will see cases coming forward that will be enforced. Licensing authorities will have a look at their own processes and how they deal with complaints that are brought to them by people complaining, "My neighbour is operating and they do not have a licence," and so on. That goes through a particular process. I do not know whether the minister wants to add anything.

Paul McLennan: I come from a local authority background and I know that there are obviously different licensing regimes operating. It is very much the case that, if a complaint is received, it will be investigated and the approach will be to ask whether there is something that can be discussed, before it gets to the enforcement stage. There is always that first stage, because enforcement will always be the last resort. We have seen, in any previous licensing regimes, that it is always about having a discussion to try to alleviate the problem and, if not, enforcement is the last resort. As Anita Stewart said, it is about making sure that, if something is reported, we speak to local authorities and police authorities about the best way to deal with it. Local approaches will vary, but it is about following the existing regimes and licensing schemes. Talk to people, try to alleviate the problem or take it away and, if not, enforcement is the last resort. We cannot have people operating illegally, under either this or any other licensing scheme. It is very much about following the procedures that are there for existing licensing schemes.

The Convener: I will go back online and bring in Fulton MacGregor.

Fulton MacGregor: Good morning to the minister and to his team. I will follow on from the last line of questioning. Licensing authorities have asked for clarity on the operation of licence transfers, provisional licensing and also on home swaps. Minister, do you intend to provide additional guidance or update regulations in those areas and, if you are, do you know when that might happen?

Paul McLennan: We have already done that on a number of occasions, Mr MacGregor. We pick up things from a number of sources. One of those was SOLAR—that is the licensing authorities and the feedback that they get on that particular point. There have been different interpretations of licensing from different local authorities so we have consulted, talked to and issued guidance to not only specific local authorities but to all local authorities. The implementation update was trying to pick that up as well and I think that we talked about who the feedback was from. It was from SOLAR, local authorities and organisations that represent the sector. We have already done that and I think that that has been outlined in the report.

We talked about the expert group; we will see what it comes out with and what it thinks that we should be looking at. I imagine that, at some stage, when the expert group reports back, we will look at the recommendations and assess them and contact local authorities and so on.

Anita Stewart has had individual discussions with local authorities on that, so I will bring her in, Mr MacGregor. We have already done the best that we can to try to get consistency while leaving flexibility for the local approach, which is of course really important. Anita, do you want to come in and give a flavour of some of the discussions that you have had with local authorities?

Anita Stewart: When the amendment order was made and came into force at the end of August, we published an update to our guidance to include sections on the processing of licence transfers and provisional licences. I do not know whether I am okay to bounce the question over to Margaret Main.

The provisions that have been made for the transfer of licences are based on the existing arrangements for liquor licensing under the Licensing (Scotland) Act 2005. That is an established process.

Margaret Main (Scottish Government): I do not know that I have anything else to add. As has been said, the expert group will look at any of the issues around provisional licences, transfers and so on. The provisions on transfers appear to be clear in the legislation, but we are open to hearing the expert group's views and, thereafter, looking at any need to tighten or change the regulations.

Fulton MacGregor: It has been well documented that licensing authorities have made it clear—they have told the committee this—that nine months is not a sufficient amount of time to process the most complex applications. Minister, what consideration are you giving to extending that deadline?

Paul McLennan: As you will probably know, there have been high numbers of applications in some areas, such as the Highlands, and there has been some anecdotal evidence about applications coming in very late in the process. We have been in discussions with individual local authorities on the general numbers, and we will also discuss with them where they are with complex cases. There are always discussions with SOLAR and individual local authorities when the level of applications is higher than we expected. There will be a degree of complexity with some cases, and such issues are discussed in our regular discussions with local authorities.

The key message to get across is that existing holders are still allowed to operate while a new application is considered, and it is in their interests to ensure that the correct information and everything else comes through as quickly as possible. If the person was an existing operator before the application was made, they can, of course, continue to operate during that time.

We have had discussions with local authorities that have had a much higher number of applications than was expected, which is obviously a good sign for the local authority.

I do not know whether Anita Stewart wants to add anything.

11:30

Anita Stewart: As the minister outlined, there is a transitional phase for existing hosts. Licensing authorities had 12 months to process the applications, and there is a nine-month period for new hosts. Once the transitional period ends, we will move into a more steady state, with the system fully embedded, but we will still talk to authorities to understand the average processing times for applications from new hosts. The nine-month period is set under the Civic Government (Scotland) Act 1982, and I do not believe that there are any plans to alter that, but we will keep the situation under review.

Paul McLennan: The vast majority of cases should be dealt with within that period. For complex cases that require various pieces of information, you would expect the local authority to take that into account in its timescales. The local authority should make an assessment at the start of the process, when an application is received. As Anita Stewart said, we have discussions with individual local authorities on those issues.

Fulton MacGregor: I was going to ask a follow-up question, but you have answered it. Thanks very much.

The Convener: Our final questions come from Emma Roddick.

Emma Roddick: Minister, how do you intend to monitor and review the operation of short-term let licensing in the future? In particular, when can we expect key milestones, such as reports from the expert group and future updates from the Scottish Government?

Paul McLennan: We have touched on that, but I will clarify the position. A key issue that was raised when I was a member of this committee was on-going monitoring, which is really important. A general point to make is that there has been an on-going process of engagement, which is also really important. We have had a number of meetings with the ASSC, the STA, SOLAR, VisitScotland and the expert group, so that has almost built in informal monitoring. There have been numerous meetings and discussions.

The amendment order, which has been mentioned, demonstrated that we were listening, and we continue to do so. The expert group is very much about listening to the sector, and the implementation update included some responses. The expert group, which includes people who work in the sector, can make recommendations. That shows that we are willing to listen, and, as I said, I will write to the committee on what comes through.

Anita Stewart talked about the timescales. It is not a long period, but it is important that, as we move towards next summer, we think about whether we need to change anything as a result of what the expert group says. We will provide another implementation update in 2025.

It is important to say that it is an on-going process. We have demonstrated that we are listening. As you would expect with any Government, we have not agreed with every comment that has been made, but we have demonstrated that we continue to listen, including to the expert group.

As I said, we will come back to the committee with an update report and if there is anything else that we think we need to do. The expert group's recommendations will be key, as it might want us to look at some things in more detail. We will consider what the report says and come back to the committee at that stage.

Emma Roddick: The implementation update does not mention the issue of local authorities not feeling able to take action against those applying for alcohol licences in an apparent attempt to avoid being captured by the short-term lets licensing orders, even when it is clear that there is no alcohol being served on the premises. Are you still looking at that problem? Will work be done to ensure that loopholes are closed?

Paul McLennan: We have been aware of some such applications being made. It comes back to the point about where things sit legally if people apply for licences when there is not anything

there. The issue has been raised with us, and I will bring in Anita Stewart and Margaret Main to talk about the legal aspects.

Anita Stewart: I was just looking at the transcript of the committee's meeting in June when that point was raised. Margaret Main's colleague Craig McGuffie responded by saying that we would need to take wider views before deciding whether further action was needed. We will continue to talk to authorities to understand the issue, but it will fall into the bracket of the post-guidance review to understand what we have and what wider views we need to take before looking at something in that respect.

It would be quite a big change if we removed the current exclusion for people with a liquor licence under the Licensing (Scotland) Act 2005 and required them to have a short-term let licence. There is a need for more due diligence and work to understand whether that is required and what the impacts of that might be.

Margaret Main: Under the current provisions, applicants are exempted from needing to obtain a short-term let licence if they already have a premises licence under the 2005 act. I agree with my colleague that we would need to weigh up the pros and cons of removing the exemption from people who had already passed a fit and proper person test and requiring them to do so again, and the proper way to do that would be through consultation on a proposed amendment.

Emma Roddick: A significant amount of time has passed since I raised the issue with you, minister. Have any steps been taken so far to get those views?

Paul McLennan: Part of that was done through the implementation update. The issues that have been raised by the committee today need to feed into the discussions with the expert group, which is chaired by VisitScotland. We will mention those issues to colleagues on the group. We have committed to look at the pros and cons of a change, and the expert group will need to consider those, too. I am happy to write to the committee on the considerations in that regard, because you have raised an important point.

Emma Roddick: I would appreciate that. Thank you.

The Convener: That brings us to the end of our questions. Thank you for joining us to give us the implementation update. It has been very useful to understand what is going on and what you intend to do in the future.

As we previously agreed to take the next items in private, I close the public part of the meeting.

11:38

Meeting continued in private until 12:17.

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