



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 29 March 2022

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
11th Meeting 2022, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Graeme Dey (Angus South) (SNP)

*Meghan Gallacher (Central Scotland) (Con)

Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Agnew (Scottish Public Services Ombudsman)

Niki Maclean (Scottish Public Services Ombudsman)

Andrew Sheridan (Scottish Public Services Ombudsman)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament
**Local Government, Housing and
Planning Committee**

Tuesday 29 March 2022

[The Convener opened the meeting at 09:30]

**Decision on Taking Business in
Private**

The Convener (Ariane Burgess): Good morning, and welcome to the 11th meeting in 2022 of the Local Government, Housing and Planning Committee. I ask all members and witnesses to ensure that their mobile phones are on silent and that all other notifications are turned off during the meeting. We have received apologies for absence from today's meeting from Mark Griffin, Willie Coffey joins us remotely.

The first item on our agenda is to decide whether to take items 3 and 5 in private and whether to consider draft reports on the Non-Domestic Rates (Coronavirus) (Scotland) Bill and the Coronavirus (Recovery and Reform) (Scotland) Bill in private at our next meeting. Do members agree to take those items in private?

Members *indicated agreement.*

**Scottish Public Services
Ombudsman**
**("Annual Report and Accounts
2020-21")**

09:30

The Convener: Under item 2, we will take evidence on the Scottish Public Services Ombudsman's annual report for 2020-21. We are joined by Rosemary Agnew, who is the ombudsman; Niki Maclean, who is the director of the SPSO; and Andrew Sheridan, who is the head of improvement, standards and engagement at the SPSO. I welcome our witnesses to the meeting.

Members have received copies of the annual report, along with an update on work that has taken place since the period that is covered by the report. I intend to allow about an hour for this session, although we have some room for flexibility if we need to overrun.

I will ask the first question. The report and the update mention the impact of Covid-19. I am interested in how Covid has impacted on the number and type of complaints that have been dealt with by the ombudsman, and in whether there have been any significant changes as a result of so many public services going online.

Rosemary Agnew (Scottish Public Services Ombudsman): The impacts have been twofold. In relation to complaints, the issue is more about what we were expecting, or might have been expecting, to see but have not seen. We have not yet seen a big increase in the number of complaints about, for example, access to general practitioner services or to elective surgery that has been delayed. During the first lockdown—although we were, in essence, in lockdown continuously, there were two distinct lockdown periods—the number of complaints dropped significantly. Anecdotal feedback that we received showed that people did not want to bother the national health service or other public services. People were adapting to life in lockdown.

In relation to the breakdown of complaints, the numbers reduced in the first year. In the second year of lockdown, the numbers gradually went back up, and they are now probably just about at pre-pandemic levels. However, the proportions have not changed significantly. For example, about 40 per cent of complaints have related to health, and that remained the case all the way through the period.

Another impact relates to the handling of complaints about public services. We differed from at least one other ombudsman in the United Kingdom, in that we did not stop taking

complaints, including health complaints. That was a conscious decision, because we felt that, more than ever, citizens needed a way of giving feedback.

We also continued our monitoring. Occasionally, reports came to us of an organisation saying on its websites that it was not handling complaints because of the pandemic. We followed that up and made sure that people were handling such complaints.

However, we have had to balance that with two different approaches in relation to public bodies. For example, through Andrew Sheridan's team, we have been giving advice and providing support with model complaints handling. We have been prompting public bodies by saying, "You still have to comply with this." However, we recognised that a lot of public bodies moved their complaints handlers into front-line services and that some complaints handlers were off work with Covid. It is about giving advice, keeping people informed and communicating with them. In the past year, one member of Andrew Sheridan's team has been working with NHS boards on some form of triaging to ensure that cases that involve people with the greatest clinical need are identified early on.

The pandemic—particularly the first lockdown—had a big impact on our investigative resources. That was, in part, because of people being off, because of people home schooling or having caring duties and simply because we had to adapt in order to set everybody up on technology platforms. Everybody came online, and we were able to work remotely, but Covid has had an impact on Niki Maclean's investigation teams in two ways. The first relates to our capacity to keep complaints moving. We have kept them moving, but there have been delays. Secondly, some of the delays have been caused not by our lack of capacity but by the lack of capacity of public bodies to respond to us and to complaints.

We have tried to balance following things up with being realistic about what public bodies are able to do. I think that we have probably got that balance about right. Some people are happy with what we have done; others are unhappy with what we are doing. The pandemic has affected our timescales because it has taken us longer to carry out investigations.

Niki Maclean or Andrew Sheridan might add something.

Niki Maclean (Scottish Public Services Ombudsman): I will just point out that, out of the 1,300 cases that are on our desks at the moment, about 75 are Covid-related cases. That gives an idea of the scale of what we are dealing with.

Rosemary Agnew: We have two markers for those cases. Some directly relate to Covid and

some indirectly relate to Covid. Direct Covid cases are, for example, complaints about hospital to care or care to hospital—those sort of things.

The Convener: It is great to hear that you were determined to keep your doors open, to support other organisations to keep their doors open in relation to complaint handling, and to allow people to give feedback on the services that were being offered.

I will continue on the Covid-19 thread. I am keen to hear whether the cases that you receive are becoming more complex and whether the office has adequate resources and expertise to fulfil its role.

Rosemary Agnew: There are a number of questions in that. Before lockdown, we were making changes to how we look at complaints. Under the Scottish Public Services Ombudsman Act 2002, there is a formal point at which something is said to be an investigation. We must do specific things, such as serve notice, before we start an investigation. However, in a lot of our cases, we carry out inquiries and pre-investigation investigations.

Over the years, we have seen a marked improvement in how public bodies handle complaints. It might seem as though we issue very critical reports every now and then, but the committee should bear in mind that we see only a tiny proportion of all the complaints that are made. Over time, we recognised that, in a lot of cases, public bodies had done reasonable investigations and had done all the things that model complaints handling asked of them. They had identified poor practice and good practice and had put in place redress measures and so on.

Increasingly, we found that we could not achieve more for people, because everything had been achieved at the first two stages, so we made a deliberate decision to not accept such cases for full and detailed investigation. That means that the complaints that are left—the ones that are subject to very detailed investigation—are inherently more complex. More than half of our investigations are about health complaints, which often require two, and sometimes require three, pieces of clinical advice.

It is not just the complaints that are more complex; the context of the more detailed investigations and the challenges and vulnerabilities that complainants bring with them are also quite complex. We try to give ourselves the space to carry out those investigations empathetically and thoroughly.

At the same time—this is not linked to lockdown, as we were doing it anyway—we have started to take a resolutions approach much more. If we get a complaint and can see a way of resolving the

issue without investigating it, we treat it slightly differently now. For example, housing complaints about repairs lend themselves to someone simply picking up the phone and saying, "What would solve this for you?" Going to the public body would solve the issue. We increasingly take that approach, and we have issued guidance to public bodies about trying to take that approach.

That means that how we use our investigative capacity is changing. We do fewer very detailed investigations, but slightly different skills are needed for some of the early resolution work, so we are investing in training our teams in resolutions-based approaches. We are also developing capacity in neurodiversity, for example. We spent a lot of time looking at wellbeing. That was critical during lockdown and still is. Irrespective of lockdown, we are trying to take a more structured approach to training our managers. What we are offering is a lot more holistic than it was two years ago.

Lockdown has had its capacity challenges. Those have related not only to simply the number of people available at any one time but to how we operate. It is easy to focus on the negatives, but there have been some very positive things. We moved to electronic working, and we will move to more hybrid working when we go back to the office properly later this year.

The biggest challenge relates to the fact that we went into lockdown with a backlog of unallocated cases. That came about because of an increase in complaint numbers and because we made some changes to our investigative approach. There has also been the impact of sickness and other Covid lockdown-related issues. Before lockdown, we had a plan and were on track, but then lockdown hit us. That pool of unallocated cases had grown but, as of yesterday, it was, I think, about at the level that it was at before lockdown. The difference is that some cases are sitting unallocated for many more months than was the case before lockdown.

The Scottish Parliamentary Corporate Body has been very supportive. It has made resources available to us for extra staff, and we have been recruiting extra staff for months. There have been some significant changes in the labour market, but we have made a number of offers, and I hope—fingers crossed—that staff will be starting with us soon.

Irrespective of those staff starting, our productivity over the past two years was probably, on average, about 15 per cent lower than it was before lockdown. However, it has now picked up, and we are making significant inroads into our oldest cases. We will not be in too bad a position by the end of the year, given everything that is going on, but I will not say that the situation is

ideal, because it is not. Too many people are still waiting too long to have their complaints looked at.

09:45

I caveat that by saying that every complaint is looked at and triaged. If an issue needs to be dealt with urgently because of the subject matter or because of the individual's vulnerability, or if we can resolve it quickly, we do not put those cases into our unallocated pool. We try to progress them straight away, so not everybody waits all that time. The system is very much based on urgency and need.

As I said, the situation is not ideal, and I cannot say that I am happy about it, but the team around me have worked really hard. I am proud of what my team achieved during lockdown—I say that every time I appear before the committee, but I mean it every time—because they kept the office going and the managers kept their teams going. We have still had contact, and we have looked after one another and the complainants who have come to us. We get complaints about our service, but we also get some fantastic, positive comments.

We lost quite a lot of capacity in the first year because of the impact of moving to remote working. Over the years, we lost capacity because of staff turnover and sickness, but—fingers crossed—we are back on track for the coming year.

The Convener: Thank you very much for that, Rosemary. We will pick up on some of the points that you have made.

I am heartened to hear you talk about a change in working practices in acknowledgement of the need to handle cases with empathy, and I think that you are absolutely right when you say that that needs space. Often, when people come into an environment to complain, they need a great deal of empathy. It seems to me that you are bringing more of that into your work, but the approach that you are taking to resolutions will, I think, also give you ease. You will be able to sort out some complaints more speedily, but you will also have the ability to be empathetic with perhaps more complex issues. I really appreciate that way of working.

I call Graeme Dey.

Graeme Dey (Angus South) (SNP): Before I get into my questions, I would just like to be absolutely clear on something. When you investigate complaints, are you re-investigating the original complaint, or are you simply looking at the processes that were followed by the body in question to ensure that they were as they should have been?

Rosemary Agnew: It is a bit of both, actually. With some very early closures of complaints, we will look at the way in which something was handled by the public body and ask ourselves a number of questions. After all, it is not enough just to do what you should have done. We will also look at, for example, whether there was learning from complaints, whether a complaint was handled well and whether there was good practice involved. We might make inquiries about certain aspects to confirm that the body is doing what it said it would do. We follow that through—we do not take everything at face value.

We will investigate the underlying issues if, as a result of our thinking that the outcome achieved did not necessarily reflect what could or should have been achieved, we need to carry out a more detailed investigation. Some of it is a matter of judgment and some of it is experience, but even with cases that are closed early doors, there is a right of review within our own organisation. If somebody comes back to us and says, “I have some more information now that I did not send you before”, we will look at the matter again. The door is not completely closed.

Graeme Dey: I should preface my questions by saying that I absolutely get that Covid has had an impact on all sorts of organisations and, of course, it is inevitably the case that a number of complaints will not be legitimate in nature at the outset.

That said, you said earlier that the SPCB has been very supportive of you and that you, in turn, have been very supportive and have looked to understand the challenges faced by public bodies. Ultimately, though, you are there to represent the public's right to challenge the experiences that they have had. If, as we have read,

“there is currently a delay of up to 11 months in allocating complaints to an SPSO Complaints Reviewer”,

that is inevitably going to have an off-putting effect on members of the public. After all, what is the point of taking a complaint forward if it is going to take up to 11 months to allocate it?

What evidence do you have, anecdotally or otherwise, of people not pursuing a complaint, because of that inordinate delay? It is a delay that almost inevitably comes on top of the delay that they have already experienced with the public body that they are complaining about. I certainly know of cases where the response from the NHS has been, “I'm sorry, but we don't have the time to deal with that.” I understand that, but when we put all that together, the fact is that people who try to raise what are often legitimate complaints face a very long time before they get the resolution that they are looking for or are entitled to.

I am interested in exploring that aspect with you, but can you also tell me how that 11-month delay compares to people's experience pre-pandemic? Moreover, how long on average does it take to conclude a complaint once it has been allocated to a complaint reviewer, whether or not it proceeds to a full investigation?

Rosemary Agnew: I will answer part of that question and will ask Niki Maclean to answer part of it, too.

First, I should say that, as of yesterday, the delay was 10 not 11 months, which is encouraging. However, the delay pre-pandemic was around three to four months and reducing.

As for anecdotal evidence, the question is an interesting one. For us, one of the bigger challenges has been stakeholder engagement. I have not heard it expressed in the way that you have described, but certainly groups like the patient advice and support service will make inquiries and say to us, “We need to get things moving. Can you get things moving?” before the matter even comes to us. Indeed, early in lockdown, we had a big increase in the number of inquiries that we were getting from people trying to get answers at first stage—in other words, at local level.

I have not heard anything specific about people not bringing their complaints to us, but it would not surprise me if somebody said as much. If anything, we have tended more in the opposite direction. When MSPs, advocacy services, citizens advice bureaux and so on write to us, we say, “Please signpost people to us, because the urgent things will get picked up and looked at.”

As I have said, I am not happy with the position. However, with regard to how things are progressing, I will ask Niki Maclean to respond, just to give my voice a bit of a rest.

Niki Maclean: With regard to anecdotal evidence, we know through our assessment and guidance team that people's responses to delays are quite mixed. Some say, “That's absolutely fine”; for them, the priority is to get the complaint looked at, so they are happy to wait. However, we also recognise and appreciate that a delay can cause additional stress, and it can be incredibly stressful for people if they find themselves having to spend more time in that complaint period. However, that is why we have the priority criteria; they allow us to try to help the most vulnerable people and ensure that they are not in that position.

As Rosemary Agnew has said, we look for opportunities by putting cases through triage and seeing whether there are any opportunities for resolution. I am talking not just about resolution of non-complex cases; indeed, with the standardised

complaints system that we now have in Scotland, I would not say that there are many cases that, when you opened them up, you would think, “That’s a non-complex case.” We might think of resolution as a quick fix, but the fact is that these cases are still incredibly complicated.

The average case age has definitely risen significantly over this period of time. Prior to lockdown, it was very rare for cases to go over two years, and the majority of cases were closed in the 260-day target that we set ourselves. Our oldest case now is two and a half years old, and there is a batch of cases that, because they are not being allocated for 11 months, are now sitting between the one and two-year mark. Our goal this year is to focus on bringing down waiting times within the allocation pool, so that our investigative staff can start to turn cases around and we can get back to the 260-day target that was achievable pre-lockdown.

Graeme Dey: I just want to develop that, Niki. The delay is now 10 months, so if someone came along today with a case that was deemed and accepted as being non-urgent, how long do you think that they would have to wait in total before their case was dealt with?

Rosemary Agnew: It would depend on what that non-urgent case was, if you are talking about the length of time from beginning to end. Even though it was non-urgent, we might be able to resolve it, so it might get looked at within, say, two or three months. If it sat in the pool of unallocated cases, I would predict that, if the progress that we are currently making were to continue, it would be about six to seven months before it got passed to an investigator or a complaints reviewer. At that point, the length of time that it would take would be very dependent on the subject matter.

Graeme Dey: Perhaps we can look at some specific public bodies—for example, local authorities. After all, we are a local government committee.

I am interested to explore with you the volumes and nature of local authority complaints. Are they changing in any way? Are you seeing any variances from the pandemic? Moreover, are your dealings with local authorities fairly consistent? You talked about your ability to resolve some cases with a telephone call. Are some local authorities far better at that kind of engagement with yourselves and others?

Rosemary Agnew: It would be difficult to say that there are local authorities who are poor at engaging with us. Different organisations have different challenges at different times and even within a local authority itself, you can have a superb relationship with its complaints department

and a very difficult relationship with another department. These things are not uniform.

I do not detect any specifically difficult relationships with local authorities as organisations or as people. Some of the difficulty has come from the allocation of resources—theirs and ours—as we try to get complaints progressed.

I also do not detect from the cases that I have seen any reluctance or change in wanting to get them resolved. If anything, our development of the resolutions approach is something that the local authority network, in particular, has welcomed. We meet the chairs of the complaint handlers in different sectors, and Andrew Sheridan’s team are in contact with the network of complaint handlers for local authorities.

Perhaps the most misgivings have arisen with regard to the revised performance indicators that we have just republished in the model complaints handling procedure documents. We have been clear all the way through that they might not be at the top of everybody’s list, but complaints are actually important.

As for the subject matter involved, Niki Maclean might be able to pick up on that, but I have not detected anything significantly different in that respect. There are some areas that are getting more complex, such as social care and its interaction with health—in other words, those areas where the local authority, the NHS board and the health and social care partnership interact.

I am not sure that there has been that much of a change in subject matter. The issue is more the speed with which things are going through.

10:00

Andrew Sheridan (Scottish Public Services Ombudsman): On engagement, my team meet with local authority complaint handlers—actually, we are doing so this week—and we have a really positive relationship, although I have to say that they are stressed and stretched. We have, as Rosemary Agnew has said, continued to encourage them to signpost people to us, but we have taken on the feedback that we have received from them through the pandemic and said, “Okay—we realise that things are maybe a bit difficult. How can we help you make things better for people who are coming to complain?” We have therefore refreshed the performance indicators to ensure that they focus on getting through cases in a timely fashion.

My team certainly support complaint handlers in that work and we point them towards good practice or things that they can try. We have also delivered a session on the resolution work that Rosemary Agnew spoke about to ensure that we

are all using the same language and that members of the public know that they will get exactly the same language from local authorities as they will from us.

Graeme Dey: I guess that the most exercised and agitated complainants who come to you will often hold the view that there is something wrong with the system, in that the body that they have complained about continues to investigate itself up to a point at various levels of escalation. However, from what you said earlier, ombudsman, you seem to feel that the performance of the system is improving.

Rosemary Agnew: I think that the handling of complaints is improving. The idea that an organisation that gets complained about will investigate itself might be an interesting one, but when the model complaints handling approach first came in, the point of the very early stages was to try to resolve issues quickly. As I have said, that has not been happening, because of lockdown. Given that the thing being complained about is often something that can just be fixed, it makes sense that, in those stages, it is all about the person in question saying, "Look, I'm not happy with what you've done—can you fix it?"

As far as more detailed investigations are concerned, I think that, although we are still talking about the same organisation carrying them out, the approach has a number of underlying aims. For the complainer, the aim is to get a complaint looked at. I know that we focus on our relationship with public bodies, but that is not in favour of complainers. If we can get public bodies to deliver things better, it is for the complainers' benefit.

Cases will not necessarily be investigated by the same person who delivered a service, although it might be the same area of service. However, fundamental to this approach are learning and improvement, and the best learning and improvement happen at local level, where you can look at the issue and make changes yourself. The quickest redress comes at local level. That is just good practice and it is to the complainers' benefit, too.

The approach also gives complainers the right to the third route of coming to us if they remain dissatisfied, and the fact that we see such a small number is an indication that it generally works well. That said, we have the power to look at complaint handling, too; indeed, a couple of the public reports last year were specifically about that issue. We will pick up on complaint handling either during an investigation or through another route. I can understand why people feel that this is a case of turkeys voting for Christmas, but I would say that the strength of the oversight function militates against that.

The other thing with model complaints handling is that the standards and processes relate not just to the investigation of complaints but to governance and the corporate responsibility for monitoring complaints and complaint numbers and ensuring that there is learning from complaints. We expect boards or councils to have sight of that information, too.

As a complete package, it works. The fact that other jurisdictions around the UK have followed suit with this approach highlights that, ultimately, it is about trying to get the best outcome for the complainer at the earliest point—and, ideally, learning from all of that to ensure that the same thing does not happen to somebody else.

Graeme Dey: My final question is on your interaction with the Scottish Housing Regulator, with whom you have a memorandum of understanding. How in practice do you share any insights into complaints about social landlords with the regulator? How does that work?

Rosemary Agnew: It works partly though our housing network, which I will ask Andrew Sheridan to comment on in a minute. The number of housing complaints that we get is not huge in comparison with all the complaints that we receive, but what we do with all our complaints is monitor the intelligence that we get from them, if you like. If we found any trend or significant issue in that respect, we would likely share that with the Scottish Housing Regulator or, indeed, any other regulator. Of course, the actual information involved must be anonymised, but what we are doing is looking for themes and trends.

We also attend the housing network, which comprises complaint handlers from the registered social landlords, and are able to share good practice there. Pre-lockdown, they were quite a dynamic group, and I think that they are reconvening now. Is that right, Andrew?

Andrew Sheridan: Yes. Again, it is much like the relationship that we have with local authorities, with one of the officers from my team going to those meetings on a regular basis. There is a lot of data, but we are trying to be a bit more data-savvy in order to identify, as Rosemary Agnew has said, any themes or trends that might be emerging. We can then make recommendations and say, "This is how we can support you with this or we can direct you to something else."

It is certainly one of those networks in which people's availability to sit on it has fluctuated a bit, but, as with many such groups, we are refocusing on it now, and as our business plan shows, our approach over the next year will be more about engagement and moving from supporting these meetings to sharing information. As I have said, the important bit for my team is the sharing of

learning and improvement, which will hopefully filter down to ensure that we are supporting this resolution model at all stages.

Rosemary Agnew: One area that the RSLs struggle with, as did local authorities before them that had housing, is antisocial behaviour complaints, because they are very often difficult to resolve. Very often with such cases, you cannot tell one party what is happening with another party, and in such situations, we certainly encourage good communication. These cases can be quite difficult for us, too, because we cannot always explain exactly why we have come to our conclusion.

The Convener: We move on to questions from Miles Briggs.

Miles Briggs (Lothian) (Con): Good morning, panel. I am not sure whether my microphone is on. [*Interruption.*] It is. Sorry.

The previous ombudsman told the predecessor local government committee that some public bodies ignored the SPSO's recommendations or delayed in responding. Is that still the case?

Rosemary Agnew: No. We certainly do not ignore recommendations and we do not find that our recommendations are ignored. You have hit on something that has been debated for as long as I have been in this arena, which is whether an ombudsman should have binding powers to enforce what they find.

My personal view is that the recommendation route is a better route, in terms of outcomes. We make recommendations in three ways. There are recommendations that are about specific redress for individuals, which might, for example, include apologies. Over half of our recommendations are about learning and improvement and some are about complaint handling. They all get logged and are followed up, and—certainly in my time—there has never been a recommendation that has not been complied with. I believe that the same was true for both my predecessors.

If I am honest, a couple of times I have come close to saying, "If you do not comply soon, I am going to look at reporting it to Parliament." In terms of influence, that is quite a powerful thing, because no public body wants to be the first one to be reported to Parliament.

That said, when we make our recommendations, our findings are ours. The outcomes that we seek are what we think would be appropriate. Over the past three or four years in particular, we have tried to be more flexible on how public bodies can demonstrate that they have achieved the outcome that we are looking for.

We do not dictate things. If we say, "We would like you to demonstrate that everybody presenting

at an accident and emergency department gets the appropriate scan at the appropriate time, and we would like to see this, this and this," and a public body comes back to us and says that it can demonstrate that much more effectively in a different way, we are open to that sort of discussion.

The impact of Covid has meant that it has been much more difficult to follow up recommendations and much more difficult for public bodies to implement them, but that does not mean that they are lost in the system. We have a support and intervention policy, and we will follow up and check that recommendations have been complied with.

Miles Briggs: That is very helpful. When we hear public bodies saying, "Lessons will be learned," most of us think that they are learned only until the next scandal or the next issue. Whether your recommendations are followed up is really important. Has that follow-up work not been possible over the past two years because of Covid?

Rosemary Agnew: I would not say that it has not been possible. In some instances, it has taken place more slowly, and there have been other examples where it has been done very quickly. An obvious example was the public report about audiology services. Increasingly, we are asking public bodies to have audits done by expert bodies. In that example, once the audit was done, the board of the public body concerned acted very quickly.

More systemic things are probably more difficult for public bodies, and some of the health outcomes are probably going to be more difficult, but what the recommendations highlight is important, and it is important to follow them through. Some recommendations are not just about whether a process can be changed somewhere, but about fundamental changes to approaches—and not just approaches to complaints but approaches to other aspects of service.

Those changes do not happen as quickly as I would like them to happen, but that is not for want of trying. There will be the occasional public body that will ask for a review of a decision because it does not agree with it, but once we have made the recommendation, we will follow it through in the way that I have described.

I cannot give you an example of something that has been delayed specifically because a public body did not want to do it.

There is another challenge regarding recommendations, and it is not just about our recommendations. This is about learning and improvement in the widest sense. There might be

changes through staff turnover with a number of people leaving or moving around a public service, so some corporate memory will be lost. Niki Maclean will recognise that issue, as I think that she has been doing these sorts of jobs for as long as I have. Sometimes the issue just seems to come around again years and years later. We try to get learning and improvement in place, but the world moves and people move.

I am speculating now, but I am doing so from the point of experience. I think that the challenge will be in retaining experience, knowledge and skills; that will make some of the changes difficult.

10:15

Miles Briggs: That is helpful. We have been hearing about that in different contexts, such as in planning departments, in the work that we have been doing.

I want to move on to a question about why many of the cases that are escalated to the SPSO are then subsequently closed by you, with the conclusion that they had been well handled by the public body. I believe that 908 cases were closed for that reason in 2021. What route would you recommend to complainants who feel that the door has been closed on their concerns?

Rosemary Agnew: First, I would recommend that they take advantage of our internal right of review. With support from two executive case officers, I look at all complaints that have been closed by a complaints reviewer when there has not been a big public report. In the first instance, the complainer should go back to the person who handled the complaint, but there is also the right of review.

What the person should do next will very much depend on what the issue was. Some complaints will be out of our jurisdiction and it will more appropriate to take them through a different route. Some of them may be technically out of time; although we have tended to try to be quite generous with timescales, occasionally some complaints are just too old.

Ultimately, though, I recognise that some complainers will just not be happy with the answer that they get. They might think, "All that time and effort I put into it, and you're saying that you're not going to investigate it." In fact, it is not that we do not investigate; it is just that our inquiries at that stage are about making sure that what we are being told is what was done. It is not a case of us saying, "Yes, we have looked into that and it's all fine."

Fundamentally, even with some of the very detailed investigations, there are a lot of happy

people, but there are always a handful of people who disagree with the answer.

Miles Briggs: Those of us who support constituents have to manage expectations sometimes, as well.

My final question is on helping vulnerable people through, specifically, the Scottish welfare fund. I know that you have looked at a number of cases regarding people applying for various grants, including crisis grants. Can you tell me about the number of cases that have been coming to you for review?

Rosemary Agnew: Niki Maclean will answer that one.

Niki Maclean: There is a very similar reconsideration process for crisis grants that people can access. Obviously, the timescales involved in such cases are much quicker, as you would expect, so people will receive a response quickly after making a reconsideration request. We inform people that they can access that process.

There are complexities in the guidance for the crisis grant system. For example, if a person makes more than three claims in a 12-month period, there needs to be evidence of the exceptional circumstances. We do our best to explain the rationale behind that, but sometimes that can be hard for people to understand.

Miles Briggs: That is helpful. Have you seen the increase because people have been asked to provide evidence through email, for example, or have not been able to get hold of documents from their general practitioner, because they have not been able to see them?

Niki Maclean: Are you asking about an increase in the number of—

Miles Briggs: I mean the number of reviews of decisions on crisis grants, including applications being rejected by local authorities.

Niki Maclean: Our figures are massively inflated because of the administration of self-isolation support grants; that is why you have seen a big increase in the numbers that SPSO is handling.

The way that we handle such cases is predominantly telephone based, and we are very proactive in gathering evidence. If somebody indicates that, for example, their GP has evidence, we will actively seek that out. That should not be a barrier for them.

Miles Briggs: What would be the average time to do deal with one of those cases?

Niki Maclean: With crisis grant cases, once we have gathered the evidence, we make a decision within 24 hours. Normally, councils are good at

making sure that the payments are processed quickly.

The Convener: We are now going to move on to questions from Willie Coffey, who is joining us online.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. Can you say a little bit about how you engage with younger people? The information that we have suggests to us that few young people make complaints to the ombudsman. Is that the case? How would you make your complaints service more accessible to younger people, in particular?

Rosemary Agnew: Traditionally, we do not get many complaints from children and young people. We are more likely to have adults making complaints on their behalf, whether they have asked for that to happen or not.

Pandemic lockdown has made it more difficult for people to access various things, but that is probably not entirely true in our case, as we do a lot of work by telephone and email. The issue that you raise is a more fundamental one. In that regard, next year will be the start of something different, because we have been asked by the Scottish Government to develop child-friendly complaints processes for the bodies that are under our jurisdiction through our complaints standards powers. That is an entirely different approach, based on the rights of the child and the United Nations Convention on the Rights of the Child, and there are things that will need to happen in relation to how complaints are handled at the local level.

What that means for us is that we will need to be more proactive in relation to complaints that are made to us by adults on behalf of children and young people, and those that are about how children and young people have received services. The challenge for us will be in getting the voices of children and young people into those processes.

I also hope that, by working on child-friendly complaints processes across the public bodies that are in my jurisdiction, we can develop something that other areas that are not in my jurisdiction will adopt over time. We will also try to develop resources to help in that regard.

For me—this is, to an extent, a personal view—the bigger issue is the word “complaint”. I do not recall at the age of nine or 10 thinking, “I don’t like what has happened in school today, so, where can I make a complaint?” I think that it is more likely that someone that age would think, “Something’s not right and I need somebody to help put it right”. The new process will fundamentally change our approach to how we make right things that are perceived to be wrong by children and young people in the first instance.

That is a huge challenge but I think that it is a good one, because it is fundamentally about a rights-based approach, which we have increasingly been trying to adopt in acting within the remit that is set out in legislation. Things like resolution have their genesis in a rights-based approach that involves thinking about how we can help people to exercise their right to a good service.

At the moment, we see almost nothing from children and young people directly. That has been the case for some time; other ombudsmen see the same thing. There is a good opportunity for organisations that might not traditionally have worked together to try to work together a bit differently. We were looking forward to moving into Bridgeside house, because there would be three officeholders, including the Children and Young People’s Commissioner Scotland, in the same building, but lockdown hit not long after we did that, so we have not been able to have the informal exchanges that we would otherwise have had.

I think there is something about complaint handling that is probably not conducive to achieving outcomes in the right way at the right time. Andrew Sheridan’s background is with children and young people, so he might be able to say something more on that.

Andrew Sheridan: The important thing, which you hit on, Mr Coffey, is the engagement and the rights-based approach, and the need to ensure that whatever we develop is child centred and child focused. Although we will be developing the framework for a complaint mechanism for children, a lot of the work that we will do over the next year with the officer that we are bringing in will be about learning for organisations and how they consider early resolution.

My background, as Rosemary Agnew suggested, is in education. For a long time we have been saying to schools that they need to try to resolve things at an early stage. There are lots of different ways in which schools do that, so how do we widen that out to other services that children are involved in? How do we make sure that, where they have capacity, their voice is heard at the table at every stage? If the issue is something to do with a service that they are getting in a school or an annexe of a school, such as a provision-based service, we need to make sure there is a mechanism for them to be able to say, right at the start, “This is what I feel is impinging on my rights”, and then there needs to be a complaint mechanism in place if the matter needs to go further.

I agree with Rosemary Agnew that there is unlikely to be a high volume of complaints in that regard, because, historically, it is usually the

parent and/or advocate who complains on the child's behalf, so we just need to make sure that, when that happens, the child's voice is at the centre immediately, so that their views are on the table. That is similar to the approach that the Scottish Courts and Tribunals Service has shifted to.

Willie Coffey: I want to ask Rosemary Agnew about digital engagement. Is it still the case that people are supposed to contact the ombudsman in writing? I noticed in your report that, last year, I think, 67 per cent of complaints came in via your website form. Can you clarify the position? I know that the Local Government and Communities Committee in the previous session discussed whether complaints could be accepted online. Could you clarify the position for me?

Rosemary Agnew: I think that "in writing" is probably a reflection of the language at the time. The position is that contact must be made in a written and recorded format, so an email would be judged as being a submission in writing.

Unless the complainer can demonstrate exceptional circumstances, we could not, for example, just take a complaint over the phone, in the same way that welfare fund applications can be taken.

We are moving increasingly to encourage people to make complaints using our online form, partly because that has contextual advice and signposting along with it, and it enables us to get the right documents quickly from the complainer, which helps with the triaging service.

10:30

An email complaint is classed as "in writing". As you mention, we have seen a big rise in the number of online complaint forms being submitted. That is consistent with other areas of the public sector and with the experience of other ombudsmen. We are constantly developing our online form, because it is not just a way of capturing a complaint; it is also often the first contact that somebody might have with us. We can use that first contact to tell people things such as, for example, the fact that they need to have made a complaint to their local authority first, and what they can come to us for advice on.

One of the benefits of lockdown is that it has increased the use of online complaint forms.

Willie Coffey: Absolutely. We have found that, in a number of areas, digital engagement in many ways saved the day. It is good to hear that route to using the ombudsman service is opening up much more. Has that led to use of the service by groups of people that perhaps might not have done so before? We spoke about younger people earlier,

but are there other groups of people you might expect to engage with the ombudsmen service that hitherto did not, and are you finding that they are doing so much more now because it is much easier to raise issues with you digitally?

Rosemary Agnew: I cannot say that. However, there are certainly sectors that cannot contact us digitally. Niki Maclean can pick up on that issue.

Niki Maclean: During lockdown, one of the things that we did immediately was make sure that we continued to staff the office because there is still a reasonable proportion of people who make complaints through the old-fashioned means of letters. That is the only mechanism that is available to our prison complainers, for example; there will always be a portion of our service users who are potentially digitally excluded for one reason or another. We recognise the importance of continuing to offer that service.

Paul McLennan (East Lothian) (SNP): Before I start, I refer members to my entry in the register of members' interests, which states that I am a serving councillor on East Lothian Council.

My questions are on preventative work that is possible. Part of your role is to promote local resolution and improve complaints handling across Scotland's public bodies.

Could you say more about what effect your preventative work, including training, has had on the SPSO's caseload? I know that the situation has been difficult in the past couple of years, so you could answer with regard to the situation before the pandemic. As we come out of the pandemic, do you see a role for that in reducing the number of complaints that come to you, because that is what we ultimately want to happen? What has happened in the past and what do you see as being the role of training in the future?

Rosemary Agnew: There are a couple of things to say on that. Training has not stopped; I will ask Andrew Sheridan to pick that up.

You have hit the nail on the head: it is important to get good complaint handling. As part of next year's business plan, born out of experience, we are looking not just at the training that we provide through specific training courses, but, coming out of the pandemic, at how we raise awareness of particular issues that might come out of our monitoring of complaints. We have a support and intervention policy; through that, we track themes and trends. If we spot a trend and a theme across public bodies or in a sector, we will we do something through Andrew's team. If we spot a trend within a particular public body, we will make direct contact with it. Niki Maclean and her colleagues have provided specific training to public bodies in that regard.

I will hand over to Andrew Sheridan at this point, because his team is currently working on the issue.

Andrew Sheridan: As Rosemary Agnew said, training has not stopped during the pandemic. We moved quickly to digital delivery. We continue to offer two courses: good complaints handling and investigation skills. The uptake digitally has been such that it has put quite a lot of pressure on the training that we deliver. We were booked all through the year and we have bookings for the next financial year already.

The important shift through all the work has been that informal training that came out of good relationships that developed because of the ability to conduct meetings digitally. That engagement focus will be huge for us next year. We have established in the team that those conversations and using the support and intervention policy is delivering good minute-to-minute training.

There is quite a high turnover of staff across public bodies, so we are considering whether we should look at having a re-accreditation model and other ways of ensuring that we continue to monitor the standard that people are operating at, so that we do not see a theme or trend of people requiring training because they have not had it for a long time.

Over the past two quarters, we have looked at how we develop that in our business plan. We will still offer the courses on good complaints handling and investigations skills—the core modules that will allow people to give a better service—but there will be a greater focus on on-going, continuous, informal training that will involve identifying bits of practice and finding ways of rolling it out within a sector.

The other thing about training delivery is that it has been across every sector. There has not been a sector that has not engaged in that over the past year that I have been here. We could give you a lot of statistics about the volume of modules, the range of people that have engaged and the positive feedback that we get in that regard every week.

Paul McLennan: The second part of my question leads on from that. Graham Dey asked about consistency in local authorities. When you talk about training opportunities, that is about organisations coming to you. Do you monitor what training the Improvement Service or local authorities provide? If they are coming to you, they are being proactive. Is every local authority doing that? Do you monitor the improvement that they are trying to co-ordinate through training, and how does that co-ordinate with your work?

Andrew Sheridan: There is no formal monitoring. We do that through the engagement

with the network. One item on the agenda at the local authority complaint handlers network meetings is about training, staff turnover and where they are on that. If we make a recommendation through our support and intervention policy, our first point would be to ask specifically what training is being provided, so that we can either supplement that or make sure that the correct information is available. We do not actively pull in that information quarterly, but if we need to go into the issue, we have the mechanism and relationships to do so.

Meghan Gallacher (Central Scotland) (Con): I refer to my entry in the register of members' interests, which shows that I am a serving councillor in North Lanarkshire Council.

I would like to pick up on the NHS whistleblowing service, and in particular the relatively low number of cases and inquiries coming into the new independent national whistleblowing officer. What will the SPSO do to raise awareness among front-line NHS staff?

Rosemary Agnew: We have already produced two specific online training modules for the NHS, which are available on the Turas website. One of those is aimed specifically at managers, who may receive concerns, and one is for all staff. We are already encouraging organisations to make that training part of induction programmes and to ensure that staff access the training. Take-up has been quite good in the first few months.

At this point, we have more of a focus on getting the people who are involved in the governance of organisations to recognise that they have a responsibility to ensure that their staff are properly trained and know how to raise a whistleblowing concern or just how to speak up—it does not have to be a whistleblowing concern. The underlying aims are about improving the culture and having a culture of speaking up.

I cannot say, because I do not know, whether the low number of cases coming to us is a result of issues being handled well in the first instance. That is because data comes through to us quite slowly. We did not have a complete feel for whether lots of concerns would be raised or whether there would not be many. The low numbers could be indicative of two things: they could be indicative of people speaking up, or that people are still afraid to speak up because of what that will mean. With many of the inquiries, we have been signposting people back to their organisation, perhaps because they just were not aware of the standards.

As part of the engagement as we come out of lockdown, we will do more engagement, particularly at board and management level. The resources are already there for front-line staff. I

think that the key success factor is for people at every level in an organisation to understand that it is a responsibility for everyone to know how to raise a concern and how to speak up. People should know what the general mechanisms are and the cultural type of things.

When complaints ultimately come to us, we cannot change the culture of an organisation overnight, but we can start with the resources that we have. To go back to Andrew Sheridan's point, part of that is about continuous engagement. We are already meeting with some of the health boards. Before the service went live, we spoke to all boards and the chief executives group, and we will continue to do that. There are now whistleblowing champions in place, and we attend the quarterly whistleblowing champions meeting. That is a constructive relationship—although they are non-executive directors and are not within our jurisdiction, that is a powerful network with which to share good practice.

I am undecided about whether the small number of cases is indicative of the service not being taken up or whether the issue is more complex than that. Some of it is likely to be more complex. We all see in the press that NHS staff are tired and working long hours, and making any form of complaint or whistleblowing is stressful—it is just physically a big thing to do that on top of an already stressful job.

As we build up our data, we will ask the boards to let us have their quarterly data. Boards are supposed to consider the issue at their level, and we will check whether the chief executives have reported whistleblowing complaints at that level. That might seem a long way away from training but, if we do not get whistleblowing embedded at that level, the training will not be embedded in an organisation's systems. The matter should be in people's personal development plans. There should be not just training but awareness raising through an organisation's intranet, staff procedures and handbooks. However, for me, it must start with the induction of new members of staff. The issue is as important as any other human resources and improvement policies, and probably the most important.

10:45

Meghan Gallacher: On your point about receiving data from the boards, how do you intend to keep that continuous? It might go well at the beginning and then tail off, particularly as boards are dealing with a number of issues just now. How do you intend to keep it going and ensure that you get the data so that you can make improvements?

Rosemary Agnew: Part of that will be through our engagement with groups such as the

whistleblowing champions group. Andrew Sheridan referred to the local authority network and housing network, and we are in the process of putting in place a confidential contacts network, so we will have that relationship with the non-management level as well. That will also be through Andrew's team.

Some of this is about helping in understanding of something that is inherently new, anyway. The principles are there, and everyone has signed up to them, but it is now about embedding. There is a lot of good learning. It will be critical to consistency that the whistleblowing champions and confidential contacts share their experience and learning—we have seen how well that works for the local authorities, for example.

Meghan Gallacher: Has the telephone number that was launched been successful? Have people contacted you through that method? Has there been more of a response through the telephone number than through other methods?

Rosemary Agnew: Probably most of our contact has come through the telephone. There are a number of reasons for that. Partly, it is because it is there. It is also probably the first number that comes up on a Google search if you put in "Whistleblowing about health in Scotland". Some of our work has therefore been signposting to other areas. The telephone line also enables people to ask questions and ask for advice anonymously in a way that they cannot do through email.

The telephone line is offered at different times of day, when people may or may not be working. The use has tailed off a bit, but that has probably happened as organisations have given more information. We have to be careful about always saying that things were difficult because of lockdown. Whistleblowing should happen if it needs to happen, irrespective of the situation. Actually, during lockdown, given the pressures that the NHS has been under, that is probably a time when it most needs to happen. We are now beginning to get inquiries about, for example, staffing levels being patient safety issues.

The Convener: You will be pleased to hear that there is one last question. It has been a useful discussion, and I want to take us out to a global level. Your submission states:

"the international community has set new standards and expectations for Ombudsmen which have been ratified at UN level".

I am interested in how the current set-up in Scotland compares.

Rosemary Agnew: This is where I have to hold up my hair shirt. Last year, we said that we would write to the committee because we were going to put a report before Parliament on that matter.

However, because it requires primary legislation and we knew that other things would probably get in the way, that has not happened. We have self-assessed against the Venice principles and found a couple of areas where significant change is needed because Scotland is now tailing behind.

Five or six years ago, we were seen as the leaders in jurisdiction relating to ombudsmen. For example, we were the first to have complaints standards authority complaints handling. However, one of the fundamental things that the Venice principles require is that ombudsmen can look at issues under their own initiative. The ombudsmen in Wales and Northern Ireland now have that ability, and it is fairly common practice for most European ombudsmen. They look slightly bemused sometimes when we say that we need own-initiative powers.

That is about being able to investigate an issue without having a complaint, which is important, and not just because it is one of the Venice principles. If it was not in the principles, I would be pursuing it anyway. For me, it is fundamentally about giving a voice to the voiceless. It is about seeing things from our intelligence and from what we learn from the groups that we sit on—for example, Niki Maclean is on the sharing intelligence for health and care group.

It is about being able to identify areas where one investigation can pick up something before it has gone through all the various routes. The landscape for scrutiny in Scotland is getting increasingly complex but, in terms of accessibility and impact, the ability to look at something because we have identified that that is in the public interest is the fundamental thing on which we do not match the principles.

There are some other areas of jurisdiction. The Scottish Public Services Ombudsman Act 2002 was written long before we had any discussions about digital services. The fact that a complaint has to be in writing, with the onus on the complainer to show why there are special circumstances, indicates that some things in the act need to be looked at afresh. Complaints should not just have to be in writing. To make the process accessible, there need to be other ways in which people can complain to us.

Andrew Sheridan referred to being data savvy. The whole of the public service is becoming more data savvy, but it is no good our collecting data in our individual organisations that our legislation allows us to collect. We need to think about how it is all joined up. Some of that is about information-sharing powers, although not personal data-sharing powers. For example, if we identify a patient safety issue, we could refer it to another body. There needs to be more real-time interaction, and there will come a point at which

we need to change the information-sharing powers.

My three big ones would be own-initiative powers, allowing complaints in any form and tidying up, for want of a better word, what we can share with whom.

The Convener: That is helpful. The act was written 20 years ago, and much has changed in the past 20 years.

I have a tiny question, although it might need too big an answer. I read in our papers that such changes would have to be done in primary legislation. I presume that we would look towards the next session of Parliament for that. What do we need to do now to set that up so that it can come about?

Rosemary Agnew: We need to get something to Parliament—not a technical paper but something straightforward, in pretty much the sort of language that we have been using here.

All the way through, when we have been consulted on other legislation, I have raised every time the point that child-friendly complaints are a good example of an issue on which it would help if the legislation gave us own-initiative powers, if only in relation to child-based complaints.

We need to get something to the committee. There would then be parliamentary debate and it would then be about getting proposals on to the legislative programme. We have tried a couple of times but, even on things that can be changed by secondary legislation, there have just been higher-priority issues. First, it was Brexit, then it was lockdown and coronavirus. If the changes can be on the legislative programme before I demit office in three years, I will feel that I have achieved something.

The Convener: I would welcome your bringing something to the committee—let us see what we can do in that direction. We have come to the end of our questions, so thank you for that useful and informative discussion.

We agreed at the start of the meeting that we would take the next items in private, so I now close the public part of the meeting.

10:56

Meeting continued in private until 11:59.

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