



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government, Housing and Planning Committee

**Tuesday 26 November 2024**

**Session 6**



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**LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE**  
**32<sup>nd</sup> 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:**

Paul Blaker (Accountability Scotland)

Fiona Collie (Carers Scotland)

Professor Chris Gill (University of Glasgow)

Professor Tom Mullen (University of Glasgow)

Jan Savage (Scottish Human Rights Commission)

Adam Stachura (Age Scotland)

Peter Stewart-Blacker (Accountability Scotland)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Local Government, Housing and Planning Committee

*Tuesday 26 November 2024*

*[The Convener opened the meeting at 09:01]*

### Decision on Taking Business in Private

**The Convener (Ariane Burgess):** Good morning, and welcome to the 32nd meeting in 2024 of the Local Government, Housing and Planning Committee. Willie Coffey and Mark Griffin are joining us online today. 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 4 and 5 in private. Do members agree to take those items in private?

**Members indicated agreement.**

## Scottish Public Services Ombudsman

**The Convener:** The next item on our agenda is to take evidence as part of our scrutiny of the Scottish Public Services Ombudsman. The committee will hear from the ombudsman at its meeting on 10 December. To inform that session, the committee has issued a call for views. Drawing on the responses to that call for views, the committee will hear from two panels of witnesses today.

On the first panel, we are joined by Professor Chris Gill, professor of socio-legal studies, and Professor Tom Mullen, professor of law, both from the University of Glasgow. I welcome you to the meeting. There is no need for you to turn your microphones on and off—we will do that for you. I have some initial questions and then I will bring in members with other questions.

The SPSO was set up in 2002 to provide a public sector complaints system that is open, accountable and easily accessible to all, and which has the trust of the Scottish public. I am interested to hear whether you think that that has been achieved and what your evidence is to support that view. I will start with Chris Gill and then go to Tom Mullen.

**Professor Chris Gill (University of Glasgow):** Such assessments can be quite difficult to make. Some of the aims that you have just outlined are very broad and can be quite difficult to assess.

Generally speaking, I think that the academic consensus is that the set-up and operation of the SPSO seems to be a success. Various features of the scheme, following its inception, have been copied in other jurisdictions around the United Kingdom. The idea of having a one-stop shop for complaints and bringing together an ombudsman with broad jurisdiction over all public services has been particularly effective. Since then, some of the developments in the ombudsman's functions have been seen quite positively for ombudsman practice in other jurisdictions. The complaints standards authority function in particular has been seen as an innovative development and has been widely copied in other UK jurisdictions.

One of the issues that we have with all ombudsmen—not just the SPSO—is the evidence base that we have for making some of these assessments. We have information that is published by the ombudsman herself, which is often very helpful and useful but goes only so far in allowing us to make assessments of quality or trustworthiness, for example. We do not really know whether the ombudsman is a trusted institution, as that would require wide-scale survey

work, which we simply have not done and do not have access to.

I think that there are some improvements that the ombudsman herself could make to the data that is published and available for scrutiny by yourselves and academics. At the same time, it is simply not possible to get some of the information that would allow us to make those assessments because it would require relatively extensive primary research. Our judgments are based on publicly available information and experts' own judgment. To that extent, broadly speaking, I think that the establishment of the SPSO and how it has been operating has been successful, but there are certainly some areas that we can go into where there is potential for improvement.

**The Convener:** We have some more questions on that. Tom Mullen, do you have anything to add?

**Professor Tom Mullen (University of Glasgow):** Chris Gill has given an excellent overview. I will wait until we get into more specific questions before I add anything.

**The Convener:** Thank you very much.

Your submission states that the ombudsman has an important role in helping public services improve their service provision. Given the near record level of public service complaints received by the SPSO last year, I am interested to hear from you what evidence there is that the ombudsman is helping to improve public services.

**Professor Mullen:** I will start and then pass on to Chris. To reiterate the point that he made about the limitations of the information that we have available, certainly one could look at the statistics on the numbers of complaints, the numbers that are investigated and the rates at which complaints are being upheld. Those indicate that the ombudsman is making a real contribution to detecting good, sound complaints, upholding them and recommending remedies. However, although the level of complaints is very high, one cannot find that that is a clear reflection of how much maladministration there is in the public sector. Certainly, the ombudsman is making a contribution in resolving individual complaints.

There is some evidence in relation to the broader aim of going beyond the individual complaint to perhaps finding out if there are systemic flaws in particular areas of public administration and suggesting ways of improving systemically for the future. If you look at the ombudsman reports, you can see when recommendations of a more wide-reaching nature in particular cases have been made. Some of that information appears in particular reports, but we do not have enough information to provide an overview about how well that broader function of

achieving systemic improvement is being performed. We would need to do research into the public authorities themselves to see how they have responded when a systemic improvement suggestion is made.

**Professor Gill:** I completely agree. To add to what Tom said, there has been some small-scale research in Scotland recently—it compared Scotland with Australia—to look at the impact of the SPSO on health boards. It found that, in general, the SPSO's recommendations are accepted and acted on by health boards. That said, it tends to be in a rather minimalist and grudging fashion. The research found that the potential for wider learning, especially around culture and adopting the spirit of what the ombudsman would like to see, as well as the letter of any recommendations, was perhaps not being acted on as much. There is limited evidence, but it is from small-scale research that does not provide the kind of data that Tom was saying would be very useful.

**The Convener:** You are suggesting that maybe we need to look for opportunities to do more of that kind of research. To clarify, when you say "grudging", am I right that you mean that a recommendation to a health board from the SPSO for a remedy is not welcomed with open arms?

**Professor Gill:** I think that that is right. That particular research found that there would be compliance, but in a fairly minimal way, rather than the health board seeking to really look at the issues. For example, you could look at a recommendation quite narrowly and could say, "Okay, we need to give training to this particular group of people". A broader approach might be to say, "Actually, this seems to be suggesting a wider issue that requires something much bigger to be done". The health boards in the study were not taking that broader approach; they were looking at the recommendations in a fairly minimalist sense.

I think that the health boards also perceived their relationship with the ombudsman to be quite adversarial, so rather than having a more co-operative and perhaps open relationship of learning, they saw the ombudsman as being very much about accountability. The research suggested that it is very difficult to do both. If you are focused on accountability, it can be hard to bring people along on the learning journey with you, and if you are focused on learning, maybe bringing out that accountability can be more difficult.

**The Convener:** I wonder also whether a health board that is already stretched might feel that they do not have the capacity to take on learning or look at something in a broader way.

**Professor Gill:** It is almost inevitable that, with public services being stretched, responding to ombudsman recommendations will be a challenge. Capacity and resources are always an underlying issue whenever we discuss complaints and anything to do with ombudsmen.

**The Convener:** Willie Coffey, who is joining us online, has a number of questions for you.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning, Professor Gill and Professor Mullen. I want to ask about the new obligations and duties that the ombudsman has taken on board or, rather, been given. You referred to it as

“considerable institutional experimentation, with the addition of the Scottish Welfare Fund jurisdiction”,

and being the national whistleblowing officer for the national health service. When that sort of thing happens, where does the ombudsman draw expertise from in order to take on board that widening scope of investigation?

**Professor Mullen:** The extent to which the SPSO's functions have become diversified is definitely striking. All the public sector ombudsmen in the UK share the same two basic functions: one is to redress individual complaints and the other is to use complaints as a window on possible wider systemic problems, leading to improvement. The SPSO has added additional functions, such as being the reviewer for the Scottish welfare fund, being the complaints standards authority and having the whistleblowing role, which means that it has a more complex mix of functions. So far, I do not think that there have been positive indications that it has been problematic, but in the future, it might become problematic to maintain effective performance over that range of quite different functions.

The extra function that I would call attention to as potentially problematic is the Scottish welfare fund. That is a corner of the social security system and it is devolved. People may remember that there used to be something called the social fund, which was part of the UK social security system and gave people additional grant and loan payments to help them over short-term difficulties. That money has been folded into the Scottish welfare fund. The decisions that are being made effectively relate to social security benefit. Historically, such cases would have been sent to an independent tribunal for a binding decision, but now that responsibility has been given to the ombudsman instead.

The primary reason for that was that there was a desire in Government at the time not to create another new public body like a tribunal, and the ombudsman was a convenient place to send such complaints. We would not want to see the

ombudsman become a repository for grievance-resolution processes that the Government thinks have nowhere else to go—the ombudsman should be able to focus on its principal functions. I would not support an extension of that type of review mechanism.

The other important point about the review mechanism is that it results in a binding decision by the ombudsman. That contradicts one of the basic principles of ombudsmen, which is that they make recommendations and not binding decisions. Why do they make recommendations and not binding decisions? That goes back to the point that Chris Gill made about seeking a co-operative rather than an adversarial relationship with the public bodies that they supervise. When the first legislation on the ombudsman was enacted at UK level in 1967, the choice was made to not have binding decisions because it was felt that having such decisions would make the role too adversarial.

09:15

**Willie Coffey:** Thanks for that answer. You are basically saying that there is no real noticeable impact, positive or otherwise, of the additional burdens on the ombudsman service. That is what I wanted to ask, but I think that you mentioned that in your response.

Turning to budgets and financing, your submission also indicated that we need to properly support and fund the ombudsman service to perform its role effectively. We know that and we know about the significant pressures on public finances at the moment. How does the ombudsman's budget of £6.7 million a year compare with that of other ombudsmen services that you know of? Is that a sufficient level of funding for the service to carry out its duties, albeit that they have been expanded, as you mentioned a moment ago?

**Professor Gill:** I do not have the figures on me for the budgets of the other UK ombudsmen. It is very difficult to draw such comparisons because of the different remits that the ombudsmen have. We just talked about two functions in Scotland that are not replicated in any of the other jurisdictions—no one has the Scottish welfare fund function or the whistleblowing function. Other jurisdictions have additional functions that do not exist in Scotland or are not given to the ombudsman. In Wales and Northern Ireland, there is a standards jurisdiction, whereby the ombudsman is also effectively the standards commissioner and will look at breaches of the code of practice for elected members. That means that comparisons are very difficult to make across jurisdictions. There are also differences in volumes of complaints and so on, which means

that just comparing budgets is not really a particularly helpful approach.

There is no research or real understanding of the optimal cost per case of an ombudsman or what its ultimate budget should be. Those are all very difficult questions, which, sadly, no one has come up with particularly good answers to so far. The way to assess the quality of what an ombudsman is doing and its value for money is through qualitative types of assessment such as the ones that are carried out by the committee every year when you review the ombudsman.

There is a possibility of going beyond that. We will probably never get the empirical evidence that Tom Mullen and I, as researchers, would like to have because it would cost too much money to gather the evidence and not enough people would be interested in it. What we can do is have expert judgments. For example, one of the proposals in our submission was around having a regular independent review of the ombudsman that would be conducted by independent, objective experts. They might be able to provide a bit of a halfway house by researching some issues in more depth than this committee is able to do, for example, while not going into that full-blown academic research.

Improving the evidence base is key and that would allow you to make some of those judgments. I would caution against saying, "What this ombudsman is doing seems to be much cheaper", for example, because making those assessments is very problematic.

**Willie Coffey:** I will turn to the complaints model that was introduced in 2011. Since that time, the number of complaints has steadily risen. What is the evidence that the approach of bringing in that model has worked? Should we naturally expect the number of complaints to increase as a result of introducing a new model for complaints handling?

**Professor Gill:** It is difficult to know whether we should expect that. It is probably not surprising if you have simplified the complaints systems. You have to remember that prior to the Public Bodies Act 2011, a lot of complaints systems in parts of the Scottish public service were extremely complicated. You could have complaints processes that had six internal stages before someone could reach the ombudsman. We have moved to a very truncated and efficient model, where there are five days to try to informally resolve something and 20 days to provide a final decision. It seems inevitable that that sort of truncated process is more likely to allow easy access to the ombudsman than one in which complaints were effectively buried under six levels of internal process.

It is not entirely surprising that you would see a greater number of complaints reaching the SPSO because that underlying process has been made more efficient. That is a sign, certainly from an efficiency perspective, that the throughput of complaints to the ombudsman is working.

It is more difficult to say whether that is being done well and whether complaint handling has improved in quality at that local level within public bodies. According to the SPSO's own statistics, the main reason why investigations or full investigations do not happen is because the ombudsman is satisfied with the quality of the complaint handling that has taken place at the earlier stage. Something like 50 per cent of cases that are closed prior to investigation are closed on the basis that the initial complaint handling has been of good quality. Those are indicators that there have been improvements in how public service complaints are being dealt with.

I would not rely on an increase in the number of complaints to the SPSO as a sign that the ombudsman system has not been working and that the complaints standards authority model has been ineffective. It would be quite helpful to do a bit more research to evaluate how the CSA has worked in practice, but certainly on the face of it there is nothing to indicate a huge issue there.

**Willie Coffey:** We might come to that a bit later on, Professor Gill. Thank you very much for answering those questions.

**The Convener:** We will stay online and go to questions from Mark Griffin. If you can take all of your questions in one go, Mark, that would be great—I mean, in your turn.

**Mark Griffin (Central Scotland) (Lab):** I will not ask them all in one go, you will be glad to know.

I want to ask about neutrality, or perceived neutrality. We have received some submissions from people who are frustrated because they perceive the relationships between the ombudsman and public bodies as being too close. Do you feel that the SPSO is adequately independent from the public bodies that it is assessing complaints about? Are you concerned that people appear to doubt the neutrality of the ombudsman?

**Professor Mullen:** It certainly is a matter of concern if there is a doubt about neutrality because the perception of independence and neutrality is absolutely key to the public trusting the ombudsman. If there is a serious level of distrust about neutrality it will put people off making complaints. Most researchers would agree that there is no evidence that there is a problem of partiality towards public bodies. All the evidence suggests that ombudsmen maintain the appropriate level of neutrality in dealing with



complaints and that the ombudsman will therefore uphold a complaint where the evidence suggests that the complaint is well founded. I am not entirely sure where the perceptions of a lack of neutrality come from and I do not think that there is anything objectively to support them.

I add one point on the question of neutrality: if the ombudsman was partial, in theory that could go either way—they could be partial towards the public bodies or they could be partial towards complainants. As I say, I do not think it is either of those things, but there is obviously a sense in which the ombudsman is assisting the complainant to a degree because the person makes the complaint and it is up to the ombudsman to investigate it and to lead the complaint. In that sense, the ombudsman is investigating the complaint on the complainant's behalf, rather than relying on the complainant or a representative of the complainant to find out the facts. The ombudsman has to balance its roles. It has to be aware that it is trying to do justice for the complainant without leaning too far towards the complainant's side. I do not think that there is any evidence of the ombudsman being partial towards public authorities.

**Mark Griffin:** You talked about being concerned about some of the long waiting times for complaints to be considered and the potential impact that waiting has on reducing the trust and satisfaction of members of the public. Are you aware of any research looking at how the ombudsman's performance and the time taken to look at complaints impact on public trust in the complaints system as a whole?

**Professor Gill:** I do not think that we have research evidence on that. We know that there has been a lot of complaints research that suggests that timeliness is a key criterion for people. It is the whole "justice delayed is justice denied" type of idea, which is that if people have to wait a very long time to have a resolution to their complaints, it inevitably has a knock-on effect on their satisfaction with the process. They expect responsive, relatively quick outcomes. That is key to customer expectations and if those expectations are not being met, that has a knock-on impact on how the whole system is being perceived.

The literature also shows quite long-standing concerns about timeliness and the time that it takes ombudsmen to investigate issues—it has been a long-standing critique of where ombudsmen are at that they should be quicker and more responsive. Ombudsmen in general have moved in that direction. Obviously, the SPSO has a backlog at the moment, but if you look at the way it has changed its processes over time, a lot of its casework is now dealt with at a stage prior to investigation. It is trying to reach perhaps informal

resolutions or early resolutions and trying to settle cases without the need to go to a full investigation with a full public report. That has been driven by an attempt to be responsive to concerns around delay, speed and responsiveness.

At the same time, of course, the ombudsman is criticised for not investigating enough and for not using enough of its more lengthy inquisitorial processes on a sufficient number of cases. There is an element of the ombudsman always being between a rock and a hard place, between complainants and public bodies, but also in having requirements that are pulling in different directions—one towards speed and one towards using very expensive, lengthy processes.

On the whole, at the moment, the balance of where the ombudsman is at seems about right. It is very difficult to make those judgments. The backlog, however, is a problem. If someone is told that it will be four months before their case can even be looked at, that is four months that they are waiting with an issue that is unresolved and during which they are becoming increasingly unhappy that nothing is happening. That is a problem for the ombudsman and it is a problem for its long-term ability to convince citizens that it is a responsive institution that is there for them. The backlog needs to be addressed as a matter of priority.

**Mark Griffin:** Finally, you have said that performance indicators appear to be rather limited and narrow in scope and that there are few or no indicators for quality and customer satisfaction. What is your view on how the SPSO or any potential external reviewer would go about measuring and monitoring those areas? Do you have any recommendations for further performance indicators?

**Professor Gill:** On customer satisfaction, it used to be the case that there was fairly regular customer surveys of the SPSO's complainants. Quite a long way back, those used to be done by an independent research consultancy. That is probably the gold standard approach because part of the aim is to ensure independence and show people that it is independent research and that its results can be relied on.

My understanding is that the ombudsman moved the research in-house. I am not sure whether it is still on-going; I do not see the results being published any longer. Looking at that piece and thinking a little bit about how customer satisfaction data is being collected, how it is being published and linking that to a key performance indicator around customer satisfaction are all things that would be very beneficial.

There used to be more information published about the results of the internal quality assurance

processes undertaken by the ombudsman. It does not look as though that information is published any longer. There is a very short abstract provided in the annual report. Some of the other ombudsmen around the UK have relatively clear KPIs around the results of quality assurance processes. That is the kind of information that would allow you, and also us as academics, to reach some more balanced judgments. If the methodology for customer surveys or quality assurance processes and the results of those were in the public domain, it would be easier to suggest that overall processes are working effectively.

At the moment, it is very difficult to reach that as an absolute assessment. When there are disappointed complainants who have had very difficult experiences, it is hard to know what to make of those. Are they just individual aberrations or are they evidence of some more systemic problem with how the ombudsman has operated? It is very difficult to reach those judgments.

09:30

**The Convener:** Before I bring in Alexander Stewart, I want to ask about the statement in your submission that

“the complaints standards function is a net benefit for ombudsmen institutions”.

I am interested to understand if you have a sense of whether that has benefited the public and whether there is any way that you could assess that.

**Professor Mullen:** One thing is Chris Gill's point about the simplification and rationalisation of complaints procedures. On the face of it, that should have made it easier for people to complain. We have seen the numbers of complaints going up, so we could argue that there is certainly evidence that the complaints standards role has benefited the public by making it easier to complain. That is the most obvious thing. It would be harder to draw a connection between that and any systemic improvements that might have taken place.

**Alexander Stewart (Mid Scotland and Fife) (Con):** The annual report sets out information on complaints. Only 4 per cent of complaints that were closed last year went through the SPSO's full investigation stage. That is much lower than we have seen previously, when we compare it with seven or eight years ago. Is the SPSO fulfilling its functions if only a small number of complaints make it through to the full investigation stage?

**Professor Mullen:** I will start, and then Chris Gill can come in. The answer is that it depends, in part, on which of the functions you are looking at. If you are emphasising, as the most important

thing, resolving as many complaints as possible and giving justice to as many individuals as possible, it is not necessarily a problem if people do not go through the full process, as the reason for that might well be that there is a satisfactory early resolution, the public body admits that it made a mistake and then it provides a remedy. In that sense, it is not a problem that cases do not go through full investigation process.

When you look at the other SPSO role of trying to identify systemic weaknesses and to recommend systemic improvements, you would need a fuller investigation and, from that perspective, the small number of full investigations might be concerning. It is important, therefore, for the ombudsman to get the correct balance. I do not think that we, as researchers, have the information that would let us make a judgment on whether the balance is correct, but it certainly could be inquired into. The ombudsman might be encouraged to discuss with the committee why there are so few investigations and whether that is undermining the ombudsman's task of finding systemic improvements as well as resolving individual grievances.

**Professor Gill:** I will add that there is a terminological issue here as well with regard to what a full investigation or investigation means as opposed to what is happening in the earlier stages of the ombudsman process. A lot of the cases that are closed prior to a full investigation will have been effectively investigated. They will have been looked into. Files will have been examined, people will have been spoken to and phone calls will have been made. A decision simply will have been made that there is nothing further that can be done in that case, or perhaps it is evident on the facts as they stand that a complaint should not be upheld or pursued.

Ombudsmen—not just the SPSO—have got slightly tied in knots on the issue of what an investigation is and what it is not. Most of their work is inquisitorial. They are establishing facts, and they are doing useful work for the benefit of the public and the public body. Depicting that work as not being a full investigation and, therefore, not having value is potentially problematic. All ombudsmen should probably think a little bit about that, because it tends to undermine the story that they are able to tell about the value that they deliver. A quick, early resolution can be just as valuable as an investigation.

**Alexander Stewart:** Absolutely. You have indicated in your submission that there are no real concerns about the quality of the complaints handling service or the process. Assessing whether that is the case requires data, and you have also indicated that there is a lack of data when you are trying to analyse that. What data

should be available to enable you to make a more informed assessment? That is where we want to try to get to. By having more data, you might then be able to assess how successful the service is or how the process is working. If there is a lack of data, you cannot really see whether the SPSO is fulfilling its role.

**Professor Gill:** Data is crucial. The data that we currently have on quality is limited. We have, for example, customer satisfaction complaints and data on that. There is also an independent customer service reviewer, and we have the evidence of its findings and reports that we can draw on, which is helpful. In addition, we have the evidence that the SPSO produces on requests for reviews of decisions. We also have data about judicial review challenges, of which I do not think that there have been any reported cases. We have some evidence from those challenges, but that evidence is quite limited.

The evidence should be supplemented, as I mentioned in my earlier answer, by customer satisfaction data and quality assurance data. It should also be supplemented by a regular programme of independent reviews, let us say, every five years, which would be able to delve into issues that have been highlighted as concerns in this committee, for example, and could be informed by the types of questions that you would like to be answered and the types of data that you would like to see surface.

**Alexander Stewart:** There is not a complete picture, as you identified. The issue has been addressed in the past, but it has not been resolved yet, so we still think that there is more room for improvement.

**Professor Gill:** Absolutely.

**Professor Mullen:** Another point—it possibly goes slightly beyond the committee's remit—is that the different public sector ombudsmen in the UK could benefit from talking to one another about the way that they collect and report data. It will never be the case that they all report it in the same way, but they could probably take steps to make it more comparable, which would then put one in a better position to compare the performance of the different public sector ombudsmen.

**Professor Gill:** The other thing that would be useful is that, although the complaints standards authority places data reporting requirements on public bodies, the whole data piece could be much better in terms of what public bodies need to publish about the effectiveness of their complaints processes. They could put more in the public domain, and there could be different types of data. Again, that would allow you to reach a better assessment of how the ombudsman is doing in its complaints standards function.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** The committee is aware that the SPSO has some very poor Trustpilot scores and reviews, and those have been highlighted by a recent petitioner to the Parliament. Can you give us any indication of how the committee might get a fuller picture of what the public perception is? It is possibly a wee bit in contrast to your own submissions.

**Professor Gill:** As I have indicated, it is very difficult in the absence of, let us say, customer surveys, to contextualise individual stories of people who are disappointed and will go on sites such as Trustpilot to express those views.

It is more likely that people who are disappointed will want to express their view and their disappointment publicly, so what we see on Trustpilot might be unrepresentative. It is very difficult to establish that in the absence of better information. It is strongly in the SPSO's own interest to commission customer satisfaction research to objectively contextualise those findings.

If we look at the number of complaints, there are, obviously, people who have very satisfactory experiences, have their complaints upheld and go through the process without having an unsatisfactory service experience and without making a complaint about customer service.

Again, the issue goes back to the lack of data. We really need to know more about that.

**Fulton MacGregor:** Your submission discusses the Council of Europe's Venice principles. How does the SPSO's performance and structures compare against those benchmarks?

**Professor Mullen:** The Venice principles are, of course, internationally widely accepted as a good measure of what ombudsmen ought to be doing. We think that the structure, powers and general approach of the SPSO are very much in line with the Venice principles. They can be evaluated very favourably. There are a couple of cases in which our system does not directly correspond. For example, the principles state:

"the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts."

I do not think that that would be appropriate in our constitutional system, but, by and large, we are compliant with the Venice principles. I do not think that there is any concern that we are not consistent with those general international standards.

**Fulton MacGregor:** What are your thoughts on the ombudsman having an own-initiative power to investigate cases? Would that bring any benefits?

**Professor Mullen:** The standard powers of investigation are adequate for the investigation of individual complaints and, generally, for finding out systemic weaknesses. Basically, they have the power to compel the production of all relevant information in the hands of the public body and to compel public servants to submit themselves to interview, so they are able to find out all the information that they need.

The most obvious area in which the powers could be augmented would be to give the SPSO an own-initiative power of investigation. With that power, it would not have to wait for a complaint to come in. It might become aware in other ways of a possible systemic deficiency in a public service, and it could then go and investigate that. There is value in having an own-initiative investigation power.

**Fulton MacGregor:** I do not want to put you on the spot, but are you able to give a practical example of where the own-initiative power might be used?

**Professor Mullen:** You might find, for example, that there are reports in the press relating to a particular public service—that could relate to how a health board deals with a particular health problem, or it could simply be that a service in a health board is not meeting the public standards—but that the ombudsman does not have an individual complaint about that. With that power, it could say that, provisionally, there is evidence that something is generally going wrong and it can then investigate that and find out all the facts that are relevant. That approach could be applied to any public service.

Obviously, resources would be an issue, because you would be adding a new power, which is potentially very resource intensive. There are two questions in that regard. Should the ombudsman's budget be increased to reflect that power? The second question would be for the ombudsman. It would have to decide how much of its resource to allocate to own-initiative investigations as opposed to those that are triggered by complaints. That would be quite an important strategic decision. Again, that would be one on which it would be worth the ombudsman discussing its approach with the committee.

**Professor Gill:** The Public Services Ombudsman Wales and the Northern Ireland Public Services Ombudsman have those own-initiative powers of investigation so they are no longer revolutionary in the UK ombudsmen landscape.

I will give some examples of what those ombudsmen have investigated. The Welsh ombudsman has carried out an own-initiative investigation into homelessness. In that particular

case, there were no complaints from homeless people. There were widespread concerns about what was happening, but, obviously, it is very difficult for complaints to be raised directly by that group. That is a really good example of an issue that the ombudsman is aware of but is not receiving complaints on directly because of the challenges that particular groups and individuals face. In that case, widespread concerns were being highlighted about an issue and the ombudsman was able to step in. The main advantage of the own-initiative power is giving justice and a voice to people who are unable to raise complaints themselves because of the very difficult situations in which they find themselves.

I am doing a project at the moment in Northern Ireland looking at asylum seekers and refugees and the extent to which they are able to raise complaints. The reality is that they do not. If you want to increase access to justice for groups that are particularly vulnerable and excluded, the own-initiative power is one of the most important ways in which ombudsmen can broaden the scope of justice that they provide beyond what is often a quite articulate middle-class user base for who is able to use ombudsmen in the first place.

**Fulton MacGregor:** That is really interesting. Thank you.

09:45

**Meghan Gallacher (Central Scotland) (Con):** Good morning, Professor Gill and Professor Mullen. Fulton MacGregor has touched on one of the questions that I was going to ask about vulnerable groups and broadening access. Professor Gill said that the ombudsman is more likely to be used by people who are seen as middle class. How do we broaden that? How do we tackle that challenge to make sure that people in more vulnerable groups—I am thinking of female prisoners and younger people—get involved if they have concerns to raise?

**Professor Mullen:** That is an important point and, as you said, Chris Gill has already begun to answer it. There are a number of vulnerable groups such as the homeless, asylum seekers and female prisoners, who it is not reasonable to expect to have the same capacity to make complaints as people who are in a much better position in their lives. It is obviously going to take a long time to change their situation—we cannot have an overnight solution to homelessness, for example—so we need to take extra steps with those people. As Chris outlined, one measure could be the own-initiative investigation that could reach the concerns of such groups if the ombudsman has evidence from other sources.

More generally, the ombudsman could look again at outreach, how it publicises its activities and how people get to find out about it. A lot of people in Scotland are probably unaware of the existence of the Scottish Public Services Ombudsman and they will therefore not think of complaining. There are some publications and there is a website that anyone could look at, but it is not reaching people. I think it needs a twin-pronged approach of own-initiative investigations and a closer look at the outreach strategy.

I would not like to go into detail but there are things that could be done to spread the message more widely that the ombudsman exists and that it can help people with their complaints.

**Meghan Gallacher:** Following that train of thought, the Parliament is looking at the role of commissioners over the next six months. It is taking a root-and-branch approach to working out whether we have too many commissioners, their role in advocacy, the roles that they are meant to play and how people can access them for support. What would you like to see the review of the commissioners achieve with the SPSO?

**Professor Gill:** One thing that would be useful is some kind of process for commissioning, approving and legislating for new commissioners. When there is an idea for creating a new commissioner, one of the issues is about where it should go. Should it be a new public body? Is the issue potentially something that the ombudsman could deal with? From the ombudsman's perspective, particularly if the new commission is going to have some kind of complaint function or an oversight function, the idea might be to give it to the ombudsman. It would be useful to have some clarity around what happens when a new function is being debated and the process that should be followed for that so that the ombudsman does not end up with a jurisdiction that is too unfocused or unwieldy.

Although we have rightly said that the ombudsman seems to be managing the various functions that have been given to it, there is a clear danger of some of those functions ending up being problematic in future. A bit of clarity about the process and perhaps some principles for proliferation and the relationship with the Parliament would be helpful.

**Professor Mullen:** One must be careful to understand that the word "commissioner" does not have a very specific meaning. It has been used to cover a range of offices that are not all performing the same functions, so we need to be clear that one should concentrate on the function rather than the title. The key thing to do when creating a new commissioner is to ask, "What will this person do?" and then to work out the appropriate structure from that.

The position of a complaints handler who has to be independent and outside the Scottish Government departmental network must have some security of tenure so that they can make decisions fearlessly and, for that reason, an independent commissioner is a good model. For other functions, you work out what the function is, then you work out the structure of the body, then you work out what powers it needs, because some other commissioners might not need the compulsory investigation powers that the ombudsman has.

**The Convener:** You suggested looking at the outreach strategy and how we broaden access. I would say that language is an issue. What does "Scottish Public Services Ombudsman" mean to the many people who have never started to go through the process? Someone might know it exists, or maybe they do not and that is one part of it, but then there is all the language, which is quite inaccessible for many people.

**Professor Gill:** Yes, it is unhelpful. People tend not to know what an ombudsman is, although things have improved a little bit recently in the sense that some ombudsmen have become quite high profile, particularly the Financial Ombudsman Service through payment protection insurance claims and so on. The term "ombudsman" has a little bit broader recognition than it might have had 15 years ago. Nonetheless, terminology is important. It is a barrier to people complaining and that is something that can be looked at.

One of the main ways of getting around the outreach issue is by ensuring that there is close work and engagement with those who are experiencing difficulties, such as community and voluntary organisations and potential intermediaries that might be in a position to bring complaints. Again, doing that could be quite resource intensive but, if there are better relationships there, you could then see a conduit or pipeline to the ombudsman. It is probably ambitious to expect ordinary people to know exactly what to do when a complaint arises, so it is about making sure that there are people who are close to them who have that information to hand.

There have been some positive developments. I am thinking particularly of the work around child-friendly complaints following the incorporation of the United Nations Convention on the Rights of the Child. That approach to complaint handling, which is rights-based and very much designed around universal access and explaining things in a straightforward way for children, has huge lessons for how we could reconceptualise complaints processes for everybody, because most people need something at that level of simplicity and accessibility.

More rights-based approaches and approaches that follow on from the excellent work that has been done on child-friendly complaint handling could be one of the ways forward in opening the ombudsman up a little bit.

**The Convener:** Have you done any work on the trauma that might come along with a complaints process? In Scotland, we do not generally have a culture of people feeling like they can complain about things. It is quite a big step to make a complaint and in some situations there might be some form of trauma.

As I understand it, Scotland is trying to move in the direction of becoming a trauma-informed country. We are even trying to do that more among members of the Parliament—there is a nice diagram of what the process is here. Parallel to that very linear process of “if this, then that”, there is also the feeling or experience that somebody is going through. Have you done any work on that or is anyone looking into it?

**Professor Gill:** There have been bits of research. One of the bits of research that I have conducted looks at trauma from the side of people who have been complained about, which is an aside to your question. That is a big area of research that has looked at the impact on doctors and clinical professionals of receiving a complaint, the trauma of that and the potential effect on future work practice and so on. That is an area that has been researched and I think that trauma-informed approaches have been developed in complaint resolution.

A stream of research called therapeutic jurisprudence has also been applied to the ombudsman contacts. That is all about making sure that it is not just about efficient processes, outcomes and statistics, but about looking slightly more broadly at how trauma works and the potential effect of one small complaint. Work has also been done on the psychosocial impact of complaints, so rather than it just being a narrow administrative issue, and thinking about the psychological impact on the individuals involved, it is also about the broader social impact of complaints. That can be significant.

I have also done a little bit of work on complainants who have been dissatisfied with their experiences. One of the observations that I made from speaking with those people is just how traumatic their complaint experience was, often over decades of trauma. Often one of the things that has been particularly traumatising is the way in which the operation of complaints processes have retraumatised people by sticking them in lengthy and interminable processes that have fed their despair, dissatisfaction and unhappiness. Complaints processes can often end up exacerbating that.

A trauma-informed approach to complaint handling is a developing area. I know that the SPSO is interested in that and has been doing work in it, but we are probably at the early stages in how it is working.

**The Convener:** Thanks very much for that. It is good to hear that that work is nascent and that it exists to go along with the parallel process that Scotland is undertaking around becoming trauma-informed. I am certainly interested in hearing more from you as that develops.

That concludes our questions for you this morning. I appreciate both of you coming in and engaging with us in your work. It has been very helpful.

I now suspend the meeting to allow for a changeover of witnesses.

09:55

*Meeting suspended.*

10:03

*On resuming—*

**The Convener:** Before I introduce our second panel, I note that Emma Roddick MSP is unable to join us this morning and sends her apologies.

We are joined by our second panel this morning: Paul Blaker, member, and Peter Stewart-Blacker, chairman, Accountability Scotland; Fiona Collie, head of public affairs and communication, Carers Scotland; Jan Savage, executive director, Scottish Human Rights Commission; and Adam Stachura, associate director for policy, communications and external affairs, Age Scotland.

First of all, I should point out that there is no need for you to turn your microphones on and off—we will do that for you. We will direct questions to specific witnesses where appropriate, but you are all welcome to contribute. Please indicate to the clerks or to me that you wish to do so.

I will begin the questions, the first of which is on the SPSO's achievements and what evidence there is to support your views. The intention behind setting up the SPSO in 2002 was to establish a public sector complaints system that was open, accountable and easily accessible to all and which had the trust of the Scottish public. Therefore, the question for all of you is this: has that been achieved from your perspective, and what evidence do you have to support that view?

I will start with Jan Savage and then go across the panel, just to make things easy.

**Jan Savage (Scottish Human Rights Commission):** The Scottish Human Rights

Commission is concerned with ensuring that Scotland's international human rights obligations on access to justice for everyone with regard to the actions of the state are progressed through the mandate of the Scottish Public Services Ombudsman. The critical principles of international human rights standards in respect of access to justice are that it should be accessible, timely, affordable and effective, and the SPSO's mandate certainly appears to deliver that.

It is not for us to comment on the quality of how another office-holder undertakes its duties, but the evidence available to us, and indeed the other witnesses, through the publicly available data that the Parliament has—that is, through the annual report—suggests that the ombudsman's reach is extensive, that individuals are finding their way through the process and that it is free at the point of delivery. How satisfied individuals are with the outcomes is obviously a matter for them, but certainly the mandate and functions of the SPSO appear to support Scotland in meeting its international human rights obligations on access to justice.

**The Convener:** Adam Stachura, what is Age Scotland's perspective?

**Adam Stachura (Age Scotland):** The ombudsman's function is definitely necessary. Our helpline handles 30,000 calls a year; not all of the calls are complaints, but mostly they are about negative situations that people find themselves in. When it comes to complaints about public services—in the sense of complaints to the SPSO relating to social care and how those are dealt with by local authorities—it is important that older people feel that they have another route if their complaint has reached a conclusion at its original place and that the person in question is not just marking their own homework. It is really important to building trust that there is something—another route—at the end of the process.

We have not had huge numbers of people giving us feedback about their experience of the ombudsman. However, we know that, last year, about 20 people were signposted or referred to the ombudsman for a further complaint, because their situation had not been resolved to their satisfaction. It is also very important that people understand that, having been through a process without reaching the conclusion or getting the natural justice that they felt that they needed, they can go to the ombudsman as the final point of delivery in that respect.

**Fiona Collie (Carers Scotland):** I certainly agree with the points that have been made, but I note that the element of trust is very difficult to measure. The SPSO is limited not just in its powers but in the resolutions that it can provide for individuals, and they might not get the results that

they had expected. Indeed, some of the figures suggest that their complaints might not have reached full investigation at all.

Moreover, it all comes at the end of what will have been a very adversarial process; the complaints system, particularly when it comes to health and social care, where you have to deal with very challenging situations—can be unduly adversarial. We saw in the independent review of adult social care how individuals did not feel able to access their rights, and the SPSO is part of that bigger picture. It indicates that individuals either do not access the SPSO or that, when they do, they feel that they do not get the resolution that they need to enforce their own rights.

**Peter Stewart-Blacker (Accountability Scotland):** First of all, thank you, convener, for allowing us to make this presentation to you.

Accountability Scotland should not exist. The SPSO should be able to deliver an adequate and effective administrative justice structure. Sadly, as we have experienced—and as Trustpilot confirms—there is a major problem with it. *[Interruption.]* I am sorry—I had a stroke two years ago, and this is quite difficult.

**The Convener:** Take your time. Would you like to bring in Paul Blaker to support you?

**Peter Stewart-Blacker:** Yes, I might let Paul carry on.

**The Convener:** Please do so. I understand that this experience can be quite intense.

**Paul Blaker (Accountability Scotland):** As someone who has experienced the service first hand—I have made three complaints—I can tell you that, at the time, I was outraged at the quality of service. I should say that I have extensive experience of dealing with complex complaints from big organisations.

In the previous session, the two professors gave evidence on the issue of bias. One example of that is a complaint that I made about a school catchment. I was told that my daughter did not meet the criteria for a certain school; I made a freedom of information request for a copy of the rules, which were hidden; and when I got the rules, they proved that I was being misled. I presented that evidence to the ombudsman, saying, "Here is the specification. These are the rules. This is what they have told me." The ombudsman found in the other party's favour. I was incredulous.

I have another concern, which I will talk about later, but it is 100 times worse. Very simply, it comes back to the ombudsman not adequately or effectively investigating matters. The big issue for me is the 50 per cent of complaints that meet the statutory test but which are not investigated; that is

definitely a concern. Lots of people complain about things not being investigated properly. Indeed, it is the biggest issue that the public, and our members, have.

**The Convener:** My next question is connected to the previous one. Some of the submissions that we have received have raised the issue of the SPSO's neutrality when it looks into complaints against public bodies, and I am interested to hear about the experiences of the people whom you represent and their dealings with the SPSO. Is that perception justified?

I will not go across the panel, because everyone might not have an answer to that question. If you do wish to respond, please indicate as much.

**Fiona Collie:** It is a difficult question to answer, because it is very much about individual experience, but it might be to do with people's knowledge of the SPSO's powers, what it can and cannot do and its not being able to uphold complaints where it does not have the powers to enforce the decision. Given the number of complaints that reach full investigation, that might also impact an individual's experience of the SPSO and their belief that it is too close to the other public bodies that it investigates.

**Paul Blaker:** I made some serious allegations about a local authority. Under the SPSO's own rules, when there are two contesting stories, it is mandated to test them. My allegations were well founded, but it decided to take at face value what it had received from the third party.

Subsequent to that, I went to court to obtain the evidence to prove that the other party had provided inaccurate information to the ombudsman. In fact, it had deliberately falsified school records and caused significant harm to my daughter. More than 10 records, and a risk assessment, were falsified; in fact, the whole thing was falsified to cover up multiple failings after the event. I made this allegation to the ombudsman at the time but, even after the whole process of draft report, final decision and review, it found nothing wrong.

I will say in the ombudsman's defence that, after my going to court and getting the evidence—which took 18 months—it has decided to reopen an investigation. I am told that it is the first time that that has happened. The challenge, however, is that the other party is refusing to play ball. The ombudsman has written to it and said, "We are now satisfied that the information that you gave us and which we based our decision on was inaccurate. You now need to start the process again and give us new information to base a decision on." However, it is not doing that.

10:15

I am really interested to see what the ombudsman does next, because this is a national issue. It is not only my daughter who has been affected by it; it has been going on for years, apparently. Bullying and weapons incidents are underreported to keep the numbers down, and when something goes from bad to worse, because authorities have not done what they were meant to do, they can go back in, create new records and backdate or alter things in a way that makes it look as if something was done at the time. If the police, doctors or nurses did the same thing, there would be an outcry, but it does not seem to be a problem when it happens to our children.

What I am trying to say is this: I made these allegations and gave the ombudsman enough evidence, but it basically ignored me and found completely in the other party's favour at the time.

**The Convener:** Thank you very much for that.

**Peter Stewart-Blacker:** Perhaps I can add to this whole discussion. The biggest problem that I have had was with a complaint that I made about Scottish Enterprise, and best practice was not used to measure it. Things would have been considerably easier if, at stage 2, the bodies under jurisdiction had to deliver what should have happened in the first place.

The best example of an ombudsman that I have ever come across was the one in Gibraltar, and its operation should be mirrored in Scotland. It was a walk-in service; after interviewing the complainant and getting the idea behind the complaint, it then went to the authority and asked it how things should have been done. It wrote to the authority and said, "This is how we think it was done. Can you explain the difference between the two?" Rosemary Agnew does not do that—the SPSO has never done it. Instead of having a straightforward investigation, you get something tortuous, longwinded and expensive. It is no surprise that the ombudsman is slow to deliver justice and does not achieve anything.

When you use best practice, things become very easy. For example, in Gibraltar, tenants in a block of flats were complaining about the windows and the ombudsman asked them, "How should the windows be?" It was immediately obvious from the specification of the windows that the result was lacking.

In my own case, which involved a pilot scheme by Scottish Enterprise, the ombudsman did not use best practice; in fact, he used no guidance at all. He spent three hours looking at the matter and, frankly, did not understand what was going on. If he had had a document saying, "This is what should go on, and this is how it should be dealt



with", things would have been so much easier for the complainants.

Interestingly, the Gibraltar ombudsman found for about 25 per cent of complainants and still achieved 97 per cent satisfaction, because he took the time to explain precisely how he saw the solution. Again, the ombudsman here does not do that.

**The Convener:** Thank you very much.

We do have quite a number of questions to get through, but it is helpful to have an indication or example of another place where you feel that there is a good model that we can look at. I will now bring in Willie Coffey, who joins us online.

**Willie Coffey:** Good morning. Paul Blaker and Peter Stewart-Blacker have raised issues about who deals with complaints about the ombudsman service. I imagine that that question will inevitably find its way into our discussion as we take the inquiry further.

For the moment, however, I want to ask about the ombudsman's annual report and the significant increase in complaints that the ombudsman received in 2023-24 compared to the previous year—the number is up 33 per cent. What are the reasons for that increase? What trends do we see? In what areas of public service are more complaints coming in? I would be much obliged if you would share your thoughts on any of those issues, please.

**Adam Stachura:** It is an interesting question. We find that challenges in the way in which public services are delivered are having a considerable knock-on effect on people's experiences. That is not an overnight phenomenon; we have been witnessing it for the past decade or so.

For instance, with social care, we find times in the year when people are being denied access to care by local authorities. We have seen huge cuts almost before the start of the financial year, with people's social care packages being downgraded—they previously had a substantive need, but it is decided that, like Lazarus, they no longer need a care package. That warrants a complaint. If you go through the local authority system, the local authority will say, "This is the decision we've come to." The next place to go is the ombudsman.

Undoubtedly, over time, awareness of ombudsmen in general—I am sorry, but I cannot think what the collective noun is—will improve, and people will think about an ombudsman as the last place to go. Judging from the SPSO's website, there are lots of places and spaces where people can be referred to it or have support to access it—Age Scotland's helpline is one of them. If people

know that the service exists, it becomes a new place to go.

The origin of the situation is probably to do with challenges in the delivery of public services and, frankly, the growing need in the past few years as a result of an extensive cost of living crisis and pressure on finances to deliver what people need. Undoubtedly, that will show in people's satisfaction levels with our services.

**Paul Blaker:** I have a couple of points on the data. More complaints are being made, in the first instance, to the authorities. We talk about people being aware of the ombudsman or not but, when someone gets a stage 2 decision, that clearly signposts them to the ombudsman. Therefore, to me, there is obviously a connection: public services are getting worse, so people are not happy with the service and are then signposted to the ombudsman.

One piece of data that concerns me is the number of premature complaints to the ombudsman, which has more than doubled to something like 918 from something like 462 in the previous year. The process is simple—to go to the ombudsman, you must have a stage 2 decision—but, in 2023-24, more than 900 people did not work that out. To me, that is either about how the ombudsman does it or, as is more likely, it is about the level of the people who are trying to get justice. Middle-class people like me—I put myself in that bracket—maybe understand the process and know what to do but, if the number of people who went to the ombudsman without a stage 2 decision has doubled to more than 900, something is wrong. That needs to be addressed.

**Fiona Collie:** I want to reflect on Adam Stachura's comment and the wider comments on the availability of services. Our focus is primarily on health and social care. I mentioned the review of adult social care and the feeling that many disabled and older people and carers had that they were simply abandoned during the pandemic. There is a feeling of abandonment and reducing services while needs are not changing or are increasing, which has a fundamental impact on complaints in the system.

We need to remember that, in the past few years, among unpaid carers, the number of people who provide significant levels of care has increased. That is primarily a result of unmet need for social care services and people being told that services are limited or quite simply not available. Frankly, carers are exhausted, and that leads to more complaints about services, or lack of services.

**Jan Savage:** I echo everything that my colleagues have said in exploring some reasons

why there may have been an increase in complaints. Those points are all absolutely valid.

I must pay tribute to the individuals who are behind every single one of those complaints because, as colleagues have acknowledged, they are exhausted. The Scottish Human Rights Commission is well aware of how difficult it is to access justice in Scotland and how getting to the final stage of an SPSO complaint is the end of a long, often adversarial and exhausting process, and that is on top of the issues that the person is complaining about.

I want to expand on what should happen as a result of those trends being observed, which points to a weakness in the SPSO's current mandate. The themes that are emerging tell us something about how access to justice and public services are being experienced, but the SPSO does not have an opportunity to take a thematic look at that or to raise any own-initiative investigations into the emerging themes.

Probably one of the biggest current challenges with access to justice in Scotland is about the ability for systems to learn from what is happening and ensure that the appropriate bodies have the appropriate resources and powers to do something about it. That is one reason why we welcome the approach that the committee has taken today, because it allows us to air the issues. Currently, committees of Parliament can do what office-holders cannot, which is to take a thematic approach and take a deeper dive into issues. Any one of the issues that we have explored in the past five minutes would certainly merit that.

**Willie Coffey:** I want to go back to Fiona Collie, who talked about unpaid carers in answer to my first question. In your submission, you tell us that unpaid carers do not really have any meaningful access to resolution or redress through the ombudsman. Have I understood that correctly? For the benefit of the committee and the public, what is the position? If people feel that they need to raise an issue and take it to the ombudsman, do they have access?

**Fiona Collie:** There are two sides to that issue. The first is the accessibility of the service, and that includes the complaints service. That is not just about the ombudsman; it is about individuals having the right information at the right time with the right support. Support to make complaints is fundamental, as is support with the outcome of complaints. I note that the committee has discussed trauma-informed practice, and making a complaint is fundamentally traumatic for individuals.

On the wider question of redress, we can find that individuals go through the whole process and, even when a complaint is upheld, it does not

change their situation to any great extent. For example, we have heard from individuals that, following the upholding of a complaint about a decision on support or a service, their assessment has simply been reviewed. The process has been followed and, therefore, they are unable to complain again.

10:30

The second point is that, when there is no resolution—when a complaint is not upheld or not fully investigated and does not get to the full investigation process—where do carers go? The only place that they can go to is the legal system, which has a cost implication. Many carers live in poverty. Some will qualify for legal aid, and those who have significant resources might be able to go down that route, but those who are somewhere in the middle will not get any resources to fight their case through the legal system.

We have found that, when a resolution is discussed, things such as legal aid are removed, so people cannot take an issue any further, even if they are not particularly happy with the outcome and even if they think that the issue is about not just them but the wider system and the experience that many carers and disabled people and older people face. Also, Scotland does not have a great deal of case law on social care—England has more.

Those barriers are one reason why carers and the people who they care for do not have a full system of redress.

**Willie Coffey:** Thanks for that extra information. Is it not the same for everybody, though? If someone is unhappy with an outcome, they could press the button and go down the legal route and so on. What distinguishes the experience that carers might have as opposed to anyone else who raises a complaint and is unhappy with the outcome?

**Fiona Collie:** That is an entirely reasonable comment. Carers in Scotland provide support for individuals that is worth £15.9 billion. Without them, health and social care would simply collapse. When carers do not have access to the support and justice that they need to provide support to the individual who they love, that is different from many other types of complaints. We need to differentiate in some way and understand carers' need to access redress to enforce not only their rights but the rights of others. When we talk to unpaid carers, we find that they are not particularly bothered about themselves; it is about the individual who they care for, and that person has not had their rights met.

At the moment, there is not sufficient justice to enable people to have their rights met under

human rights legislation, the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child. We need to understand that difference and that we are not enabling individuals to have justice and to have the best lives possible, because the current system is a barrier to that.

**Willie Coffey:** Thanks for that. I am sure that the committee will be keen to take that on board as we do more work on the issue.

**Peter Stewart-Blacker:** I want to mention the lack of appeal on the decisions that the ombudsman makes. The only legal way is to take a judicial review against the ombudsman, which is financially impossible to achieve, even for bodies that are under the SPSO's jurisdiction. In the current straitened times, even those bodies cannot afford to take judicial review, so complainants cannot do so either.

There should be access to an appeal to the sheriff court, similarly to what happens with the children's panel. The simple procedure could be used to appeal on a point that the ombudsman has made. The simple procedure costs, I think—

**Paul Blaker:** It is £123.

**Peter Stewart-Blacker:** It is £123, which is well within people's ability to pay. They do not have to take a risk, because the most that they can lose is—

**Paul Blaker:** It is normally 10 per cent of what you ask for, for claims of up to £3,000.

**Peter Stewart-Blacker:** Paul Blaker has won his case against the ombudsman. That would be a simple and quick solution to get people to look at issues.

Another problem is that the ombudsman is a toothless tiger. She has been unable to get a local authority to answer her questions. We need a change in the Scottish Public Services Ombudsman Act 2002 to allow a degree of compulsion so that local authorities have to answer the questions that she asks. That is another way in which we will get much closer to justice.

**Fulton MacGregor:** I thank all the witnesses for their evidence so far. Last year, before I was a member of the committee, the ombudsman told the committee:

"we see good complaints handling in the first instance."—[*Official Report, Local Government, Housing and Planning Committee*, 5 December 2023; c 9.]

That was in relation to public bodies. Do you agree that that is one of the reasons why complaints are not fully progressed through every stage? Before you came to the meeting, I said that that is not

what I, as an MSP, tend to see, but, given what the witnesses on the previous panel said, I am quite willing to accept that that might be because I see only people who are very unhappy and come to me for a bit of advice and support. However, my experience as an MSP does not back that up.

I will direct that question to Jan Savage, Adam Stachura and Fiona Collie, because my second question will probably be for Peter Stewart-Blacker and Paul Blaker, who can come in at that point.

**Jan Savage:** The point relates to the dual mandate of office-holders. One part of the mandate relates to the complaints process and ensuring that the ombudsman progresses complaints to the nth degree. The other part is to promote better practice and take a preventative approach to ensure that public services are supported to deliver human rights best practice and, fundamentally, support people to live good lives. I am sure that, if the ombudsman has said that to the committee, she will have evidence of good-quality complaints handling processes at the first stage of resolution.

Is that enough? Of course it is not. We can see that through the increased number of complaints coming to the ombudsman, what you see in your case loads, as you reflected, and what comes to the Scottish Human Rights Commission, although the commission is not permitted to offer advice to individuals under any circumstances.

We can see that there are challenges at all stages of the complaints process. It is probably fair to reflect that supporting public services to do better is a function and purpose of the Public Services Ombudsman, and I am sure that she will have evidence that suggests that that work is progressing, but there is clearly more work to be done.

**Adam Stachura:** Public services will have documented, well-versed and probably quite robust complaints procedures that are written down. Once complaints get to the ombudsman, her office will, undoubtedly, look at whether those processes are robust and whether they have been followed. The answer will probably be yes, but that is different from the question about the quality of the material that is assessed. There are two parts to the issue.

Particular examples were given earlier. If people are finding it challenging to get the right information from, say, a local authority about what it has done or done wrong, they might not have spent their time cataloguing, recording and documenting everything—the when, the how and the what. People will have experienced things but will not necessarily have logged them, so they might lack information and evidence. The process itself might be fine, but there might be a lack of

material. If the complaint reaches the ombudsman and there is no change in the information that has been received, with all the steps in the process having been followed, it is quite difficult, as you can imagine, to say that something is fundamentally wrong. That might be why there is a gap.

This boils down to ensuring that people feel empowered to get the information that they need and that they are supported to gather and share it and, quite frankly, in the heat of the moment, to understand what has happened. In moments of crisis, people will not be thinking about what they need to capture or gather; they will think, “I need to deal with this problem now, and I will get to that later.” I am sure that we have all been in situations in which we have thought, “I wish I’d got that thing,” or, “I wish I remembered what happened here or there.”

We also have to remember that half a million people over 50 in Scotland do not use the internet, so they will not necessarily be cataloguing documents or uploading things. They might use bits of paper here and there, or they might have heard something from somewhere else.

We should consider people’s ability to do those things. If they are supported through the whole process and have a good experience, they should not need to use the complaints process in the first place, but that is obviously not happening. Mr MacGregor’s experience will be exactly the same as that of charities such as Age Scotland: people come to us with their worst problems.

**Fulton MacGregor:** I want to ask you something else before I bring in Fiona Collie. Is there an impact based on the scale of seriousness, if that is the right term? Is the ombudsman able to say with confidence that investigations by public bodies are, in the main, done well? Is there a seriousness scale? The cases that eventually come to me, as an MSP—I am sure that it is the same for the charities that are represented today—seem to be quite serious and complex. Is there an issue in that regard? Is it the case that public bodies deal with the less serious cases pretty well and quickly but that things become more difficult as you go up that scale?

**Adam Stachura:** In a sense, those cases are potentially easier to deal with.

**Fulton MacGregor:** I am just wondering whether the charities that you and Fiona Collie represent have seen evidence of that.

**Adam Stachura:** We do not have any particular evidence of that. A lot of this will be subjective—my experience might be very different from Fiona Collie’s and yours.

**Fulton MacGregor:** That is fair enough.

**Adam Stachura:** I imagine that there will be a resourcing issue with any ombudsman or public service. We go around the houses in the Parliament on how we spend public money on commissioners and other things, and we debate whether we have the resources that we need to deal with them. The length of time that it takes to have a case allocated to the Scottish Public Services Ombudsman in the first instance is about four months, and there could be an answer in about a year. Those figures are from my notes, so forgive me if they have since changed, but we can see not just the volume of complaints but the increased time that it is taking to get complaints anywhere near being allocated. What do you do if a full wave of complaints comes in? What do you focus on? We can do simple arithmetic to work out what can be dealt with in that time. The challenge relates to what the ombudsman has at her disposal to deal with public services in Scotland in 2024.

**Fiona Collie:** I will reflect what the other witnesses have said. It is difficult to say whether there is evidence that shows that the procedures are robust. Our experience is similar to Fulton MacGregor’s. We hear from carers who are having the most difficult experiences, are not getting a resolution and are having to go through complaints procedures that they find challenging and adversarial.

In all these situations, we need to remember the different power dynamics—the individuals who make complaints are not the people with the power. That can deter people from making a complaint in the first place, because they do not feel that they will be heard, and it can make them decide not to go any further. The experience is exhausting, and concluding stages 1 and 2 can take far longer than is set out in the guidelines. Many individuals simply do not have access to information, to knowledge about the SPSO or to the support to even start a stage 1 complaint. There is probably a bit of a mix in relation to the robustness of complaints procedures.

**Fulton MacGregor:** Thanks very much. My next question is for Paul Blaker and Peter Stewart-Blacker. I think that you almost come at my earlier question in reverse. You refer to the high rate of complaints that have been upheld—they are, therefore, complaints that have gone through the SPSO’s investigation stage—and you suggest that that indicates that many public bodies are still “getting it wrong”. Could you elaborate your thinking on that?

10:45

**Paul Blaker:** Yes. I wrote that. If public sector bodies were effective—if they were following the correct complaint models and if they were doing their job—you would expect that, over time, the number of complaints made to the ombudsman would drop and the number of complaints upheld by the ombudsman would drop. However, the opposite is happening. Year on year, both the number of complaints made and the number of complaints upheld increase—up to 70-odd per cent. To me, that indicates that there is a problem. How did the public authority not work that out itself? That is the question 72 per cent of the time.

Public sector authorities have extensive experience of one thing. Maybe I am unlucky, but I have taken a national health service board to court over a member of a family who died. We even had the death certificate that said that it caused the death, and there was even a homicide investigation. The case went all the way to the steps of the Court of Session before the board would pay out. The authorities' process is that they try to bury you until you run out of money. They are brilliant at covering up and playing the game, and they know how the system works—the system is written to protect them.

Let us take my case with the ombudsman as an example. Even though she can go back to investigate, saying "We now have evidence that you have given the wrong information", she will not investigate why two individuals deliberately falsified 10 school records and a risk assessment and put a child at harm. Those individuals foresaw the harm to the child and did not implement the risk assessment because that was not required to reduce the harm; they then saw the harm that happened and covered up more records. All that stuff is going on, but I cannot get anyone in Scotland to investigate that element.

This comes back to my human rights. My daughter has suffered significant harm due to the state and what it did. Even though the ombudsman now says that she will go back in and investigate, she will not investigate the conduct of the individuals who falsified the records because she cannot. Under the legislation, she is prevented from doing that. Either the police or the General Teaching Council for Scotland is meant to do it, but neither of them will because they know that it is part of a bigger problem and they do not want the problem to be exposed to the public and for the public to find out that it is going on all the time.

I have the data to prove that councils underreport bullying and weapons incidents. I sent an FOI request to all 32 councils, got the data, pulled it all together, put it to the Government and said, "We have a problem: they are all significantly underreporting bullying in Scotland." The average

recorded number of bullying incidents per school per year was three, which is ridiculous. Clackmannanshire Council—bless its little cotton socks—managed to record one bullying incident in all its schools across the year. That is ridiculous.

Councils need to report the bullying—that is why thousands of children get harmed—but they do not because it is all about public image and they do not want the system to be seen. Then, if a situation goes from bad to worse, which happened in our case, they can go back in and create new records and backdate them, or they can alter previous ones. It is simply appalling, it is fraud and it impacts thousands of children. I have no doubt that it goes on across the board. The authority knows that—everyone knows it—but no one will do anything about it.

The Government signposted me back to the SPSO because, under the legislation, it cannot get involved in the case. Education Scotland said exactly the same, the Health and Safety Executive said the same and the General Teaching Council said the same. If that is the case, we need an ombudsman who has teeth, who can hold bodies to account and who has powers to do something. We cannot have a situation where children in their thousands—we know this from the data—have been harmed because bullying has not been dealt with properly.

The Government has a good process in place: if someone alleges bullying, you should record what is involved, what has been done and what the outcome is. Councils do not do that because that means accountability, so they whitewash it, they hide it and they cover it up. Then they have their wee secret weapon, which is that they can go back and falsify all the information. It is outrageous. I am sorry to go on about this, but no one is doing anything about it. Everyone runs a mile, including my MSPs. I am just saying. I have made my point. Only one MSP has helped me.

**Peter Stewart-Blacker:** A lot of the problem with the SPSO is that the legislation is inadequate. Bodies such as the children's panel are not covered by it. People are bullied by the chief executive of the children's panel. One woman who has given years of unpaid work to the children's panel has been constantly bullied by the chief executive, whom I understand has been confirmed in post again for five years. That woman has no recourse to be able to complain. The ombudsman says that it is not within her jurisdiction. A huge number of organisations are not supervised by the ombudsman.

**Fulton MacGregor:** Yes. That is my point: what is the ombudsman's remit in certain situations? Thanks very much. Both of you have given your evidence passionately, as did the other witnesses.

**Alexander Stewart:** We have already touched on timescales and the length of the process. Adam Stachura talked about a timescale of four months and another of a year. In its submission, Age Scotland also commented on the length of time that the SPSO takes to consider a case, and on the backlog. We are aware of the backlog, which I am sure is getting bigger, depending on how many cases come through the system. That is frustrating for any individual. Their case will take a considerable length of time to progress and, even when it does progress, they do not necessarily get the result that they expect.

My question to all the witnesses is this: what impact does that have on the public trust in the whole complaints system? I can see that there is an impact, which may well be negative rather than positive. It would be good to get views on that. Perhaps Adam Stachura could start, given that Age Scotland put those comments in its submission.

**Adam Stachura:** It is a good question. The number of people coming back to us after they have gone through the SPSO process is not too voluminous, so I cannot give you any fine detail. However, there are obvious issues. You have a huge length of time to wait when you are at the final stage, having gone through however many complaints procedures to get some access to justice or resolution of your issue, but then you find that you are at the back of a queue that will get bigger. That goes back to my earlier point about the resourcing that is required to handle the system.

I will come back to the trust point in a second, but the SPSO is not unique. We have seen the same in places such as the Office of the Public Guardian. People who are trying to get power of attorney documents, which are absolutely vital in some circumstances, face huge waits and a backlog, and there have been issues around the infrastructure and whatnot. We have to be smart in Scotland about what we expect of these services. Do they have the resources that are required to deal with things and avoid a backlog, but also to handle a backlog when there is one?

Let us say that someone has gone through what can be, to varying degrees, quite a traumatic complaints procedure with a local authority, a health board or somewhere else. They have come to the conclusion that the SPSO is the next place to go, but they are at the back of a queue. It will feel a bit never-ending, and, quite frankly, they could give up and not feel that anyone is there for them. That will have a big impact on trust. It will also impact their sentiments about public services in general. They will feel that no one is there for them and that they cannot get access to justice. They know what has gone wrong but no one

believes them and no one can help them fix it. A good point is that big backlogs—not just regular processing—will only get worse without more resource to tackle them.

**Alexander Stewart:** In some ways, individual rights seem to be diminished. I put that to Jan Savage, given her role

**Jan Savage:** The timeframe and the resourcing are matters for the ombudsman to discuss. I imagine—actually, I do not need to imagine as we have done some research into the impact of not having a timely resolution to a complaint on trust and confidence in the system and in the state and, moreover, in the opportunity for a timely remedy.

Probably the bigger issue here relates to the teeth part of our discussion and what happens next. Being heard and someone finding that there is truth to their complaint is the first part of access to justice for individuals; something changing as a result is the second. That feedback loop and the opportunity to consider it as part of the complaints process is still missing. The timeline is important, but the question could probably be extended to look at what happens as a result of a complaint. That possibly more accurately reflects where lack of trust in the system comes from.

**Fiona Collie:** I echo those comments. A timely remedy is so critical. For example, someone who complains that their social work services have been withdrawn or reduced will live with the impact of that while they wait for that not-timely remedy. The impact on their health and wellbeing, and on the health and wellbeing of their carer, can be significant.

I find it challenging that only 4 per cent of complaints go to full investigation. If you say to the public, “Complain to the SPSO, but only 4 per cent of your complaints will go to full investigation”, the response might be, “Why bother?” That could have a real impact on public trust.

Does the ombudsman measure people’s experiences of her part of the complaints system? Do we measure individuals’ responses to finding that their complaint will not go to full investigation? How do we measure that experience at different points? Do we measure it when there are different outcomes? It is not just about complaints that are upheld because, even when they are upheld, do we measure what that means and whether it provides a resolution? How do we measure across the system whether our public services operate effectively? Is our access to justice good and timely?

**Alexander Stewart:** Peter and Paul, you have already made your views on some of this quite clear. I am not disagreeing—the compelling evidence that we have heard today very much backs up what was said earlier about how the

whole process seems to be stacked against you, even if you are in the right process and moving forward. If you are not moving forward—if you are at the back of the queue and you are waiting, waiting and still waiting—there is a bigger problem to manage.

**Paul Blaker:** I have had to seek psychological support right through this. You know that you are right and you know that you are being abused by the state, which I have been. It is not just abuse: I have been threatened and bullied. When I threatened to take legal action to get the evidence—the metadata history showing when the records were recorded—the local authority knew that I was right and it basically threatened me with consequences if I took such action. I became ill as a result of that and had to get medical support. I have been seeing a psychologist as a result, in effect to protect me from them trying to poison me and trying to run me down.

It is a kind of gold standard: the authority deals with you at first and, eventually, when you get close to it, it starts attacking you and trying to undermine you. I was banned from every building in my local authority area for having the audacity to pursue the truth. Staff were told that, should I turn up in any building and not leave the building, the police were to be called because I was a danger and because I was asserting myself.

When we got to court, the authority was absolutely hammered because it tried its tricks with the court, which had none of it. It was blasted, humiliated and heavily criticised, and it was told that it had to investigate matters again. However, it did not, and the court could not force it to because it claimed that my action was to get the information that I needed at the time.

That is appalling and it is a massive issue. I have met lots of people through this process with Peter Stewart-Blacker. It is a horrendous experience in people's lives—horrendous.

11:00

**Alexander Stewart:** We questioned the previous witnesses, Professor Gill and Professor Mullen, about some of the aspects of responsiveness. They talked about a lack of data, a mismatch of the data supplied and the need for more investigation into some aspects of that data. They saw a gap in some of that. I get the sense from you that you also believe that to be the case.

As a committee trying to understand how to respond to customer concerns about the SPSO, if we do not get the data and you as individuals or organisations do not get the data, it is difficult to make an assessment. Through data, we can understand the process. It may be the case, however, that data is limited or somehow

manipulated. You have given evidence of seeing that, Paul. Age Scotland understands that people sometimes get run out of the process because of the length of time that a complaint takes. People's cases are being run down and, because of their age, they may expire by the time that the case progresses. That may happen in some people's processes. The data that we collect and the data that is provided is vitally important for trying to analyse where we take the whole process and how we, as a committee, can then manage to see how effective the SPSO is. Peter Stewart-Blacker, you want to come in.

**Peter Stewart-Blacker:** The two professors referred to the Venice principles. Professor Gill said that there should be an independent, in-depth investigation of the quality of the ombudsman's work. The Venice principles say that the judicial independence of the ombudsman should not be interfered with. May I use an analogy? The ombudsman is like the Heinz beans factory without quality control at the end of it. If you do not have quality control, you have no idea how bad or good the resultant beans are. Quality control is essential and we do not see any within the ombudsman at all.

**Paul Blaker:** The SPSO did publish customer satisfaction figures for the public. I stuck an FOI in and said, "Give me the information you hold on this." It turns out that, at the time, the SPSO was sending the survey only to people who had had actual investigations, which was skewing the results. If they say that, at the moment, 72 per cent of individuals get a successful outcome, you will get a more favourable response. However, when I pointed out to them that I had had two complete investigations but had not received the survey, they could not explain that. Read what you want into that.

**Peter Stewart-Blacker:** Years ago, the ombudsman used to employ consultants called Craigforth, who did a customer satisfaction survey thoroughly, but it was stopped. It ended up being unfavourable to the SPSO. Again, that is why we need an independent investigation into whether the SPSO does its job properly.

**Jan Savage:** It is important to ask what data the Parliament needs in order to hold the ombudsman to account. Ultimately, that is the accountability structure that exists around all the independent office-holders. I am not completely conversant with what the legislation prescribes in terms of what the ombudsman must put into her annual report. I imagine that it is not too prescriptive and that it will be a matter for the ombudsman to decide. Using the committee's findings from these conversations to be a bit more prescriptive about what data is required would be helpful. We would have to work through resource implications and all the rest of it,

but such a requirement, coming from the committee to the ombudsman and then through to the Scottish Parliamentary Corporate Body, would be an important step forward. Again, I commend the committee for having this session and for inviting external witnesses because that is the only way to progress accountability in the way that is intended. My overarching comment is that that is a role for the Parliament to work on with the ombudsman.

**Fiona Collie:** I agree with all that has been said about the measurement of people's experience. The SPSO does not appear to be effective now and it needs to be much stronger. It also needs to work through how it measures the people who do not access its support and why, and look at what work it can do as an ombudsman to reduce the barriers to what it does and the outcome of that. Certainly, for many people it is a step too far—the whole complaints system is a step too far.

**Adam Stachura:** On the point about data, Scotland's public services have no consistency on the baseline data that should be captured. I wonder to what degree that is not about this ombudsman as such. What do other ombudsmen capture and measure and report on, so that things do not sit in silos? While what it is necessary to do might be quite bare, it is important that this committee and others in the Parliament consider what they expect to see: the SPSO should have the right process to capture data and have enough disaggregated data so that it can be scrutinised further.

I have been to endless committees in the Parliament where the question of data and whether public services are capturing it comes up, in whatever area. How on earth are you meant to deliver or advance a service that you provide to the public if you do not know what is going on and do not have that information publicly available, at people's fingertips? There is certainly something to discuss about what it is necessary and good to have in order to be able to scrutinise.

A good reflection point here is that the office-holders have been around for a while. At what point do we think about what the future holds? How do they become fit for the future? What do you need? There is also Fiona Collie's point about who does not get into the system. How do you measure that? Others will be doing data collection really well, but it is not consistent.

**Paul Blaker:** This is a little cynical, but the Cabinet Secretary for Education and Skills was talking about how we do not have data on the number of bullying instances and so on when she did have it, because I had provided all the data to her. They do not want the data because they know about the problem of the massive underreporting of bullying in schools. They know that they do not

deal with it properly. They know about weapon incidents and so on. Basically, they do not want to collect the data and, when they have it, they certainly do not use it when they should. My point is that data is critical and it needs to be collected, but people do not want to collect it.

**The Convener:** We have a few more questions and a couple more members who want to come in and we have about 20 minutes in which to manage that—I say that for your awareness. Mark Griffin is joining us online.

**Mark Griffin:** I want to come back to the point that Fiona Collie flagged, as did Adam Stachura in Age Scotland's submission, about the barriers to accessing public services that are experienced by groups such as black and minority ethnic carers, young carers, people with sensory impairments and people whose first language is not English. I will come to Adam Stachura and Fiona Collie to talk about what those barriers are and what more can be done by the ombudsman to provide access to her services.

**Adam Stachura:** Thank you very much. Our response was looking at some of the common themes that came out, particularly from ethnic minority older people. We facilitate a fantastic forum called the Scottish ethnic minority older people forum and we are in regular discussions with it about how it and the communities that it represents feel about public services in Scotland and whether they can access them or not. Certainly, there is a generational issue. It could be skills, it could be digital exclusion, it could be not knowing that organisations are there to support them, it could be language access—which is difficult to do but far from impossible—and it could also be about ensuring that they are supported with whatever medical condition or disability they might have.

Often, we rely on a digital-first approach to access information or advice about our public services but, as I said earlier, half a million people over 50 in Scotland do not use the internet and just because you have it does not mean that you are particularly literate. About a third of older people are online but cannot undertake the most basic functions such as logging on to a web browser or changing a password as required. Our metrics, to go back to data points, tell a different story.

We also know about the feelings that ethnic minority older people have about public services. They would have had bad experiences in the past and do not feel that those services are there for them. They feel that they are shut out of those services and there will be institutional and historical reasons for that.



I suppose that the challenge for services, charities and every organisation that is there to support people is not just to have the big flashing light on top of your building, physical or virtual, that says that you are here for everyone and that you are inclusive, but to demonstrate that. It is challenging, but we definitely hear from people about issues. Literacy levels can be challenging and just because information is available in another language does not mean that it is accessible. Are there advocacy services for translation and interpretation? We have known those things for years and Scotland is on a pretty good journey in that regard, but the picture is far from complete. Definitely, digital exclusion, the feeling that the service is not there for you and language barriers exist here.

**Fiona Collie:** I agree with all that and our response reflected it. One of the most important things to enable people to access complaints—and services as a whole—is the availability of support from advice and advocacy organisations. We know that we are in challenging times in terms of public funding and that there is a danger of that shrinking back. Individuals' access to support and justice is shrinking back as well. It is important to consider the impact of time—carers are very time poor—and also the impact of income. That leads into digital access and also into being able to access support at all in order to make complaints. We all, as organisations, work through those issues but certainly, when it comes to access to justice, it is critical that the Public Services Ombudsman does more and that all public bodies do more as well.

**Jan Savage:** I endorse everything that my colleagues have said. From the Scottish Human Rights Commission's perspective, access to justice in Scotland is a critical concern. It is one of the priorities in the commission's four-year strategic plan. To help the commission get a baseline for how access to justice operates in Scotland, last summer we published a substantial piece of research, led by Professor Katie Boyle from the University of Strathclyde. More recently, in partnership with the Children and Young People's Commissioner Scotland, we have combined resources and published a map of human rights-based advocacy services in Scotland. It is fair to say that in some cases there is a complete desert of provision. I am happy to share both those pieces of evidence with the committee after this appearance to inform your understanding.

**The Convener:** Thank you for that; that would be very welcome.

**Mark Griffin:** Previously, the ombudsman has spoken to the committee about a change in legislation to give the SPSO its own-initiative

investigatory powers, which would allow it to investigate public services without a member of the public necessarily making a complaint first. It is similar to what happens in Wales and Northern Ireland. What are your views on that expansion of powers? Would that be a good thing, or would there be a risk that adding something else to the remit could lead to the ombudsman's being spread too thinly?

11:15

**Fiona Collie:** Its powers should absolutely be expanded to enable that sort of investigation to take place. The SPSO should look not just at individual complaints but at potential systemic issues in a public service or a range of public services that need to be considered and addressed or brought to the Scottish Parliament's attention. After all, they might indicate that legislation or further activity is required.

There is certainly the potential to be the canary in the coalmine with regard to any big issues that might emerge. When you look at what has led to some of the major inquiries in England—for example, on residential learning disability support, some maternity services or other instances where things have gone wrong—you will see that it is not that individuals were not raising complaints, but some of the public might not have been aware that these things were going on. In reality, the oversight was not necessarily there to see that a problem was emerging. If you provide those sorts of powers to the ombudsman, it will give us as a country greater reach in ensuring that the rights of individuals are delivered and that poor practice and activity are not being perpetrated and continued.

**The Convener:** Thank you. That was good advocacy for the ombudsman having more powers. The same issue came up earlier.

**Paul Blaker:** As far as my case is concerned, I think that that would be exactly the right thing to do. I have uncovered this issue about the national underreporting of bullying; the data proves as much, but the fact is that authorities can falsify records to cover things up and cover their tracks. I have been told that that is going on across the country—I just happened to stumble across it—and I think that, in such situations, the ombudsman should have the powers to see whether there is a nationwide problem. If there is, the ombudsman needs to be able to do something about it. Currently, she cannot do so. When she reopens my case, all she will do is look at whether the correct procedure was followed. I do appreciate, though, that she is doing that.

**Jan Savage:** I think that there has been an endorsement from the panel of the benefits of

progressing with such powers. A general observation that I would make, though, is that this appears to be a quirk of the lack of powers and teeth that the independent office-holders of the Parliament have, even though they are discharged with the duty of upholding human rights through Scottish public service delivery.

Such powers exist for independent regulators in England, Wales and Northern Ireland; clearly, there is a gap in respect of access to justice and seeking remedy, and it impacts on case law. The fact is that we see a dearth of case law in all of the areas that we have explored today, and that could be remedied by looking again at the mandates of each of the office-holders.

Indeed, the Parliament will have an opportunity to do that imminently in the forthcoming inquiry. I know that that is still in the early stages of being set up, but it is an important time to have the conversation and I encourage the committee to consider that.

**The Convener:** Thank you very much. We now move to—*[Interruption.]* I am sorry, Peter. I did not see you there.

**Peter Stewart-Blacker:** I just wanted to say briefly that what happened with Horizon should not happen in Scotland. We need an adequate and effective investigation so that people are not ignored. They are being consistently ignored by various local authorities et cetera.

**The Convener:** I call Meghan Gallacher.

**Meghan Gallacher:** Good morning. We have had a really interesting conversation so far. Jan Savage has just picked up on one of the questions that I was going to ask about the role of commissioners, but if anyone else has anything to add on that, please do so.

One submission that the committee received was about the ombudsman and the public complaints system as a whole. We have heard a lot this morning about issues, concerns, accountability processes and perceptions of the ombudsman and the public complaints system. Looking at the rest of the UK, and indeed across Europe, what do you think is the ideal, best-practice scenario that we could use here in Scotland to improve things with regard to the ombudsman as a whole?

I do not know who would like to kick off with that. I know that it is a huge question.

**Peter Stewart-Blacker:** As far as I can see, we have to simplify things. The best way of doing that is to look at how something should have been carried out, as that will allow the gap between how it should have been carried out and the reality of how it was carried out to be measured.

The problem that I had when I met the SPSO was, frankly, that it ran out of time. I had engaged a computer expert, but the ombudsman was not interested in listening to how things should have been carried out. The expert said to me, "Well, summarise your complaint in a sentence." Basically, the sentence was this: "Scottish Enterprise went live with a pilot scheme that was untested and incomplete." We showed the ombudsman a 130-page report that set out precisely where it was lacking, but to be frank, I do not think that anyone understood it.

We need to be able to demonstrate exactly how these things need to be measured. Otherwise, it all becomes too complicated and people fall asleep—which I hope is not the case here.

**Paul Blaker:** The authority could lay out in its stage 2 response its obligations, best practice or process for whatever it was, and how it had met those things. If that sort of thing came back to me or to anyone else, and if we were able to see that what the authority was saying made complete sense or was reasonable—or if, even if we did not like it, it was able to say, for example, "We did not pick this up for two weeks, but that is the process. You do not pick up for two weeks"—it would be clear that it had done what it should have done, and that would help.

In that case, if the complainant were to say, "No, you never did this. You might have said that, but I disagree", and the matter got referred to the ombudsman, it would have that moment when it could say, "This is what the council"—or whoever it is—"says that it has done, and this is what the complainant says. We will check that against what we think it should be." It would be a quick process; I would say that, in perhaps 98 per cent of cases, you could do that quickly and cost effectively. Indeed, you might even reduce the number of complaints, too, because people would understand why the council or authority had done what it did. Simply having that sort of thing would be helpful.

**Meghan Gallacher:** So it is about clarity.

**Peter Stewart-Blacker:** Can I just—

**The Convener:** I will just move along the panel and then come back to you, Peter. Fiona Collie and Jan Savage had indicated that they want to come in.

**Fiona Collie:** I will be very brief. There are two sides to this: complaints about process and other stuff about rights. I am very much in favour of front-line resolution. We need to take some of the confrontation and the adversarial aspect out of the complaints system, because it is always positive if a solution can be found together.

As for the current system, I should apologise, because you asked about good practice and I am not able to respond on that. However, I think that we need to look at the legislation that we have passed and the UN conventions that we have signed up to and committed ourselves to, and build a human rights-based complaints system that looks at whether a person's rights have been met and, if the answer is no, ensures some resolution at the end of the process.

**Jan Savage:** I agree with everything that Fiona Collie has just said. I want to return to my point about ensuring that the ombudsman has the powers that it needs; indeed, we can see that there are some gaps in that respect when we look at international best practice. We have already heard today about the power to raise own-name investigations and inquiries and to compel public authorities to provide information as a result. That is critical.

We have had this conversation with the ombudsman herself, but we need to create the space and the opportunity through legislation to remove barriers to sharing information. Currently, if the ombudsman is working with an individual and uncovers a terrible violation of human rights—as I am quite sure that it does—it is not permitted or able to share that information with bodies such as the Scottish Human Rights Commission, which might wish to take further action in the public interest. That is getting in the way of remedy and access to justice, and it could well be remedied by reviewing the legislation.

**Adam Stachura:** I think that this is really a good question. Like Fiona Collie, I do not have any international best practice to share with you, but we do have, as Jan Savage highlighted earlier, the example of other commissioners across the rest of the UK whose powers are more extensive than those that we have in Scotland. If you look at the broader context and why we have had a proliferation of asks for commissioners on certain issues or for certain groups of people, you will see that it is because the public and civil society feels that something is missing in the Scottish landscape to meet those needs.

It might also boil down to whether parliamentary committees have enough power to discharge their duties and to carry out the scrutiny that they want to carry out. We might be creating bodies, but are we scared of giving them too many scrutiny powers, because we will not like the answers that they will come up with, even though those answers could actually help reform our services? Maybe the question that we should be asking is “Why are we not giving them these powers?” instead of “Should we be giving them these powers?” Then we can start to give them greater powers.

In discussions that I have been having with members of the Scottish Parliament about, for instance, a commissioner for older people, some of the feedback that I have been getting is “We wish the committees were stronger. They could do that kind of stuff.” I absolutely agree, but that framework is simply not there. Some of our commissioners have been set up without having the necessary tools to meet the challenges that we face.

**Peter Stewart-Blacker:** I will try to be brief, but it is hard for me.

One of the biggest problems that I have come across is that, when a local authority or body under jurisdiction should have done something but has not done it, the ombudsman never comes back and says, “Why didn't you do such and such?” It is all about trying to prove the negative, which, for a complainant, is almost impossible. The ombudsman should be able to point that out and question the authority.

**The Convener:** Thanks very much.

Meghan Gallacher mentioned that she had another question that she wanted to ask, but Jan Savage answered it well when she talked about having a root-and-branch review. I, too, am interested in hearing your thoughts on the recommendation from Professors Gill and Mullen on our previous panel that England's parliamentary ombudsmen and officers be subject to five-yearly independent peer reviews. In light of the parliamentary root-and-branch review of all commissioner offices that is going to take place in the next six months, what would you—briefly—like to see it achieve with the SPSO? Perhaps we can keep it within that framework. Does anybody have any thoughts on that in addition to what Jan Savage said? That does not mean, Jan, that you cannot come back in again.

**Paul Blaker:** I think that it comes back to those famous two words—adequate and effective. We must have an adequate and effective ombudsman, because it is really important, we need it and it needs more powers. We must ensure that it is delivering adequately and effectively and that it has the powers and wherewithal to do what it needs to do. After all, the times are moving on.

**Fiona Collie:** I agree with that and the comments that Jan Savage made. I also agree with the idea of having a regular review and ensuring that the ombudsman has the powers that it needs to build trust and deliver rights. If you are not reviewing these things, they can become a problem.

**Peter Stewart-Blacker:** I want to highlight just one question: is Scotland big enough so that we can find someone who can carry out an independent review of the ombudsman? When the

former ombudsman, Jim Martin, wanted a report written, he had to go south of the border to get a retired ombudsman to do it.

**The Convener:** That is a good question to consider.

Now that we have come to the end of our questions, I just want to say that I appreciate your coming in and sharing your perspectives. This year's process has been interesting, as we have taken a somewhat deeper approach instead of just hearing from the ombudsman on the basis on her reports. It has been a helpful and enriching process, certainly from the point of view of our hearing that the office needs more powers in order to do its work.

Before we go on to our next item, I briefly suspend the meeting to allow the witnesses to leave the room. Thank you.

11:30

*Meeting suspended.*

11:32

*On resuming—*

## **Subordinate Legislation**

### **Town and Country Planning (Fees for Applications) (Scotland) Amendment Regulations 2024 (SSI 2024/292)**

**The Convener:** The next item on our agenda is consideration of a Scottish statutory instrument. As this is a negative instrument, the committee is not required to make any recommendations on it.

If other members have no comments on the instrument, I would just like to make one comment on an issue that has previously come before the committee—that is, planning application fees. I welcome the fact that our planning authorities might be able to recoup some of their costs through fees that better reflect things.

Does the committee agree that we do not wish to make any recommendations on the instrument?

**Members indicated agreement.**

**The Convener:** As previously agreed, we will take the next items in private, so I close the public part of the meeting.

11:33

*Meeting continued in private until 11:43.*

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