



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government, Housing and Planning Committee

**Tuesday 12 December 2023**

**Session 6**



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**Tuesday 12 December 2023**

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**LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE**  
**30<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Ariane Burgess (Highlands and Islands) (Green)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Miles Briggs (Lothian) (Con)

\*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

\*Pam Gosal (West Scotland) (Con)

\*Mark Griffin (Central Scotland) (Lab)

\*Marie McNair (Clydebank and Milngavie) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ian Bruce (Commissioner for Ethical Standards in Public Life in Scotland)

Kate Hall (Scottish Government)

Lorna Johnston (Standards Commission for Scotland)

Sarah Pollock (Commissioner for Ethical Standards in Public Life in Scotland)

Rachel Sunderland (Scottish Government)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The David Livingstone Room (CR6)



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

*Tuesday 12 December 2023*

*[The Convener opened the meeting at 09:00]*

**Decision on Taking Business in  
Private**

**The Convener (Ariane Burgess):** Good morning, and welcome to the 30th meeting in 2023 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices are set to silent.

Mark Griffin cannot be here for the start of the meeting but he expects to join us slightly later. I have just heard that Stephanie Callaghan will also join us slightly later. Pam Gosal and Marie McNair are joining us online.

Under agenda item 1, does the committee agree to take items 5 and 6 in private?

**Members** *indicated agreement.*

**Standards Commission for  
Scotland: “Annual Report 2022-  
23”**

09:01

**The Convener:** Item 2 is for the committee to take evidence on the Standards Commission for Scotland’s annual report for 2022-23 from Lorna Johnston, executive director, and Richard Wilson, case manager. I invite Lorna Johnston to make an opening statement.

**Lorna Johnston (Standards Commission for Scotland):** Good morning, everybody. As the committee is aware, the Standards Commission is responsible for encouraging high standards of conduct in public life. Our remit is to promote high ethical standards and codes of conduct for councillors and members of devolved public bodies and to issue guidance on how the codes should be interpreted.

The Standards Commission is also responsible for adjudicating on alleged breaches of the codes and, when a breach is found, for applying a sanction. Following the conclusion of any investigation that he has undertaken into an alleged breach of the applicable code by a councillor or member, the Commissioner for Ethical Standards in Public Life in Scotland sends the Standards Commission a report that outlines his findings and conclusions. Under the governing legislation, the Standards Commission then decides whether to hold a hearing, direct the commissioner to carry out further investigation or do neither, which means that no further action is taken on the complaint. The Standards Commission decides to take no action if it does not consider that it is in the public interest or proportionate to hold a hearing.

Hearings are conducted—usually in public—by a hearing panel that comprises three Standards Commission members, which determines whether the councillor or member concerned has breached their respective code. If a breach is found, the panel is obliged to impose a sanction, which can be a censure, suspension or disqualification.

The Standards Commission has five part-time members, who are appointed by the Scottish Parliamentary Corporate Body with the Parliament’s agreement. The Standards Commission’s convener is contracted to work the equivalent of three days a month, while the remaining members work two days a month. Members also sit in hearing panels as and when required. The Standards Commission has one full-time member of staff, who is me. As the executive director, I am the accountable officer. I am assisted by case manager Richard Wilson, who is

with me today, and by an office manager and an admin assistant, all of whom are part time. The overall staffing complement is the equivalent of 3.1 full-time members of staff.

As the committee will have noted from our annual report for last year, the Standards Commission's strategic aims are to have a positive impact on ethical standards in public life; to pursue continuous improvement in the ethical standards framework and the way in which we do our work; to pursue and develop strong relationships with our stakeholders; and to ensure that all stakeholders have easy access to high-quality information about the organisation, its work and any initiatives.

Work that was undertaken last year to meet those aims included continuing to help councillors and members to comply with the requirements of the codes by holding training events for elected members of two councils and for board members of nine public bodies; publishing and issuing standard training videos on the codes and monthly blogs on ethics and governance issues; producing further advice notes on specific topics and scenarios that can lead to breaches of the code, such as conduct during online meetings; and publishing interactive training modules on a new e-learning page of our website.

We have worked to increase public awareness of the expected standards by publishing on our website animated videos on the codes, on using social media and on bullying and harassment. We have produced a card to help councillors to manage expectations when they attend community council meetings by explaining what they can and cannot do under the code.

We continue to work with the commissioner to identify trends, resolve any inconsistencies in how the codes are interpreted and improve the processes for investigating and adjudicating on complaints. We engaged with him on proposed changes to our hearing rules and provided feedback on his publicly available investigations manual.

We made timely decisions on the 44 cases that were referred. Decisions were made, issued and published on all no-action cases within an average of four days, and all hearings were held within an average of 12 weeks from date of receipt of a report from the commissioner.

In this year to date, the Standards Commission has continued to undertake outreach work to promote the codes. That includes presenting with the commissioner at the Society of Local Authority Lawyers and Administrators in Scotland's annual conference and providing tailored training sessions to the boards of several public bodies

and to elected members of Clackmannanshire Council.

The Standards Commission has continued to update its educational material in light of feedback and inquiries received and decisions made. Along with the Improvement Service, we have produced an advice note for councillors on access to information, which we will issue shortly. We are working with the Improvement Service on two webinars—on engaging with constituents and on good practice in using social media—that will be held early next year.

In relation to the 33 cases that the commissioner has referred to date this year, we have made and published 19 no-action decisions. We have also held 12 hearings so far, and a further five hearings are scheduled for early next year.

I hope that that has been a helpful introduction to and summary of our remit and work. I am happy to answer any questions that the committee may have.

**The Convener:** Thank you—it was helpful to get an overview of your work. When you previously spoke to the committee, which was in January—we are bookending the year with you—we heard that the responses to the commission's surveys on whether people felt that standards had improved were a bit mixed. I am interested in what further work you have done this year on understanding public trust in councillors.

**Lorna Johnston:** We have done no further surveys this year but, from what we know from the inquiries that we receive, from hearings and from our annual workshop with monitoring officers, standards of conduct have been mixed. We are seeing an improvement in the number of complaints that the commissioner receives and the number of cases that are referred to us. We are seeing fewer cases about more technical aspects of the code, fewer inadvertent breaches and fewer cases where there is an element of personal benefit. However, we are still seeing quite a lot of cases that relate to respect.

In relation to the respect cases, it is hard to know whether standards of behaviour are definitely decreasing or deteriorating or whether the public are more aware of the fact that they can make a complaint and of the standards that are expected of councillors. The commissioner wants to do research on that in the next year or so. We would be interested in helping him with that.

**The Convener:** That sounds great. I explored the page with the advice notes for councillors and the card for attending community councils. That is helpful because it is about not only what councillors are expected to do but what people

can expect from them; it is clear about where the boundaries are.

**Lorna Johnston:** Definitely. As I said to the committee when I was previously here, we produced a card on assisting constituents that councillors could take to their surgeries, which was to help to manage expectations—for example, it lets constituents know that councillors cannot overturn a council decision, although they can help to find out what is happening with a case that is before the council or find out about a service that the council provides.

The point is the same in relation to community councils. Sometimes there is an expectation that elected members of councils can do things that they cannot do under the code—for example, they cannot prejudge a planning application. We hope that, by having a card that they can take to community council meetings, councillors will be able to say, for example, “Look—this is what I can and cannot do. I can listen to your views, but I can’t prejudge the planning application,” which will manage expectations and make meetings easier for them.

**The Convener:** That certainly will help. In surveys that you did in the past, most of the issues that cropped up related to respect, bullying and harassment. You said in your opening statement that most of the issues now seem to be about respect. Will you give us a bit more detail on that? We are particularly interested in hearing how the use of social media may be impacting on people who are considering taking up or leaving elected office and whether you are noticing any trends.

**Lorna Johnston:** The respect cases that we receive are a bit of a mix between social media, conduct at meetings, conduct towards officers and sometimes conduct towards constituents when councillors are out and about. We are still seeing social media cases. As I said, we are going to do a webinar with the Improvement Service, and we have done an advice note on social media for councillors.

The difficulty is that complaints can be made about behaviour on social media that the commissioner will say are inadmissible or will not uphold because the behaviour was not disrespectful. We advise councillors to try not to be personal. We are not trying to inhibit their freedom of expression or the way in which they make their political points; we encourage them to concentrate on the policy or the political issue rather than making it personal. We understand that that is difficult for councillors, because many of them are targeted with a lot of abuse on social media—I am sure that, as politicians, you all know that.

Our view, which I know is the commissioner’s view, is that councillors should lead by example. We do not want anyone to be targeted but, on the other hand, if councillors lead by example and make sure that standards of debate are at a certain level, the hope is that that will stop the public doing that—well, it will not stop people, but it might encourage them to keep debate at a certain level, too.

**The Convener:** So the approach is about leading by example where possible. That is helpful.

I bring in Marie McNair. It would be great if you took a moment to declare your interest, Marie.

**Marie McNair (Clydebank and Milngavie) (SNP):** I state that I was a councillor in West Dunbartonshire Council from 2003 to 2022.

I will move on to my questions, which are about the revised code of conduct that the Scottish ministers issued. You have spoken about the issue quite a bit, but are there areas where the current code may need to be strengthened?

**Lorna Johnston:** The only area that we have identified is the provision on accepting hospitality. The code says that councillors should never ask for gifts or hospitality and should not accept hospitality, except in really limited circumstances. The feedback that we have had is that that can sometimes be difficult to interpret. One of those circumstances is when the council has approved the hospitality in advance, but there is no guidance on who would approve that in advance.

We intend to work with monitoring officers and the Convention of Scottish Local Authorities to see whether we can do anything to amend the code or, if we cannot do that, to strengthen our guidance to make sure that it is interpreted consistently among councils.

**Marie McNair:** The annual report states that the commission had decided to renew all three directions to the Commissioner for Ethical Standards for a further two years. Why did you feel the need to do that, and what procedures were followed in making that decision?

**Lorna Johnston:** We renewed all three directions, although we renewed the eligibility direction only for a little while to allow the commissioner time to include eligibility criteria in his publicly available investigations manual, which he has now done. That direction is therefore no longer in place, because he has the eligibility criteria in his manual.

Of the other two directions, one requires the commissioner to update us and the parties involved on the progress of investigations. We renewed that after consultation with stakeholders, including the commissioner. We felt that that gives

everybody confidence that people are being kept up to date and that investigations are moving along. There will always be some delays with investigations while the commissioner waits for responses from parties or if he cannot contact witnesses, for example. I am sure that the commissioner will be able to say more about that direction, but it is just about making sure that investigations are progressing.

09:15

The other direction requires the commissioner to report to the Standards Commission on the outcome of all his investigations, regardless of whether he considers that there has been a breach of the code. I previously gave the committee the reason why we have that direction in place, and we renewed it for the same reason, which is that it helps to ensure consistency in interpretation of the codes when one organisation does the investigation and another does the adjudication. If difficulties arise in how to interpret the code, two organisations can look at that. There is no right of appeal against the commissioner's decision not to uphold a complaint, so that direction gives people comfort that a second organisation looked at the issue.

Another reason for renewing the direction is the fact that, given that we can hold public hearings and that we put people on oath or affirmation at hearings, it allows evidence to be tested fully and for any interpretative discrepancies to be aired fully at the hearing. We consulted various stakeholders, including the commissioner, and decided that it was appropriate to keep that direction in place.

**Marie McNair:** I hand back to the convener.

**The Convener:** I bring in Pam Gosal, who joins us online.

**Pam Gosal (West Scotland) (Con):** Good morning, panel. What level of interest is there in the Standards Commission's activity at the local and national levels? In what ways does the commission ensure that the public are informed about decisions that affect their council members?

**Lorna Johnston:** We publish all our decisions on our website, whether those are no-action decisions or decisions that we make at hearings. If we hold a hearing, we publish information about it—about where it is being held, the date, the time and so on. If we hold a hearing online, we live stream it on our website. To ensure that the public are aware of hearings, we issue media releases before them to tell local media that we are holding them, and we always issue a press release after them.

Richard Wilson and I had a meeting with local journalists last year to advise them about the work of the Standards Commission in order to generate interest. I think that that was quite effective, because we now have contact names for various local journalists, whom we will automatically email to tell them about hearings and send press releases to. That really helped to increase awareness.

We track what media coverage we have had. We tend to have some local coverage of hearings, if not national coverage. I think that we will try to hold another meeting like the one that I mentioned with local journalists next calendar year.

**The Convener:** That sounds very proactive. Getting the press on board so that you have another avenue for communicating your work is a good approach.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning. I have a couple of questions about the business plan, which refers to section 31 of the Local Government (Scotland) Act 1973 and your intention to raise issue with that. That is to do with disqualification, sanctions and so on. Can you flesh out your thinking on that for the benefit of the committee, please?

**Lorna Johnston:** As you said, section 31 of the Local Government (Scotland) Act 1973 outlines the circumstances in which somebody would automatically be disqualified from being a councillor. At the moment, there is sequestration and a couple of other technical grounds, but the main issue that we have a slight difficulty with is where somebody has been convicted of a crime and has received a custodial sentence of three months or more. In 2021, I think, we identified that that meant that there would be a slight gap between the legislation and what we think the public's expectations would be with regard to when someone could or could not be a councillor, because someone will be covered by the code only if their behaviour occurs when they are acting as a councillor or they could reasonably be perceived as acting as a councillor.

For example, in the case of someone having been convicted of a crime of a sexual nature, which had nothing to do with their role as a councillor, if they did not receive a custodial sentence or they were sentenced for a period of less than three months, they would not be automatically disqualified, and we would not be able to take any action. We felt that there was a discrepancy in relation to the Local Government (Scotland) Act 1973 because, in sentencing guidelines, there is now a presumption against short custodial sentences. We wrote to the then local government minister and asked for that to be reviewed. I think that similar changes have been



made to the relevant legislation in England and Wales.

Earlier this year, the Government consulted on making a change to section 31 of that act so that somebody would be automatically disqualified if they had been convicted of a crime and had been put on the sex offenders register, regardless of the length of any sentence that was served on them. That consultation closed at the end of August, and we are waiting to see what happens. I assume that the Government is currently analysing the outcome of the consultation.

**Willie Coffey:** Are you asking for a similar revision for sentences that do not relate to the matters that you have described and are for under 12 months?

**Lorna Johnston:** No, we are not, and I do not know whether anyone else has suggested that. Our view is that, if someone received a two-month sentence for a driving incident, for example, that would not necessarily affect how the public might perceive their ability to be a councillor. That was the only part of the disqualification provisions that we sought to be changed.

**Willie Coffey:** Last week, we heard from the Scottish Public Services Ombudsman. We talked about own-initiative powers, whether they are a good idea, and whether they should be pursued. What is your approach to that? Do you feel that you should have own-initiative powers?

**Lorna Johnston:** Do you mean powers to ask for something to be investigated?

**Willie Coffey:** Yes.

**Lorna Johnston:** I do not think that we need those powers. Anybody can make a complaint to the commissioner, and I think that, if a breach of a code was so egregious, it would be picked up by a member of the public or an opposition councillor, especially if the complaint related to a councillor. I would have concerns that, if we initiated a complaint and then adjudicated on it, there could potentially be a perception of unfairness. As anyone can make a complaint, I do not think that there is anything in the legislation that would preclude us from doing so if we felt that it was necessary, although I cannot envisage a situation in which we would think that it was necessary.

If we thought that there had been a low-level breach of the code, we would be quite happy for that to be resolved informally. For example, if somebody had apologised and the complaint was resolved locally, we would not have any difficulty with that.

If the commissioner was investigating a complaint about a failure to declare an interest, he would look at the person's register of interests. If he discovered that they had not registered an

interest, he would be able to include that in his investigation.

I do not think that we feel that we need own-initiative powers.

**Willie Coffey:** That is very clear. I will probably ask the Commissioner for Ethical Standards in Public Life in Scotland team for its view on that when it joins us for the next evidence session. Thank you very much for those answers.

**The Convener:** From what you have said, it sounds as if the difference relates to the scope of work that gives rise to the desire for own-initiative powers.

**Lorna Johnston:** As I have said, if the conduct has been so serious that we would want to look into it, I cannot imagine a situation in which no one else would have picked up on it.

**The Convener:** For sure.

**Miles Briggs (Lothian) (Con):** My question relates to councillors as well as officials in councils. Over the past year, I have spoken to councillors from all parties who have expressed concerns about what they think is the code of conduct being used against them by officials. Often, they cannot name those officials when they talk about incidents. However, they have been concerned that simply discussing an issue has been used against them in complaints raised.

What research have you done on that and what conversations have you had about it? I have been acutely aware that that is a real concern for councillors over the past year, and I think that that has led them to feel that they cannot do their job properly.

**Lorna Johnston:** I do not think that we have had any referrals in which that has been an issue. The code says that councillors cannot criticise in public the conduct, capability or performance of an identifiable officer. I do not think that that precludes councillors in any way from scrutinising the service of others. They just need to do that in a way that is respectful and does not make it personal.

We could maybe do a bit more training on that, because it sounds as if that is more of a misconception than an issue. I am pleased to hear that councillors are aware of the code and that they are worried about potentially breaching it. However, it is all about how to word any complaints.

In our current standard training presentation, we say that, if someone has a report before them and they are concerned that the officer has not done a proper risk analysis, they should say, "I don't think that that risk has been properly considered. Could you go back and gather further information?" That

approach would be absolutely fine, and it would not be a breach of the code. However, if an individual, such as an author of a report, was named and it was said that they were incompetent at their job because they had not done something properly, that could potentially be a breach of the code.

It is about how someone goes about making complaints rather than the code preventing them from doing so. If they felt that officers were weaponising the code to use against them, they may need to speak to the officers in private or to the chief executive or the monitoring officer. They could go to them and say, "That's not our understanding of the code." I would urge them to have a conversation with us, as well, to see whether we could get that resolved.

**Miles Briggs:** That is helpful.

I would hope that individual council officials need to be held to account in very few cases. However, the code has given them additional protection so that councillors feel that they cannot raise concerns. Maybe it needs to be reviewed to look at that. It might be useful for you and the Commissioner for Ethical Standards in Public Life in Scotland to speak to councillors who have raised those concerns so that you can see why they feel that the code is holding them back in their scrutiny role.

**Lorna Johnston:** We will make a note of that. We have an annual workshop with monitoring officers, and we can certainly raise that with them.

Councillors can still raise issues about an officer's conduct or capability. They just need to do that in private and through the right channels—for example, by speaking to the person's line manager or their organisation's chief executive.

**The Convener:** That concludes our questions. Do you want to highlight anything else to us?

**Lorna Johnston:** No.

**The Convener:** We have pretty much covered things.

Thank you very much for giving evidence to the committee. I suspend the meeting to allow for a change of witnesses.

09:27

*Meeting suspended.*

09:29

*On resuming—*

## **Commissioner for Ethical Standards in Public Life in Scotland: "Annual Report 2022-23"**

**The Convener:** Agenda item 3 is evidence on the annual report for 2022-23 of the Commissioner for Ethical Standards in Public Life in Scotland. We will hear from Ian Bruce, who is the commissioner, and Sarah Pollock, who is a hearings and investigations officer.

I invite Ian to make a brief opening statement.

**Ian Bruce (Commissioner for Ethical Standards in Public Life in Scotland):** Thank you, convener and members of the committee for the invitation and the opportunity to talk to you about the work of our office. I am joined by Sarah Pollock, our relatively new hearings and investigations officer, who will be happy to provide more detail on our work on complaint handling. My focus will largely be on our governance. We are keen to ensure that the committee is fully informed about our performance, and I will keep my opening statement brief to allow as much time as possible for questions.

I trust that you have reviewed our annual report and that it has given you an indication of the significant progress that we have made in the past year in implementing the recommendations made by the Auditor General for Scotland, following his section 22 report into the work of our office.

I last gave evidence to the committee in January this year. As the annual report testifies, the intervening period has been extremely busy for us, but we are content that we are operating effectively as an organisation and we have assurance from our auditors on that. I am pleased to report to the committee that we have now implemented all the auditor's recommendations that we were able to implement, and that we have also implemented the majority of the additional recommendations that our internal auditors had for us.

We have successfully recruited and inducted the new staff that I spoke to the committee about in January. They completed their probationary periods in the past month and they are already adding value across the work of the office, particularly in relation to reducing the number of complaints that require initial assessment. Waiting times have now reduced to four months—when I last spoke to you, they were at nine. That was not easy to achieve in the face of rising complaint and

investigation numbers this year. We can give you more detail on that during this evidence session. We have included all the details on the progress that has been made on our website and in summary in our annual report. Again, we can provide more detail to you.

On my plans for the future, I have published a new draft strategic plan for 2024 to 2028, which is currently subject to extensive consultation, including with this committee. It sets out an ambitious pathway for our office in the next four-year period. Your views on the plan and my priorities would be very welcome.

I trust that that is of interest to the committee. I am happy, along with my colleague, to answer any questions that you may have.

**The Convener:** Thank you, Ian. You have given us a broad-brush overview of things that have improved, which is great. It is good to hear that the newly recruited staff are helping you to tackle all the things that you need to do. You have highlighted what has improved, but I would be interested to hear a bit more about the challenges that remain.

**Ian Bruce:** I would say that very few challenges remain. We have restored our governance and we are now a well-functioning organisation. We have the staff on board that we need to not only get through the much shorter backlog but improve as an organisation in future.

You will be aware from the previous evidence session that the investigations team overall is still relatively new, so there is quite a lot in our strategic plan about development. It is about getting all the staff up to speed to become very efficient and au fait with what can be quite a complex area of civil law. For example, we have run training on article 10 of the European convention on human rights and we have had external trainers providing training on licensing and planning matters. Those are complex areas that councillors have to deal with and we need to be across them. We are due to repeat training on investigating cases of sexual harassment in the new year. There will also be training on plain-English drafting, in order to make our reports more accessible to the Standards Commission for Scotland, which is a key stakeholder and customer for us.

There are very few challenges. We have a clear path forward and it is about us improving and being the best that we possibly can be as an organisation.

**The Convener:** It is good to hear the level of confidence that you have in the direction of travel. Are you satisfied that your office has the staff and resources required to carry out your functions effectively and efficiently?

**Ian Bruce:** Definitely. The committee will be aware that I conducted a workforce planning exercise in May 2022 and, on the back of that, made a bid to the Scottish Parliamentary Corporate Body for additional resources. It was a very comprehensive workforce planning exercise and the bid was entirely evidence based. I am sure that you will understand that the SPCB would not have agreed to provide those additional resources unless the case was very compelling. The SPCB agreed that we required those additional resources in order to perform our role as effectively as possible.

I can also provide you with additional assurance, because it is not always great to have a commissioner mark their own homework in front of the committee. We now have an internal audit function, which reviewed our workforce planning exercise this year—that was one of the internal audits that it ran. It gave us the highest possible rating of a very strong assurance on the workforce planning, identified a great many good practice points and benchmarked us above equivalent organisations. I am very happy that we have what we require.

It may be helpful to point out that some of the things on which we based our assumptions were that complaint volumes would remain relatively stable and that the directions would remain in place. We heard Ms Johnston say that those are there in order to provide a level of public assurance and even though one is being lifted, it remains in our manual. Basically, everything that we investigate to a conclusion is now adjudicated on by an independent body.

**The Convener:** That sounds very positive and it is good to hear that you got the highest possible rating on your internal audit. That is tremendous.

Marie McNair is joining us online.

**Marie McNair:** What factors have contributed to enabling you to reduce the backlog of cases so significantly?

**Ian Bruce:** There are a number of factors. We revised our approach and we now have an extensive triage system, which I may ask Sarah Pollock to provide some more detail on.

One of the first elements is that we get a lot of complaints that are not admissible and do not engage the code—for example, they may be service complaints, perhaps because a councillor is not responding to someone as quickly as they would like them to respond or is not dealing with an issue in a way that a constituent would like them to deal with it, or maybe it relates to a housing issue. We identify those complaints quickly after they come in and get back to the individuals as quickly as possible to let them know that we cannot help them. However, we also have

a database of other organisations that might be in a position to assist them. That clears out many of the complaints that might previously have just been sitting there. Clearly, that brings the numbers down.

We have weekly meetings with the entire investigatory team and every second week we go through all the complaints that are sitting at the admissibility stage and consider those that represent an issue where someone might be subject to harm if we do not put it to the front of the queue. Those are taken out and prioritised for investigation. Such complaints might relate to ongoing bullying and harassment and conduct of that type.

Over and above that, we now have additional staff and we have a spreadsheet of all pending complaints. In order to ensure that they are spread across the team in a fair way, they are colour coded on the level of complexity and the number of witnesses and people who would need to be contacted. In that way, the team is able to allocate to themselves a mix of different types of complaint for investigation. We monitor that situation on a fortnightly basis. The senior management team meets monthly and also monitors all the complaint numbers.

Those are some of the things that we are doing. Sarah Pollock might have something to add to that.

**Sarah Pollock (Commissioner for Ethical Standards in Public Life in Scotland):** I have just a couple of things to add.

Our new staff came to us in May this year and we worked hard to put in place a comprehensive induction programme for them, which involved them shadowing the more experienced members of the team and undertaking the wide range of training that the commissioner has alluded to.

Triage is an important part of the process. We use it to check whether all the relevant material that we need has been submitted with the complaint. If it has not, that is the point at which we can go back and seek out additional information. When a complaint comes in to us, we do a lot of work to make sure that we are dealing with it as efficiently and effectively as possible.

**Marie McNair:** Why do you think the number of complaints about councillors was so much lower in 2022-23 than it was in 2021-22, and has that trend continued into this reporting year? From the figures, it looks as if the 2022-23 number is half of what it was the year before that.

**Ian Bruce:** It is hard to say. Ms Johnston alluded to this and it is set out in the strategic plan that I intend to conduct research because I would like to know what drives those trends—as would

the committee, I am sure—because it will assist us and the Standards Commission in our planning. The short answer is that the trend has not continued. We thought that the committee might be interested to know where we are in this reporting year. We have had more complaints and cases already, within seven months, than we did in the entirety of the previous financial year. Anecdotally, we feel that that might be attributable to what happens pre-election and post-election—2022-23 was post-election. Pre-election, we tend to see a rise in the number of complaints, particularly councillor on councillor complaints, which may be an endeavour to undermine a prospective opposition candidate. We definitely plan to do some research and see what is driving the numbers.

**Marie McNair:** We will certainly be interested in those findings. That is me, convener.

**The Convener:** Thank you very much, Marie. Pam Gosal is also joining us online.

**Pam Gosal:** Considering the highly divisive and frequently personal discussions that are currently taking place, when does a disagreement turn into disrespect? Does the code of conduct explicitly state what conduct on social media is and is not acceptable? What kind of training on that subject have the commissioner and his office given to council members?

**Ian Bruce:** The point in time at which a disagreement turns into disrespect can be quite subjective. Again, I refer to the evidence that Ms Johnston gave. She and her team have provided a considerable amount of guidance on that. There are specific bits of guidance on conduct on social media and on disrespect, and that is what I and my team follow when we are assessing conduct against the provisions of the code. We do not refer only to the code itself, we also refer to the guidance.

We also know what the commission's views are. Every case turns on its individual facts and circumstances, but from hearings that have been held, we always take cognisance of the prior decisions that have been made on whether a breach has occurred when reaching our own decisions about whether something has been disrespectful.

You might recall that I did some research for the committee, disaggregating social media complaints. I provided that in April, as I recall. Social media is still accounting for around 20 per cent of all complaints, so it continues to be a driver for poor conduct. When I was last in front of the committee, I mentioned some other research that was done by the Local Government Association about the impact that such behaviours are having on people's willingness to put themselves forward

for positions in public life. It is problematic and it is not a new thing. It is six years since the Committee on Standards in Public Life published its own report about the way in which standards of conduct, from its perspective, were deteriorating.

The Local Government Association, prior to the report that I mentioned—it is called “Debate not Hate”—published another report called “Civility in Public Life”. All the reports tell us the same thing: standards are dropping and it is about discourtesy and disrespect. A very high proportion of complaints this year relate to those issues. Indeed, we did some research to disaggregate the proportion of complaints related to disrespect and discourtesy this year compared with prior years. In prior years, the average sat at around 40 per cent; this year, the figure is 60 per cent. It would be very helpful to us to know what is driving those numbers.

**Pam Gosal:** Thank you.

09:45

**The Convener:** Stephanie Callaghan has a supplementary.

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** Thank you for coming along today. I have been reading about problematic behaviour online and, anecdotally, we have heard that women councillors, in particular, are facing much more bullying and harassment. Are you looking at anything specific to address that? Are you doing any research on it?

**Ian Bruce:** The research will be very broad in nature. We will look at all the different types of complaint that we get and try to identify what is driving them. It will probably not surprise the committee to learn that relatively recent geopolitical events have led to a rise in complaints, because there is a debate happening in which there are two sides. However, conduct becomes problematic when it becomes personal, and that is one of the things that we are planning to look at.

Single events can sometimes drive a great number of complaints, but we will count them as a single case. What we are really interested in is case trends, as they will highlight the different types of conduct. I am thinking of conduct in council chambers, for example, when people might be saying things about each other rather than about their policies. That might be an issue, and I do not know whether it is an underlying trend, whether it relates to election cycles and so on.

I was also asked about what training we provide. Just to be clear, I will highlight the separation of functions between the two

organisations. We work hand in glove with the Standards Commission for Scotland in respect of the training and guidance that it provides, but our statutory role is to investigate complaints.

**Stephanie Callaghan:** Can I just follow that up?

**Ian Bruce:** Of course.

**Stephanie Callaghan:** If, when you look at the statistics, you find that women are facing much greater bullying and harassment from colleagues on social media, will you look at putting in some training or working with the Improvement Service in that respect?

**Ian Bruce:** Yes. I know exactly where you are coming from now, and I apologise for not picking it up.

What will assist us in that is a survey that we have already rolled out to all complainers and respondents to give them an opportunity to provide their views on whether, having come into contact with our office, they think that we have adhered to the values that we have set out. What we are asking is: did we treat you respectfully and kindly? Did we act empathetically? We are doing that work, and those people are providing us with anonymous responses.

Over and above that, we are collecting their demographic data—and, indeed, we have explained why we are doing so. That research will help us to understand whether a disproportionate number of complaints are being made against people who share certain protected characteristics, such as women, people from the LGBTQ+ community or people from an ethnic visible minority, and/or whether individuals who share those characteristics feel the need to complain more frequently about others. We will drill down into those numbers, which will help us to understand what is driving the trend. I know for myself, anecdotally, that these are issues, because people have come to me to complain. They tell me, “Look—I’m a woman, I’m a visible minority and I feel that I am being targeted because of that.” That is not just in council activity, but online, too.

The other worrying and disturbing phenomenon is the pile on that happens to someone who might have been the subject of behaviour that is incompatible with the provisions of the code. Members of the public who see a particular exchange decide, “I want a piece of that”—for want of a better expression—and they add their own opprobrium to what is already up there. It is definitely an issue.

**The Convener:** Thank you very much. I call Willie Coffey.

**Willie Coffey:** Good morning. I just want to carry on the wee discussion about the Local

Government Association's "Debate Not Hate" survey, which you mentioned. That is primarily conducted in England and Wales, is it not? Do we need to do something similar in order to pick up whether the same trends are happening in Scotland?

**Ian Bruce:** That is a matter for the committee, but it is certainly of interest to me. As I said, I propose to conduct some research on that. The issue is that, given my role, I am already seeing people who are unhappy. I am the one who sees complainers and respondents, who make up my dataset.

It might be of wider interest to know the public's view. Once councillors are in, they are in, and we can find out whether they would be willing to stand again or what sort of abuse they have suffered. That is all helpful, but what about the people who do not put themselves forward? Why do they not do that? What prohibits them from doing so? Does that affect particular groups in society? You heard me say in January that I have a real commitment to diversity because of my background in public appointments. That is valuable in and of itself, but it is also good for local communities to see themselves reflected at council level and I believe that diversity contributes to better decision making.

**Willie Coffey:** Is COSLA actively considering such a piece of work?

**Ian Bruce:** It is not, that I am aware of, but I could contact COSLA to find out whether it intends to do so.

**Willie Coffey:** I presume that you would support that work to get a fuller picture.

**Ian Bruce:** I would certainly very much support that. That might be a personal issue for me and perhaps I should not express such an opinion as a commissioner, but I would certainly personally support something like that.

**The Deputy Convener:** I have some questions relating to the Auditor General's previous reports. You probably remember that I asked about that during several meetings of the Public Audit Committee. You have identified serious failings that occurred in the organisation, although I stress that they happened before you joined it.

We know that a number of complaints were closed without proper consideration. What are the complainants' views on the outcome of that process? Have we tried to gather that information, or have we just said that we are sorry, but we cannot revisit those complaints? Has any attempt been made to connect with those people to find out their views on that experience?

**Ian Bruce:** People have been in touch with me, including, in one case, along with their constituency MSP. To be clear, as the

commissioner, I am very open to that, as is the office. I have spoken about the values of the office, and transparency is one of those. Part and parcel of that is that I will meet people who are unhappy about how the office operates either one-to-one online or in person. A number of complainers have come to me to say that they are not entirely happy with how things went and I will sit down and discuss their concerns with them.

I cannot reverse the previous commissioner's decisions. My hands are tied, but that does not mean that I do not empathise with individuals who find themselves in that position. I think I used this analogy when I spoke to the Public Audit Committee: it is like double jeopardy. Councillors who were being complained about felt exonerated—rightly or wrongly—if complaints about them were not upheld. The law precludes someone making the same complaint again and having the prior decision reversed when a different commissioner comes along two years later. That is the reality.

I am a parliamentary officeholder. I took legal advice and know that I would be legally challenged if I were to try to overturn earlier decisions. There is no way that I would win and I would end up spending public money trying to defend the indefensible. I understand that that is difficult.

**Willie Coffey:** One of the major failings of the process was that many complaints were not investigated at all.

**Ian Bruce:** Indeed.

**Willie Coffey:** In that sense, people felt really hard done by under the legal system in Scotland, which I would have thought was there to deliver justice, rather than thwart it. Do you have a view on that?

**Ian Bruce:** Yes—I agree whole-heartedly.

**Willie Coffey:** Where should we turn, as the Government, to remedy that? We cannot have the law thwarting the delivery of justice. We are talking about honest people who came with genuine, honest complaints that were never dealt with. They were not even considered and dismissed; they were never touched by the predecessor organisation.

**Ian Bruce:** I agree. They were not investigated; they were deemed to be inadmissible by that commissioner.

**Willie Coffey:** What would need to change to reverse that?

**Ian Bruce:** That I cannot assist with, I am afraid. The remedy for those individuals at the time would have been judicial review in order to overturn a commissioner's decision.

**Willie Coffey:** The term for that is a *functus officio* determination, is it not?

**Ian Bruce:** Yes—*functus officio* is the Latin term. There are very narrow circumstances in which a public authority can return to something, and there were some complaints relating to that position. One of the narrow circumstances in which a complaint can be revisited is where a public authority had not completed its investigation. Where I was able to revisit complaints, I did; where I knew I was not able to, I simply could not.

**Willie Coffey:** I asked you this question previously, and I will have to ask it again. If a person whose complaint was not dealt with at all makes the complaint again, are you able to take it as a new complaint, or would there have to be some material difference?

**Ian Bruce:** New information would have to come to light.

**Willie Coffey:** Is that the case even if the complaint was never dealt with?

**Ian Bruce:** Yes. It was the commissioner's position to take those decisions in law. As a parliamentary office holder, it was her prerogative to decide whether a complaint was admissible or inadmissible. That judgment having been made, I cannot revisit it. However, a complaint could come in with additional allegations. Let us say, for example, that the complaint concerns a continuing course of conduct. That could change the nature of a complaint, and that could give me a pathway to conduct an investigation in the case. If the facts and circumstances on which the prior decision had been made were precisely the same, I would have no scope to revisit it, for the reason that I have pointed out—I am exonerated because there has not been a breach of the code. I would need to see something new.

**Willie Coffey:** That is really clear. Thanks very much for those responses, Ian.

**Ian Bruce:** Not at all.

**The Convener:** Thanks for exploring that area, Willie.

**Miles Briggs:** Good morning, and thanks for joining us. Last week, the Scottish Public Services Ombudsman discussed with us the demographics of people who escalate complaints to that office. Have you carried out any work yourself on those who complain, and why?

**Ian Bruce:** That refers to the research that I mentioned earlier, and this is something that we have recently rolled out. Come next year's annual report, how our office is viewed is the sort of thing that we will potentially report on. Our office has never gathered the demographic data of

individuals who contact it, but we are doing so now. That will cover complainers and respondents, and it will give us a much clearer picture of whether there are differences that depend on people's protected characteristics.

**Miles Briggs:** That is helpful. To return to Willie Coffey's line of questioning, I note that the Public Services Ombudsman stated last week that it would like legislation to change to grant it own-initiative investigative powers. Are you content with your powers as they currently sit? What opportunity might you have to strengthen them?

I also note that some of our conversation today has concerned unfounded or spurious complaints about elected members and whether there is an opportunity to state earlier in an investigation whether you can investigate such complaints, especially with regard to social media.

10:00

**Ian Bruce:** I will start with own-initiative powers. The Ethical Standards in Public Life etc (Scotland) Act 2000 gives me a bit of discretion. It says that, to the extent that is "possible"—or wording to that effect—I will investigate only in response to a complaint that has been submitted to me. There is sufficient leeway there for me to investigate something that is not in response to a complaint. As Ms Johnston pointed out, I already have leeway during the course of an investigation. If I see additional poor conduct or conduct that I feel is incompatible with the code, which was not complained about but arises as part of the investigation, I can certainly look at that, and that is made clear to everyone in our letters.

With regard to unfounded and spurious complaints, I do not look at people's motivation for making complaints. All I do is assess the facts against the code. An awful lot of the complaints that are made to me are unfounded and spurious and, by and large, they tend to be inadmissible. For those on which I am not clear, I will conduct an investigation, and that ends up being reported to the Standards Commission and adjudicated on there. That can be a decision to take no further action or a decision to go to hearing. If I am being honest with you, an awful lot of that snash gets dismissed, and that includes online complaints.

It is important for me that all the letters that I provide to complainers and respondents give clear reasons for my decisions. If it is apparent to me that what is going on is just a political debate and that members of the public disagree with someone's political views, that does not constitute a breach of the code's provisions. I do not know whether that answers your question.

**Miles Briggs:** That is helpful. My line of questioning was also about whether any work has

been done to consider whether similar bodies in the United Kingdom and Europe have a different model or other countries are using a better set of powers to govern some of that.

**Ian Bruce:** It has not, but I will certainly add that to my list of things to look into.

For what it is worth, we engage with other bodies that work in that area. Angela Glen, our senior investigating officer during the course of this year, was one of a few people who gave an online talk for the Global Government Forum about conduct in public life, so it is not as though we do not have contacts there. People attended that event from all over the world, so it was very good for us to be invited to speak.

**Miles Briggs:** That is great. Thank you.

**The Convener:** That concludes our questions for this morning.

Thank you for the report and all the information about the improvements and the positives around there being very few challenges. I also noted the training that you have been giving to selection panel chairs so that they can achieve effective boards. I thought that that was tremendous. You have done that piece of work to ensure that our public body boards are reflective of the communities that they represent. Thank you very much for that work, too.

**Ian Bruce:** Thank you so much. It was a very positive year on the board front.

**The Convener:** Yes, it seems like it has been, and it has not really been a full year, because we saw you in January.

**Ian Bruce:** Indeed.

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

**Ian Bruce:** Not at all.

**The Convener:** Just before we finish this section of the meeting, I will ask Stephanie Callaghan to declare an interest.

**Stephanie Callaghan:** I declare that I was previously a councillor at South Lanarkshire Council.

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

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

10:03

*Meeting suspended.*

10:10

*On resuming—*

## **Housing (Cladding Remediation) (Scotland) Bill: Stage 1**

**The Convener:** Under agenda item 4, we will take evidence on the Housing (Cladding Remediation) (Scotland) Bill from Scottish Government officials Kate Hall, director of the cladding remediation division; Rachel Sunderland, deputy director of that division; and Micheila West, a solicitor in the housing branch. I welcome them and invite Kate Hall to make an opening statement.

**Kate Hall (Scottish Government):** Thank you for giving us the opportunity to speak to the committee about the important topic of the bill. In his evidence about the cladding remediation programme to the committee on 30 May, the Minister for Housing said that the safety of home owners and residents was the Government's "absolute priority". The driver for establishing the programme was the tragic fire at Grenfell tower, and that tragedy clearly sets out why we need to take action to identify, assess and remediate the risk from unsafe cladding.

As the committee will be aware, the ministerial working group on building and fire safety was established following the Grenfell fire tragedy, and it developed the recommendation for single building assessments. The cladding remediation programme was established to deliver that recommendation and to seek to deliver the Scottish Government's commitment to protecting lives by supporting and facilitating the assessment and remediation of unsafe cladding on residential buildings of 11m and above.

As the programme has progressed, a number of issues have been identified that have been impacting on delivery of the overall programme and therefore of the policy objective. Those issues have emerged from the Scottish Government's direct experience and from discussions with developers. The bill has been designed to address the barriers to delivery, particularly in relation to home owners' consent, through providing clarity and assurance about standards and the status of remediation and creating a legal framework for developers to participate in remediation.

I will outline the bill's key elements. It will allow for the establishment of a cladding remediation register to provide information on buildings that have undergone a single building assessment and remediation. That will take forward a direct recommendation from the ministerial working group that better information should be made



publicly available—for example, through a database or a portal—on the safety profile of domestic buildings with cladding.

The bill will allow for the assessment of buildings through a single building assessment, even when it is not possible to achieve owners' consent. The bill will allow ministers to specify the standards for a single building assessment; the ministerial working group recommended having such an assessment.

The bill will provide ministers with the power to arrange remediation work that a single building assessment has identified

“as being needed to eliminate or mitigate risks to human life that are (directly or indirectly) created or exacerbated by the building's external wall cladding system”,

even when it has not been possible to secure consent. That provision reflects experience from the programme and from engagement with developers. Finally, the bill also includes provisions to establish a developer remediation scheme.

The programme arises from the work of the ministerial working group on mortgage lending and cladding, which included representatives of the finance sector, home owners, Homes for Scotland and the Scottish Fire and Rescue Service. The programme continues to be built on regular stakeholder engagement, and developers have been closely involved in discussions over the past 18 months or so. That has supported policy development, within the bounds of convention and confidence. Our engagement continues with stakeholders, and there will be further opportunity for them to be involved in consultation on secondary legislation.

The focus on cladding sits alongside work by our colleagues in building standards, housing standards and fire safety. Once the building safety levy, which was announced in the programme for government, is established, it will support the financing of the remediation work. The work continues in collaboration, and we are collaborating with local authorities in the spirit of the Verity house agreement.

Developers' commitment is a valuable asset, and we are extremely grateful for their contribution and collaboration in the public interest. Nine developers have publicly signed the developer commitment letter as part of the Scottish safer buildings process.

I add that I am joined by my colleagues Rachel Sunderland and Micheila West.

**The Convener:** Thank you—it is helpful to hear that overview.

Why has there been no public consultation on the bill? What changes to the bill, if any, were made following conversations with stakeholders?

10:15

**Kate Hall:** The priority in relation to the bill has been to ensure that we can quickly make progress on some of the issues that I outlined in my opening statement. That also reflects a period of some time in which we have been engaging with stakeholders, and we therefore consider that the bill seeks to achieve a balance between the initial consultation that we have undertaken and the subsequent progress and on-going engagement that will follow during its passage. Elements in secondary legislation will allow time for further consultation with stakeholders as we move forward.

**The Convener:** As part of the work that you are doing, you are undertaking a stock survey of all the medium-rise and high-rise buildings that are in the scope of the programme. How advanced is that survey?

**Kate Hall:** We have undertaken some preliminary estimates, and we have set those out in the initial memorandum to the bill. We are working through a process of procuring the next stage of work on the stock survey, and we hope to have—in line with the commitment in the mandate letter—information available on the outcome of that during the early part of 2024.

**The Convener:** We have heard that owners and residents of properties and buildings with potentially unsafe cladding have consistently reported challenges with the remortgaging, buying, selling or insuring of their properties. What conversations have you had with lenders and insurers in the development of the bill? Are you confident that the proposed cladding assurance register will provide them with sufficient assurance?

**Kate Hall:** Yes. I will provide some initial detail and then hand over to Rachel Sunderland to pick up some of those further points of detail. I can assure you that the Association of British Insurers has been closely involved in our stakeholder group, as has UK Finance. Rachel may want to pick up some of those points.

**Rachel Sunderland (Scottish Government):** I am happy to do so. It is worth noting that, as the committee will probably be aware, the recommendation for a register of some type came from the ministerial working group, which, as Kate Hall mentioned, included representation from UK Finance and the ABI. Those organisations are also represented in our cladding stakeholder group, so we have been talking to them about those issues and we are working closely with them. As we work

through and operationalise what a register will look like, we will work closely with them and with other stakeholders.

**The Convener:** Thank you.

I will bring in Marie McNair, who joins us online.

**Marie McNair:** I will carry on looking at the single building assessment process, which we touched on earlier. The bill states that a single building assessment can proceed without the consent of the owner, provided that a notice period has lapsed and any appeal that may have been lodged has been determined or withdrawn. How prevalent has the problem been of securing consent for assessments, and how significant a factor has that been in holding up the remediation process?

**Kate Hall:** As a consequence of the work that we have been undertaking so far through the pilot programme, it has come to our attention that there can be instances in which consent can cause a delay in moving through to the next stage. That is why we consider that it would be appropriate to include those provisions in the bill. It is so that we can move all the way through from carrying out the building assessment to ensuring a fair pace of subsequent remediation work, thereby ensuring the safety of all home owners in a block of flats.

**Marie McNair:** How significant a factor has that been in holding up the remediation process?

**Kate Hall:** Evidence has come to light that it can delay the process. As a consequence, in the interests of all home owners, we have considered it significant enough to decide that some legislative provisions are needed to sit around it to ensure that, as the programme moves forward, all home owners in a single block are equally supported through having remediation work done, and that one or two individuals are not able to block reasonable progress.

The committee will see from provisions in the bill that it is intended to be a proportionate response in relation to consent and is built on precedent from previous acts, in order that we are taking action that is in the wider interest of everybody in the individual blocks concerned.

**Marie McNair:** Thanks for that confirmation.

**Willie Coffey:** We understand that 105 buildings are in the pilot phase of the programme. Where are we in relation to the assessment and remediation of the buildings that have been identified?

**Kate Hall:** Willie Coffey is correct in relation to the programme as a whole. We have formally commissioned 27 building assessments. We now have 16 of those at substantive reporting stage.

We have remediation under way in one building and mitigation in a second building.

We have a commitment to ensure that all of those 105 are on a pathway to a single building assessment by next summer. That is set out in the mandate letter from the First Minister to the cabinet secretary, and we are taking steps to ensure that the mandate is met.

We have also recently been undertaking work with developers on a task and finish group to look at the process around an SBA and ensure that we are taking learning—as this is a pilot—from the work that we have experienced so far on those that have been undertaken. We want to ensure a smooth process as we move forward into the substantive SBA process, which would fall from the provisions in the bill.

**Willie Coffey:** Those are quite low numbers when it comes to progress, if there are 105 buildings and only 27 assessments are in commission and only one building has had any remediation so far. Would you accept that? Are the provisions in the bill likely to help you to accelerate that?

**Kate Hall:** The bill is scheduled to complete its passage by next summer. While that is going on, we wish to make progress on the remainder of the 105 buildings. We see that happening in parallel with the passage of the bill. We wish to make on-going progress with the ones that have already been identified as part of the pilot programme.

As the minister has previously acknowledged, we are seeking to speed up the process in relation to those SBAs and then to speed buildings through into a remediation programme. Ultimately, the programme is intended to ensure the protection of life and the safety of individuals within those blocks, so we are very mindful of the need to make that progress.

**Willie Coffey:** One issue that keeps coming up is whether we have enough fire engineers and surveyors to help us to carry out the assessments. Has that been a barrier in the pilot phase of the programme? Do we need to do more to recruit, hire and train fire safety engineers and surveyors to carry out the work at a greater pace?

**Kate Hall:** We are mindful of the importance of the supply chain to our ability to make progress on the SBAs. As part of the task and finish group, we have been looking at the specification of the SBA so that we can be assured that there will be a wider supply chain.

Obviously, other parts of the UK are also undertaking building assessments. We would hope that the work that we are doing will help to stimulate a wider market across the UK so that we can also access the fire engineers and the others

that are needed to carry out the SBAs that we require for the programme.

We are hopeful that we will make progress on that and that there should not be a barrier to ensuring that SBAs can move through as quickly as possible so that we can move individual buildings into a process of remediation, which is the first and foremost priority of the work.

**Willie Coffey:** Do we have enough people at the moment to carry out the work, or do we need to accelerate recruitment?

**Kate Hall:** We have not found that to be a specific barrier to completing SBAs at this point. I would hope that our approach to SBAs will ensure that the market follows and will send out market signals so that those who are in a position to provide the services are able to do so.

We are also seeking to move from a grant-based process to a procurement process, and we hope that that competition will help to stimulate the market and bring additional fire engineers and others into the supply chain to support delivery of the programme as a whole.

**Willie Coffey:** Thank you.

**The Convener:** I will bring in Pam Gosal, who joins us online.

**Pam Gosal:** Good morning, panel. The UK Government has so far provided the Scottish Government with £97 million to identify and remove dangerous cladding from buildings. However, so far, less than £5 million has been spent through the single building assessment programme. What actions is the Scottish Government undertaking to speed up that process?

**Kate Hall:** We are mindful of the need to make progress on the programme. Just last month, we published data that sets out that we have spent almost £5 million on the programme as a whole in the current financial year, which is an increase and pick-up from previous years. For example, in 2022-23, we spent just over £1.5 million, and in 2021-22, it was £242,000, so we feel that we are on an increasing trajectory.

The establishment of my directorate and the uptick in the programme overall are also intended to increase the speed and the expansion of the programme. The bill should help us to make progress and to continue to build out and move through the programme of remediation. Obviously, given that much of the spend will be demand led as a consequence of the SBAs, we have a good opportunity to start moving forward with the expenditure on the buildings that will follow on.

Rachel, do you want to add anything?

**Rachel Sunderland:** When the minister gave evidence to the committee previously, he talked about the fact that things had probably started more slowly, and that was acknowledged in the cabinet secretary's statement last year. As Kate Hall said, the move from the grant model to direct procurement has seen a significant increase in spend from around £241,000 in 2021-22 to just over £3.1 million this year, and the total of just under £5 million.

**Pam Gosal:** Do you envisage any problems ahead? You have said that you are on a trajectory where basically things are getting better, but do you foresee any problems in spending more money?

**Kate Hall:** The key priority is for us to make further progress in relation to the SBAs to identify the buildings that may then require remediation and then to move them through into that remediation being carried out. We are working with the developers to seek to agree a legally binding contract with them to fulfil their commitment to remediate buildings, which will also help us move forward on that trajectory.

The Scottish Government is committed to picking up spend in relation to what are known as orphan buildings, which are those where there is no identified developer that would be in a position to remediate them. Obviously, it would fall to the Scottish Government to cover the costs in relation to those buildings.

Total spend by the Scottish Government is not the only indicator of progress on the programme because, if developers are remediating buildings, that does not necessarily mean that the Scottish Government funding needs to be spent in order for home owners to be protected. I just flag that Scottish Government spend is not the only indicator of progress on remediation and protecting home owners.

**Pam Gosal:** Thank you.

**The Convener:** Thanks for that clarity. We heard on our recent visit that part of the problem is not so much that the single building assessments are not being undertaken but that the remediation work is not subsequently being pursued. Do you recognise that as a concern and, if so, how will the bill contribute to overcoming the problem?

**Kate Hall:** We have talked already about resolving issues in relation to consent. Progress through to remediation also requires the support of developers in order that they will then move the buildings for which they are responsible into a full programme of remediation.

The priority is to get more building assessments done. Once we have done those, buildings can more swiftly move into the process of remediation.

Providing clarity about the scope and content of the single building assessment, and about the one that will ultimately be provided for in the bill, will also support a continued forward trajectory in relation to the programme as a whole.

Again, I will offer Rachel Sunderland the opportunity to add anything, should she wish.

10:30

**Rachel Sunderland:** Just to reinforce what Kate Hall has said, I point out that the focus in the initial pilot phase has been on the single building assessment process and getting the 105 buildings on the pathway. Sometimes, where we have identified immediate risks, we have had to step in and take urgent action to address them. We then need to engage with the home owners or residents in order to secure their consent to move on to the next phase, and the bill will help with that process.

**The Convener:** I seek some clarification, because we have heard about what has been described as a pile of single building assessments. The assessments are just piling up and are not moving through to the remediation phase. Is that to do in part with not having the consent from everybody in the building, say, and will the legislation allow things to move forward to the remediation process?

**Kate Hall:** Yes, it will certainly help us to move through the process. The bill is intended to help us to tackle some of the barriers and issues that we have started to identify in the pilot phase of the work. Obviously, consent will be one element that will help us to move from assessment to remediation. Even during the pilot phase, the knowledge that those provisions are there will, we hope, provide a stimulus to move buildings from the initial assessment all the way through to a remediation programme.

**The Convener:** Have you identified anything else that is preventing the movement from the single building assessment to remediation?

**Kate Hall:** I do not think that there are any specific blockers that we have not previously identified from within the programme. Rachel, would you like to add anything?

**Rachel Sunderland:** I would not necessarily describe them as blockers, but work is going on with developers to secure an agreement to allow buildings with a linked developer to be progressed. There is also, as Kate Hall has mentioned, the on-going work of the task and finish group. There are a number of different strands, and the bill is part of that work. Consent is not the sole issue that we are looking at, but it is certainly an important one that we need to address.

**The Convener:** Thanks very much—that was helpful. I will now bring in Mark Griffin.

**Mark Griffin (Central Scotland) (Lab):** The bill gives Scottish ministers the power to establish a responsible developers scheme. Are you able to set out how the scheme will speed up the remediation of potentially unsafe buildings?

**Kate Hall:** Yes. As we have just been saying, that is one part of a start-to-finish process that goes all the way through to ensuring that we have engagement from developers who are responsible for individual buildings. As Rachel Sutherland has been very heavily involved in that work, I will hand over to her to answer your question.

**Rachel Sunderland:** The responsible developers scheme forms an important part of our wider engagement with developers. At the moment, we are discussing with them developer contracts, which will confirm and clearly set out developers' responsibilities in relation to remediating their buildings. There is also the responsible developers scheme. As it is important that the developers who step forward and voluntarily remediate their buildings are not disadvantaged if others do not do the same, the responsible developers scheme will clearly set out the membership criteria, the expectations and also the consequences for developers in terms of stepping forward to remediate their buildings.

**Mark Griffin:** Why has that been left to regulations? Why is there no more detail up front to make developers aware of what is coming down the track?

**Rachel Sunderland:** It is probably worth noting that we are proposing to put the detail into regulations under the affirmative procedure. We will therefore come back to the committee, and you will see the detail.

We have tried to put into the bill some detail on the areas that we will be looking at in regulations, but we are also mindful of the on-going process for the developer remediation contract, about which we are in live and active negotiations with developers. As we refine and define exactly the parameters of the developer remediation scheme, we will be mindful of our current discussions with developers. The two things should be speaking to each other.

**Mark Griffin:** The policy memorandum refers to a "proportionate approach". What will be the Government's attitude towards the varying levels of size of house builders? Small and medium-sized enterprises are being treated very differently in the scheme down south. What will the Government's approach on that be in Scotland?

**Rachel Sunderland:** We recognise that there will be a difference between developers' ability to

pay to remediate their buildings. It is important that that is reflected in any agreement that we reach with them, and we are actively discussing that with developers through the developer remediation contract negotiations. I cannot give you the detail of exactly what we will do, because we are still discussing it, but we are absolutely bearing in mind that principle as we engage in those negotiations.

**Mark Griffin:** It would be helpful if you could let the committee know as soon as you have any detail on that. That would be worth while.

**Rachel Sunderland:** Yes, we will.

**Kate Hall:** Yes.

**Mark Griffin:** Finally, I want to ask about the power to introduce a levy. Has there been any difficulty in developing the bill or the programme while we wait for the devolution of the power that would enable the introduction of a levy?

**Rachel Sunderland:** Colleagues in tax policy are taking forward the levy, but we are working very closely with them. It is not an impediment to the bill or to the work that we are doing at the moment. It will obviously be an important factor in the future in terms of the wider funding of the programme, given the fact that the UK Government is planning to put in place a building safety levy to fund the programme in England.

Being able to put the levy in will be important in the future, but it is not an impediment at the moment.

**Mark Griffin:** Do you have a timeline for the expected devolution of power to introduce the levy?

**Rachel Sunderland:** My understanding is that there are on-going discussions between Treasury and the Scottish Government and that we do not have a precise timeline yet. We might have to come back to you if there is any further detail on that, because lead responsibility in that area rests with colleagues elsewhere.

I have set out my understanding, but I will confirm the position with my colleagues and we can come back to you if there is further information.

**Mark Griffin:** Thank you.

**The Convener:** I will bring in Miles Briggs.

**Miles Briggs:** Good morning, and thanks for joining us. In some of the meetings that we have had with affected residents and experts, they have been critical of the limited progress that we have made in Scotland to date. What learning is taking place to try to align the bill with the schemes that have been progressed in England and Wales,

given that many of the companies operate across the UK?

**Kate Hall:** We regularly meet counterparts in the UK and Welsh Governments. What they have learned from their initial assessment process and from running and taking forward their programme is helpful learning for us as we move through our next stages.

We are mindful of the fact that developers operate on a UK basis. However, some arrangements in Scotland are different from those in other parts of the UK, such as the tenure system. It is important that the programme's arrangements for Scotland reflect and mirror the arrangements in which developers operate in the Scottish environment. There are also different regulations in relation to building standards in Scotland. We are mindful of that, but it is very helpful to be able to understand what has been learned in other parts of the UK as we take forward our programme.

**Miles Briggs:** That is helpful. As the bill progresses, there might be quite a few amendments that seek to ensure that the bill is aligned in that way, so it would be helpful to see how things are being taken forward elsewhere.

One issue that I have raised consistently and about which I am quite concerned is that the bill relates only to residential buildings in Scotland. There are many other buildings that potentially include flammable cladding where people sleep, such as care homes, student accommodation and hospital settings. Why are those buildings not covered by the bill? Why are no provisions made for non-residential buildings that could potentially have unsafe cladding?

**Kate Hall:** The programme, as you rightly said, is focused on residential buildings, so that may include commercial premises. The ministerial working group had a wide remit and covered non-residential buildings, but the barriers that were identified—which we have talked about and that are being reflected in the bill—are focused on matters that are not replicated in the same way in non-residential buildings.

Building safety is the responsibility of the building owner. When there is a clear owner, such as national health service boards, local authorities and commercial owners, we would expect them to understand and assess risks of cladding on those buildings and then take action to remediate as necessary. The focus has been primarily on residential buildings, but the bill is tenure neutral.

**Miles Briggs:** Do you expect non-residential buildings to be included in the register that you mentioned?

**Kate Hall:** The register focuses on buildings that have been through a single building assessment under the programme. It would therefore be confined to buildings that start and finish the programme.

**Miles Briggs:** Okay. Many organisations that have influenced our work still have a lot of questions about the buildings that are not being included and about how that will be dealt with as the bill progresses.

One aspect to consider when undertaking remedial work is economies of scale. Will work to retrofit buildings be co-ordinated to try to ensure that economies of scale can be realised?

**Kate Hall:** That is a helpful point. We are mindful of wider work that is going on, and we will take that into account as we transition from pilot into full programme, although no decisions have been made yet in relation to that.

**Miles Briggs:** I have raised concerns with the previous minister, Tom Arthur, about charging points that are attached to buildings. Specific concerns have been raised with us with regard to electric bikes and electric cars. That is not covered in the bill currently. Are you mindful to look at the issue and include that aspect in the bill, given some of the incidents that have happened?

**Kate Hall:** Any decision in relation to that would ultimately be a matter for ministers. However, the scope of the bill solely relates to cladding at this point, which constrains what provisions can be in the bill.

**Willie Coffey:** One issue that came up several times in discussions with residents is that no one knows what their building is made of. That came as a surprise to many of us—particularly in relation to modern homes. Who is in possession of information about what material a building is constructed from, where is that record held, and how can people get access to that information? Nobody seems to know. I know that that is outwith the scope of the bill, but it is an important issue, particularly for people who are buying new flats, homes or residences.

Someone commented that the inspection process during construction is perhaps not what it used to be and that, in some cases, buildings can be constructed in a way that is not entirely consistent with the specification drawings and so on. Where is the protection for the public on that, and where should the committee look to pursue that, if it is not in the bill?

**Kate Hall:** You are correct that it is not within the direct scope of the bill. Rachel Sunderland, do you want to come in with some background on that?

**Rachel Sunderland:** I can say a little bit about some of those things, but some of that falls outwith our responsibility and it would not be appropriate for us to talk about other people's responsibilities.

The point that you raised about there being, if you like, a golden thread of information on buildings was identified in the Grenfell inquiry as a key issue. The register will help to address that for buildings that have gone through a process, because it will hold information about what has been done to a building up to a fixed point in time.

Colleagues in building standards are doing work more broadly on their commitments, and a number of the points that you raised rest quite closely with them. We are happy to take those points away and feed them back to our colleagues, and to ask if they want to respond to the committee.

**Willie Coffey:** Absolutely. Thank you for that.

**The Convener:** That concludes our questions. Thank you very much for coming today, and for giving us clarity around the bill and its purpose.

We previously agreed to take the next four items in private, so that was the last public item on our agenda today.

10:45

*Meeting continued in private until 12:13.*

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

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