



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Local Government, Housing and Planning Committee

Tuesday 10 December 2024

Session 6



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Pàrlamaid na h-Alba

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**Tuesday 10 December 2024**

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**LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE**  
**34<sup>th</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:**

Rosemary Agnew (Scottish Public Services Ombudsman)

Craig Campbell (Scottish Government)

Andrew Crawford (Scottish Public Services Ombudsman)

Stephen Lea-Ross (Scottish Government)

Paul McLennan (Minister for Housing)

Laura McMahon (Scottish Government)

Judy Saddler (Scottish Public Services Ombudsman)

Yvette Sheppard (Scottish Government)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Local Government, Housing and Planning Committee

*Tuesday 10 December 2024*

*[The Convener opened the meeting at 09:14]*

### Decision on Taking Business in Private

**The Convener (Ariane Burgess):** Good morning, and welcome to the 34th meeting in 2024 of the Local Government, Housing and Planning Committee. Mark Griffin is joining us online today, and we have received apologies from Fulton MacGregor and Emma Roddick. 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 6, 7 and 8 in private. Do we agree to take those items in private?

**Members** *indicated agreement.*

## Scottish Public Services Ombudsman

09:14

**The Convener:** The next item on our agenda is to take evidence as part of our scrutiny of the Scottish Public Services Ombudsman. We are joined for this item by the ombudsman, Rosemary Agnew. Ms Agnew is joined by Andrew Crawford, head of improvement, standards and engagement, and Judy Saddler, head of investigations, public service complaints, both of whom are from the SPSO. I welcome you all to our meeting, and I invite Ms Agnew to make a short opening statement.

**Rosemary Agnew (Scottish Public Services Ombudsman):** I will keep it very short because I am aware that we are a bit behind time. I want to reinforce something that I put in my letter to you a little while ago. The year that we are in is my last full year as ombudsman and will be my accounting year next year. I will not see that report, and this is likely to be my last expected appearance before the committee.

I have been reflecting on the number of times that I have been here over the years, and I want to thank you for the what I think has been fair, but not always easy, challenge that you have given us, because answering your questions has caused us to be very reflective about what we do and how we operate.

I am really proud of my organisation. They are an incredible group of people and I feel that, come next May, I will be leaving the organisation in great shape for the ombudsman after me.

Thank you very much. I will leave it there and we will get straight into questions, which is probably easier.

**The Convener:** Thank you so much. It is helpful for us to hear that the cycle of feedback and reflection is useful for you in developing your approaches. I have a couple of opening questions, then I will bring in other members.

The SPSO was set up in 2002 to provide

“a public sector complaints system which is open, accountable, easily accessible to all and has the trust of the Scottish public.”

What evidence can the SPSO provide that shows that those aims have been achieved?

**Rosemary Agnew:** There is probably no single source. On the aims to be open, accountable and accessible, we achieve all of those to a degree. It is worth being honest about that: we achieve all of them. We have improved our accessibility no end, but it is still a journey that we are on.

For example, we are currently embarked on quite an ambitious piece of work about how we can make contact with those who do not traditionally complain. On openness, we have completely reviewed the way that we give reasons for our decisions. We publish as much as we can, but there is still work to do. Some of that relates to legislative functions, and there are things in our legislation that we think can be improved to enable us to be even more open.

One of the areas where we would like to have done more is accessibility, but, again, that is tied into legislation. There are two specific things. One is about being able to take complaints in any format. Nearly eight years on, I still have, in large part, to take complaints in writing. When I reflect on how much I have achieved, I think that the one thing that I have not achieved, which I desperately wanted to achieve, was the establishment of own-initiative powers. Those are key to enabling us to investigate things that are not complained about. As managers and leaders in the organisation, we can see areas where we could make a difference.

On customer satisfaction and impact, a downside of the job, if you like, is that most of what gets out there are the things that do not work and the unhappy complainers—those whom we would like to help but sometimes cannot, because of jurisdictional aims.

We have done two specific pieces of work. I might pass to Andrew Crawford in a moment to talk about the work that we have done on customer service feedback, which stalled during Covid, for many reasons. I might also ask Judy Saddler to talk about some of the areas of impact from our complaints that perhaps are not always as obvious. Andrew, I will pass over to you.

**Andrew Crawford (Scottish Public Services Ombudsman):** We have identified, as Rosemary Agnew said, that most of the things out there on the internet relate to where people have been dissatisfied, as it is dissatisfied people who tend to put their feedback in the public domain. We get lots of unsolicited feedback that is very positive and we share that internally as part of our own learning and improvement, but we have identified that we need to do more work on feedback. That is tied into your question about accessibility and trust, convener, and I think that both matters go hand in hand.

We have done a piece of work to look at where we get complaints from and we have mapped that against the Scottish index of multiple deprivation and local authorities. We looked for areas that are outliers—where we get numbers of complaints that are above average and, more important, where we get numbers of complaints that are below average, or no complaints. Those are the areas where we will do some awareness-raising work over the next

one to three years. It is a long-term programme, because it is not something that we can just react to and get meaningful feedback on.

The other thing that we are acutely aware of is that we used to do service user forums. We want to bring those back, but we need to tease out where they would fit best, and how to get meaningful use of them, so that we can use the data to drive our improvement work. Those things go hand in hand, and that is one of the high priority things that we are looking at over the next one to three years, as part of our programme.

**Judy Saddler (Scottish Public Services Ombudsman):** In terms of impact on individual complaints, we achieve a lot at pre-investigation stage, which is a stage at which we do not publicise what we achieve. For example, we have achieved financial settlements in a number of cases, particularly in kinship care cases. There was a significant financial settlement in one case involving in excess of £60,000 in backdated payments. We have also achieved financial redress in relation to backdated payments, such as redress in excess of £6,000 for a disabled child in the previous quarter.

Not only do we achieve financial redress; we achieve a lot in terms of reflective learning in organisations without going to investigation or making recommendations. In response to our inquiries, organisations will carry out more work, more training and more reflective learning.

We achieve quite a lot at our early pre-investigation stage, as well as at our more statutory investigation stage, where we publicise our achievements.

**Rosemary Agnew:** There are other functions, including a welfare fund model complaints handling procedure, which have come on board since that work has started. We will maybe pick those up in our answers to other questions, if that is okay.

**The Convener:** Great. I have a number of questions about the number of complaints. As we have been discussing, the ombudsman has an important role in helping public services to improve their service provision, but a near record number of public service complaints was received in the past year. Is the ombudsman therefore helping to improve public services, given the number of complaints?

**Rosemary Agnew:** Yes, I think that that is the case. Judy Saddler mentioned the reflective learning on systemic issues, and I think that an initiative in that area would help even more.

It is worth reflecting that the rising number of complaints that come to us is indicative of rising complaint numbers in public services. From

experience, we know that dissatisfaction at a local level leads to more complaints. Dissatisfaction can often be driven by a number of things; there is no single cause. Undoubtedly, one of the causes has been cuts to public services and funding being allocated to other functions. From our work on model complaints handling and supporting public bodies, we are aware that many public bodies are struggling to cope with the number of complaints that they are getting.

Our data shows that, for many years, there was a decline in the number of premature complaints, which are those that have not been through the local process. The number of those complaints is now rising again, and there was a significant rise last year. Those complaints were not necessarily about people not knowing where to go; they were about people not receiving responses or cases getting stuck at a local level.

We have a support and intervention policy, and the idea is that it clearly sets out what we will do in relation to complaints handling. As well as giving feedback and making recommendations, we will, in the first instance, offer support if we recognise a trend, and we have completely revamped the training that public bodies can access.

Other things are probably creeping in now. There is an increased expectation, particularly since Covid, that things should go back to how they were. Given the programme of public service reform combined with some of the huge changes in technology, there is probably an element of fear. In relation to health complaints, people were waiting a few months before Covid, and now they can be waiting years. I would be worried if I was waiting for an operation that I was not getting soon enough, so the number of such complaints is going up.

It would be really good to carry out research—we do not have the resources to do it, unfortunately—to try to quantify the number of complaints that organisations, particularly big ones, receive at a local level. I was reflecting on my days as the Scottish Information Commissioner, when we managed to set up a portal to which major schedule 1 organisations uploaded their statistics quarterly. That was really interesting, because it told us that fewer than 0.5 per cent of information requests ended up being appealed, and I would like to see the same for complaints. Public bodies make so many transactions, and we do not always have the data to focus on individual areas, which is why we started doing the work that Andrew Crawford talked about.

The number of complaints is going up, but there has been a particular benefit from the amount of investigatory work that we do, as Judy Saddler made reference to, before there are statutory

investigations. We resolve a lot of cases and see evidence of really good complaints handling, and we would not be able to take that more proportionate and people-centred approach if there had not been improvement at the local level.

Access to advocacy is also often missing. Patient advisory services provide a really good service to support people in making health complaints, for example, but there is not the same level of advocacy and support for all complainers or in all areas, so it is worth looking into that wider system issue.

**The Convener:** So that we can connect this into our conversation, can you say how many complaints there have been about public services this year and how that number compares with those in previous years?

**Rosemary Agnew:** I do not know whether Judy Saddler wants to pick up that question.

**The Convener:** While you are looking for that information—Judy Saddler can perhaps pull it out—I can ask another question. You have talked about improvements at the local level. For clarity, is that to do with the model complaints handling approach?

09:30

**Rosemary Agnew:** Yes, but it is not enough to just have model complaints handling; support and advice must also be provided, which is part of what Andrew Crawford's team does. It is time to revise and review the approach, because the world has changed, and the combination of training, intervention and support makes a difference.

Andrew Crawford, do you want to give examples of some of the things that your team does?

**Andrew Crawford:** My team oversees all the functions that Rosemary Agnew mentioned. We have revamped the training that we offer to local authorities and more widely. There are two stages: there is a good complaints handling offer, and there is investigation skills training, which provides real value for local authorities. We take them through how to investigate a complaint, how to ensure that the heads of complaint are agreed with the complainant, how to ensure that the complainant is satisfied with progress, how to keep the complainant informed in relation to timescales and expectations and, equally important, how to write the decision letter in a way that the complainant can understand. We are still trying to tease out that issue. There are lots of things that need to be included, but, if we pare things back, we find that people just want simple language. As Rosemary Agnew said, that

accessibility journey for everything that we do is on-going.

In relation to the team's work on the model complaints handling procedures, we have multiple engagement sessions with local authorities, health boards and so on throughout the year in order to share good practice. When we have identified good practice by a local authority in delivering a resolution for a complainant or in relation to its procedures, we encourage it to share that practice at those network meetings. We then bring everything back in and, as Rosemary Agnew said, use it when we revamp or refresh our internal procedures.

Our support and intervention policy is very much about providing support. We offer to support local authorities with whatever recommendations they receive, whether that is through providing training, looking at how they go through procedures or helping them to identify and sort out pitfalls. A lot of that work goes on.

Local authorities are feeling the pressure, given that the number of people who can deal with complaints at the local level has diminished. That has had a knock-on effect on the amount of complaints that come to us, because a lot of the complaints are about communication, timeliness and so on. That feeds into the situation.

**Rosemary Agnew:** I will make the "I didn't get my homework done in time" excuse. We finished our notes yesterday, so that we could have the most up-to-date numbers at our fingertips, but none of the printers worked when we got to the office this morning, which is why we are sitting here with laptops and cannot find anything.

On the numbers, in my first annual report, which covered my predecessor's final year, we had 4,182 complaints. In the latest complete financial year—2023-24—we had 4,686. That might not sound like a huge number, but it represents a really significant rise: there has been a rise of about 12 per cent over that seven or eight-year period.

What is significant is not just the rise but the profile of the complaints that we have received. Going hand in hand with the work on model complaints handling, we are able to process more complaints in a different way, but that means that, on paper, it looks as though not as many complaints are being carried forward for formal investigation. However, what we are doing is far more targeted and a much better use of resources. It is clear that, over the past three or four years, the uphold rate for our statutory investigations has gone up, because we are focusing on the complaints on which we think we can make the most difference or in which there is a public interest.

There is another significant thing about the rise in the number of complaints. There was a bit of volatility during the Covid lockdown, which was not overly representative, so, for planning purposes, we have been using the 2019-20 year, which was the last full year before there were all those other things. There has been a rise in the number of complaints of more than 600 since then.

In the first two quarters of this year, the number of complaints has still gone up. That has had two impacts. First, there has been an impact on our ability to handle the complaints, because we have put in place a number of quality measures. I think that quality has got better—we are much better at reflective learning—but we are probably at the limit of what we can absorb through efficiencies. We have had a lot of what we call agile projects, in which we focus on one specific thing, test something to see whether it works and, if it works well, roll it out to the whole organisation. Andrew Crawford and Judy Saddler have described some of those things.

My concern is that, during those eight years, our investigative capacity has not gone up; it has remained pretty static. We have also taken on other functions, such as those relating to the welfare fund review and whistleblowing. I think that there will be a sea change in complaints handling in the wider public sector, because, although it is right to say that we should learn from complaints and that we should provide a good service, if there are too many complaints, you get into a cycle in which you just try to deal with complaints all the time and do not have the resources or the mental space to step back and look at whether redesign is needed.

We are trying to pick up some of that through a review of the complaints handling principles. I think that our consultation launches today. We are trying to reflect the changes in the wider environment and move away from always being so process driven to encouraging a far more outcomes-focused approach. It is about what can be achieved at the outset of a complaint. The draft document that is going out for consultation draws on human rights language and is much more about focusing on the person as well as the issue that is being complained about. I do not think that we would have got to that point without learning from complaints ourselves.

I am quite concerned about the rise in the number of complaints. There is a bit of levelling off at the moment, but we do not know whether that will be sustained, and the levelling off is at a point that is even higher than the level last year.

**The Convener:** Thanks for going into that detail. Prior to talking about the numbers, you gave a bit of background to explain why, potentially, we are in this position.



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

**(SNP):** Good morning, Rosemary and colleagues. I will share with you a couple of pieces of evidence from our session two weeks ago.

The first is on social care provision. Age Scotland told us that it feels that people are being denied access to social care at certain times of the year. The committee is wondering whether you are aware of that and what action has been taken. Could you share with us any recommendations that have been taken up to address the issues that were raised with us?

**Rosemary Agnew:** Give me the easy questions. [*Laughter.*]

Social care is quite complex because it can fall under adult services, which are local authority services, it can fall under health and social care partnerships, which are commissioning organisations, and it can fall under the jurisdiction of the Care Inspectorate, in respect of care homes. I will not say that the evidence was misguided or wrong: I think that it is probably true, but I cannot give you numbers that will say that.

If I look at the sectors that we get complaints from, I see that the number of complaints is going up in healthcare and social care. Local authorities are always one of the biggest areas on which there are complaints, and such complaints have gone up quite significantly.

Some of that is related to resources. There is no consistency: different local authorities put different amounts of money into care. There is also almost certainly something related to assessments, and there are links to healthcare. We have had complaints about healthcare that have their roots in unavailability of care home places and what have you.

This is a very good example of where the landscape is changing, and where there is probably more need to start focusing on the life journey and where services intersect, rather than focusing on care. That is where care becomes a challenge. There is not the same advocacy support available for people to make complaints about care.

Another area on which we have had direct feedback is relatives often being more fearful of complaining about care provision than about healthcare because they are afraid that it will affect the relationship and that care will not be provided any more. That is something that we know about, but it does not always come directly into our jurisdiction because it is to do with care homes. Certainly, that is an area on which a lot more thinking about the complaint journey is needed.

**Willie Coffey:** That is an interesting answer. I understand the difficulties that you probably face with that crossover of responsibilities. Looking forward, what should we try to do, or what could we recommend, to resolve that issue? My colleagues will in a wee minute ask questions about the national health service and the responses that you get from that sector, but just in general terms, how can you make the process easier? People might complain about an issue that you decide transcends a number of areas, departments and functions. Can you still carry out a full investigation, or do you need the additional powers that we talked about earlier to strengthen your ability to inquire?

**Rosemary Agnew:** The answer is yes to both. We are used to working together, once a complaint reaches us or the Care Inspectorate. In some cases, the issue is accessibility and knowing where to go in the first place to make a complaint. That goes back to advocacy. There is definitely more that can be done legislatively to enable us to share more information among organisations that have abutting, but not necessarily overlapping, powers.

Investment, for want of a better word, would help people on the ground—I would be very interested to hear other's views on this—through making them feel confident in complaining and there being a much clearer complaint route. If you are going to complain to a local authority, the process is usually pretty clear: there will be information on how to make a complaint. However, someone in a local authority care home, although it would be a local authority complaint, might not know where to complain and might be afraid to say anything to the care home and not want to complain to it.

The problem might even be as basic as someone not having a computer, because so much is done in that way. The matter is double-edged: there is definitely work to do on accessibility, which links to some of the work that Andrew Crawford talked about, but, equally, being able to more proactively share information among oversight bodies would be hugely beneficial.

09:45

**Willie Coffey:** Another issue is that some groups feel that the relationship between the ombudsman and public bodies is too close. In fact, Accountability Scotland said to us that the SPSO is not measuring service standards against best practice and that too much agreement with public bodies is evident. I invite you to respond on the relationship that you have with public bodies. Is it too close?

**Rosemary Agnew:** No. I am very interested in seeing that evidence.

This is where we come back to the powers that the SPSO has been given over the years. The model complaints handling powers are not just about complaints handling: they are also about monitoring complaints standards and making improvements in complaint handling.

We operate, in effect—I am not sure that I should say this in Edinburgh—on tram tracks. On one track, I absolutely hold public bodies to account in a complaint, as do my investigators and managers. When we are looking at complaints, we also look at how they have been handled at the local level and we give a lot of feedback, and we might even make recommendations. It is not uncommon for us to send a complaint back to a public body saying that it has not done it well enough and to do it again. That is not to prolong an issue: it is because the best resolutions are often at local level.

Hand in hand with that, we have to support organisations on the improvement journey by providing training and an advice line on how to handle complaints.

It is not a fair statement to say that we do not hold them to account. One of the very interesting things to consider is the standards to which organisations are held to account. We hold them to account against model complaints handling, but some of the thinking that they have expressed has led us—at the same time, but separately—to look again at complaint handling principles, which have been in place for over a decade. I do not think that the principles completely match the environment that we are in. A complainer should be able to go to a public body knowing what under what principles and standards their complaint will be handled.

That is not just about saying that people will receive a response in five days: it is about the wider principles—for example, saying that people will be listened to, and that they will be communicated with effectively. We are doing a review of the complaint handling principles anyway. That is an opportunity for us, once they are agreed by Parliament, to really start pushing people to show how they are delivering against the principles, and not just asking how they do the process. I think that that would be insightful.

**Willie Coffey:** Thank you.

On the expertise that you have with which to conduct an inquiry and investigation, do you have the breadth of experience that is needed to look at healthcare? We have talked about that this morning. From where do you draw expertise to conduct a thorough, proper and balanced investigation? We know that public bodies will

have all the expertise to hand to answer you, but often the complainer will not have that same depth and breadth of awareness, so how do you make sure the process is balanced? How do you make sure that you have the expertise that you need to conduct an investigation?

**Judy Saddler:** I am happy to answer, then Rosemary can come in.

As complaints reviewers, we are laypeople: we are not health experts. In a healthcare case, we have a panel of independent advisers who provide us with the technical information that we need. In healthcare cases we can look at whether clinical practice was reasonable. As laypeople, we do not know that, so we go to our panel of advisers. Normally, in each case we ask for advice from one adviser.

Where we are expert is in complaint handling. We have a wealth of experience across the public service complaints function with the SPSO, and we have a lot of expert knowledge in complaints handling. In other areas—for example, healthcare, social work and planning; the technical areas—we recognise that we need technical advice. We have a good panel of expertise that we can go to.

**Rosemary Agnew:** It is worth saying that we are expert at asking questions of our advisers. They are not employees, but contractors. It is not the case that a person can just volunteer and be an adviser. They are selected—they must have a minimum of experience and qualifications. My complaints reviewers and Judy Saddler and her team have that experience.

If we are not sure about something, we challenge it. If we think that we need a second opinion, we get a second opinion. In our decisions, we always set out the advice that we have received and relied on, because it is our decision whether to accept it. Sometimes that is quite difficult—for example, where somebody believes that something has happened, and I absolutely do not doubt their experience.

What the medical profession can achieve may be miraculous on occasions, but there is currently a high expectation of what healthcare can deliver, which goes beyond technical care. In many cases, our findings are related to communication rather than to the standard of care. In healthcare cases, complainers have better support through patient advisory services. People do not have the same support in social care, which is an omission.

The other thing to mention about our advisers is that if we spot a theme or a trend, we might get extra advice or a legal summary of the legislation relating to the matter. It is like any other area: we cannot possibly have experts in everything, but I am confident that we get access to very good advice.

**Willie Coffey:** Does your panel of advisers reach out to complainers to get a more rounded bigger picture and a more articulate presentation of the issue? As I have said, the balance of evidence can sometimes favour the institutional side in the quality and depth of the defence paperwork that you might receive on an issue. Do you reach out to complainers to ensure that there is a balance when it comes to the quality and quantity of information that you consider?

**Rosemary Agnew:** There is no direct contact with the complainer, but there is no direct contact between the advisers and the public bodies, either. On occasion, we have had direct contact, but as our advisers are practising professionals who might well be working in a hospital or a general practitioner practice, we do not give out the names of our advisers. However, we will always put questions back to them. If the complainer does not understand something and they ask us a question that we cannot answer, we will ensure that their views are heard and that we test what they say.

Difficulties have sometimes arisen not in relation to the nature of the professional advice that we have had, but in relation to the nature of the records on which that advice is based. We can only go down an evidence-based route. The most challenging complaints are those in relation to which one person's recollection of a consultation is not necessarily 100 per cent the same as the level of detail in their medical notes. Although there is no direct contact, we will make sure that we pass things on and that we challenge what we have been told with our advisers. As I said, if we think that we need different or additional advice, we will also get that.

**Willie Coffey:** Thank you very much for answering those questions.

**The Convener:** At this point, I will give a bit of a time prompt to our witnesses, because we are not even halfway through our questions. What you have said has been very useful, and you have started to touch on a few things that we might want to go into in more detail, but I would appreciate it if you could be more succinct in your responses. I realise that that is challenging, because you are trying to convey a lot of important information. If committee members could also be succinct in their questioning, that would be gratefully appreciated.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Good morning. Accountability Scotland has argued that the SPSO is "a toothless tiger" and that you are not able to get much out of public bodies. When you ask questions, they do not always answer all the questions that you pose to them. How would you respond to Accountability Scotland's interpretation? Do you agree that the

Scottish Public Services Ombudsman Act 2002 needs to be changed to allow you to exert a degree of compulsion on public bodies?

**Rosemary Agnew:** We have a degree of compulsion, which we will use, but we have never had to use it. If, at the end of an investigation, we make a recommendation that is not complied with, ultimately we can bring a special report to Parliament. We have never had to do that, not because we have backed out or changed anything, but because organisations have always complied with recommendations to our satisfaction. During an investigation, I have powers to require information to be provided. If that information is not provided, my ultimate recourse is that I can go to the Court of Session, because such a failure to provide information is regarded as contempt.

I can understand Accountability Scotland's perception. In the past 18 months to two years, I would say that we have got much better at progressing things and demanding information more often through our support and intervention policy. We face a challenge whereby, unless we get corroborating information, we have to rely on what we are given, up to a point. However, that is where what the complainer has to say is important, because information from the complainer—it is not only information from public bodies that we take into account—might cause us to ask for further information.

I do not think that we need extra powers, because we have not had to use the full extent of those that we already have.

**Alexander Stewart:** Two weeks ago, Professor Gill indicated that although NHS boards will accept and act on some of your recommendations, they will do so only, as he put it,

"in a rather minimalist and grudging fashion."—[*Official Report, Local Government, Housing and Planning Committee*, 26 November; c 4.]

Once again, that is the perception of another individual, but what is your assessment of that? Does the same go for local authorities? What needs to change so that public bodies are more receptive to criticism and open to ideas for improvement?

**Rosemary Agnew:** I think that it is unfair on public bodies to make such a sweeping statement, because not all public bodies are the same. There are some organisations that, at various points in time, we might have to push harder, but we will not sign off a case as completely closed until a recommendation has been met to our satisfaction. If a recommendation has not been delivered to the level that we expect, or if the evidence is not there that it has been, we will keep pushing until the organisation does that. In life in general, some

people will push back, while others will not. We see different cultures and different levels of practice from different organisations in different areas; we see differences even within the same sector.

I would be interested to know whether specific examples can be provided. We cannot always tell everyone what we have done, because we have to investigate in private. I am not saying that there are no examples out there. There are some organisations that we have to work harder with. However, it is too sweeping a statement to say that there is too much resistance. In my experience, most organisations want to improve, if for no other reason than that it improves the bottom line if they improve the efficiency of their service.

10:00

**Meghan Gallacher (Central Scotland) (Con):** Good morning. There has been commentary on the long waiting times for some complaints to be considered. Professor Gill noted that that has

“the potential to ... reduce trust and satisfaction among members of the public”.

Do you think that delays could impact public trust in the complaints system overall? What is your response to that suggestion?

**Rosemary Agnew:** That is not a link that I would automatically make. There are lots of things that undermine public trust. In a complaints context, delay causes frustration, worry and anger, but, in my experience—I invite colleagues to comment, too—people would prefer to have their complaint handled well and to have the process take longer, rather than for their complaint to be simply swept along.

In relation to delay, I am not sure whether you mean our delay or organisations’ delays, because they both exist.

**Meghan Gallacher:** It could be both. There could be several reasons for a delay—it could be to do with the vast volumes that we have spoken about or the need for further submissions from public bodies in order for an investigation to continue.

**Rosemary Agnew:** We are bringing down our delay times. For brevity, I will not repeat what we said in our update letter. We are still bringing those times down. We have done a huge amount of work on reducing older complaints, which is helping from a communication point of view.

The potential for confidence—I would say that we are talking about confidence rather than trust—to be undermined relates to the fact that, by definition, complaints are about something that has already happened. Many people who make a

complaint will say, “I don’t want this to happen to someone else,” and the longer it takes for a complaint to be handled, the longer it will take for the improvement work to be done.

I do not think that it is a matter of trust being undermined, but I can see that there is a confidence issue. Andrew Crawford might want to add to that.

**Andrew Crawford:** The other issue that comes into play is the fact that communication is key because, as Rosemary has said, people want to know that their complaint is being handled well and thoroughly. We have done work internally and externally to make sure that that communication is clear. If a complaint will take significantly longer to deal with than initially appeared to be the case, we encourage public bodies and our staff to say that up front.

If a person who complains is told, “This is quite complicated, so we’ll be back in touch in four weeks, but it’ll probably take us about eight weeks to get X amount of information,” that allows them to feel confident in the process, and it builds what people envisage as trust in the service that they are getting.

**Meghan Gallacher:** To go back to the annual report, it states that only 4 per cent of all complaints that were closed last year went through the SPSO’s full investigation stage, which is a much lower level than was the case seven or eight years ago. Why are so few full investigations taking place? Does that undermine the ombudsman’s job of identifying the systemic improvements that need to be made?

**Rosemary Agnew:** I refer back to an answer that I gave earlier: we are not doing any less investigatory work. We are doing fewer of those investigations that we would call statutory investigations, and our uphold rate on those is going up, as we would expect. Those are the investigations in which we are mostly likely to identify systemic changes.

I will ask Judy Saddler to outline some of the activities that do not come under that 4 per cent figure, but which are things that we do on the majority of complaints.

**Judy Saddler:** As Rosemary said earlier, on the majority of complaints—this is the case before complaints go to the statutory investigation stage—we will test the evidence. A lot of that work involves investigatory-type work, which includes obtaining the complaint file. If it is a planning case, we will obtain the planning records and test the complaint against what the local protocols are and what the planning guidance is. If it is a technical planning case, we will seek advice. That all happens before the statutory investigation stage. If, having done all that, we realise that we cannot

achieve any more for the complainant, we do not think that it is fair or a good use of our resources to then take that complaint through a statutory process, which is a long process, if we cannot achieve a different outcome.

As I alluded to earlier, at the pre-investigation stage, we achieve a lot of significant impact outcomes for complainants. Rosemary mentioned the fact that it is more difficult to publicise and share that, because it takes place at the pre-investigation stage. However, in such circumstances, we do not see the point in moving a complaint through to the investigation stage simply for the sake of it because, again, that will not help the complainant when we have achieved a good outcome for them.

A lot of work is done at the pre-investigation stage. The 4 per cent figure for the proportion of the overall number of complaints that proceed to the full investigation stage reflects our change in approach, whereby we want to move cases to the significant investigation stage only when we know from our pre-investigation inquiries that we can achieve more. At the pre-investigation stage, we will also ask the organisation to do a bit more work to achieve that outcome, so a lot of work goes on at that early stage.

**Rosemary Agnew:** It is probably also worth saying that those early stages are where we will resolve cases. The annual report shows that, of the 2,200 cases that were done in that way, 76 involved a resolution. That does not mean that we do not pick up the learning—we also capture that. This is partly a reflection of our efforts to move towards outcome-focused complaints, in which the complainer is at the centre of things, rather than the process being something that we slavishly follow.

**Meghan Gallacher:** Thank you for that helpful clarification of your processes.

**The Convener:** I will bring in Mark Griffin, who joins us online.

**Mark Griffin (Central Scotland) (Lab):** In a previous evidence session, Professor Gill and Professor Mullen talked about the lack of national data in areas relating to the complaints system. Generally, what data should be available to assist Parliament in scrutinising the effectiveness of the complaints system? More specifically, is anyone responsible for collecting statistics on the total number of complaints that are received by public bodies and not just the ones that are escalated to the SPSO? Do we have any idea of the proportions of those that are escalated and not escalated? Should we collect that information?

**Rosemary Agnew:** For the sake of brevity, I will go back to the previous answer. Under model complaint handling, organisations are required to

keep statistics, and they generally publish them on their websites. In health, I think that Public Health Scotland will have collated health data. However, Professor Gill's point is valid: we do not have that single point for complaints data that we have in other areas of work.

It is a huge investment to get a mechanism for collecting and collating the data. The answer is probably not to make an organisation responsible for collecting all that data; it is to look at tapping into things such as the Government's open data strategy, through which data is available in a useable format and can be picked up through technology routes by any organisation. I would very much like Professor Gill to take that on as a project. There is a deal of research to be done on collecting and analysing data, and I see that as probably the next stage in the technology and artificial intelligence journey.

Andrew Crawford might want to pick up on that.

**Andrew Crawford:** You are right that, if we had an open source of data and the resource to gather and analyse it, that would definitely lead into the other things that we have spoken about this morning. We would be able to identify themes and trends and, if we had own-initiative powers, we could then use them to investigate. That definitely would be a significant step forward for us. As Rosemary Agnew said, the interfaces currently do not talk to one another and the data is not saved or presented in the same way, so it is quite a long journey to get to a point where that data is useable by a single organisation, person or team.

**Rosemary Agnew:** I suspect that the approach would be to see what you can get per sector to start with and have a system that works on that.

Another issue is that organisations need to look not only at their complaints data; in their governance systems, they need to look at their complaints data along with their whistleblowing and human resources data and service agreements and customer feedback. It is about starting to use data holistically, with complaints as one element.

The numbers can be a bit misleading. If you have high numbers, you think that something is wrong. Actually, it is about what learning you are getting from those complaints. If you are consistently getting the same learning from the same areas on the same things, that learning journey has not happened.

It is a very interesting issue, and we could go on forever, but we do not have time. I hope that that is enough.

**Mark Griffin:** My other question is on SPSO performance indicators. A previous witness told us that the indicators

“appear to be rather limited and narrow in scope”,

with few or no indicators relating to quality and customer satisfaction. Another concern was that previous customer satisfaction surveys were stopped because they were unfavourable to the SPSO. What is your response to those witnesses' comments?

**Rosemary Agnew:** I will pass to Andrew Crawford in a moment. The reason why we stopped those surveys was not that they were unfavourable; it was just that the response rates were too small to be viable. We have done a huge amount of work basically resetting and relaunching that.

Andrew might want to pick up some of that on the customer service side.

**Andrew Crawford:** As I said at the start of the meeting, we have identified that most of the feedback that we get is from people who are dissatisfied at the end of their journey, so we are actively trying to tap into the unsolicited positive feedback as well as the learning feedback that we get. We have a range of ideas about how we will do that. As I said, we want to bring back service user forums and we want more awareness raising in the areas that we have identified where there are no complaints about certain sectors within certain deciles. All the information through our vulnerabilities project, which is in its second year, will feed into that and will allow us to have quite a wide view of how we are viewed by members of the public and service users.

On top of that, lots of work goes on in the organisation around our quality assurance schedules and procedures. We also have an independent customer service complaints reviewer who does an end of year report and who will look at whether we are holding ourselves to the same standards as we hold other public bodies. There is lots of quality assurance, although I take the point that a more rounded and wrapped-up presentation of that might be easier for people to digest at the end of the year.

**Rosemary Agnew:** Judy Saddler might want to add something on the success of the revamped approach.

**Judy Saddler:** As Rosemary Agnew said, we halted the customer satisfaction survey a couple of years ago, because we were not getting a meaningful number of responses. We have completely reviewed and refreshed the survey. We piloted that at the end of quarter 4 last year and then we launched it in quarter 1 of this year, so we have two quarters' worth of data. We want to wait until we have the full year's data to analyse to identify key themes and trends. We are surveying at more closure points, which was an issue that was raised in the feedback at the sessions that the

committee has had. That approach means that we have more data and richer data, and we have had more returns. We analyse the returns quarterly, and we will provide a published set of data at the end of the business year.

**Mark Griffin:** Thank you.

10:15

**The Convener:** Willie Coffey has a number of questions.

**Willie Coffey:** I have two brief questions. One is on the overall review of the SPSO. As you will be aware, the Parliament has agreed to hold a root and branch review of all the commissioner services and so on. What are your views on that? Who should review the SPSO? What should a review of the commissioner service look like?

**Rosemary Agnew:** You need to think about whether you are reviewing the SPSO or the SPSO's legislation, because our activity and performance are often constrained by our legislation. On a number of my appearances before your good selves, I have expressed my view that there should be a full review of that legislation, because it was written for a time when we did not all do things digitally and we did not all have 1,001 apps on our phones; we were used to operating in a different way and public services were delivered in a different way. There needs to be proper parliamentary scrutiny of our legislation to consider the enabling measures that will empower us to do those value-adding things to a greater extent.

On how we operate day to day, as Andrew Crawford said, we have a number of ways of doing things. We have an external complaints route. We cannot go to an ombudsman, so we go to a third party, who looks at our customer service complaints if people want them to progress to there. We have external and internal auditors. We have an internal audit programme each year that looks at the quality of various things. The external audit is independent and is reflected through our governance meetings, the notes of which we publish.

We also test in other ways. Many of the decisions are made under delegated powers by Judy Saddler's team and my other officers, as I cannot make every single decision. There is a right to ask for a review, and I review all decisions that are made under delegated powers—I do so objectively, based on what I see. We also have our own quality assurance programme. Two of the officers who support me on complaints reviews, because they are not part of the teams and are separate in that sense, also carry out quality assurance. That is a risk-based approach. For example, one area that we have just looked at is

those very early decisions. We recognise that we need to ensure that we are doing all the things that Judy Saddler explained.

An external external review has attractions and risks. Ideally, it would have to be done by somebody who understands what ombudsmen do. For example, we have access to the International Ombudsman Institute, which has a peer review function. It all costs money so, if we want to conduct an external root and branch review, we would have to go to the SPCB to say, "We need some money for that." This committee is also part of reviewing, in that you look at what we are doing more than once a year now.

We must be very careful about what we expect a review to achieve. Are we looking for improvement in what we currently do or are we looking for extension and reframing of what we do so that we can have added impact?

**Willie Coffey:** My final question is about own-initiative powers. You have answered that, so I will ask the question in a different way. You agree that it would be handy to have those powers. What do you do currently if issues arise that are of a wider and more systemic nature? Do you have no powers whatsoever to widen your scope of inquiry? For example, we heard that female prisoners never complain about issues and you will probably never see a complaint from a woman or young girl in prison. What is preventing you from writing to the Scottish Prison Service when an issue arises to ask for feedback and so on? Why do you need the own-initiative powers to solve that?

**Rosemary Agnew:** We actually do write to organisations. Own-initiative powers would give the ability to demand information, but that does not mean that we do not report on things anyway. Most recently, there was a report on the welfare fund and the use by local authorities of the "high most compelling" rating. We can do that, and we do do it, although we need to do more of it, and that is in our business planning. We also do quite a lot that is not necessarily publicised in the same way. On female prisoners, I can outline separately, in writing, some of the things that we are doing on that.

It all comes back to the project on vulnerabilities, data and targeting what is a very limited engagement resource in the way that it is most needed. Own-initiative powers would enable us to dig deeper. We can research, ask and comment, and we can share themes and trends with organisations and with, for example, the Cabinet Secretary for Health and Social Care, but those are about sharing and raising awareness, which is different from own-initiative powers, which are about having a deep dive into something.

**Willie Coffey:** So you need the power to compel, because your experience is that you might not get a response or the quality of response that you hope for.

**Rosemary Agnew:** It is not that we will not get a response. Most organisations probably would try to provide something, but what they try to provide because they are being co-operative is maybe not as deep as they would provide if we had asked very specific questions. There is also an issue of consistency. If you are looking at a systemic issue, you are likely to be looking across a number of organisations or a sector, or even a couple of sectors. The powers would give the ability not just to get a response, but perhaps to get it in good time. It can be an issue to get somebody to do something co-operatively when you know that they are already stretched and busy and have probably been asked by half a dozen inquiries, organisations, groups and researchers for that information. It is as much for the benefit of the issues that we would be looking into as anything else.

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

**The Convener:** It was interesting to get a better understanding of that.

I have a couple more questions. With Professor Gill, we talked briefly about trauma-informed approaches, which is something that Scotland is really taking on board. Is your organisation looking at that area in complaint handling?

**Rosemary Agnew:** Yes, and we already have looked at it. In fact, some of our work on early decision making, where we do not take things to statutory investigation, was trauma informed, because it can be incredibly stressful for people to have to keep going over something that was difficult to start with.

All our complaint handling staff have been through the stuff that is on Turas, the NHS Education for Scotland site, on trauma-informed approaches. In our policies, we try to reflect ways in which we might reduce trauma. Equally, we have had our staff trained in vicarious trauma, because it can sometimes be as traumatic for us to read some of the things that we read. Again, that ties in with our vulnerabilities work.

There is not an end point to this. You do not just tick a box and say, "We've done trauma informed." Therefore, the work will be on-going as we review and update policy to ensure that we are reflecting those approaches.

**The Convener:** It is good to hear that you are already involved with that.

Finally, your submission states that the SPSO looks at a range of areas that are much broader than just local government and suggests that

“it may be time to consider whether scrutiny of the breadth of our work may go beyond the capacity of a subject specific Committee.”

What parliamentary oversight arrangements would be more appropriate, in your view?

**Rosemary Agnew:** I am a bit nervous about saying how you should do your work. Coming at it from the point of view of the citizen—because we are accountable to citizens through you as Parliament and through the committees—there are very particular issues in some sectors. One of our biggest areas of complaints is local authorities. You will probably have picked up that we tend to highlight things that are of particular interest to this committee, but the same could be said of health, and the Health, Social Care and Sport Committee would have different questions. I do not know whether we expect this, but I think that there could be more accountability through the Finance and Public Administration Committee about the nuts and bolts of how I discharge my function as an accountable officer.

We look at some things that are sectoral and where it would be beneficial to have a different view, given the knowledge around the table. There is also something about the accountable officer role, although we obviously work closely with and are accountable to the corporate body. A lot of work is going on to look at the roles of the office-holders collectively, and that issue will probably come out through that inquiry.

**The Convener:** That concludes our questions. Thank you so much for coming in to talk to us. In the conversation, we have raised points that we heard from the witnesses a couple of weeks ago, which has been helpful. At the beginning, we talked about the reflective feedback process and the learning journey that you have been talking about. I trust that our bringing in broader perspectives has been helpful for you.

**Rosemary Agnew:** Absolutely. We try to give you reassurance that we are doing our jobs well but, for me, we have also had the reassurance that a lot of the things that we are doing are hitting the right mark, which is incredibly helpful. We just have to get really good at them and not just very good at them.

**The Convener:** Many thanks for joining us this morning.

I briefly suspend the meeting.

10:28

*Meeting suspended.*

10:32

*On resuming—*

## **Renters’ Rights Bill**

**The Convener:** Item 3 is evidence from the Minister for Housing on the legislative consent memorandum to the Renters’ Rights Bill, which is LCM-S6-49. The minister is joined for this item by Scottish Government officials. Craig Campbell is from housing registers policy and is housing registers and policy casework manager; Laura McMahon is a solicitor in the legal directorate; and Yvette Sheppard is head of the housing legislation and reform unit. Before we begin, I invite the minister to make a brief opening statement.

**The Minister for Housing (Paul McLennan):** Good morning. Thank you for the opportunity to discuss the legislative consent memorandum to the United Kingdom Government’s Renters’ Rights Bill.

The relevant provisions in the bill will prohibit discrimination and restrictions against people with children or people in receipt of benefits. That aligns with the Scottish Government’s work on rented sector reform and will provide an important element of protection to those vulnerable groups in the private rented sector.

As the committee will recall, the provisions on rental discrimination were first introduced by the previous Conservative Government in the Renters’ Reform Bill, which did not pass prior to the UK Parliament being prorogued, following the calling of a general election. Consideration of the associated LCM in the Scottish Parliament was also halted, given that the bill had fallen.

I am pleased that the new UK Government has elected to include rental discrimination provisions in the Renters’ Rights Bill and that those provisions appear to have support from a wide range of political parties and stakeholders.

Although housing is a devolved matter, there are elements in the provisions that fall into the reserved area of financial services. In order to ensure that the full range of protections are able to come into effect in Scotland, the Scottish Government is seeking the Parliament’s consent to the UK Government’s legislating on the devolved area of housing, as set out in the LCM. By proceeding in that manner, we will ensure that the full extent of the provisions will come into effect in Scotland in the same way as they will come into effect in England and Wales.

I and my officials look forward to answering any questions that members may have on the LCM. Thank you.



**The Convener:** Thanks very much. We have a few questions on the LCM.

I appreciate your setting out what you hope to achieve by bringing the LCM to Parliament, but I would be interested to hear how you think that the provisions fit into the wider work that the Scottish Government is undertaking on private rented sector reform. Could you give an example of how the provisions might work in practice? For example, if a prospective tenant saw an advert for a let that stated, “No tenants on benefits”, what should they do and what should they expect to happen?

**Paul McLennan:** First of all, this falls into broader renters’ rights provisions to increase the rights of renters. For a number of years, we have heard of people being discriminated against because they are on benefits. It is a surprise to lots of us that that has not been legislated against previously. It has been discussed a number of times.

You mentioned advertising, which is important. As I said, the measure falls into legislation to protect vulnerable groups.

There are a number of issues. We will probably come on to whether such discrimination is seen as a civil matter or a criminal matter in Scotland. Like Wales, we have decided to go down the route of making it a criminal matter. Therefore, we would say to people to report a case to Police Scotland and let the police take that up as a criminal offence, as it will be a criminal offence in Scotland if the Parliament consents to the LCM. Certainly, we would hope that people would take a case to the police and that the police would pick it up. The practice is not one that we can continue to see in the UK and in Scotland.

**The Convener:** Okay. You may have touched on this, but I asked how the provisions fit into the Scottish Government’s wider work of undertaking reform in the private rented sector. If you could broaden that out a little bit, that would be helpful.

**Paul McLennan:** Renters’ rights are one of the key issues in the Housing (Scotland) Bill, which is going through Parliament at the moment, so the provisions fit in with that. The Housing (Scotland) Bill is obviously looking at various other matters, such as rental disputes involving pets and so on. It is important that we have these provisions as part of that. The provisions are very explicit and right in your face, so I think that they give a strong message to people out there who are undertaking the practice that they cannot continue to do so.

**The Convener:** Great. Thank you very much. I will now bring in Willie Coffey.

**Willie Coffey:** Good morning, minister. I have a couple of questions. The Renters’ Rights Bill sets

out that there will be a defence for a prospective landlord to show that the conduct is a proportionate means of achieving a legitimate aim. Could you give some examples of what that might mean in practice?

**Paul McLennan:** I will bring in my legal colleague. Laura, do you want to touch on the specific point about how that would work in practice?

**Laura McMahon (Scottish Government):** Absolutely, minister. The landlord, or a person purporting to act for the landlord, in that circumstance would, as you say, have to demonstrate that their conduct is a proportionate means of achieving a legitimate aim. That is in there to make sure that, if there is a legitimate aim, someone is not convicted of a criminal offence. It could be that a property is not suitable for a certain number of children—a one-bedroom property could be suitable for a mother with a small infant, but not for someone with two teenage children. That is an example of what we envisage.

**Willie Coffey:** Who would determine that? Will there be any guidelines in place for a sheriff—if such a case goes before a sheriff? How would the determination as to whether there is a legitimate issue be arrived at?

**Laura McMahon:** I suppose that it would be determined at the point when an individual who feels that they have been discriminated against reports that to Police Scotland, which will intake evidence and report to the procurator fiscal. If the fiscal deems that that is the right procedure in the public interest, they would determine proportionateness before bringing proceedings.

**Willie Coffey:** Thank you. My other question is about the ability of people to use the new protections.

As you well know, minister, when considering the Housing (Scotland) Bill, the committee heard about issues around how tenants can be made aware of and enabled to exercise and enforce their rights. It sounds as though the same issues might confront us in relation to the Renters’ Rights Bill. How do you see us giving support to tenants who may wish to bring issues forward? What support might they be able to receive?

**Paul McLennan:** First of all, important publicity work is required to make tenants aware of the provisions—indeed, not just tenants but landlords. You would hope that the legislation would drive change in the sector anyway and that people would move away from the practice and operate legally, rather than being prosecuted. That is key.

We will obviously use the normal communication channels to make sure that we get that message out there, but we hope that, over a

period of time—or very quickly—the legislation would drive the behaviour change that we need to make sure that people do not have to be prosecuted to stop the practice in the first place.

An important part of the discussion that we had about the Housing (Scotland) Bill was about how we get the message out there about what we are trying to do. This is a key part of the broader message.

We will also engage with landlords associations on what they need to do to get the message out. A small number of people is involved, but one is far too many. We will continue to work with tenants and landlords as we push forward with this, and I hope that it becomes part of the legislation.

**Alexander Stewart:** If convicted, the relevant fine is level 3 on the standard scale, which is about £1,000. Previous private rented housing legislation has increased criminal penalties to encourage compliance. For example, the fine for acting as an unregistered landlord was increased from level 5 on the standard scale to £50,000 in 2011. Is the fine high enough to act as an effective deterrent to such practices, and were other enforcement options considered?

**Paul McLennan:** I will bring in colleagues on whether other options were considered. At the moment, I think that £1,000 is sufficient, although we would obviously continue to assess the legislation.

As I said, one of the key things is that the provisions would, I hope, drive change pretty early on, so that we do not have as many convictions as we would otherwise have. Monitoring will be key, as with any legislation.

I do not know whether Craig Campbell or Laura McMahon wants to come in on what options were considered. I am aware that the fine is based on similar punishments that are already in place. We could look at landlord registration, which we have talked about. Does anybody else want to add anything?

**Laura McMahon:** I suppose that part of the deterrent is that, because it will be a criminal offence, it would have implications for the fit and proper person test that the landlord would have to satisfy to become a registered landlord. There is the financial deterrent, but there are potential implications for a landlord's ability to continue to act as a landlord in Scotland.

**Alexander Stewart:** Was anything else considered when you were looking at enforcement?

**Laura McMahon:** Craig Campbell might like to come in, perhaps.

**Paul McLennan:** Craig Campbell might be able to give a little bit more information.

**Craig Campbell (Scottish Government):** When the provisions were first considered, there was consideration of having a civil offence rather than a criminal offence. That is the approach that England is taking, whereas Scotland and Wales have both adopted the criminal offence route. That route is in line with similar legislation in housing law in Scotland—that is why it was decided to have a criminal offence.

I would note, as Laura McMahon noted, that the criminal offence would obviously be a consideration in the fit and proper person test for landlord registration—that is, whether a landlord remained a fit and proper person. That would equally apply to letting agents who are convicted of such an offence.

**The Convener:** We will now go online and bring Mark Griffin in.

10:45

**Mark Griffin:** I received a submission from Crisis, which argues that the reluctance of some private landlords to let to tenants on benefits stems from the complexity of the benefits system. Do you agree with the Crisis submission? Is there anything that the Government can do to support landlords to be able to navigate the benefits system more effectively and take away that block on letting to tenants who are on benefits?

**Paul McLennan:** I will come on to discuss the submission from Crisis, but Mr Griffin makes an important point. In terms of complexity, the benefit system more broadly needs to be simplified. We will continue to discuss that with Crisis.

In terms of its feedback on the LCM, Crisis obviously has front-line experience of the complexity of the benefits system. It is an important point, but it is much broader than this piece of legislation. Simplification of the benefits system is something that we would need to speak to the UK Government about.

Do colleagues have anything else to add on what Crisis said? No?

In that case, I am happy to come back to you on that, Mr Griffin, but I think that the point that Crisis has raised is much broader than just this piece of legislation. We are always discussing the issue in terms of the Housing (Scotland) Bill and where the benefits system fits in, because it can overly complicate things. I am happy to take the point away and come back to you. Maybe we can take it up with Crisis. You have raised a very good point, but it is much broader than this piece of legislation.

**The Convener:** Thank you, minister, for being willing to be proactive on that. I now bring in Megan Gallacher.

**Meghan Gallacher:** Good morning, minister and officials. Scottish ministers will have the power to set the commencement date for the proposed changes in the Renters' Rights Bill. Briefly, can you give the committee an update on the timescale that the Scottish Government is considering?

**Paul McLennan:** We are working with the UK and Welsh Governments on the bill because it obviously impacts on us all. We would get royal assent first and then move on to commencement. Mr Coffey touched on the key issue of getting the message out and letting tenants and landlords know about the bill.

I do not whether we have discussed the timescales that the UK and Welsh Governments are talking about, but we are trying to move as soon as possible.

**Yvette Sheppard (Scottish Government):** At the moment, we do not have a definite parliamentary timeline for the completion of the bill process. Although the measure is not particularly controversial, there are some on-going discussions about some of the other measures in the bill. Following on from that, we will get an understanding of the timetable and when royal assent is likely to come, as the minister says. We will continue to work with Welsh and UK Government counterparts on an implementation plan.

Obviously, there are benefits to our working in tandem and in lockstep to make sure that the measures come in simultaneously across the devolved Administrations and in the UK. At the moment, there is no definitive date for the measures to come into force, but that will follow royal assent as quickly as possible.

**Paul McLennan:** We would be happy to write to the committee once we have an agreed date.

**The Convener:** That is very welcome. That concludes our questions. It has been helpful to get a fuller picture of your perspective and how you are working with the Renters' Rights Bill—I really appreciate that. I will now briefly suspend the meeting to allow for a changeover of witnesses.

10:49

*Meeting suspended.*

10:50

*On resuming—*

## Cladding Remediation Programme

**The Convener:** Agenda item 4 is an evidence-taking session on the Scottish Government's cladding remediation programme. It arises out of concerns expressed by the committee about the progress that is being made on cladding remediation in the committee's tracker report. In particular, the committee noted that its consideration of the Housing (Cladding Remediation) (Scotland) Bill was subject to an expedited timescale in order to accelerate remediation; however, that acceleration has not materialised and the committee wants to understand why.

We are joined for this item by Paul McLennan, the Minister for Housing, and by Stephen Lea-Ross, director of cladding remediation in the Scottish Government. Before we begin, I invite the minister to make a brief opening statement.

**Paul McLennan:** Thank you, convener. I am happy to come back to the committee to discuss cladding whenever it requests.

I am pleased to be able to update the committee today on our work on cladding remediation since the Housing (Cladding Remediation) (Scotland) Act 2024 was passed in the summer. As we approach the act's commencement, I would also like to set out how we intend to accelerate and broaden our action on cladding in the new year.

As we recognised at the time, the passing of the act in May and the publication of the single building assessment and specification in June were important milestones and laid essential foundations for our work. As the absence of such a statutory framework hampered progress on assessment and remediation in recent years, further work has, significantly, been carried out to allow commencement of the act, which will come into effect on Monday 6 January 2025. The regulations that will bring the act into effect are currently going through its parliamentary process.

As members know, the act's centrepiece is the creation of the single building assessment, which is a statutory process by which the actions that are required to bring a building to a tolerable level of risk can be identified, and around which a range of powers and duties necessary for effective assessment and remediation has been built. The act also gives ministers the power to set standards for conducting such an assessment, and we are on track to publish on 6 January—the day of commencement—the full set of standards, building on the earlier specification.

I was also pleased to be able to share last week with the committee what we intend to be a final draft of the standards. I realise that for the owners and occupiers concerned this has been a deeply stressful time, but I am pleased to say that having the statutory framework in place will now facilitate a much-needed quickening of pace.

I can report to the committee that we have also been taking action in anticipation of the powers coming into effect. In particular, we have drawn from the properties in the original pilot to commission 13 priority single building assessments in circumstances where no developer has been identified and can lead and pay for the assessment and, if required, remediation. I know that the issue of orphan buildings was raised during the debate in the chamber, when the point was made that we had to ensure that such buildings did not fall behind those with identified owners, and I am glad to say that we are taking the issue forward at pace.

We expect the 13 assessments to be available to us in the new year, soon after the powers and duties of the act have come into effect. It will then be for the Scottish Government to consider the recommendations, communicate with the owners and residents affected, and set in train the process of remediation. We have already written to people in those buildings to confirm that the assessments have been commissioned.

In respect of the other entries in the pilot, an assurance process is continuing to ensure that they fall within the scope of the act and to find out whether a developer or other body is in place to take forward assessment and, if needed, remediation. Some of those cases might need to be taken forward by the Government, but in others, the outcome will be clearly communicated to the responsible body and to residents.

All of this means that 2025 will be the first year of substantial Scottish Government-led assessment and, where required, remediation. Of course, we would have wished this to have taken place earlier, but with learning from the pilot programme, the recognition of the particular issues of tenure that we face in Scotland and the development, passing and imminent commencement of the legislation, we are now in the position that we would want to be in, and substantial Government-led action can now proceed.

We have also made good progress with securing agreement on a new remediation contract with the large developers, which have already accepted the responsibility for assessment and remediation of the buildings that they developed. Discussions are at an advanced stage and we hope that, once agreed, the contract will

unlock a further programme of assessment and remediation in 2025.

What next? As we approach the important milestone of commencement, it is essential that we ask ourselves that simple question. I can tell the committee today that on 6 January, the day of commencement, we will publish a renewed statement of our priorities and action on cladding, and I will now give the committee an indication of some of the themes in that statement.

First, we will look to increase the pace of action on cladding, and we intend to do so by introducing two new assessment and remediation schemes beyond the pilot scheme. One will centre on a new open call for buildings that are potentially affected by unsafe cladding, and it will enable owners and residents in buildings that are affected by cladding, but in respect of which no owner or developer has been able or willing to take forward assessment and remediation at their own hand, to bring the matter to the Government's attention and to be considered for Government-led assessment and remediation.

A further complementary scheme will have its own schedule of buildings that appear to be at elevated risk from cladding. With that risk-based approach, we will work with local authorities and fire services to help to identify the buildings that should be prioritised, and I have already contacted local authorities on that basis. We will also consider where responsibilities for taking forward assessment and remediation should lie, including whether the Scottish Government has a part to play. With those complementary schemes, we aim to empower owners and residents to take steps towards assessment and remediation of their buildings and to support and accelerate action where the risks are highest.

I am also pleased to note that last week's draft budget proposed substantial provision of £52.2 million in 2025-26 to support the acceleration of the action on cladding that we are now taking forward. However, as well as increasing the pace of action on cladding, we also want to increase the breadth of action on cladding in 2025. Government needs to be a very active and positive player in such action, but we also need to harness the skills, knowledge and capacity of others if we are to have the greatest effect. That is reflected in our intention to work with partners to identify the highest-risk properties, as I have already described.

More generally, though, we need to make action on cladding a collective national endeavour, where all parties are asked and enabled to play their part. That is particularly relevant in the area of social housing. If people are to be protected in the way that we want them to be, we need to work even more closely and co-operatively with local

authorities and registered social landlords to make sure that the necessary actions are being taken, seeking assurance where appropriate, but also being prepared as a Government to play our part where needed.

For example, with properties that are partly owned by a registered social landlord but in which there is a mix of tenure, including private owners, the Government needs to be part of a solution and a way forward. Similarly, there might be properties that are wholly owned by a registered social landlord but it is not in a financial position to be able to take forward remediation. The Government needs to be prepared to consider funding issues on a case-by-case basis.

Our plan for 2025 will therefore include work to engage with local authorities, RSLs and other local partners to identify and prioritise buildings at risk from cladding, to seek assurance of action where that is appropriate and to provide help where it is needed. I have recently written to a range of local representatives to set the process in train, and as with all our work, I will keep the committee up to date with progress.

Finally, on communications, I would like to return to those who are the most important in these discussions: the people who live in the buildings affected by potentially unsafe cladding. I know that the issue of communications has been raised by the committee on a number of occasions, and I have already described how we will set up a route for people in that situation to raise their concerns with us through a new open call.

Beyond that, I commit to maintaining and expanding further the new approach to communication that we have taken forward in recent months, with a new monthly newsletter aimed at residents and updated material on the Government website, including frequently asked questions. There are also the duties on building-specific communications, which will apply when assessment and remediation is taken forward under the act. Stakeholders have told us that our communications have not been good enough; I have acknowledged that and we are taking action in response.

I hope that this has been a helpful update for the committee and a useful indication of our intended next steps. I look forward to discussing the issues with you.

11:00

**The Convener:** Thank you very much for that opening statement, which was actually quite helpful, as you touched on a number of the areas that we have questions on. However, we might want to dig deeper into those matters.

I want to open with a couple of questions on why things have taken so long with the single building assessment. As you will understand, stakeholders from whom we have heard are feeling a certain level of frustration. The single building assessment programme was launched in March 2021, but the standard for conducting a single building assessment will, as you have indicated, come into force only in January 2025. Why has it taken almost four years from launching the assessment programme to establishing standards for conducting such assessments?

**Paul McLennan:** First of all, I should say that work has been carried out in those four years, and I will come to the timeline and why we have got to where we are with the cladding issue.

I should also highlight the fair wee bit of work carried out by the Grenfell working group, which I chair. In 2021, there was a fire risk advice note on external cladding systems, which was updated in 2022, and that work fed in and was used to test the Scottish advice note, which I will refer to as the SAN instead of saying it in full all the time.

One of the key things at the start of the process was to meet developers. I had a number of such meetings, and when the SAN was discussed, it was felt to be far too broad, and that it needed to be more specific with regard to what we were looking to achieve. As a result, there were discussions with officials and me on how to make the SAN not only as efficient as possible but as extensive as it needed to be in its focus on some of the issues, and SAN 9980 was then agreed as the basis for that work.

When it came to the single building assessment, one of the key and essential things was to ensure that developers were happy with it. After all, if we did not have an SBA process that everybody agreed with, it would be really difficult to take these things forward, and that work took a period of time.

Therefore, the standards have been in place for some time, but what we have been doing is building on them and ensuring that they are focused and homing in on what we need to do in the SBA process. Discussions have been going on, too. A system has been in place, although it has been more specifically about cladding. It is not that the issue has just been sitting there for four years; we have been developing the system and working in partnership with the developers in that respect. That is the key point that I want to get across, and I should add that things will continue to develop as we work with the developers.

**The Convener:** To paraphrase, then, a process has been taking place over four years, with a number of fire advice notices being produced and various other bits and pieces happening, and there

have been meetings with developers to get to the point where publicly available specification—or PAS—9980, which I think you meant, could be agreed.

**Paul McLennan:** Yes. That was seen as the basis of things, but there were other specific aspects that were agreed with the developers, who were feeding back into the process. It was all about listening to what they were saying and trying to amend the process in light of that. We had a number of meetings over that period of time, but that formed the real basis for taking forward the assessments.

**The Convener:** Thanks. I will continue on my theme of frustration around why it has taken so long for things to happen. The cladding remediation act received royal assent on 21 June 2024, following expedited consideration by this committee, yet the standard for a single building assessment will not take effect until January 2025. Can you explain why that took six months, particularly given that the standards run to only three pages?

**Paul McLennan:** To build on what I said before, there were a number of discussions and meetings. The developers would come back to us, and we would go back to them—there were a number of occasions when that happened. One of the key issues concerns the addition of elements around audit and compliance. If you recall, that issue was raised by a number of members during the debate around these issues. People wanted to know how we could ensure that what we are doing is compliant and auditable, and wanted reassurance that we could have a look at what was going on at any particular point.

The issue just concerns the discussions and the to-ing and fro-ing that I mentioned in my previous answer in relation to ensuring that we and the developers were happy with what had been agreed.

Stephen Lea-Ross might want to add something about the technical discussions that he undertook with developers.

**Stephen Lea-Ross (Scottish Government):** I will make a couple of brief points. The standards themselves will comprise both the single building assessment technical specification and the standards document that was communicated to the committee last week in draft form. The technical specification itself was published on 21 June—the day that the act received royal assent. The reason why we published it on that date was to allow people involved in the industry to familiarise themselves with the methodology that is contained in the assessment and to allow Government to proceed with commissioning

Government-led SBAs in anticipation of commencement of the legislation itself.

As the minister points out, the remainder of the standards document also contains provisions in relation to audit assurance and compliance. We have been required to informally consult on the contents of that document, particularly with developers but also with broader stakeholders, to ensure that it meets expectations in relation to the audit and assurance process. I have had to tease out some particularities in relation to the fact that there is assurance built into the SBA methodology itself in relation to peer review, and on top of that we are layering an audit process that would allow us to maintain the integrity of the cladding assurance register.

Those things in tandem will form the basis of the standard, when it is published on 6 January—the date of commencement. Importantly, the technical method for assessment has been available since June and, although entries will not be created on the register until January, it is possible to take forward an SBA at this point.

**The Convener:** Thanks for that explanation of processes. However, I think that the fact that it has taken four years, and now this additional time, is concerning, given the safety issues for people who have to live in the buildings.

**Paul McLennan:** On that point, it is important to note that part of the reason why we brought in the legislation was to allow us to move more quickly on the SBA process and to discuss issues around that. I acknowledge that the period of time to get us there is longer than I would have liked. When the bill came in, it gave us more clout to try to move things forward. Right from the start, I said to the developers that there would be very much a hand-in-hand relationship, as we needed to make sure that they were happy with what we were proposing and vice versa. More important is that that will give the people who live in the buildings confidence that the process is being carried out, is auditable and is at the level that it needs to be at. That is what took the time.

The bill gave us the ability to move things along more quickly. We now have a process in place that we, developers and tenants can see is auditable and is in a position for us to move forward with, and we can proceed at a pace that everybody is agreed on. However, I acknowledge that four years was far too long.

**The Convener:** I appreciate that acknowledgement and I think that some of our other questions might help to surface some other reasons why we are concerned. I will bring in Willie Coffey.

**Willie Coffey:** Good morning, again. The standards document tells us that all the single

building assessments that have been carried out to date have to be done again. Why is that?

**Paul McLennan:** Stephen Lea-Ross touched on some of the points. There has been important assessment work going on—some developers have been in place and have been doing that anyway. One of the key things is to almost top and tail that process by looking at what else needs to be done in terms of assessment. There is existing documentation that could be used, but we need to get it up to the standard that we have agreed with the developers and signed a commitment on—that is incredibly important. That does not mean that the whole process will have to be done again. There will be some existing work that has been carried out that can be used as part of that process.

We have had extensive discussions with the developers; we have not made it to this position without speaking to them. We have looked into what they have been doing over this period of time, what learnings they have from what they have done and what additional work needs to be done. Those discussions on-going.

I will ask Stephen Lea-Ross to add anything that he thinks is relevant with regard to the technical points.

**Stephen Lea-Ross:** As the minister has outlined, the fundamental point is that, where a pilot assessment exists, it is not necessarily the case that a full intrusive assessment would need to start again from the beginning of the process. What we require, for maintenance of the register, is that any existing pilot assessment be reviewed by a competent fire risk assessor to ensure that the components of that assessment fully comply with the methodology that is set out in the single building assessment, which ensures that every building that is then entered under the register has been the subject of the same form of assessment.

In many cases, where a pilot assessment exists on the basis of the SAN, that will involve little work and will, effectively, be a bureaucratic exercise. There might be some instances in which aspects relating to the external wall assessment require a little more investigation but, fundamentally, the process does not require the assessment to start again; it is designed to ensure that all buildings have been assessed to the same standard. In the single building assessment specification document, we set out the existing pilot assessments that a fire risk assessor can draw on in order to make sure that that then quickly becomes a competent SBA. We need to ensure that the end-to-end process has integrity and that everything has been assessed to the same standard in order to maintain the integrity of the register itself.

**Willie Coffey:** Thank you. I have a brief follow-up to that. Suppose a single building assessment is carried out now, but it does not look like work will proceed until a year has passed, do you have to do the single building assessment again at that point? How long is the SBA valid for in terms of allowing you to remediate the building?

**Stephen Lea-Ross:** As part of the SBA methodology, the fire risk assessor will give an indication of the timeframes in which each of the specific recommendations that are set out in relation to the internal fire risk assessment and the fire risk assessment of the external wall are to be conducted. If those were to lapse, it may be that further assessment would be required. However, our expectation would be that, for any building seeking an entry on to the register—an entry is created at the point when the assessment takes place—further onward remediation works would take place within the timescale specified.

There may be some circumstances in which that is not possible; for example, where materials require to be sourced that are not readily available, or if there were to be an issue within the market. Such a circumstance would not necessarily require a full assessment to be undertaken.

However, we would want to ensure that the fire risk assessors maintain oversight of the overall level of risk within the building and that, therefore, if it were required, we would be able to take forward interim measures, pending the completion of remediation works. Those interim measures are all designed to bring down the level of fire risk in the building. That might be, at the high end of the scale, things such as waking watches and fire alarms, and, at the lower end of the scale, interim measures around removing obstructions, decanting cars from underground car parks and so on.

The methodology includes timeframes within which specified remediation works are to have taken place.

**Willie Coffey:** Thank you for that further detail.

You will be well aware that, during the committee's consideration of this issue, we were interested in whether there are sufficient skills to enable the assessments to take place. That was quite a concern and probably still is. Could you give the committee a bit more confidence about whether we have enough surveyors, fire engineers and so on to carry out the assessments that will be required to take us forward at the pace that you say?

**Paul McLennan:** I am sure that, when I was on the committee before I became a minister, I asked the same question. It is very relevant. When we were doing the previous assessments, that is

something that we have not had an issue with. From working with colleagues across the UK on Grenfell, I know that that is a very relevant issue in that regard, as well as cladding. However, at the moment, all the Governments are quite confident that the skills are there. The sector is beginning to skill up, realising the work that is required. We have had numerous intergovernmental meetings, and officials have had numerous meetings on that particular point. I have a meeting coming up with my UK Government colleague, and we will be asking the same thing. However, we have been reassured that there is a sufficient skills base at the moment. The sector recognises the need for that skills base, and is taking on more people.

At the moment, we are confident about what we have in Scotland and across the rest of the UK, but we are aware of the increased demand following the Grenfell inquiry and the cladding work both here and across Britain. We will continue to keep an eye on the issue, as it is incredibly important. We do not want any delays as a result of a lack of the availability of skills. However, at the moment, I am confident about the position.

Stephen Lea-Ross might want to add to that.

11:15

**Stephen Lea-Ross:** As part of our putting in place of appropriate frameworks for taking forward Government-led remediation, we have taken a number of steps to manage and ensure the sufficiency of skills within the market. For example, we currently have 12 suppliers as part of our framework for commissioning SBAs. That allows us to commission from those suppliers assessments as and when the need arises. We also use existing Crown commercial services framework contracts to ensure that we are ready to go should we require to put in place provisions for urgent interim measures, and, similarly, we use Crown commercial services frameworks for onward remediation works.

We are in constant engagement and dialogue with the market, and we keep a watchful eye on the market, as it is adjusting as developers and we commission activity and put things out to tender. However, as I said, we have taken all the pre-emptive steps that we can in terms of using existing Crown commercial services frameworks to tee up availability to enable work to be taken forward.

**Willie Coffey:** My next question is on the UK fire safety standard PAS 9980, which you mentioned earlier, Paul. There was a huge discussion at the committee about why we did not just immediately jump to embrace that at the time and incorporate it in the developing technical

specification. Did you say earlier that you were discussing with developers the applicability of that standard to the Scottish circumstances?

**Paul McLennan:** We were talking more about what we needed to look to add on in that regard. PAS 9980 was established as the foundation to enable progress to be made quickly with developers. It was concerned more with the internal fire risk assessments and those for external walls, in relation to which there are slightly different procedures in Scotland and England. That was part of the discussions that we had to have with the developers and technical experts. There were early discussions to establish and agree on PAS 9980, and there was work around additionality. Of course, the fire risk assessment, in particular around the external walls, was important. There were discussions on the technical element, and that was moved on.

As I said, PAS 9980 was established pretty quickly as the standard that action would be based on, with the understanding that other things would need to be added to that.

Again, Stephen Lea-Ross can say more about the technical discussions that were held. However, essentially, there was a need to add a little bit more to PAS 9980 to make it more applicable to Scotland.

**Stephen Lea-Ross:** Yes, essentially, the fundamental decision point for us in relation to PAS 9980 was the switch from the existing SAN to PAS. I suppose that the debate with industry and with stakeholders in the broader market was around whether that was acceptable in the context of the previous SAN articulating a tighter binary safe or unsafe outcome and the move to the tolerable risk standard as a fundamental underlying basis. Operationally, that has been demonstrated to be the only practicable solution.

As the minister pointed out, in addition, we then had to technically overlay a mechanism—which is set out in the single building assessment technical specification—for undertaking an internal fire risk assessment in addition to the assessment of the external wall. That is because, in private multi-residential buildings, there is not currently a compulsory internal fire risk assessment. For the assessment itself to be holistic, and noting that there can be issues within a building that then further exacerbate the fire risk that is created by potentially unsafe cladding, part of the process that we then had to go through in coming to the method that is currently set out within the SBA involved ensuring that we had those two elements in place and then working out the interplay between them for our purposes and for the Scottish context. That has been a key component of the underlying discussions with industry and coming to that standard latterly.



**Willie Coffey:** So, we have a variability scale rather than a safe or unsafe outcome.

**Stephen Lea-Ross:** Yes. The fundamental underlying standard is that there is a tolerable risk. It is a question of judgment, and it is for the fire risk assessor undertaking the assessment in accordance with the methodology to determine when a building would be a tolerable risk, taking into account the recommendations that they set out in the context of the two assessments that are required for the single building assessment—the internal fire risk assessment and the fire risk assessment of the external wall.

**The Convener:** Mark Griffin, who joins us online, has a couple of questions.

**Mark Griffin:** Minister, is the cladding assurance register operational? If it is not operational, will you outline progress to date? When might it be available?

**Paul McLennan:** It is not yet operational. I know that the committee has raised the issue previously, and it was raised during the passage of the bill. I am glad to announce that it will be operational on 6 January. That is an important step forward. We will communicate with the committee on that around 6 January.

**Mark Griffin:** My other question is about the Scottish safer buildings accord. When will agreement be reached with developers on that? Is there a date? Is there anything outstanding on it that needs to be resolved?

**Paul McLennan:** That comes down to the technical discussions that are going on. I have met the developers on the issue, and I mentioned that I would be available for discussions at any time. About three or four meetings have taken place already. We are now down to the point of agreeing the technicalities. Without prejudice to any discussions, I am confident that we will have something early in the new year on which we can write to the committee.

Our approach is very much like the one that we used for the discussions on the SBA. We have been working hand in hand with the developers, and that has been the process over the past number of weeks and months.

I will bring in Stephen Lea-Ross to cover the technical aspects of the discussions.

**Stephen Lea-Ross:** As the minister has noted, we are actively and formally negotiating the contract with nine major developers that previously signed the accord. We are using a twin-track approach. We are negotiating by correspondence on legal points, then negotiating in person on the substantive points. We will meet this week and again next week.

Again, without prejudice to those negotiations, the minister is right that we hope to conclude that process as quickly as possible in the new year. We sent the published draft remediation contract to those developers on 24 September. One thing that has intervened since has been the publication of the draft standards. We will be reading those into the contract, and it has been a requirement that we engage with the developers and their legal representatives on the content of the draft standards and work through with them the process of how they will be read into the contract.

We have also been picking up with the developers a suite of practical points about the operation of the contract in relation to the register, and further, the key issues for them in relation to the extent of their liability under the contract.

Insofar as is possible and suitable for the Scottish context—this is partly because it is a requirement of aligning with the developers and with the contracts that are in place elsewhere in the United Kingdom—we are mirroring the outline liability that is in place for the English contracts as well.

As I said, we hope to have that over the line as early as possible in the new year. The developers are being very proactive in working with us to get that over the line.

**Mark Griffin:** I had previously asked about how small and medium-sized enterprise developers were going to be treated, and talked about the turnover thresholds that exist at UK level and the exemptions that are in place there. Minister, you spoke about treating developers almost on a case-by-case basis. Has any consideration been given to particular developers that have high exposure given the size of their business? Are there any concerns about the liabilities putting developers out of business? What discussions have you had about putting in place a similar scheme to support SMEs and for developers that might be swamped and put out of business by the measures?

**Paul McLennan:** That is an important point, Mr Griffin. We talked about that issue during the debate in the chamber. I have had individual discussions with developers about the ability to pay. The last thing that we want is to put any business out of action.

You are right that that might be due to a number of reasons. One reason is exposure and another is previous ownership—we have seen businesses being bought over or whatever, so there are complexities to do with that. We have recognised complexities in each of the businesses that we have talked to.

We cannot go into every business, but we are trying to work with them as closely as we possibly can to make sure that the buildings are

remediated. With regard to the pace of that work, that is where the flexibility around some of the funding comes in and we are speaking with them about how we can work with them on that particular point.

You are right—that is something that we have to recognise. However, we can do both. We can make sure that the companies survive and have an ability to grow; we can also make sure that the buildings are remediated.

I have had a number of meetings about that. Perhaps Stephen will want to speak to the discussions that colleagues have also had at the technical level. Stephen, do you want to add anything on the ability to pay and on discussions that we have had with developers on that point?

**Stephen Lea-Ross:** Briefly, on the on-going negotiations on the contract, at this point, we are not asking any developer that does not have operating profit of more than £10 million in specified years to formally sign the contract. The fundamental underlying purpose of the contract would be for the developer to assume 100 per cent liability in relation to remediation. It is for that reason that we are not asking other SME businesses to come forward and sign the contract at this point. We will deal with assessment and remediation differently for those enterprises. As the minister has already outlined, we will remain in discussion with them.

For the purposes of getting the contract over the line and the remediation programme as things stand, we are, in effect, aligning with the position that has been taken forward in England. As the minister has outlined, we are keeping under review our need to engage with SME developers.

**Paul McLennan:** As Stephen said, that very much follows the procedure in the rest of the UK.

**The Convener:** Thanks, Mark Griffin, for asking that bit of detail about SME developers, which was very helpful. I will now bring in Alexander Stewart.

**Alexander Stewart:** Minister, the Scottish Government has allocated £41.3 million for cladding remuneration. There is a vast difference between the amount that has been allocated and the amount that has been spent. In quarter 2, only £1.16 million was spent. Why is there such an underspend? How have things been allowed to get to this stage? What will happen to any underspend?

**Paul McLennan:** That is to do with a number of things. We have talked about the building blocks being put in place. One important part is to get in place the SBA process, because the buildings first need to be assessed before being remediated. That has taken slightly longer, but it is important

that we get right the SBA process. If we do not get it right, that will stock up problems for the future.

At the moment, the spend is around £5 million, and it is estimated that it will be around £12 million. We, including Stephen Lea-Ross, have sat down and talked about the budget that is required. I am very confident about the pace of spend increasing next year, because we now have in place the building blocks. We have had discussions and we have partnerships and agreements with the developers, and we are not too far away from agreeing the remediation contract. All that will increase the pace of spend.

Have things taken a little longer than expected this year? Yes, they have, but it is important that we take the proper time for the SBA process, because it is quite literally the building block of everything else that we need to put in place.

I am confident, given what we have laid out previously and for this year, that the pace will quicken. I am quite happy to come back next year and to be held to account on the point. With a lot of the uncertainties that we had previously no longer there, the legislation in place and the agreements in place with developers, we can really quicken the pace.

Stephen, do you have anything you want to add on that particular point?

11:30

**Stephen Lea-Ross:** The only material point that I will add is that, when we have sought capital allocations to the cladding remediation programme from the Scottish Government budget, up to this point we have had to bid for those allocations on a precautionary basis. That is partly because, until a building assessment is undertaken on a building, we do not necessarily know what the extent of the remediation costs for that development will be or, indeed, what the timeframe over which remediation will need to take place will be, as that will depend on the specific findings of the SBA report. There has been an element of, if you like, precautionary allocation when it comes to the cladding remediation programme. That is to ensure that we are not in a situation in which funding would not be available to take forward necessary or urgent works in a building.

As the minister has outlined, in practical effect we have needed to put in place those building blocks before significant assessment and remediation work can take place. Moving forward and looking ahead to 2025-26, we have continued to take a precautionary approach when seeking allocations through the draft budget. Another thing that we have done as part of that bidding process is to seek to ensure that we can take forward as much activity as possible with regard to stepping

up the pace on assessments. We are also assuming that all the buildings that are undergoing an SBA will require significant remediation works, so we are ensuring that funds are available to cover that, although that might not be the case in practice. The other thing is that we are giving consideration to how funding might be allocated across different funding streams in relation to the broadening of pace that the minister outlined in his opening remarks.

**Alexander Stewart:** People who are residing in some of these buildings are anxious and in fear. We know that a large number of them that require support, and that the cladding still needs to be removed. What contracts has the Scottish Government agreed with professional services companies and cladding contractors to deliver the cladding remediation programme now that legislation and standards are in place? There needs to be a step change to ensure that we can deliver on the work.

Daily, individuals are anxious about and in fear of what could happen to the building that they are living in. We need, and they need, to see a step change on delivery. As far as I can see, things have stalled to some extent. That is not helping to allay their fears and anxiety in any way, shape or form.

**Paul McLennan:** There are a number of things to say in response to that. On step change, earlier on, we set out what we are doing. If we go back to the previous year, we had to get in place the legislation because, without that, there were some things that we just did not have the ability to do. Following that, one key thing was building on the partnership with the developers, and it was really important to ensure that we were all in agreement about work that was to be carried out. The work was carried out to that level, and could be inspected and looked at by the tenants. For example, if they wanted an independent assessment of it, that was carried out. That was an important part.

We are just about there with the remediation contract. That is an incredibly important part, which is about tying developers in legally and setting out exactly what they are liable for and what the Scottish Government's part in that is.

The other key thing, which I acknowledged at the start of the meeting, is communication. We need to communicate, even if there is not much happening—for example, we might set out what we are working on and that it might take three months. If there is an assessment process or a discussion going on, we need to ensure that people know that, because if there is a void people—quite rightly—will be worried about what is going on. The communications part needs to be picked up as well.

A lot of the building blocks, which have been put in place over the past number of months, will get us to a position that will enable us, when commencement starts at the turn of the year, to really move quickly. You are right—it needs that step change. I acknowledge that we need that, and I said that as part of my comments.

Communications is an incredibly important aspect. We must tell people what is going on. I have had a number of meetings with residents in different parts of Scotland, to try to explain that. We will always be open to doing that.

I hope that what we have laid out earlier today shows that we have made a step change on delivery. We are also looking at things to ensure that we extend the breadth of that. I have met residents. I totally acknowledge that it is an extremely worrying position for them. You have to understand that they are living with that every day. We need to move, and the measures that we have laid out will quicken the pace of delivery.

**The Convener:** I have a couple of questions that are about comparing what we have been doing in Scotland with what is going on south of the border. In England, cladding remediation has been completed on 1,412 buildings over 11m high that were known to have potentially flammable cladding. The Scottish cladding remediation programme has seen work begin on five buildings and completed on one. The committee is interested in understanding why Scotland is lagging so far behind England on remediation.

**Paul McLennan:** I acknowledge what the UK Government has been doing in England and where it is at. Unlike England, we needed to put a statutory framework in place to allow remediation work to be undertaken, and the safeguards that I mentioned are important. The tenure system is different as there is a lack of a single freeholder for a property.

I acknowledge where England is and where we are. We need to quicken the pace. I acknowledged that during the debate. The reason why we introduced the legislation was to address that very point and to make sure that we have what we need in place legally. We needed a statutory framework, given the different tenure system in Scotland, and that has delayed things.

I acknowledge that we need to quicken the pace. I said that during the debate and I have said it today as well. However, as I have set out, we are learning from the pilot programme how we can quicken the pace going forward, and how we can broaden what we are doing. I am confident that, given what I have set out this morning, we will see the pace quickening quite considerably.

**The Convener:** Okay. Thanks for that.

So that colleagues are aware who will come in to ask questions and when, and to create a bit of relaxation in the system, I note that I have another question, after which Willie Coffey will come in. I will then bring in Mark Griffin and Megan Gallacher.

Minister, please forgive me if you have already answered the question that I am about to ask. The UK Government published a remediation acceleration plan for England on 2 December 2024, which includes a commitment to complete Government-supported remediation of buildings that are 18m or higher by the end of 2029. Does the Scottish Government intend to set a date for completion of that type of remediation in Scotland? If so, when might that be?

**Paul McLennan:** We have not set a date yet. I do not think that the UK Government has set a date for every type of building, either. The UK Government minister who is responsible for cladding wrote to me about what they are doing, and we are in the process of trying to have a discussion around that. I say again that we are working very closely with the UK Government on the Grenfell issue. Obviously, there are related issues.

On what we need to do, I talked about some of the work that we are doing on broadening. We will continue to monitor that as we go ahead, but it is not something that we are doing at this particular moment in time. One of the key things is that we are required to report to Parliament every year. As you know, I am also happy to come to the committee at any stage to discuss cladding. I have made that offer before and I make it again.

**The Convener:** Given that the issue is something that we are tracking, we might take you up on that.

**Willie Coffey:** Minister, you mentioned communications and the issues in that regard that have been raised with the committee in the past couple of years. You have given the committee some assurances about the communications improving. Do residents get information from any source other than the Scottish Government? Do the builders who built the buildings that may be subject to this work communicate regularly or otherwise with the residents? When will we see some tangible evidence that residents are getting the information that they seek?

**Paul McLennan:** We are starting to see that now. I acknowledged that issue, which was discussed during the passage of the bill. Over the period, we have tried to engage with individual residents and a group of residents on what we need to do. I mentioned the newsletter, which is incredibly important. Another key thing is working with factors. How do we make sure that we are

engaging with them and getting the message out as best we can?

The communications have improved and they will continue to improve. I understand from the evidence that was taken before that there was an issue, but we are seeing an improvement. It is a really important point. I have acknowledged that we need to do better on communications, but I think that we are doing so now.

Stephen, do you have anything to add?

**Stephen Lea-Ross:** Specific terms and obligations are being written into the contracts that will require developers to undertake best practice communications with residents and home owners as they go through the process of assessing and then remediating buildings. We will require evidence of that in relation to any request that a developer makes for ministers to exercise their powers under the legislation.

As Mr McLennan outlined, we now have in place a routine process to update residents and home owners, who can choose to sign up to our newsletter. It is issued quarterly with a monthly update. That gives them updated information on where we are in the programme, outline information on which SBAs and things have been commissioned, and links to the frequently asked questions information.

In addition, for the SBAs that we have already commissioned, we have gone through an extensive process of writing via factors or residents associations to all individual home owners and residents and, similarly, writing to MSPs and local authorities. We are trying to broaden out the suite of communications and we expect that best practice to be replicated by others who undertake remediation work, be they developers or other building owners.

**Willie Coffey:** Is that access available for people now?

**Stephen Lea-Ross:** Yes. We have an edition of the newsletter up, along with two monthly updates. They are published on our website, but we also have a Mailchimp account that people can sign up to in order to be proactively provided with that information.

**Paul McLennan:** In addition to that, I have had numerous meetings with MSP colleagues who are representing their constituents. I have offered those meetings to anybody who thinks that they would be useful, and they have taken place with a number of colleagues and residents.

**The Convener:** It is good to get that detail on communication and the concerted efforts that you are making there. So that we remain on the theme of cladding, I have reshuffled the order of

members' questions. Meghan Gallacher will be next.

**Meghan Gallacher:** Good morning. Minister, a number of weeks ago, I submitted a written question to the Government to ask whether the Government would provide an update on how many buildings have been identified as having flammable cladding. The response that I received from you states:

"We have previously estimated that around 350 high-rise and up to 500 medium-rise buildings across Scotland may require assessment and some level of remediation, across all tenure and building ownership types.

We continue to use this data as an outline planning assumption. However, we are working through a number of routes to enhance both the quality and efficacy of our estimate of potentially affected buildings in Scotland."— [*Written Answers*, 25 November 2024; S6W-31234.]

That suggests to me that you still do not know how many buildings are impacted with cladding across Scotland. That is really concerning. How can we accelerate the programme of cladding remediation when we still do not know how many buildings have cladding?

**Paul McLennan:** I will try to address that in a number of ways and will then bring in Stephen Lea-Ross. The pilot buildings were identified, and the risk criteria are important. I talked about the breadth and what we need to do with RSLs and local authorities. They should have a list of buildings that fall into the category. The discussions that we will have with RSLs and local authorities will go into that in more detail. Local authorities have a responsibility to make sure that they have the data in place. In the discussions, we are trying to home in on that particular figure. Stephen Lea-Ross can say more about where we see that going.

I also mentioned the open call. If there are buildings that have not been picked up, what do we do about that and how do we take that forward? As part of the pilot programme, 107 buildings were identified, and that programme enabled us to learn, to pick things up and to deal with those that are most at risk.

Stephen, do you want to add anything on the open call, on local authorities and RSLs, and on how we intend to take that work forward? I return to my point about increasing the breadth.

11:45

**Stephen Lea-Ross:** I have a few practical points. First, it is not possible, prior to an SBA being undertaken for a building, to confirm that it has potentially flammable cladding. That is not just the position in Scotland; it is the position for the assessments across the UK. Programmes across the UK are making planning assumptions about

the outline number of buildings that may require assessment and/or remediation across medium and high-rise, and those planning assumptions are part of how we build the delivery of our programmes.

As the minister outlined, we therefore feel that we need to ensure that we have both proactive and reactive identification of buildings so that, if anybody is at any point concerned about the risk of cladding in their building, they can come forward via the open call and seek an SBA.

We know from work that has already been undertaken that the high rise inventory does not give categorical assurance that given buildings have flammable cladding. Where there are buildings that we should prioritise for assessment on the basis that we understand that they may have, for instance, high-pressure laminate or aluminium composite material cladding, we will look to prioritise them for assessment as part of the process that the minister described for working with local authorities, so that we take a risk-based approach to bringing down the risk where we suspect that there is such cladding in high-rise and medium-rise buildings.

The reason for having that open call approach is that it is not possible from public records data alone to categorically determine that a building has potentially flammable cladding on its exterior. We also know from the findings of the Grenfell inquiry and elsewhere that we need to have processes in place for situations where the material on a building differs from the material that was specified in building warrants and so on, in order to capture where there has potentially been mischief in the system.

We hope that that twin-track approach of proactive risk management and reactive identification will allow us to progressively reduce the risk as much as possible in the stock that potentially has flammable cladding. I do not think that anybody could categorically determine at this point how many buildings are affected. That is why we have to work on the basis of reasonable planning assumptions and the total building stock within the built environment across the country.

**Meghan Gallacher:** I take your point, but this goes back to the speeding up of processes. You could achieve the work on the 500 buildings and the 350 buildings that are identified in the budget that you have allocated, but then more people could come forward with concerns about cladding on their buildings. How long do you expect this to go on for? Will funding be available until all the identified buildings have been remediated? It will not be a quick fix if you are relying on people to come forward with information for assessments to be carried out. I am trying to get an idea of the scope and the scale of the work, because it will

not be a quick fix or a speedy process, as you highlighted earlier.

**Paul McLennan:** I have written to local authorities and we hope to meet as soon as possible—it will probably be very early in the new year—to try to identify that and firm it up. The same applies with RSLs. There is immediacy around this work. They will have existing information that we need, and that is an important aspect. Stephen Lea-Ross mentioned the information that we have, but in some cases more thorough investigation will be needed, rather than just the desktop information that we have. In setting out the budget this year, we tried to estimate what is needed.

As I think I mentioned at the time, we have talked about the consequentials coming through from the UK Government. The money has been spent as quickly as possible this year. If there is demand to spend more money this year, I will take that up with Government colleagues. However, we need to know what we need to know, if you know what I mean. That is an incredibly important part of it.

In addition, discussions are continuing with developers about the levy. They need to play their part in that regard. That has been well discussed and it is well established. We are in consultation with them at the moment. Although we have talked about the breadth, it is also about trying to home in and determine the timescales. We will come back to the committee once we have had the discussions with the local authorities. RSLs are slightly different because they do not have an umbrella group, but we are also engaging with them.

The work is very much based on risk-based assessment of where we are and identifying the most important parts. If risks are identified, we will put in place mitigations to make sure that they are lessened.

Stephen, do you want to add anything on that?

**Stephen Lea-Ross:** That was a pretty substantive answer. The only thing that I have to add is that we have cross-referenced our recent planning assumptions against programmes elsewhere in the UK. Proportionally, we have a broadly similar built environment profile relative to the size of our population, and we expect the completion of our remediation programme to take roughly the same length of time as programmes elsewhere in the United Kingdom. Once remediation requirements have been identified in a building, the remediation in complex developments can take three to five years. We know that from work that has taken place in significant developments in Glasgow. That is broadly why the timescales are as they are.

**Paul McLennan:** The annual report can cover that as well. Meghan Gallacher was quite right to ask the question. This time next year, we should be able to come back and say, “This is what we have done with local authorities, RSLs and so on, and this is how it has developed”. We need to increase the breadth of the work for the reason that was mentioned in the question. We need to identify where the risks are, mitigate them and get on with moving the SBA process on. I think that the committee will quite rightly ask the same question next year.

**The Convener:** Meghan, I appreciate your digging into those points. Finally, I bring in Mark Griffin to ask a supplementary question.

**Mark Griffin:** I am hoping to abuse my position as a committee member and ask a broader question on building safety. I visited a group of residents in Bathgate and they showed me the extent of reinforced autoclaved aerated concrete in their properties. They gave me a really fantastic warm welcome, and they would be more than happy to extend such a welcome to the minister if he can talk to them about the issues of RAAC.

The issues that they raised about RAAC are really similar to the issues that we are talking about with regard to cladding. They are to do with access to finance, access to insurance, access to skills to assess properties and potentially replace RAAC, difficulty with selling properties, and communication from local and national Government. Is the minister in a position to update the committee or Parliament on RAAC issues that are affecting residents, as he has committed to do—and has done—on cladding?

**Paul McLennan:** I am happy to do that. A number of local authorities have been impacted, including West Lothian Council, Aberdeen City Council and Clackmannanshire Council, and there have been impacts outside housing as well.

Your point about finance and insurance is important. Those are reserved matters, but we have had discussions about them. In Aberdeen, we have had UK Finance involved in discussions to try to give advice to people who own their properties, and the Association of British Insurers has also been involved in giving advice.

Each local authority will have a different mix. Aberdeen has a mixture of private owners and council tenants. I think that parts of West Lothian will be the same, as will Clackmannanshire. The local authorities will be assessing their options. We are in discussions with all three of them and we will continue those.

In discussions with the previous UK Government, it said that, on RAAC, the amount that would be spent would be what was required. We have written to the new UK Government on

that and I am still to hear from it formally on that point. We will need to sit down with it and have discussions on that.

I am aware that the Citizen Participation and Public Petitions Committee is considering a petition on the matter, and I suspect that I will be asked to appear at that committee at some stage, but I do not have a date for that.

We continue to engage with local authorities on RAAC. I will raise the issue when I meet my UK Government colleague, but we still await a reply from the UK Government on financing that work. We will continue to push it on the matter. As I said, I have met the local authorities on that. If Mr Griffin wants to write to me about visiting others, I will be happy to consider that.

**The Convener:** That is another area that we are keeping track of, so we will be in touch on it.

I thank the minister and Mr Lea-Ross for their evidence, which we very much appreciate. I will suspend the meeting briefly to allow them to leave the room.

11:56

*Meeting suspended.*

11:57

*On resuming—*

## **Subordinate Legislation**

### **Building (Scotland) Amendment (No 2) Regulations 2024 (SSI 2024/327)**

**The Convener:** The next item on our agenda is consideration of a negative instrument. Members will note that we received a number of submissions from medical professionals highlighting the potential health impacts of reversing the ban on bioenergy. I am grateful to them for taking the time to submit their views to us. Given the comments in the submissions, I am minded to arrange a session to put those points to the minister. Do members agree with that proposal?

**Members indicated agreement.**

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

11:58

*Meeting continued in private until 12:25.*





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