



The Scottish Parliament
Pàrlamaid na h-Alba

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

AGENDA

6th Meeting, 2009 (Session 3)

Tuesday 21 April 2009

The Committee will meet at 10.00 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take item 2 in private. The Committee will also decide whether to consider in private at future meetings its draft report.
2. **Review of SPCB Supported Bodies:** The Committee will consider a draft report.

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The papers for this meeting are as follows—

Agenda item 2

Draft report chapters

RSSB/S3/09/6/1
(P)

Scottish Government follow up evidence

[RSSB/S3/09/6/2](#)

Waterwatch Scotland response to Scottish Government
evidence

[RSSB/S3/09/6/3](#)

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

RESPONSE BY SCOTTISH GOVERNMENT TO THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

1. After the Cabinet Secretary for Finance & Sustainable Growth gave evidence to the committee on 24th March you asked for clarification on two points:

- when a decision is going to be made as to what the Government thinking is in relation to clinical prison complaints; and
- the competence to legislate allowing SPSO to carry out those investigatory functions of Waterwatch which relate to the actions of the private water suppliers.

Clinical Prison Complaints

2. Ministers have now made a decision on the issue of clinical prison complaints. We would propose transferring responsibility for prisoner clinical complaints to the SPSO. The transfer would be consistent with the SPSO's current responsibility for clinical complaints outwith the prison environment. As we are also proposing that the SPSO takes over from the SPCC responsibility for non-clinical complaints by prisoners, the further transfer of responsibility of clinical complaints would also provide consistency of complaints handling for prisoners.

Waterwatch

3. Turning to complaints against the licensed providers who provide the retail services to non-domestic water customers, it may help if I set out the current position.

4. Waterwatch, which is the trading name of the Water Customer Consultation Panels and the Convenor of those panels, was established by the Water Industry (Scotland) Act 2002 and subsequently amended by the Water Services Etc. (Scotland) Act 2005. Waterwatch must investigate complaints made with regards to any of Scottish Water's core functions. The Water Services Etc. (Scotland) Act 2005 restricted Scottish Water's core functions so that they do not include the activities of licensed retailers. Waterwatch therefore does not have a formal role in legislation with regards to complaints against licensed retailers. Consequently, there is currently no obligation on licensed retailers to work with Waterwatch in relation to customer complaints and neither are licensed retailers bound by Waterwatch's decisions.

5. To overcome this gap in provision, Waterwatch has informally agreed to act as the 2nd tier complaints handling authority with the licensed providers. However, licensed providers can withdraw from this arrangement at any point.

6. It may also help if I provide an indication of scale. In 2008/09 Waterwatch has dealt with approximately 65 complaints against licensed providers. With the development of the retail market I would expect this number to fall rapidly, as customers who are unhappy with the services they receive can change to a different provider. The number of complaints against licensed providers is already quite small in absolute numbers, especially when compared against SPSO's complaints completed in 2007-08 of nearly 2,900, and is likely to decline further.

7. It is of course important that non-domestic water customers continue to have an appropriate and robust complaints route if they are unhappy with the service they have received. We are suggesting that this could be achieved by:

- Requesting that the Water Industry Commission for Scotland, which is the licensing authority, includes a requirement for licensed retailers to have robust complaints handling procedures as part of their license - the Cabinet Secretary will be writing to them shortly on this point, and
- Enabling the SPSO to undertake the role Waterwatch is currently performing informally in acting as the 2nd tier complaints handling authority for licensed retailers. This could be done by providing SPSO with a specific power to consider complaints against any retailer licensed by the Water Industry Commission for Scotland, where the licensed provider requests this.

8. During the Cabinet Secretary's appearance, committee members raised the issue of whether it is possible to legislate to enable SPSO to undertake this role was raised. I understand that this focuses on Schedule 5 of the Scotland Act and in particular, to reservation C1 in the second part of that schedule. Reservation C1 reserves to the UK Parliament, the 'creation, operation, regulation and dissolution of types of business association'. I understand that a query has arisen over whether this reservation would prevent the Scottish Parliament from legislating to create a ombudsman scheme for licensed providers.

9. It is our view that the reservation would not have such an effect. The reservation in C1 is addressed at rules relating to 'types' of business association, such as companies or partnerships, or building societies. Among other things, it would prevent the Scottish Parliament from creating new types of business association or from changing the rules in relation to existing types. For example, the reservation would prevent the Scottish Parliament from legislating on the disqualification of company directors or from changing the law in relation to shareholders' liability.

10. The proposal to allow the SPSO to handle complaints from the customers of licensed providers is addressed at persons in their capacity as licensed providers and not at any particular 'type' of business association. There is no requirement in legislation for licensed providers to take the form of a business association. It would be possible for an individual to become a licensed provider. While it may be the case that the majority of licensed providers would fall into one category of business association or another, a proposal to allow SPSO to handle complaints against them is directed towards them only in their capacity as a licensed provider. It would not alter the way in which they as a company, a partnership, or any other type of business association were created, regulated or dissolved. Accordingly we do not believe that such a proposal would breach reservation C1.

11. To summarise, the number of complaints against licensed retailers are small, likely to decline and the current informal footing for the handling of these complaints could be rectified by allowing SPSO to handle them. We do not, therefore, see the issue as an impediment to the transfer of Waterwatch's complaints handling functions to the SPSO, which would simplify access and remove some of the current confusing patchwork of provision for public service users.

12. I would like to take this opportunity to make two further points with regards to the transfer of Waterwatch's functions to the SPSO and Consumer Focus Scotland.

13. The first is the additional synergies for water customers that would be gained from the proposed transfer. SPSO can bring to bear experience in handling complaints in other public services. Consumer Focus Scotland can utilise specialists such as economists and lawyers. Both can identify common trends for consumers in other areas. A small single sector organisation can not do this.

14. Secondly, transferring Waterwatch's functions would produce savings. Waterwatch has a budget of approximately £720,000 a year. SPSO and Consumer Focus Scotland have estimated that, combined, they would need less than £420,000 to deliver this role to at least as high a standard – a saving of around £300,000 a year. This saving arises from economies of scale – lower property costs and the combining of back office functions – and from being able to utilise Consumer Focus Scotland's network of consumers. To re-iterate a point Mr. McCabe made scale is an issue - small organisations, such as Waterwatch, carry disproportionate overheads.

15. I hope this is helpful. I am, of course, happy to discuss any of these issues if that would be useful.

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

RESPONSE BY WATERWATCH SCOTLAND TO THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

I write further to your recent communication.

Particular aspects that I feel that latest responses to the Committee have unfortunately not managed to accurately reflect the actual WWS position or have communicated only a partial position which has the potential of misinterpretation are:-

1. The impression that WWS “has informally agreed” to act as 2nd tier complaints-handling authority for non-domestic service providers - I merely reiterate that WWS’s duties relate to all those connected (or who may reasonably be expected to be) to the public water and sewerage network – which as Scottish Water (SW) are still wholesale supplier to all non-domestic service providers, pretty much covers the situation.

The impression that WWS are dealing with such complaints informally / voluntarily, is I feel not accurate. Ministers have explicitly tasked us to fulfil this role – evidenced in our Financial Memorandum & Management Statement (FM/MS) (Annex A) and that the position be provided for in the statutory (it is required in terms of the Water Industry (Scotland) Act 2002, as amended by the Water Services etc (Scotland) Act 2005) Memorandum of Understanding between WWS and Water Industry Commission for Scotland (WICS), to be approved by Ministers.

I enclose at Annex B, extracts from relevant documents.

2. With regards to complaints-handling data, I enclose a copy of the statistics provided to our Sponsor Division last Wednesday (Annex C). This clearly shows that of the circa 1000+ contacts / complaints received and dealt with by WWS, over a third are from non-domestic customers.

With the greatest of respect the response that complaints are likely to decrease post-competition is clearly wrong, the figures having increased significantly from 28% to 38%. The response re being able to change provider is considered extremely naïve. The figure of 65 given to the Committee is unfortunately used out of context and represents only those contacts / complaints which actually escalated to our third of three categories of contact / complaint.

3. With regard to comments re the Cabinet Secretary writing to WICS requiring non-domestic service providers having robust complaints handling procedures as part of their licence – they already do, we having worked and liaised with them in this regard, also ensuring that the role of WWS is adequately sign-posted should customers still remain dissatisfied and wish to escalate to us.

Another important factor is that SPSO looking at private non-domestic service providers, would not be in the same capacity as SPSO investigating a private company sub-contracted to fulfil a public duty, e.g. of a local authority, but in the capacity of investigating a private company operating in an open competitive industry in their own right. In this regard it would be akin to SPSO investigating Scottish Power, Powergen or Vodafone, which would appear to run contrary to it being a “Public” services ombudsman.

It is strictly correct to say WWS can't bind non-domestic service providers, but only in the same way WWS (or any other ombudsman including SPSO) cannot “bind” bodies within their jurisdiction. We can of course bring our powers, including statutory recommendations, to bear. Certainly, the impression that our monitoring of non-domestic service providers is any less robust is strongly contended.

I merely reiterate that any person seeking redress against any water provider already has simple, accessible provision to us, as the negligible (2 over 3 years) who have contact SPSO first testifies. I would also like to think that the turnaround times, satisfaction rates and otherwise general performance levels of WWS back up my sentiments here.

With regards to additional synergies from tapping into SPSO experience, again, with the greatest of respect, I would submit that WWS performance figures would verify the relevant dynamic here. Again, with regards to being able to utilise specialists such as economists and lawyers, WWS has access to as high (if not potentially higher) calibre in this regard, through its present staff and Member network.

In respect of any figures provided re potential cost savings and being able to deliver the WWS role “to at least a high a standard”, I feel that this is not an accurate reflection. Any savings referred to are created merely by not continuing to provide our statutory Member, Regional Panel and National Committee structures. If WWS did not have to provide such a framework / support, we would be able to operate at substantially less than any figures referred to by the Government. Quite simply “apples are not being compared with apples” here.

I would also submit that costs of being based in Alloa are significantly less than being based in Edinburgh (or most other locations in Scotland in that regard).

I enclose (Annex D) financial information previously provided to the Scottish Government. You may note that even if savings could be realised (which is disputed), these are more than likely to be offset as a result of ongoing TUPE requirements (e.g. relocation / travelling costs), not insignificant one-off costs and also to “leave” our current pension provision.

One synergy that is hard to cost is that presently enjoyed between complaints and customer representation, where the joint synergy is more than the sum of the two separate component parts. This would need to be

factored into any resource / costs split, in order to “artificially” seek to recapture the synergy presently enjoyed in one body.

Otherwise I would reiterate the position as stated in all prior communications and evidence to the Committee. As ever, should there be any further information required or clarification on any point, please do not hesitate to contact me.