Q1. General

The Committee’s overall view is that a general conduct section to the Code is required but that it might usefully be shortened and clarified. In particular there are specific provisions which might be merged with material in other sections. For example, paragraph 7.2.1, which relates to the duty of members as representatives, might fit better in section 8; paragraph 7.2.2, which relates to relationships between MSPs, might fit better in section 8 or in Volume 1 (general principles); paragraphs 7.2.7 – 7.2.8, which relate to acceptance of hospitality, gifts or other benefits, might fit better in section 5.

1) Are there any parts of section 7 which you consider are not required at all or which might be merged with others parts of the Code?

Answer

The Committee may wish to consider moving the following sections:

7.2.1 to section 8 (8.1).

7.2.2 to section 8 (8.2) – consideration should be given to amending title.
(a new sub-heading is required at 8.2.1)

It is further recommended a reference to 2.3 is included for completeness at 7.2.7 and 7.2.8.

Q2. SPCB policies

Section 7 includes a number of references to SPCB\(^1\) policies including on equal opportunities, expenses, smoking, alcohol and use of stationery. Members are expected to comply with SPCB policies whether or not they are specifically mentioned in the Code of Conduct and there is a general provision to this effect in paragraph 7.2.11.

The Committee also notes that policies are likely to change from time to time and that it would be preferable if the Code did not need to be updated every time an SPCB policy is changed. For example, the current provision on equal

\(^1\) The Scottish Parliamentary Corporate Body (SPCB) is responsible for ensuring that the Parliament is provided with the property, staff and services it requires.
opportunities (paragraph 7.2.3) is not up to date with current policy and legislation.

2a) Given the general provision, which SPCB policies need to be given specific mention in the Code? Is it sufficient for this to be a statement of principle, with detail contained in SPCB publications?

Answer

I consider that a blanket requirement of compliance with general unspecified policies is problematic. Also, case law over the years has confirmed that policies have been held not to equate to rules or conditions and therefore not necessarily to be capable of being lawfully enforced. Application of a “policy” seeking to impose a standard to a set of circumstances must legally envisage the use of discretion to make exceptions in policy application in special individual circumstances – policy can therefore not be an absolute requirement.

The Code also makes reference at 7.2.12 and 7.2.13 to the legal responsibilities of MSPs in their capacity as individual employers with specific mention of the SPCB’s Health and Safety Management System. The Committee may wish to consider whether or not 7.2.13 amounts to no more than guidance on what is already a legal obligation.

2b) Is it sufficiently clear to Members (or other interested parties) what SPCB policies they must comply with and which documents from the SPCB are, for example, guidance rather than enforceable policy?

Answer

No.

It should be made clear to Members which specific obligations they are being expected to meet - so if the obligations are not to be referred directly to within the body of the Code (and if they are not this is problematic) a specific database at the very least needs to be developed which is updated as necessary with changes being specifically notified to Members.

Additionally such information needs to be readily available to other interested parties including the public and potential complainers.

The Code at section 9 (enforcement) makes clear that complaints about SPCB facilities and services should be made to the SPCB and also sets out the procedure for complaining to the SPCB about use of the reimbursement of members’ expenses scheme. However there are other SPCB policies where the enforcement route is less clear.

The Committee’s initial view is that any complaint about a breach of SPCB policies, unless it relates to conduct in the Chamber or in committee
(discussed below), should be made to the SPCB and only referred on to the SPPA Committee if it is sufficiently serious or unable to be resolved informally.

2c) Do you agree that complaints about breaches of SPCB policies should generally be considered in the first instance by the SPCB? If not, which complaints should be dealt with in a different way (for example, by referral to the Public Standards Commissioner or Presiding Officer)?

Answer

Yes - the status quo should be maintained.

Q3. Treatment of other MSPs and of other MSPs’ staff

Paragraph 7.2.5 says that “Members must treat other MSPs and the staff of other MSPs with courtesy and respect.” The Committee notes that section 9 (enforcement) provides that complaints about a member’s treatment of the staff of another member would be made to the relevant Business Manager who would investigate, with assistance from the Human Resources office where appropriate, and would only report to the SPCB if informal resolution could not be achieved. (Complaints about a member’s treatment of their own staff are treated as an employment matter and not covered by the Code).

Section 9 does not say anything about how complaints about one MSP’s treatment of another MSP would be handled.

3) Who should consider complaints about one MSP’s treatment of another (e.g. the relevant Business Manager, the Presiding Officer or the Public Standards Commissioner)?

Answer

Any requirement or entreatment that “Members must treat other MSPs with respect” is most appropriate for inclusion in paragraph 3.1 of volume 1 of the Code dealing with Key Principles. The reference could be included under Public Duty or Leadership.

If, notwithstanding what I have suggested, the Committee is minded to leave the reference in paragraph 7.2.5 of volume 2, then I consider that the Presiding Officer is best placed to consider such complaints, particularly bearing in mind the Presiding Officer’s existing responsibility for regulating members’ conduct in the Chamber in terms of Standing Orders.

Q4. Conduct in the Chamber

Paragraph 7.3.3 sets out the Presiding Officer’s ruling on conduct in the Chamber (which also applies as appropriate in committee). The Committee notes that conduct in the Chamber is a matter for the Presiding Officer under Standing Orders and that conduct in committees is a matter for committee conveners. It may therefore be more appropriate for this ruling not to form
part of the Code of Conduct, allowing the Presiding Officer to adjust it as required. The current ruling could be made available on the Parliament's website.

4) Do you agree that paragraph 7.3.3 should not form part of the Code of Conduct?

Answer

Yes – I consider this should form part of Standing Orders.

Q5. Conduct in Committee

Section 9.1.6(a) provides that complaints about conduct in Committee are referred to the Convener. This would include a complaint about the Convener. The Committee considers that there should be an alternative mechanism for considering complaints about the Convener. For example, such complaints might be referred to the Presiding Officer, or the Chair of the Conveners Group (if different).

5) Who should consider complaints about committee Conveners?

Answer

It is my view that complaints about committee Conveners should be considered by the Presiding Officer. Where complaints are about Conveners and other Members, the Presiding Officer should also have responsibility for dealing with these complaints.

Q6. Confidentiality requirements

The Committee's initial view is that section 7.4 is generally relevant and clear although it is considering some small amendments to clarify how the confidentiality requirements apply to embargoed reports.

6) Does this section require any change?

Answer

No.

Q7. Section 5: Lobbying

The Committee does not propose to undertake a full review of section 5 at this time. However, as well as the possible inclusion of the material on gifts from section 7, the Committee will consider whether section 5 is consistent with the SPCB's charities policy. It is also willing to consider other amendments which would clarify the existing wording of section 5.
7) Do you consider that there are any parts of section 5 which need to be made clearer?

Answer

I refer to my answer to Question 2 regarding the application of policy. Members must have clear information on the obligations expected of them. As regards the Committee’s further consideration of the provisions of section 7 in relation to Gifts – and the linkage with section 5 on Lobbying, I consider that the inclusion of the Gifts provisions in section 7 is indicative of a wider obligation on MSPs than just lobbying situations.

Q8. Section 8: Engagement and Liaison with Constituents

The Committee notes that section 8 was reviewed in session 3 and it does not therefore propose to undertake a wholesale review of this section. However, it considers that there may be some helpful minor amendments which could be made to clarify this section. In particular:

- the rules setting out how members should describe themselves are very specific, stating an exact wording for constituency and regional members respectively. It may be appropriate and helpful to make these rules slightly less prescriptive without affecting the underlying principle.

- Section 8.1.4 says that MSPs must not deal with a case or issue outside their constituency/region “unless by prior agreement”. It may be helpful to clarify what is meant by this.

Answer

I consider that the rules on description of members are generally clear and understandable. I have no particular suggestions to make on possible changes.

Section 8.1 of the Code seems designed to cover only individual cases raised by constituents. I consider the obligations on MSPs in this section do not preclude other MSPs from dealing with wider general national and regional issues raised by members of the public.

It may be appropriate to clarify the situation by extending the qualification to read “unless by prior agreement of the relevant constituency MSP or a relevant regional Member”.

8) Are there any parts of section 8 which require amendment to make them clearer or more easily enforced?

Answer

No.
Q9. Other comments

9) The Committee would welcome any other comments you have on any part of section 7.

Answer

None.

D STUART ALLAN
PUBLIC STANDARDS COMMISSIONER FOR SCOTLAND
29 MARCH 2012