



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 14 January 2016

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
1st Meeting 2016, Session 4

CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Mary Fee (West Scotland) (Lab)

COMMITTEE MEMBERS

*Cameron Buchanan (Lothian) (Con)

*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 14 January 2016

[The Convener opened the meeting at 09:30]

Commissioner for Ethical Standards in Public Life in Scotland

The Convener (Stewart Stevenson):

Colleagues, I welcome you to the first meeting in 2016 of the Standards, Procedures and Public Appointments Committee. I remind everyone present to switch off mobile phones, as they may affect the broadcasting system.

Agenda item 1 is evidence from the Commissioner for Ethical Standards in Public Life in Scotland. We are joined by Bill Thomson, who is the commissioner; Ian Bruce, who is the public appointments manager in the commissioner's office; and Helen Hayne, who is the investigations manager in the commissioner's office. Does Bill Thomson wish to make an initial statement?

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): With your permission, convener. I am grateful to the committee for the opportunity to give evidence in relation to the 2014-15 annual report and some other documents and issues that I believe are before you. My two colleagues are very experienced, having held their roles throughout the period of office of my predecessors.

Before answering your questions, I thought that it might be helpful briefly to highlight what I consider to be the most significant developments since the period covered by the 2014-15 annual report, in terms of both the standards and the public appointments aspects of my remit.

The number and range of complaints about the conduct of members of the Scottish Parliament have been remarkably constant for a number of years. However, in relation to councillors and to the members of public bodies, the already significant volume of complaints has continued to rise since the end of March 2015. If the increase experienced over the first nine months of the current year is sustained, the outturn will be some 10 per cent up on the previous year. Even though three new investigating officers were recruited in the early summer—on a part-time basis and to replace two who had retired—the increase is

putting significant pressure on the resource available to progress investigations.

Additionally, our case management system relies on a database developed some 13 years ago. It is at the limits of its capacity and, frankly, its usefulness. We have therefore been working on a review with a view to sourcing a new case management system. I refer to that in the draft strategic plan for 2016 to 2020, as it is one of the key elements of our plan to be able to sustain our volume of business going forward. That is of course subject to funding being available, which is a discussion that I will have with other people.

Our work on public appointments has also increased, for good reasons. We are now working more closely with Scottish Government staff on a more strategic approach to the planning of appointments.

The approach involves better preparation for new appointment rounds, with public appointments advisers—who are contracted to work for my office—working alongside the public appointments team, the directorates who sponsor public bodies and selection panels. The focus is no longer simply on planning competitions, but now includes planning for succession on boards in their strategic role and their operating context. That informs the planning for a competition and how best to attract and assess diverse fields of suitable applicants. I think that that is an important development.

We have co-produced with Government staff a competency framework that has been piloted since the summer of 2015. It assists with the definition of merit in each appointment round and the effective assessment of candidates against the identified criteria. Those in turn support the translation into practice of the statutory guidance on the application of the 2013 code, which I issued in August 2014.

The “Thematic Review of Operation of the 2013 Code of Practice for Ministerial Appointments to Public Bodies in Scotland”, published in the autumn of 2015, identified the need for a mechanism to capture and disseminate lessons learned from individual appointment rounds. I am pleased to say that the Government has been working on the development of such a process. We have been consulted on the detail and we expect it to be put into effect in the early part of this calendar year. The lessons-learned approach and a number of other topics have been incorporated, along with the guidance on merit and most able, in a new set of guidance on the 2013 code, on which we have been consulting since early December. I hope to be able to finalise that very soon.

All the indications are that the new approach to working in partnership with those in the Government who are responsible for public appointments has been well received. I am sure that the approach is already leading to improvements in the appointments process, including better definition of merit by ministers, and thereby to the recruitment of suitably able and more diverse appointees. Our work with the Scottish Government on appointments is, of course, wider than that simply on process improvements, albeit that they are important in themselves—I think that that is indicated in my annual report.

That is all that I have to say by way of introduction. Thank you.

The Convener: Thank you very much, commissioner. Just before we move to the questioning that the committee discussed before you came in, I want to pick up on the point about the rise in the volume of complaints about councillors. That issue is outside the remit of this committee, but I want to ask in that context whether you think that the rule that it is a breach of the code governing the behaviour of MSPs for an MSP to make public that they are making a complaint about a fellow MSP is one that helps keep that volume of complaints at an appropriate level when compared and contrasted with the volume of complaints about councillors.

Bill Thomson: That is an interesting question. However, unless I am forgetting something, I think that there has been only one complaint since the Parliament was inaugurated in relation to a breach of that rule. I think that the comparison that you make is not straightforward. The bulk of complaints about councillors and members of public bodies are submitted by members of the public, who might or might not be politically involved. Of course, it would not be possible for the code to apply directly to those people if they were to complain. I am not convinced that it would have the same effect were it to be translated into the councillors code or the model code for public bodies.

The Convener: Right. That is helpful. I think that we will just move on. I had a personal, instinctive view that councillors complaining about councillors was a larger component of the volume of complaints than you have indicated. We will move on to what is actually within the remit of this committee. I first pass the baton to Mary Fee.

Mary Fee (West Scotland) (Lab): Thank you very much, and good morning everyone. I will start by asking the commissioner a couple of questions around the guidance on the code of practice, specifically in relation to the criteria of merit and most able. Were there specific concerns that

prompted you to include those criteria? If so, what were they?

Bill Thomson: Yes, there were specific concerns. The principle of merit was introduced in the—I think—2006 iteration of the code, and the principle of integrity was introduced in the 2011 revision of the code. By the time that I came into office both applied, along with a third principle. It became clear in the course of investigating a particular complaint that the information that had gone to the appointing minister contained a number of errors, which was problematic in itself. However, the advice on the options available to the minister did not seem to me to be wholly clear in terms of the implications of the application of the principles of merit and integrity. I set that out in the annual report in summary form, and for those who are interested it is on page 28 of the 2014-15 annual report.

I thought that it would be useful to clarify the implications of the application of the principle of merit throughout the entire process—that is, with integrity—which is what led to the guidance. I had some discussion with ministers before I finalised the guidance, so it is not as though it was imposed. My understanding, from discussions that I have had, is that the guidance was welcomed, and that still appears to be the position.

Mary Fee: Perhaps it is just too early in the day for me to grasp these things. The guidance on the 2013 code states:

“Merit is defined by the appointing Minister at the point at which he or she advises the panel”.

Is it the appointing minister who decides the merit, is it predetermined or is he given guidance on what that merit should be?

Bill Thomson: Circumstances vary. The minister is responsible for the appointment and is, therefore, ultimately responsible for the criteria that are used. The criteria that are used are the definition of merit, which then applies throughout the appointment process.

There have been some examples of ministers, including cabinet secretaries, being directly involved in discussions about what those criteria should be, and there may have been other circumstances in which the minister has been presented with suggestions, whether or not they have commented on them. However, the minister—whoever it is—will have to endorse the criteria, and that is the point at which merit is determined for the appointment process.

The Convener: I ask for clarification. I see the process as having three parts: the invitation that goes out for people to apply, the selection from those who apply and the appointment itself. Does the determination of merit come before all those

stages and influence every step of the process right from the outset?

Bill Thomson: That is correct, convener. The definition of merit—the criteria that are set out—should govern the entire process. It should influence the way in which the appointment is advertised and the assessment of candidates, and it must be the basis on which the minister makes the decision.

Mary Fee: That is fine. I just wanted to clarify whether the decision on merit lies with the minister or whether it is predetermined.

Bill Thomson: It very clearly lies with the minister.

Mary Fee: Thank you. What plans have been put in place to monitor how that will progress and whether it improves the situation or whether further steps are needed to change it?

Bill Thomson: You will be aware that I now categorise appointment rounds according to the level of risk that I think applies. When they are high risk, which usually also means high profile, one of the public appointments advisers from my office will be involved throughout the entire process—as I have just said, from the pre-planning stage right up to the point at which the assessment is done, which is usually by interview—although they will not be involved when the matter is passed to the minister. In a medium-risk round, the adviser is involved up to the conclusion of the planning stage, at which point the die is cast.

If it is a low-risk round, my office is not involved, which is a change that was made in the 2013 code in order that regulation should be proportionate. I appreciate that that is dependent on a judgment that is made at the outset. There are, nevertheless, two safety nets. First, because of the good working relationship that we have with the Government staff, if they are concerned about things, they will pick up the phone to my office and check things out. Secondly, people who are aggrieved about the process can make a complaint. There have been a small number of complaints—there were two in the year that is covered by the annual report and I think that there have been two since then. It is a very small number.

The Convener: The Scottish ministers also make appointments to joint boards, such as the UK Climate Change Committee, under United Kingdom provisions. Are you involved in such processes?

Bill Thomson: No, I am involved only in appointments that are regulated under the act under which I operate. There are Scotland-only appointments that are not regulated and I think

that ministers frequently try to use the same process for those appointments, but I am not involved.

09:45

Mary Fee: Are you content that having open communication between yourselves and ministers is enough to fully monitor how merit and most able progresses and that it is fluid enough to make changes as you go along?

Bill Thomson: I am content. I should note that there is not normally direct communication between ministers and me. I have some direct communication with them, but that is usually done through the civil service. However, I am content with having that communication.

Mary Fee: I want to ask you about the thematic review of the operation of the code of practice. Your annual report for 2013-14 showed that improvements to the appointments practices were not enough to achieve the targets set out in the diversity delivers strategy. In the report on the draft code, the committee expressed concern about whether the addition of experience to the criteria for appointment risked discouraging people with relevant skills. Can you talk us through that? How have you found the inclusion of experience as a criterion?

Bill Thomson: As Ian Bruce is closer to that, I will ask him to deal with the detail.

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): Good morning. Thank you for the opportunity to give evidence to the committee.

When we gave evidence to the committee previously, in relation to a similar question about including experience in person specifications, we discussed an approach that was trialled on NHS Fife. At the time, I think that I indicated that the inclusion of experience would rule out some people but that, equally, it should be included with the intention of ruling in people who meet the needs of a board, perhaps in a different way from what the committee anticipated.

People may feel that asking for experience means asking for people with board experience, but that is certainly not the intention. The commissioner mentioned the introduction of the guidance on merit and most able, which is fundamentally about meeting board needs and finding what the minister wants. NHS Fife was looking for service users, carers and people who may have experienced barriers to accessing services. Since then we have seen the inclusion of very similar criteria for selection in many more health board appointment rounds. Rather than the inclusion of experience leading to less diverse

pools of applicants, more diverse pools of applicants have been coming forward.

The situation varies from board to board. The organisation looks at what the board needs and then designs criteria to meet those needs. For example, as well as service user experience, health boards now look for people with track records in the integration of health and social care, which makes sense for the work that they are doing with the integration joint boards.

Creative Scotland ran an appointment round in which it was looking for people who are passionate about arts and culture in Scotland and about how that should be viewed on the international stage. That is very different from looking for people with experience as board members; it is quite the opposite, in fact. I think that the thematic review bore out that it was leading to more diversity, not less.

Mary Fee: Is the guidance on the application process and the definition of the experience that is required clear enough that, if it rules people out, it rules the right people out? Does it also allow people to be ruled in?

Ian Bruce: Just so. We have also been working with the Government on the introduction of a competency framework, which was a recommendation in the diversity delivers strategy. That allows panels—and ministers, where they are directly involved—to be very specific about the sorts of evidence they are looking for in relation to all the criteria for selection, and the level at which those criteria must be met. It is about meeting specific needs on boards. We now see competitions in which three board members are sought and the criteria for selection are different for each of those positions. That is absolutely right; it is about securing more diverse, heterogeneous boards.

Mary Fee: I will ask now about delivering diversity. There have been issues in the past about whether boards are diverse and about appointing a broad mix of people. Concerns have been expressed about participants' reluctance to embrace the shared commitment. Can you give us any information about what is being done to improve the situation?

Bill Thomson: The issue of participants' reluctance was examined through a thematic review that Ian Bruce led on, so it would be better and more direct if he replied. There is some new good news on diversity, but we can come back to that if you wish.

Ian Bruce: Ms Fee's question is interesting. We all have to bear it in mind that public appointments do not operate in isolation from societal issues. Probably the first thing to point out is that we need to think about diversity in two ways. We included a

diagram in the report on the thematic review to help people to understand what we are talking about. Diversity in its broadest sense goes back to your original question about whether it is appropriate to ask about experience and whether that leads to more diverse boards. Diversity in its broadest sense is about the range of skills, knowledge, backgrounds and perspectives that different people bring to boards, which is important.

There is lots of evidence out there and a great deal of it has been generated since the publication in 2008 of the Walker review, which looked at the effectiveness of boards for financial institutions. The review had an appendix from the Tavistock Institute about the effects of groupthink and its impact on boards' ability to consider risks appropriately. However, the evidence very much points to the fact that heterogeneous boards are more effective because, when they consider matters, there is perhaps more debate in order to reach appropriate decisions.

We can contrast that with homogeneous boards, which tend to arise when people make appointments perhaps in their own image or when they replace people on a like-for-like basis. Homogeneous boards have advantages in that, perhaps unsurprisingly, they tend to reach consensus quite quickly because there is not much dissent, which can be relatively comfortable for people.

If you know much about unconscious bias, you will be aware that there are in-groups and out-groups. There can be a tendency to look to the in-group for recruitment because that is what people are comfortable with, but that will not necessarily lead to the debates and decision making that effective boards are good at.

That is about diversity in its broadest sense. Over and above that, we need to think about diversity in terms of protected characteristics, and the diversity delivers strategy discusses that and delivers it to an extent. The strategy includes targets for protected characteristics. We have to bear it in mind that, under the Equality Act 2010, there is an obligation on public bodies and on the Scottish ministers to redress underrepresentation by protected characteristic as well. Societally, there might be a view that achieving representation by protected characteristic is about lowering the bar.

The Convener: Forgive me for intervening but, for the benefit perhaps of people outside our in-group, will you please define what you mean by protected characteristics? You have used the term three times.

Ian Bruce: By all means. The protected characteristics are set out in the 2010 act and

include age, gender, sexual orientation, race, religion and belief, and disabled status. We are concerned with those six in considering appointments.

There is an obligation on ministers to redress underrepresentation in terms of protected characteristics. Fundamentally, those involved in each competition are looking to meet two targets—one is about the board's needs in terms of background, experience, perspective, skills and knowledge and the other is about protected characteristics when one has underrepresentation. The purpose of the competition should be to redress underrepresentation in both sides of that equation.

To go back to Mary Fee's original point, I think that there is perhaps a general feeling in society that things such as targets are inappropriate for redressing underrepresentation, because the merit system is already operating effectively. Clearly, that is not a position with which we agree, but there is perhaps a feeling that people are in their positions because of merit.

I come back to the commissioner's point that it is important for ministers to be clear about what they want at the outset of a competition. They define it on the basis of merit as far as boards are concerned, but there is no ineffable, perfect-board-member template that we should look to use on each occasion. I hope that that fully answers Mary Fee's question.

Mary Fee: It does. Can you share any examples of good practice that have resulted in a more diverse recruitment pool?

Ian Bruce: Certainly. We have mentioned the competency framework, which is a hugely important tool and was included in the diversity delivers strategy for the reason that you give. It is the kind of thing that is referred to in human resources circles as an anchored frame of reference; it allows ministers and then panels to be clear about what they are seeking, the different levels at which criteria have to be met and—perhaps more important—the priorities for a particular board at a particular time.

One of our public appointments advisers—like the Scottish Government, we are capitalising on their expertise more and more—was instrumental in designing that framework. Her name is Jennifer Hawksworth—I name her because we should give credit where it is due. We worked along with the Government on developing the tool, which was trialled in the Creative Scotland appointments round. It appears from the press release that was issued that the cabinet secretary was particularly happy with the results of that round not only because the board's needs were met but because it led to a gender-balanced board. The press

release highlighted what those new people were bringing to their roles, and that board is now 50 per cent men and 50 per cent women, so the two targets that I referred to were hit. Since the summer, that framework has been trialled in different appointment rounds, all to good effect.

It might be worth saying that we previously mentioned our plans to post on our website examples of different methods that had been used and the difference that they had made to boards. We have put quite a few case studies up there now, and I am happy to send further details to the committee.

Mary Fee: That would be helpful. Are there still any barriers to rolling out that method of good practice in making appointments?

Bill Thomson: That is a slightly mischievous question.

The Convener: Naturally.

Bill Thomson: The main barrier, in its broadest sense, is capacity. We do not pretend that what we are advocating is the easiest thing to do; it will produce the best results, but any pressures might make things more difficult to achieve.

I am impressed by the commitments that the Government has made not only publicly but in the resourcing of the appointments processes—certainly for the appointments that my office has been involved in—and there seems to be a clear desire to change things. As Ian Bruce said, there are examples of that. However, it is fair to say that this approach will not always succeed. Whether the barriers are ones that people put up deliberately or whether they are all about the realities of getting on with things, I have to say that I do not expect 100 per cent success, but I am pleased with the direction of travel.

Mary Fee: When you refer to capacity, do you mean the number of people who put themselves forward or the ability of ministers and boards to appoint people?

10:00

Bill Thomson: I mean the amount of resource that is available to the system when it seeks to appoint people.

Mary Fee: Do you think that more resource should be available?

Bill Thomson: I am not saying that more resource should be available; that is not a decision for me to make. However, if there is not adequate resource, that will create a problem. Planning properly for something takes longer than just rushing out and doing it—I am sorry to be so simplistic, but that is the truth of it. What we

advocate and the good practice that we describe involve a fair amount of preparation.

The logic of the argument is that, if that preparation is done properly, the later stages of the process will be easier to handle and less consuming of resources. Overall, in time, that will lead to more diverse boards with the right sort of people on them, and the process will not be more expensive. However, it is safe to say that the transition involves extra effort and is quite difficult to absorb at times.

Mary Fee: The last part of your answer addressed the question that I am about to ask you. As the process beds in and people become more used to the various ways of approaching recruitment pools and generating diversity, will the process inevitably become easier and less resource heavy?

Bill Thomson: It will. If the lessons-learned mechanism that I mentioned in my opening statement works well—there is no reason to suppose that it will not—more information will be available to people and it will be easier to find. In effect, success will breed success.

Mary Fee: Yes, and as the process becomes standard practice, it will become less onerous, although maybe that is the wrong word to use.

Bill Thomson: That is looking at one part of the process; the other part involves attracting people from diverse backgrounds, which involves different issues.

Mary Fee: How do you envision the thematic review being monitored?

Ian Bruce: The commissioner mentioned the lessons-learned framework that the Government has been developing since the thematic review was published. We saw an early draft of that in the new year. I do not expect that to be put into practice across the board until February or March this year, and it is only legitimate that we allow that sufficient time to bed in. However, we have a stage 3 review planned. On the basis of that timetable, I expect us to look at how things are working in practice by doing some field research in March 2017.

The Convener: Your annual report says that 19 complaints were deemed to be inadmissible. Will you tell us a bit more about why they were so deemed and whether that leads us to any particular conclusions or actions?

Bill Thomson: I anticipated that question and I have the information with me. However, I regret to say that you will have to wait while I lay my hands on it.

Table 13, on page 18 of the annual report, includes a breakdown of the inadmissible

complaints. Eleven of them were not pursued. Six of those were not pursued following initial investigation, which means that, after a bit of inquiry, it was clear that the investigation could not lead to anything that would amount to a breach of the code. Five of the 11 involved no inquiries at all, which means that what had been alleged could not in any circumstances amount to a breach of the code.

We are talking about complaints about MSPs. Some of the inadmissible complaints were referred to other people, as the table shows, because they were excluded from my jurisdiction under rules that you will be familiar with. One was referred to the Presiding Officer and the First Minister—I think that that was a first. Four were referred to the First Minister because they appeared to relate to alleged breaches of ministerial responsibilities, and two were referred to the Scottish Parliamentary Corporate Body because, I think, they involved alleged breaches of the rules on members' expenses. In one case, I offered the person who complained the opportunity to have the complaint referred but they did not get back to me, so I did not refer it. I do not refer a complaint unless I have written authority to do so.

The Convener: That is helpful.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning. A number of the points that I was going to raise have been covered, but it would be useful to find out what volume of improvement there has been in getting greater diversity and greater numbers of people coming forward. Has there been a 1, 5 or 10 per cent improvement? Do you have any way of measuring how effective the changes have been?

I often come across people who are the chair of this or that and who are also on the board of this or that. Most of them are multiple quangoteers. It strikes me that we still have an awful lot of the usual suspects covering an awful lot of the positions. I accept that it will take time for that to change. However, do you have a measure of the volume of change that there has been over the past few years? How long will it take to get the change that we are looking for?

Bill Thomson: Some of the people who are on more than one board may be extremely able people. I suspect that that goes without saying.

We publish information that is provided to us by the Government, which is based on the Government's statistics. On page 35 of the annual report, table 24, which is headed "Demographic profile of board membership", sets out the percentage of board members who are female, disabled, from black and minority ethnic backgrounds, aged 49 and under, and from the lesbian, gay and bisexual community. We

compare the percentages year on year, and the current comparison is over the page, in table 25.

As you know, the Government's priority has been to improve the gender balance on public boards—and on private boards, for that matter—and to aim for a 50:50 split by 2020. Table 25 shows that the percentage of female board members in 2013-14 was 35 per cent—it had increased only very slightly on the baseline from 2004-05. That percentage improved in 2014-15 to something over 38 per cent and, although the figures for 2015-16 have not yet been published, I am told that the current figure is 41 per cent. That is significant in being a long way beyond 34.5 per cent. It is below 50 per cent, but it is above the level that the European Commission set and, from my point of view, that is to be welcomed. My interest is in diversity in a broad sense, but I am happy that progress is being made, and we will continue to report on that progress year on year.

Dave Thompson: That is interesting and encouraging. On this committee, I was involved in discussing "Diversity Delivers" and all the rest of it a number of years ago, so I am pleased that it appears to be having a positive effect and that we are moving in the right direction.

I am interested in involving a broader spread of people across society rather than just people from the specific sections that you have mentioned. Is there evidence to show that people from other sections of society are also coming forward and being appointed?

Bill Thomson: There is some evidence of that, although I do not think that we could report on that in a terribly tidy way. Ian Bruce gave examples of people from different sections of society who have been recruited to health boards in recent times.

I draw the committee's attention to the Government's public boards and corporate diversity programme. We are plugged into part of that. That is an attempt to examine reasonably comprehensively all the factors that are involved, including by reaching out to sectors of society that are not well represented on boards.

Although we should not be looking for instant results, it is a good thing that the Government is attempting to move forward on all those fronts. Progress in one area without progress in another will lead to the whole thing juddering to a halt.

To take a simple scenario, if somebody who has been appointed as the chair of a board is not comfortable with a diverse board, that will patently not work. Things have to move together in parallel, and there are a lot of factors.

To answer your question directly, we will not be able to produce precisely the sort of information that you are looking for. However, we—and, I

suspect, the Government—would be happy to discuss progress with the committee from time to time.

The Convener: Just before Dave Thompson continues, Mary Fee has a specific question about table 24.

Mary Fee: My question is about a particular group in table 24 on page 35: the "Aged 49 and under" group. I absolutely understand that the focus has been on gender and ethnicity, but I see that there is a figure of 17.3 per cent for under-49s on boards, whereas they represent 54 per cent of the population. What, specifically, will be done to improve that?

Bill Thomson: I am glad that I mentioned the public boards and corporate diversity programme. Efforts are being made under that programme to engage with a variety of different groups involving younger people, including those involved in business and in the charity and third sector. They will have relevant experience, although they might not have considered putting themselves forward. We have participated in some meetings under the programme, but we are not directly responsible for it and we are not driving it. However, it is fair to say that the Government is well aware of the issue, and it is trying to take steps to address it.

Mary Fee: Is there a specific issue with the perception that people have of boards and board membership that means that under-49s do not apply?

Bill Thomson: It is an artificial cut-off, but I suspect that you are right.

The Convener: Or are they just too busy at that stage in their careers doing other things?

Bill Thomson: They may be too busy for a number of reasons. One of the issues is the nature of people's perception of boards. Another is the reality of board membership. What are board members required to do? How much time commitment is involved? Is that made clear? When are meetings held? Where are meetings held? All those things come into play. I suspect that the basic question hits the nail on the head.

Mary Fee: Thank you.

The Convener: I know that Patricia Ferguson is going to come back on the issue of diversity specifically. I ask Dave Thompson to focus on some of the other issues first.

Dave Thompson: I want to continue along the same lines on the number of people who are on multiple boards and so on. Many of those positions will be unpaid. Some of them will be paid positions—and they will be very well paid—for a few days a month. That is not for me, the

witnesses or the committee to comment on directly.

There has perhaps been a temptation in the past—it has been very easy for the thing to become self-perpetuating once people get into the system. That is why the diversity delivers strategy is necessary and we need the change. Is there a case for limiting the number of boards of which individuals could be members or for limiting the number of positions of board chair that people can hold? Is it in fact necessary for some people to be on a number of boards in order to get an income and to live if they are giving up time, they are not working and they cannot hold down a full-time job because they are on boards?

Would a limit be useful, or do you think that that is not relevant at all?

10:15

Bill Thomson: I will answer that obliquely and then directly. Currently, the Government is also looking more carefully at reappointments than it did in the past. I referred to that at the outset in relation to planning the whole appointment process rather than just setting a competition when a vacancy occurs.

It is about thinking ahead, looking at the strategic requirements and the operational context and considering whether the people who are currently on the board are the right people to be there in three years or whatever. There will probably be a lower percentage of reappointments than has been the position in the past. That may or may not have an impact on the number of people who are on multiple boards or at least the number of boards that they are on.

To answer your question directly, I think that there is a risk in applying a limit. It would inevitably be an artificial limit and if somebody who was already at that limit put themselves forward for something and they appeared to be precisely the right person for it, the consequence of trying to appoint them would be that they would have to resign from something else, which would create a vacancy that was not planned for. Then we would be into the whole resourcing issue of trying to do the job properly.

I can see arguments for and against a limit. I would not be keen to argue for a limit at this stage; I would need to be convinced that it would work.

Dave Thompson: Thank you for that. You mentioned that the new approach has been well received by all involved. We noticed that the public appointments and diversity centre of expertise—PACE—has changed its name during the year to public appointments, wellbeing and diversity. How

has its role changed, or has it just changed its name?

Bill Thomson: I will ask Ian Bruce to go into more detail on that but, just to update you, in next year's annual report, it will be called the public appointments team—its name has changed again.

Ian Bruce: Right enough, it has been rebranded again. It is now the public appointments team and that very much reflects its role. It is wholly dedicated to public appointments and nothing else. I have been impressed by the level of understanding that now exists in that team. I indicated—and I think we said in the annual report—that there was a new head of the public appointments team. To give credit where it is due, although I normally hesitate to name an official, Evie McLaren has a very good understanding of what we are engaged in, is very dedicated to that activity and has drawn together a team and then strengthened the existing team. There is also a new development manager, Kirsty Walker—again, I give credit where it is due. We have been working with them on developing an action plan under strand 2 of the public boards and corporate diversity programme, which is about addressing underrepresentation on the boards of Scotland's public bodies.

The last time we gave evidence, we said that a number of recommendations in the diversity delivers strategy had not been implemented. We subsequently sent an indication to the committee of those that we felt had been in abeyance. The action plan now looks to address a whole raft of things that have not been implemented to date and we are working closely together on doing that.

It is not just about the appointments process; it is much broader than that. We spoke earlier about attracting people under the age of 50 who perhaps had not thought about such roles. Along with the members of Evie McLaren's team, I have been working on that. We ran a couple of events with Equate Scotland for young women in science, engineering and technology subjects to encourage them to apply for board roles. It is not just work on the process; it is much wider.

We have a detailed action plan and I am sure that, with the Government's permission, we could provide it to you if the committee was interested in having a look at it.

We have assigned people for all those activities; we have dates by which they all have to be achieved; and we are very much working in partnership with a view to meeting what is a shared outcome. There is no adversarial relationship; we are still very much guardians of the code and the principles. The Government understands that our activities, including those of our public appointments advisers, are all with a

view to meeting ministerial aims and getting the best possible people for boards. I am very heartened by the work that we have been doing with it.

Dave Thompson: Thank you very much for that. It is encouraging to hear that matters have progressed so well in recent years, because it was not always thus. Such measures take time to bed in and change. Let us hope that progress continues as the years move on.

The Convener: We will want to step up the pace a little bit. Patricia Ferguson has some questions.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Good morning. I listened with great interest to the previous comments on diversity, and it is good to see progress being made. I also noted that the report mentioned that you were cautiously optimistic about the trends. However, table 24 demonstrates that all the target groups are still underrepresented. Have you looked at what has and has not worked? Will you give us an example of the good practice that is helping to make a difference? If one practice works in one area or for one target group, can it be rolled out to others, or is that happening?

Bill Thomson: Convener, I am conscious that you are slightly concerned antisocial behaviour time.

The Convener: We need not get too concerned. I was just alerting my colleagues that I am keeping an eye on it.

Bill Thomson: Ian Bruce has mentioned the Creative Scotland appointments round, which has led to people with a passion for the arts in Scotland and in the wider world being appointed, as well as to a balanced board in gender terms. He has also referred to developing practice in the national health service appointments rounds, where a much broader range of people are being attracted to put themselves forward and being appointed to boards. Those are good examples.

I accept that all the groups remain underrepresented, so I am not complacent. However, I hope that all that I have said indicates that a lot of positive work is being done and a lot of positive attention is being paid to the issue. The signs are that things are moving in the right direction.

The lessons-learned mechanism to which we have referred a couple of times should do precisely what you outlined at the beginning of your question and make it possible and easier for people to see what has worked well. Of course, circumstances will vary, and it would be a great pity if we got to the point where whatever had worked in, for example, NHS Tayside, was then

seen as the model for everything else. Practice should not develop that way.

Patricia Ferguson: I am conscious that the figures for women are getting better, but the figures for disabled people and people under 49 are not moving in the same direction as quickly. I suppose that I am just expressing a slight anxiety that, perhaps understandably, there is a focus on increasing women's representation. I hope that we are not losing sight of the other target groups and that work is also being done to ensure that people from those groups are coming forward and being appointed. The issues that they face will, on some occasions at least, be very different from those that prevent women from taking part. One approach does not necessarily fit all.

Bill Thomson: I do not know whether this will give you any comfort, but I share your anxiety. Having said that, I very much welcome the high-profile attention that has been given to the gender imbalance, because that opens the door to consideration of diversity issues in a way that would not otherwise occur.

My office is interested in diversity in a much broader sense, and the public appointments advisers are passionate about it. We do not think that the problem has been addressed—far from it.

Patricia Ferguson: That is very helpful. Convener, my next question is on a slightly different area, so this might be an appropriate point for Fiona McLeod to come in.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I think that it would be—thank you. We have talked about how the profile of the need for diversity in public appointments has definitely been raised and has been accepted by so many. However, I am interested in the process. Page 13 of the thematic review talks about publicity—how we get the applicants. First, we have to look at where the position is advertised, so that it is in a space that attracts more diversity among the people looking at it in the first place. You talked about that being centred on the appointed for Scotland website.

Another part of the process is how people, having seen the advert, can apply. Are you bringing in different ways of doing that? We talked about that last time. Do you have any examples of more creative ways of putting out an appointment and allowing people to apply for it?

Ian Bruce: I think that it is fair to say that there has been some inertia there. Once people are in the process, there has been more proliferation of different methods and techniques.

I mentioned our action plan earlier. One of the key things that have appeared in that for the first time is a social media strategy, which is due to be

rolled out this year. That is aimed at attracting people under the age of 50. It has not been rolled out yet, but I received a copy of the draft strategy in the past week and I am very encouraged by that.

That is not to say that specific techniques have not been used to attract target groups—they certainly have and they have been used on a range of rounds. The issue is underrepresentation by protected characteristic. As you know, the commissioner's guidance was altered—a draft was provided to the committee. It is very explicit that the outcome is about meeting all the needs of the board and that part and parcel of that, in terms of learning lessons, is including all protected characteristics. We have to look, for example, at whether we attracted disabled people—one fifth of the population—to apply for those roles and, if not, what needs to be done differently next time in order to achieve that.

I will choose one example of what has been done, but there are others on the website. The enterprise bodies understood that they had underrepresentation by gender. They held open days and encouraged women who belonged to organisations such as Changing the Chemistry and the Institute of Directors to come and find out more about those roles—people who would not necessarily have thought about applying for those positions. It is not that there are not lots of pockets of good practice out there; it is a matter of widening that net.

Fiona McLeod: Can I get that information from your website? Can I go and view it?

Ian Bruce: Yes.

Patricia Ferguson: I was very interested in table 27 on page 37 of the annual report, which shows how many people applied for appointments, how many got through the process at various levels, and how many were actually appointed. I was struck by the fact that, in 2014, 1,742 people applied and, of those, 431 were invited to interview. That suggests that those people were considered to have at least some merit and ability and to fit some of the criteria. However, only a quarter of those were appointed.

Is there any process that allows those people who are not appointed to have some feedback about the reasons why they were not appointed? Presumably, if they got as far as being invited to interview, they had some merit and ability. They might have been people who did not fit the criteria for a particular appointment but who had abilities that would fit very well for another. I would not want to see people being discouraged by not being able to progress through the process, given the numbers that are in the process itself.

10:30

Bill Thomson: That is absolutely correct. In some of the discussions that I have been involved in, it has been clear that there is a heightened awareness of the opportunities to, as it were, retain people's interest by giving them better feedback if they are not successful. I should say that there have been some very good examples of that. There is also an awareness that, in an exercise in which—as we have already identified—there are sectors of the population who are less likely to be interested, when such people put themselves forward, it is extremely important to retain that interest and to encourage them to put themselves forward again.

Therefore, there is awareness of the issue and there is some developing practice, but it is fair to say that there is still quite a lot of scope for improvement.

Patricia Ferguson: That will be an interesting issue to follow.

I have two points that arise from questions that colleagues asked earlier. I was struck by a good point that Dave Thompson made about the appointment of people who are paid to serve on boards. Do you have any statistics that explain how many people who are appointed to boards are remunerated as opposed to being given expenses? Is that a barrier to application, or does it encourage it?

Bill Thomson: We do not hold that information. I think that it is available on the appointed for Scotland website, but it is not gathered in a way that would answer your question neatly. I am a little bit hesitant about volunteering to do that in the short term, but it is maybe something that we could try and do for another time.

Patricia Ferguson: It would be quite interesting to know whether remuneration is a factor in people's decision to become involved.

Bill Thomson: There are some people who, in effect, have a career on boards—that was Mr Thompson's point. In itself, that is not wrong. They might be contributing extremely effectively. There will be other people for whom being involved is more important than the remuneration. I am not quite sure how we would get information about that, which is why I am hesitant about offering to provide statistics.

The Convener: That is probably something that we might ask the Scottish Parliament information centre to look at for us.

Patricia Ferguson: The convener raised with you the issue of the 19 inadmissible complaints that had come forward. I was struck by the fact that a number of them were referred on to more appropriate organisations. As an organisation, do

you get any feedback on the outcome of those referrals?

Bill Thomson: Sometimes we do and sometime we do not.

The previous permanent secretary's office followed the practice of sending a copy of the final letter to my office for our records—not that we would, or could, do anything with it. I do not think that there have been any more recent examples, so I presume that that practice will continue.

Although I am interested in what happens with such complaints, I have no role in relation to them, so there is nothing that I can do. If you were going to ask me what I thought of the information that I had received, I am afraid that I would not be able to comment.

Patricia Ferguson: No, I was not going to do that. I was simply interested to know whether, once you had referred on an inadmissible complaint, you got feedback on how the matter had been handled and the outcome.

Bill Thomson: In that sense, we do.

Patricia Ferguson: That is helpful to know.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning, everybody. I want to ask about accessibility and the public's ability to complain. The Scottish Parliamentary Standards Commissioner Act 2002 requires allegations about MSPs to be made in writing and to be signed. You recommend that that should be changed so that people can complain using information technology such as email. Does the benefit of allowing complaints to be submitted online outweigh the potential risk of acting outwith statutory competence?

Bill Thomson: My short answer is that I think so, otherwise I would not have put that forward, as I have done in the draft strategic plan. However, there is a slightly more complex picture behind that—as there is with all these things, unfortunately. If a complaint is about a member of the Scottish Parliament and it is unsigned, I have to submit a report to the Standards, Procedures and Public Appointments Committee that seeks instructions and a direction on whether to proceed with it. If it is about a councillor or a member of a public body, the act requires that, as far as possible, I investigate only complaints that are in writing and signed.

The legal definition of “writing” has moved on even since 2000 to the point where an online complaint could be treated as written, I think. The difficulty relates to the signature.

My view is that the risk of proceeding inappropriately with an investigation is very small. In the period in which I have been in office, I have

not yet received any complaints that appeared to have been completely frivolous. Some have been so far outside my jurisdiction that I was not sure why they came to me, but I have not received any from somebody who has pretended to be Mr C Lion or whoever. That has not been an issue up to now.

When we investigate, we have quite a lot of contact backwards and forwards—whether that is reciprocal or there is some other arrangement, to go back to a discussion that we had before the meeting. It would be very difficult for somebody to maintain a completely spurious complaint throughout the process. If I had any doubts, I would ask to speak to them.

That is a long way of saying that I do not think that the risk is very high. If the complaint is about an MSP, I have to come to the committee anyway, and you or your successors can direct me on whether to proceed. If the complaint is not about an MSP, the risk would be very low.

Gil Paterson: I look at the matter from a slightly different angle. The requirement in the act is that a complaint against an MSP should be in writing and signed. I understand your point about email, which makes complete sense, but could the MSP say that the person is not complying? Could the complaint be stopped in its tracks? Under the law, the requirement is that the complaint is signed. If it is not signed, how can it move forward?

I agree with you, by the way, and I am not trying to put an obstacle in your way. However, would it not be better to seek to amend the act? Can it be amended? Is the provision in the Scotland Act 1998 or is it something that we have the competence to change in the Scottish Parliament?

Bill Thomson: The Parliament has that competence. The 2002 act is an act of the Scottish Parliament in the first place, so it could certainly be amended here.

As I said, if a complaint about an MSP is unsigned, I have to come to the committee or its successor committee to seek authority to proceed, or directions on whether to proceed. I am not sure what the value of a signature is. Some signatures are completely illegible.

Gil Paterson: Mine, for instance.

Bill Thomson: We have to think carefully. All Governments that I am aware of are seeking to move to digital provision of services, and there has to be an assessment of the risk of not requiring a signature. If I brought to the committee a report that said that I had a complaint that was not signed but in all other respects it met the requirements, the committee or its successor committee would have to make a decision on that.

I am not sure whether that answers the question.

Gil Paterson: It certainly does. You are quite right to put the issue to us to have a look at it and to square the circle.

You mentioned the additional investments that are required for the renewal of your IT system. What resources, if any, are required to alter the relevant systems over and above the IT system to deliver the changes?

Bill Thomson: Convener, I might have to be a little bit coy about that, partly because we will be going to tender. I am therefore reluctant to discuss figures—

The Convener: If you are going to tender in early course, we should perhaps leave that.

Bill Thomson: We will be going to tender provided that I have the financial backing to do so, which I do not have yet.

The Convener: Indeed.

Gil Paterson: I want to ask a simple and straightforward question on a topic that the commissioner and Mary Fee raised—the increase in complaints about councillors. It would be good to hear whether the number of those complaints that are being upheld has also increased.

Bill Thomson: Percentage-wise, the number of complaints that are upheld is reasonably static. Perhaps it is better to talk about this in terms of cases, given that, in the 2014-15 annual report, we refer to something in Aberdeen about which we received 524 complaints. They all related to one issue, so that was one case, but it distorted the figures.

The highest number of cases that the office considered was in 2013-14. In that sense, there was a dip in 2014-15, although the level of complexity went up. We are now heading back to 2013-14 levels, and I see no sign of a tail-off.

Gil Paterson: Are the two things going up together?

Bill Thomson: Yes. You can look, for example, at the number of hearings held by the Standards Commission where I have reported a breach. The numbers are very small, but percentage-wise, they do not change very much. I do not think that it is an indication of rampant bad behaviour; it is just the volume of complaints.

Gil Paterson: Thank you.

The Convener: As an observation, I am fairly confident that we have legislation that provides for electronic signatures in other jurisdictions, and when the committee recently went through standing orders and the codes of conduct, we

wanted to make it clear that the phrase “in writing” should not be restricted to the physical process of making an imprint on a page. Just to give certainty, our successor committee might wish to look at doing something about the issue in a committee bill, but it is certainly not something for the current session of Parliament.

Cameron Buchanan (Lothian) (Con): I am interested in your comment that changes in working practices have contributed to the reduction in the number of reported concerns. Has there been a significant fall in the number of such concerns?

Bill Thomson: I ask Ian Bruce, who deals with the inquiries, to answer that question. I presume that we are talking about public appointments here.

Ian Bruce: We indicate in the annual report that that is due at least in part to the amount of oversight that we provide, but that does not mean that we are hugely concerned about the issue. As the commissioner indicated, where issues arise in rounds in which we do not provide direct oversight, officials will pick up the phone, call our office and say, “There’s been an instance of maladministration. How do we address it?” In that respect, we do not have a huge concern.

With our closer working relationship, there is a clearer understanding with regard to the advice that our advisers provide in the field, and that has been welcomed and found to be helpful in achieving ministerial aims. Such things are contributing to the reduction in the number of concerns. We also have to bear in mind that, compared with previous years, there were fewer live appointment rounds during the year, and that inevitably has an impact on the number of reports that come to the office.

I am not going to commit myself by saying that, in perpetuity, we will be looking at fewer concerns coming to us. However, our position has always been that, where our folks are involved in appointment activity, it is with a view to addressing issues as they arise. That is why we do not appear before the committee with reports—we are there to facilitate compliance on an on-going basis.

Cameron Buchanan: Thank you. We have passed two bills recently—the Lobbying (Scotland) Bill and the Interests of Members of the Scottish Parliament (Amendment) Bill. What impact will they have on staffing and other resources?

The Convener: Just for clarity, I point out that we have reached only stage 1 of the Lobbying (Scotland) Bill. It might or might not be passed.

Cameron Buchanan: That is fine, but I think that I can still ask the question.

The Convener: The question is certainly relevant. I was just making the point clear for the record.

Cameron Buchanan: The bill is going to be passed.

Bill Thomson: The impact will depend on the volume of issues that we have to investigate. I realise that that does not answer your question, though.

I have assumed—in fact, I have given evidence to the committee on this—that a handful of complaints will be received. If that is the case, although there will be an additional cost, I am sure that we will find a way of dealing with them. However, as I have said, we are really at capacity with regard to the range of things that we are looking at on the standards and complaints side. The honest answer is that, if there is a large volume of issues, I do not know what we will do. I am keeping my fingers crossed, and I hope that our new case management system, which allows us to streamline our administration and generate a lot of material automatically, will reduce the amount of time taken.

Cameron Buchanan: Is it your IT system that you are talking about?

Bill Thomson: It is part of the IT system. There are other issues, but we do not need to go into them today.

We are trying to improve our efficiency; indeed, we have already done so, and we will continue to try to do so. We just have to hope for the best and hope that the volume of complaints is not large.

The Convener: That brings us to the end of the questions that we wanted to put to you. Do you wish to draw to our attention anything of significance that we have not covered?

Bill Thomson: No, thank you, convener. We have had a fairly extensive canter around the field.

The Convener: In that case, I thank all three of you for attending the meeting and helping us with our consideration of matters related to public appointments and so on. Your evidence has been very helpful.

Bill Thomson: Our pleasure, convener.

The Convener: We now move into private session.

10:46

Meeting continued in private until 11:23.

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