



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Standards, Procedures and Public Appointments Committee

**Thursday 22 September 2016**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Thursday 22 September 2016**

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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**  
**5<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

\*Patrick Harvie (Glasgow) (Green)

**COMMITTEE MEMBERS**

\*Tom Arthur (Renfrewshire South) (SNP)

\*Clare Haughey (Rutherglen) (SNP)

\*Daniel Johnson (Edinburgh Southern) (Lab)

\*John Scott (Ayr) (Con)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Joe FitzPatrick (Minister for Parliamentary Business)

**CLERK TO THE COMMITTEE**

Douglas Wands

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Thursday 22 September 2016*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Clare Adamson):** Good morning. I welcome members to the fifth meeting in session 5 of the Standards, Procedures and Public Appointments Committee. I remind everyone to switch off mobile phones. Other devices should be kept on silent.

We have received apologies from Mr Arthur, who is delayed but expects to be in attendance at some point.

Our first item is a decision on whether consideration of draft standing order rule changes, a draft report on First Minister's questions and the committee's work programme should be taken in private at future meetings. Do members agree?

**Members** *indicated agreement.*

## Parliamentary Liaison Officers

09:30

**The Convener:** Item 2 is evidence from Joe FitzPatrick MSP, the Minister for Parliamentary Business, on parliamentary liaison officers. I warmly welcome the minister to the committee, as well as James Hynd, head of the Cabinet, Parliament and governance division, and Steven MacGregor, head of the Parliament and legislation unit in the Scottish Government.

Mr FitzPatrick, do you have any opening remarks to make to the committee?

**The Minister for Parliamentary Business (Joe FitzPatrick):** No, I am pleased to come and speak to the committee and answer your questions.

**The Convener:** Okay. I will take the opening gambit. Will you give your description of the parliamentary liaison officer role?

**Joe FitzPatrick:** The parliamentary liaison officers were devised in the first minority Government in 2007. Previously, there was a system of ministerial aides, which had worked through the first two coalition Governments but, in 2007, the situation had changed and the way that the Parliament was going to work had to change. Therefore, the emphasis changed from supporting ministers to liaising with the Parliament as a whole. For the Parliament to work and the Government to make progress on any of its agenda, consensus had to be built across the Parliament. That is the main role of parliamentary liaison officers. It is not just a link between the back benches and Government ministers; it is very much a link to the whole Parliament and it has worked effectively over time.

**The Convener:** Thank you, minister. A number of members have questions, starting with Mr Harvie.

**Patrick Harvie (Glasgow) (Green):** Good morning. For me, the central question is the definition of the role. You said that the role changed at the beginning of the first minority Government from supporting the minister to liaising with the Parliament as a whole, not just the Government's back benchers. That is reflected in the answer that you gave in announcing the most recent changes:

"PLOs will assist in developing and maintaining a positive and constructive relationship between the Scottish Parliament and the Scottish Government."—[*Written Answers*, 1 September 2016; S5W-02261.]

In a previous answer, in which you announced the first appointments of PLOs for this session, you said that their role was about the

"relationship between the Scottish Parliament and the Scottish Government and to take account of the views of the Parliament and of Scotland as a whole."—[*Written Answers*, 14 June 2016; S5W-00723.]

However, the part of the ministerial code that has not been changed is the simple definition of the role in section 4.8: appointment of

"an MSP as a Parliamentary Liaison Officer ... to support the Cabinet Secretary in the discharge of his or her Parliamentary duties."

There seems to be a mismatch between those two aspects. If the job is one of working for the Government—not a Government job but working for the Government—to support the cabinet secretary, that seems to me to be a different role from the one that you describe of liaising between the Government and the Parliament as a whole. I do not recall PLOs performing that function during the first months of this session of minority government nor during the first period of minority government, when there had to be a great deal of interparty discussion and negotiation on a host of issues. MSPs and ministers would pick up the phone to each other.

**Joe FitzPatrick:** Maybe I should refresh your memory. In that first Scottish National Party Government, I was the parliamentary liaison officer for John Swinney. I can remember having many discussions with you, Sarah Boyack and other Opposition members.

At that time John Swinney was responsible for four committees. I sat on one of those committees, the Finance Committee, and I can remember having lots of discussions with you and other members specifically because I was John Swinney's PLO. One particular area was the budget—there were lots of discussions around that. I did not mean to say that there were no direct discussions with cabinet secretaries, but it was an additional layer that I hope was valued. I can remember spending a lot of time in those years carrying out that role in a way that I thought was helpful, not just to the Government but to Opposition members.

**Patrick Harvie:** There were certainly aspects of the discussion on budgets in which we would engage not just with the cabinet secretary or other ministers, but with you or officials. However, the principal negotiation was between the Government party—the members of the Government—and Opposition parties.

The committee is looking at whether the suggestion of having the PLO role codified at some level in the standing orders is relevant. If the role has changed from what is described in paragraph 4.8 of the ministerial code—supporting the cabinet secretary—to being a go-between or liaising between Parliament and Government, the PLO is not working for the cabinet secretary but

working for all of us and the role requires to be defined in the standing orders of the Parliament.

**Joe FitzPatrick:** It is an appointment made by the First Minister—it is important to have that distinction. It is not an appointment of the Parliament; it is an appointment made by the First Minister in discussion with me and the cabinet secretaries.

The name change from ministerial aides to parliamentary liaison officers was about a shift of emphasis and that was made very clear when the change was made. The former First Minister made it clear that it was about improved transparency and increased engagement. It is an appointment of the First Minister not the Parliament. It does not in any way debar members from going directly to cabinet secretaries but sometimes it is worth having different routes.

I can remember in the last session of Parliament the work of Angus MacDonald in making sure that the Government understood the concerns there were, particularly of Labour members as well as back-bench SNP members and others, in relation to the Land Reform (Scotland) Bill. That process, which Angus was very much involved in, got us to a point where we had a better bill. It was about not just direct communication but understanding what members were saying.

Over the nine years since we have had parliamentary liaison officers, maybe people did not realise that they were speaking to somebody in their capacity as a PLO. The Presiding Officer has spoken to me about that, and now PLOs will declare their appointment in the chamber to improve transparency. That has been a positive step forward both for the PLOs and for the Parliament in having that awareness. I hope that folk have seen over the years that the role is useful and that, if they look back, they will find examples in which it has helped.

**Patrick Harvie:** I welcome that last point about transparency. In short, would you say that PLOs still work for ministers, as stated in paragraph 4.8 of the ministerial code, or are you saying now that PLOs work for the Parliament?

**Joe FitzPatrick:** They are clearly appointed by the First Minister but, as part of that, particularly in a minority Government, the role is important and I hope that it is valued by members across the chamber.

**The Convener:** I bring in first Mr Johnson and then Mr Scott.

**Daniel Johnson (Edinburgh Southern) (Lab):** Thank you for coming to the committee, minister. It is useful, and the discussion about PLOs is an important one. I would like to continue on some of the things that you mentioned in response to

Patrick Harvie. You described yourself as working for John Swinney. That is fine—I am not saying that there is anything wrong with it—but will you say a little more about what you did for him and, more broadly, how PLOs help ministers?

**Joe FitzPatrick:** Certainly. Each PLO and cabinet secretary will have different ways of working. That is one thing to be accepted. Obviously, they have to work within the confines of the ministerial code, but everyone who does a job will have their own ways of doing it and their own ways of working. It is not a case of saying, “You need to do X, Y and Z.” It will depend on the relationship.

However, when I was John Swinney’s parliamentary liaison officer from 2007 to 2011, I spent a lot of time meeting the Opposition. There was a lot of focus on the budget, but in addition I had discussions when we were looking to introduce the Climate Change (Scotland) Bill. As the only parliamentary liaison officer within John Swinney’s remit, I had a lot of discussions with Sarah Boyack about taking forward that bill. As a Government, we had to build consensus in order to get the bill through.

Pretty early on in that process, Shirley-Anne Somerville came into the Parliament and she joined me as one of John Swinney’s parliamentary liaison officers. She then focused more on climate change and did more of the discussions with members in that regard. She sat on the Transport, Infrastructure and Climate Change Committee that Patrick Harvie chaired—

**Patrick Harvie:** Exactly.

**Joe FitzPatrick:** I hope that he appreciated the input that she was able to make.

**Patrick Harvie:** And of all committee members—

**Joe FitzPatrick:** Yes, exactly, but—

**Daniel Johnson:** Would it be fair to say that your role was about helping to ensure that Government legislation had the support that it needed to get through?

**Joe FitzPatrick:** No. I have no idea what the role was previously, when there were ministerial aides, but it has always been a two-way process. It is about understanding Government process and policy and trying to find consensus—

**Daniel Johnson:** Sure, but your objectives were set by the cabinet secretary.

**Joe FitzPatrick:** —but it is also about understanding the Opposition’s position. A really good example of that from the previous session of Parliament is the Land Reform (Scotland) Bill, on which Angus MacDonald did a fantastic job in bringing together the thoughts of back-bench SNP

members and Opposition members—particularly Labour members—on the committee. We reached a point at which we had a stronger bill, and that shows the benefit of the system working both ways.

**Daniel Johnson:** The bills that you name checked were both Government bills. How much time did you spend working on members’ bills and getting support from the Government for those?

**Joe FitzPatrick:** There are obviously far fewer members’ bills, but I guess that there will be some examples. I am trying to think what members’ bills there were. We are going back quite a bit.

**Daniel Johnson:** I think you have made the point for me.

**Joe FitzPatrick:** It is easy to talk about the Climate Change (Scotland) Bill because it was such a big bill. Although it was a Government-inspired bill, it became a bill of the Parliament as a whole; I do not think that the Government would claim all the credit for it. Members across the Parliament worked together on it, and I hope that the parliamentary liaison officer system helped us to get to the point where we were all proud of the legislation that was ultimately passed.

**Daniel Johnson:** Sure, but supporting the programme for government is clearly an important part of the PLO’s role.

**Joe FitzPatrick:** Supporting their manifesto commitments is something that people in all parties do. Just as SNP members, whether they are PLOs or back benchers, will support in the main—

**Daniel Johnson:** But there is a difference between a manifesto and a programme for government.

**Joe FitzPatrick:** Members of the Opposition will also come in with their specific manifesto commitments or policy positions. However, when members come on to a committee, that is where things change.

We have good examples of members of all parties taking off their party-political hat when looking at a subject, whether they are a PLO or a spokesperson for the Opposition, and I think that this Parliament’s committee system does that well. Clearly, if someone is a Government back bencher of any sort, the type of questioning will be slightly different, but nonetheless there has been robust questioning over the past nine years, whether from Opposition or Government back benchers, including parliamentary liaison officers. They have done a good job, and we can see that from the stage 1 reports and the changes that Government often makes to bills at stage 2. The Parliament works well and members have the ability to take off their political hats and look at a subject straight

on. I could give examples of people from both Government and Opposition who have managed to do that.

09:45

**Daniel Johnson:** How were the parliamentary liaison officers chosen? I take it that it is not an accident that you have a former lawyer helping with the justice brief and a former teacher helping with the education brief. What was the process for selecting PLOs?

**Joe FitzPatrick:** The decision on selection is one for the First Minister, but obviously I helped her with that process in discussion with the cabinet secretaries. We will have taken account of the whole range of experience that people have in order to get people who can best help with the portfolios.

**Daniel Johnson:** Coming from a business background, I know that developing skills and talent is important. I take it that an important part of that is nurturing the back-bench ranks and developing the next generation of members who can take on further responsibilities. Would you say that that is part of the role?

**Joe FitzPatrick:** Everybody who comes into Parliament is initially on a big learning curve. The PLO role is about liaising between Parliament and Government. We in the Government must look, just as the Opposition does, at the whole range of experience in our team and how best that can be deployed. In the same way, the Labour Party will have made a decision as to which members it wants as conveners and as spokespeople. That is a choice that is made about how those talents are used.

**Daniel Johnson:** How many members of the current ministerial ranks have formerly been PLOs?

**Joe FitzPatrick:** I would need to look at a list of names, but it is probably about a third. Is it more?

**Patrick Harvie:** I think so.

**Joe FitzPatrick:** It could be more, but I think that it is about a third. I guess that we could come back to you with an answer about exactly who has been a PLO, but nobody has ever been a secret PLO so it should be easy to work out that figure.

**Daniel Johnson:** I do not think that it is a bad thing.

**Joe FitzPatrick:** It is actually one of the good things. To be serious, given the discussion that there has been here, we do not think that there has ever been a problem, but we think that it is always possible to be more transparent. That is something that the First Minister is keen to do, which is why she has made the changes that were

suggested. It is not only about being more transparent but about people having more confidence in the system.

I hope that people will welcome the changes to the ministerial code that the First Minister decided to make, and I hope that that gives folk outside more confidence in the processes that we have in this Parliament. I think that our system is really good, and I would hate to think that we might ever have to end up going down the route of a Westminster system with an unelected house trying to determine what happens with our legislation. We have a robust system, but it is appropriate to keep checking it to see whether we can make it more transparent. The First Minister made the changes to the ministerial code on that basis, and after discussion with the Presiding Officer we have also asked parliamentary liaison officers to indicate their positions prior to asking a question of their cabinet secretary.

**Daniel Johnson:** I think that we can agree that transparency and confidence are vital.

**John Scott (Ayr) (Con):** Thank you for coming to speak to us, minister. I go back to Patrick Harvie's point. Of course I welcome the First Minister's determination to introduce even greater transparency into the process, but I am still trying to bottom out the difference between your statement and standing orders.

If, as you implied, PLOs are working for the Parliament, that is something new, given that the First Minister appoints them. After all, the Parliament and the Government are two separate entities—I do not need to tell you that, minister, but I make that clear for those who might be looking in, shall we say—and normally those who work for the Parliament are appointed by the Scottish Parliamentary Corporate Body or the Presiding Officer, with the endorsement, perhaps, of the Parliamentary Bureau. I cannot reconcile how, given the fact that PLOs have to work within standing orders, they now work for the Parliament, too, as you implied. Do you not think that there is a conflict?

**Joe FitzPatrick:** No. Let me be clear: parliamentary liaison officers are appointed by the First Minister, but their role benefits the whole Parliament. We all work for the people of Scotland, whether or not we are in such roles, and that is where the responsibility that is on all of us lies.

I do not think that it is quite fair to interpret my comment as suggesting that PLOs work for the Parliament; they are appointed by the First Minister to do a role that benefits the Parliament. Particularly with a minority Parliament, there will have to be consensus, liaison and discussion if we are to make progress on any issue. The focus is absolutely on the liaison role. I think that all the



PLOs are new to their roles, so they will be developing those roles and, once they have been in position for a period, members will see the benefit that they will have had.

**John Scott:** So the PLOs are of benefit to the Parliament, rather than of benefit to the Government.

**Joe FitzPatrick:** They are of benefit to the people of Scotland, which is ultimately the most important thing.

**John Scott:** I would prefer you to be clearer. We are all here for the benefit of the people of Scotland, but we all have different points of view.

**Joe FitzPatrick:** PLOs are appointed by the First Minister. They are of benefit to the Parliament, but they are also of benefit to the Government. I do not see why in this discussion it should be just one or the other.

**John Scott:** On a specific point, other Parliaments restrict the questions that a PLO can ask of their cabinet secretary or minister. Would you consider the value of such an approach? I think that you said that the questioning by PLOs of their cabinet secretaries has been neutral, but I have certainly witnessed questions that have been just a feed—they were inspired questions, shall we say. That is absolutely legitimate, but I cannot get my head round the suggestion that PLOs are also there to scrutinise the Government through their role on committees and that they are for the Parliament, which also seeks to scrutinise the Government, while being bound by standing orders to work for their cabinet secretaries.

**Joe FitzPatrick:** The big difference with legislatures where PLOs are not allowed to ask questions of cabinet secretaries is that those PLOs are expressly bound by the ministerial code to support the Government position and are in effect covered by collective responsibility. The old pre-2008 code, which was from a time when we had ministerial aides, made it clear that that was the case and that aides had to go further than the usual following of the whip. That code said:

“their position as Ministerial Parliamentary Aides means that they must support the Executive on key policy issues.”

That is why, before 2007, a ministerial parliamentary aide who wanted to take a different view in committee or in the chamber would resign from their position.

That provision was removed from the code. That was a significant step, because, first and foremost, PLOs are MSPs, which is why it would be wrong of the Parliament to come up with a situation in which a set of back-bench MSPs were not allowed to ask questions. We have had discussions with the Presiding Officer—at the deputy convener's behest, I think—about making the process more

transparent so that, if a PLO asks a question, people know that they are a PLO and can put any colouring on to the question that they want. That is helpful. It is about transparency, which is important because I have seen a few articles in the papers in which some journalist has said, “That was a softball question,” and so on. Such transparency shows that the system is working.

Government back benchers will always be accused of asking softball questions and Opposition members will be accused of asking highly politicised questions—that is the way of Parliament. We will see how the changes work out over the coming period, but I hope that they have got us to a position in which there is an increase in transparency so that, even if people think that a question from a PLO is a softball question, they know that the person is a PLO and there is no secrecy in the system.

One of our Parliament's strengths is that, as it has grown over the years, we have grown more open and more transparent. I contrast that with other places that have perhaps closed in.

**John Scott:** There is an issue about an extension of the role beyond standing orders, which is what you seem to imply has happened. The situation would be far clearer if we knew that PLOs were working just for cabinet secretaries and that, as such, they were part of the Government—

**Joe FitzPatrick:** That is not the case.

**John Scott:** You are saying that they are working for the Parliament—

**Joe FitzPatrick:** I did not say that, either. I said that they are MSPs.

**John Scott:** Will you define the extension of the role again for me, for the avoidance of doubt?

**Joe FitzPatrick:** To be clear, PLOs are appointed by the First Minister. I believe that the role benefits the Government and the Parliament. I hope that people who have been involved in the Parliament—and Patrick Harvie in particular—will be able to look back and appreciate that the role that PLOs have played has been positive and helpful.

**John Scott:** I will leave it there.

10:00

**Alexander Stewart (Mid Scotland and Fife) (Con):** The PLOs need to have access to information that might be confidential. I want to be clear about what they can do with that information. Do they receive any training in the role? Do they all go through a process, or do cabinet secretaries and ministers come up with their roles? What

scrutiny and governance is there of them? What happens if they are challenged in their role?

**Joe FitzPatrick:** As I said earlier, the working relationships and ways of working of individual PLOs and cabinet secretaries vary, but everything has to be within the ministerial code. When PLOs are appointed by the First Minister, they receive a letter. It would help if I read out the paragraph of that letter that relates to the area that we are discussing. It says:

"This role may involve you in having to access government information: such access will be solely for the purpose of allowing you to discharge your role effectively, and on a strictly confidential basis."

The next part of the paragraph is important, as it concerns the other side of the issue. It says:

"You may also have access to information provided in confidence as a result of your Parliamentary role, for example in relation to committee membership. It will therefore be important that you respect the confidentiality arrangements that exist in respect of both roles and avoid any conflict of interest or the appearance of such a conflict."

The letter recognises the potential for a conflict of interest and it highlights to PLOs their responsibility to treat confidentially any confidential information that they receive from the Government or in other capacities. I think that members take such an approach. A party spokesperson has to respect whatever information they get from a committee, just as a PLO does.

**Alexander Stewart:** Do PLOs receive any formal training, or is it just accepted that they will be supported by the cabinet secretary or the ministerial office?

**Joe FitzPatrick:** I am not sure what training would be needed to understand that if you have received something in confidence you do not—

**Alexander Stewart:** Do PLOs get training to do the role? Information is disseminated, and the role has expanded. As we have discussed, the role has changed in some ways from what it was originally, and it may adapt further. We acknowledge that the First Minister makes the appointment but, when each individual is working with the cabinet secretary, will they have an opportunity to develop their potential, so that they may end up becoming a minister in the future?

**Joe FitzPatrick:** There is no formal PLO training.

**Alexander Stewart:** Is there none of that kind?

**Joe FitzPatrick:** No.

**Clare Haughey (Rutherglen) (SNP):** Thank you for coming along, minister. I am one of those who are on the steep learning curve that you referred to, so it was helpful to hear what you said about the history of the role and how it has

developed. What would be lost if we did not have PLOs in Parliament?

**Joe FitzPatrick:** The role is helpful. If we did not have PLOs, it might be more difficult for us to make some of the progress that we have made at other times, although we would always find a way. Given that PLOs focus on a portfolio area and try to understand other members' thoughts, not having the role would be negative.

The role is helpful, particularly with a minority Government, but there were good examples in the previous parliamentary session of PLOs making a particular contribution to ensuring that Parliament was comfortable with legislation. Even when the Government could have bulldozed something through if it had wanted to, that did not happen.

**Clare Haughey:** Will you expand a little on how you view the liaison role?

**Joe FitzPatrick:** I will mention one thing that would be lost if we did not have PLOs. Meetings can happen and people can put out a press release that says, "Here's the position," but sometimes the role is about finding out what is behind that position. It is not just about understanding what a position is; understanding why a position exists helps the Government to develop policies.

It was a challenge for us to find ways to make some amendments to the Land Reform (Scotland) Bill. The Government had to work hard to achieve that. We would not have achieved that if there had not been an understanding of what members were concerned about. The PLO helped to ensure that we not only heard but understood the issues.

**Daniel Johnson:** You have set out a number of times the role's benefits, which I accept. I accept that there is a benefit to having a Scottish Parliament. There is a benefit to having a Scottish Government, but that does not necessarily mean that I agree with its objectives and purpose. Do you accept that there is a difference between saying that a role has a benefit and the objectives and purpose that it may serve at any given time?

**Joe FitzPatrick:** I do not 100 per cent understand the question.

**Daniel Johnson:** There is a benefit to having a First Minister—it is easy for me to say that. However, as a Labour member, I do not always think that having an SNP First Minister will achieve the purposes that I might want, even if I accept the role's wider benefit. Do you understand the distinction?

**Joe FitzPatrick:** I would be surprised if the First Minister appointed a member of another party as a PLO, so that difference will always exist. However, I think that a number of current and past members

of Opposition parties will recall occasions on which they felt the benefit of the PLO.

**Daniel Johnson:** There is a benefit, but the objectives that PLOs pursue are still primarily those of the Government.

**Joe FitzPatrick:** I will stick with the example of the Land Reform (Scotland) Bill. Our objective was to get the best possible legislation. The objective in that case was, through a process of liaison, to get like-minded members—whether they were from the Green Party or the Labour Party—to go in the same direction, and we got further along that road than we might have done without the discussions that took place as part of the liaison process. The members of the then Rural Affairs, Climate Change and Environment Committee engaged with the Government constructively. Sometimes that involved direct discussion with ministers and sometimes it involved indirect contact through liaison officers.

**John Scott:** If I may—

**The Convener:** I am sorry, Mr Scott, but I have a question to ask and then I want to bring in Mr Harvie. I will come back to you.

Minister, you mentioned that, with a minority Government, the First Minister would be unlikely to appoint a PLO from another party. However, is it true to say that, with a coalition Government, it is quite possible that there would be PLOs from however many parties were involved in the coalition?

**Joe FitzPatrick:** That is a hypothetical question, but I guess that, given that the First Minister discusses and confirms appointments with the cabinet secretaries, the parliamentary liaison officers would be likely to be of the same party as the cabinet secretaries if there was a coalition Government.

**Patrick Harvie:** I would like to follow up on a couple of points. You have stated quite clearly that PLOs are not bound by collective responsibility in the way that parliamentary private secretaries at Westminster are. Therefore, I presume that a PLO would not be dismissed or be expected to resign for voting against the Government whip.

**Joe FitzPatrick:** That is correct. PLOs are bound by the same party discipline that we are all bound by under the whips process, but there is no extra layer.

**Patrick Harvie:** But that would not affect their PLO role.

**Joe FitzPatrick:** No. There is no extra layer of responsibility in the way that there is for a minister, who is bound by collective responsibility. That does not apply to PLOs.

**Patrick Harvie:** How often have PLOs voted against the whip?

**Joe FitzPatrick:** I have never assessed that.

**Patrick Harvie:** It is not something that I recall happening.

**Joe FitzPatrick:** I do not know. The same would probably apply to most Green members, who have never gone against the Green whip.

The fact is that people join parties because they have similar views and, in the main, they will come to the same conclusions. Whether we are talking about members of the Conservative Party, the Green Party, the Labour Party or the Scottish National Party, they will have joined their party because, in the main, they agree on most things.

**Patrick Harvie:** Nobody tended to spot the days when Robin Harper and I voted in different ways.

I do not detect any hostility to the existence of PLOs; I do not even detect any great rejection of the description that you have given of the way in which Government has perceived the role to change over the years. However, it seems clear that there has not always been a good understanding between Government and Parliament of those changes. Government has had a sense of how the role has changed, but that has not always been apparent to Parliament.

I think that the example that you gave of the Climate Change (Scotland) Bill was a good one. As convener of the Transport, Infrastructure and Climate Change Committee, I respected and valued the role of all committee members equally, and I always perceived the members to be acting as committee members. When committees want to hear from the Government, we invite ministers and civil servants to come and give evidence. I would not have felt it appropriate if a member of the committee had, in effect, been acting on the Government's behalf during that process.

There has been an acknowledgement that it was inappropriate for a PLO to be a member of the committee that dealt with their minister's portfolio, and I welcome that as a positive change. However, I suggest that, if the role of PLO has changed from that of working for ministers to that of engaging with how Government conducts its functions and with how Parliament conducts its functions, there needs to be a mutually agreed definition. The role should not be defined only through the ministerial code.

Would the Government seek to oppose the introduction of such a definition in standing orders so that there is some mutual agreement about how the role is supposed to work?

**Joe FitzPatrick:** I think that it would be difficult for an appointment that is made by the First

Minister to be governed by the standing orders. That would be quite strange.

**Patrick Harvie:** Aspects of how ministers do their job are defined by the standing orders.

**Joe FitzPatrick:** I think that it would be quite difficult. The main role of PLOs is as MSPs, so what you suggest would be quite strange. A lot of what goes on in Parliament is not in the standing orders but happens according to agreed ways forward.

In response to the request for increased transparency and the need for confidence in the system—it is as important for the Government as it is for the Parliament that people have confidence in our democratic system—the First Minister has put it into the ministerial code that PLOs will not be on the committee that is most relevant to their cabinet secretary's portfolio. We have also made sure that, at each point, there is transparency around who the PLOs are—the First Minister is clear that we should ensure that at the earliest opportunity—and, after discussion with the Presiding Officer, we have agreed that every new appointee will make a statement in the chamber prior to questioning their cabinet secretary.

We have gone some way towards allaying people's concerns, and I hope that those measures will be given some time to see whether they work. All the PLOs are relatively new in post, and we have some new systems in place that will benefit the PLOs as well as the Parliament. You highlight the need for people to have a better understanding of what PLOs do, and I think that the increased transparency will be good for the PLOs as well, because there may have been a lack of recognition of their role and the work that they were doing.

**Patrick Harvie:** You have accepted the general argument that, previously, the role was about how ministers carried out their duties. Now you are saying that the role is about both how the Government functions and how the Parliament functions. That being the case, there needs to be a mutual understanding of what the role is and how it operates.

**Joe FitzPatrick:** This process is part of developing that understanding. Ultimately, however, the PLOs are appointed by the First Minister—they not have any special rights in the Parliament, so it would be strange to have them in the standing orders.

**Patrick Harvie:** You have acknowledged that they have a special role in the relationship between the Government and the Parliament, which other MSPs do not have.

**Joe FitzPatrick:** The relationship is between the Government and back benchers, yes.

**John Scott:** I am still trying to bottom out the new role of the PLOs. On two occasions, you have suggested that Angus MacDonald's job in the RACCE Committee was to understand the mood of parliamentarians outside his own party rather than to influence them. However, I think that you have said twice that the new role is to understand and benefit the progress of bills. Can you confirm that the new role is to understand rather than to influence?

I appreciate the difficulty with the nuances around the role. Would you or the First Minister write to the committee, having reflected on the matter with your officials and others, to give us a clearer definition? I am still struggling to grasp what the new role of the PLOs is and to resolve the apparent conflict between what you have said and what the standing orders tell us.

**Joe FitzPatrick:** The big change is the focus on liaison. They are still appointed by the First Minister and they still work with the cabinet secretaries, serving as liaison officers for particular cabinet secretaries.

**John Scott:** Coming from the Delegated Powers and Law Reform Committee, I am interested in the nuance between "working with" and "working for" a cabinet secretary. Which is it?

**Joe FitzPatrick:** When they are appointed to serve, the specific language used in the letter is:

"I am pleased to confirm your appointment as parliamentary liaison officer in support of the Cabinet Secretary and portfolio Ministers."

In that role, the most important thing is the liaison function. It is only part of what they do—different parliamentary liaison officers and cabinet secretaries have different ways of working. However, they are always bound by the ministerial code, which we have updated in a way that I hope is welcome.

10:15

**John Scott:** I still cannot get beyond what you have said today. In terms of the standing orders, there is a clear conflict of interest. Perhaps you could write to us and redefine how that—

**Joe FitzPatrick:** I will have a think and find some words that make that clearer.

**The Convener:** Would you be willing to share the appointment letter with the committee? I think that that would be helpful.

**Daniel Johnson:** We have a unicameral parliamentary system so we do not have the clear distinction between Government and Parliament that other places have. Do you agree that the closer an MSP is to the Government, the more

difficult the scrutiny role becomes, and the further the separation, the easier it is to perform that role?

**Joe FitzPatrick:** Whatever scrutiny is happening has to reflect and respect the voting pattern of the people of Scotland. In the previous parliamentary session, the majority of MSPs were members of the SNP, but in this session that is not the case. As I said, there are some very good examples of PLOs scrutinising the cabinet secretary whom they were appointed to serve. One example—I will try to stay away from examples of SNP members—was John Finnie who, when he was a member of the SNP group, was parliamentary liaison officer for Kenny MacAskill. If anybody cares to look at the record, they will see lots of occasions when John Finnie robustly questioned Kenny MacAskill on justice issues.

The challenge for all of us in our various roles—particularly committee roles—is to put aside, to some extent, the party-political hat. Whether you are a parliamentary liaison officer or a spokesperson for a particular party—which means that you are bound to support that party's manifesto commitments or policies—you have to take off the party-political hat in order to scrutinise evidence from external parties, a Government bill or whatever else comes before you. Most folk manage to do that really well.

**Daniel Johnson:** I take it that you think it a good thing that ministers do not question their fellow ministers in the chamber or in the committees?

**Joe FitzPatrick:** Ministers are bound by collective responsibility, but PLOs are not.

**Daniel Johnson:** Do you see the benefit in not permitting that in the chamber or in the committees?

**Joe FitzPatrick:** That is not relevant, although there has been an attempt to make it so here. Ministers are bound by collective responsibility when they are appointed. When they accept their appointment, they accept collective responsibility. Parliamentary liaison officers are not bound by collective responsibility here, although they are in other places. That is the big difference.

**Daniel Johnson:** They are appointed by ministers, their objectives are set by ministers and they report to ministers.

**Joe FitzPatrick:** They are appointed by the First Minister.

**Daniel Johnson:** They also get access to confidential Government information. We have already established that there is at least some connection between their status and role as a PLO and potentially progressing in the Government. Do you agree that there is a proximity between PLOs

and the Government that an ordinary backbencher does not have?

**Joe FitzPatrick:** It is an appointment by the First Minister.

**Daniel Johnson:** If the relationship between a minister and the Government means that it is not appropriate for them to be questioning the Government, surely that raises the same question for the PLO. I suggest that your dismissal of that point is perhaps a little quick.

**Joe FitzPatrick:** I am merely stating the fact that ministers are bound by collective responsibility and parliamentary liaison officers are not. That is a substantial and pretty fundamental difference.

Transparency is really important, so the question whether people should know that an Opposition spokesperson is asking a question also arises. There are lots of ways in which we could improve transparency, but it would not be right to suggest that we should have what would effectively be a set of second-class back-bench MSPs who are not allowed to ask questions and not allowed to represent their constituents.

**Daniel Johnson:** The question is whether we have a Government rank to which a set of rules is applied that is different from the rules that apply to other Government ranks. That is the distinction.

**Joe FitzPatrick:** No. Your suggestion that PLOs are a Government rank is wrong.

**Daniel Johnson:** So there is no connection between PLOs and the Government.

**Joe FitzPatrick:** There are lots of connections. Any SNP member will be closer to the Government than a member of, say, the Conservative Party—I would suggest that Conservative members are furthest away.

**Daniel Johnson:** I am sorry, but the letter says that there is a formal relationship between the Government and PLOs.

**Joe FitzPatrick:** It is an appointment made by the First Minister.

**Daniel Johnson:** It is a formal relationship.

**Joe FitzPatrick:** There is no secrecy; it is very transparent.

**Daniel Johnson:** The status is that of a formal relationship between the Government and PLOs.

**Joe FitzPatrick:** It is an appointment made by the First Minister—

**Daniel Johnson:** —which means that it is a formal relationship.

**The Convener:** We will leave that there. Your point is well made, Mr Johnson. I will bring in Mr Arthur and then Mr Scott.

**Tom Arthur (Renfrewshire South) (SNP):** First, I apologise for being a bit late due to unforeseen circumstances. Also, for the record, I declare that I am a parliamentary liaison officer for the Cabinet Secretary for Justice, prior to which I was parliamentary liaison officer for the Cabinet Secretary for Health and Sport. Also—just to correct Mr Johnson—my background is not in law, but in music.

**Daniel Johnson:** I apologise.

**Tom Arthur:** My experience of being a PLO is limited to the past four months, but I have also considered international practice in respect of the role. My understanding is that if the role is carried out properly it is to develop expertise in a particular portfolio, to engage and liaise with parliamentarians, to make particular efforts to engage with people outwith Parliament, and ultimately to act as a conduit between members of all parties and the cabinet secretaries and ministers. Does the minister agree with such a characterisation?

**Joe FitzPatrick:** That is true. Today we have talked mainly about the parliamentary role, but there are clearly other roles in helping the cabinet secretary to hear the voice of Scotland. Everybody has limited time for engagement—the cabinet secretaries try to make themselves as available as possible in Parliament, but there is, equally, in wider Scotland a role for PLOs. As I say, the functions will, ultimately, vary from PLO and cabinet secretary to PLO and cabinet secretary.

**Tom Arthur:** One of the things that strikes me is that there is an in-built flexibility that is necessary because the *modus operandi* of cabinet secretaries will differ. Also, while respecting that flexibility and the right of cabinet secretaries to have their own unique relationship with their PLO, the deputy convener has suggested that the role could be formalised within standing orders, and you have raised the conflict in that because it is an appointment from the First Minister. Would there be an opportunity in the ministerial code to expand upon the definition of a PLO in a way that does not overly restrict it?

**Joe FitzPatrick:** The ministerial code is a matter for the First Minister, but I am sure that she will be listening to the proceedings today. If there are any thoughts on a requirement for further adjustments, I am sure that she will take them into account.

I hope that members appreciate that there have been some significant changes. There is a new team of PLOs and I hope that the committee will feel that it is appropriate to allow that process to

bed in. If there is a feeling that we need to come back for further discussions, that would not be a bad thing. Today's discussion has been helpful in highlighting and increasing understanding of the roles across Parliament, which is good for members and will help our PLOs.

**John Scott:** I want to take you back to what you said about Mr Finnie's contribution to scrutiny of his cabinet secretary. I do not recall that necessarily being welcomed, but are you telling us—in good faith, I dare say—that the PLOs will have a new scrutiny role? That would stack up with your telling us that they are working for the Parliament, because in a democracy Parliament exists to allow scrutiny of the Government. If you are going to write to us in that regard, will you also say that that is a welcome part of the PLOs' role and that they will be welcome to undertake scrutiny?

**Joe FitzPatrick:** When John Finnie was questioning Kenny MacAskill, he would not have been doing so as a PLO; he would have swapped his hat and would have been questioning him as a Highlands and Islands member. I think that in this Parliament members are very good at having two roles; indeed, a number of party spokespeople sit on committees, and sometimes they will go to a meeting wearing their party hat because the issue in question is in their manifesto and they have a clear policy on it. For instance, in the previous Parliament, Alison McInnes would have stood rigid with regard to anything to do with Police Scotland, because the Liberal Democrats were very clearly against our proposals; however, on a load of other issues, she was able to take off her Lib Dem justice spokesperson hat and look at the evidence as a committee member. I think that committee members of all parties are, in most cases, very good at doing that.

Of course, there will always be one or two matters on which people will have very rigid views. For example, no matter what evidence is given, Patrick Harvie's view on fracking is not, at the end of the day, going to change. There will be examples of that across the parties, but in the main I think that members who serve on committees do a really good job and listen to the evidence. That is really important for the Parliament, because one of the strengths of the committee system is the time that is taken to hear from people outwith the Parliament when scrutinising Government bills or other matters. Everyone needs the skill of being able to wear two hats, and that is specifically referred to in the letter that PLOs receive from the First Minister.

**John Scott:** I accept that, and I think that people work very hard at wearing two hats, as it were, at one time and with integrity. However, I also ask you to acknowledge the potential for the

perception, at any rate, of a conflict of interests in the role that you are assigning to PLOs. As you will know, the perception is more awkward than the reality. No doubt we are talking about people with integrity. Alison McInnes is a classic case in point—she is someone who, historically, was universally recognised in Parliament as having absolute integrity. Welcome as they are, PLOs are, if my memory serves me correctly, mostly newcomers to our Parliament. You are, I think, asking a lot of them in making them tread that very fine line between perception and the reality of standing orders, and between their being appointed by the First Minister and their having the ability, as you have told us, to scrutinise their cabinet secretary when they want and as they should and to hold them to account as and when appropriate. That is a big task that you are setting those people.

**Joe FitzPatrick:** You might be right, although I think they are up to it.

**Tom Arthur:** I agree.

**Joe FitzPatrick:** There is good evidence that PLOs have managed to do that for the past nine years, just as spokespeople for other parties have managed to do it. I hope that that continues.

**Patrick Harvie:** For the record, it is worth our while to acknowledge that none of this discussion should be seen as casting aspersions on individuals or how they have done their job. However, there is a critical difference between someone having a role on behalf of a political party and their having a role working for a minister. The purpose of Parliament is to hold the Government to account, regardless of which party is in office. It is not to hold Opposition parties to account. There is a danger that, rather than the line being walked, it becomes blurred.

**Joe FitzPatrick:** As Mr Scott said, it is about perception. I hope that adding to the ministerial code the condition that PLOs must not sit on a committee for whose remit their cabinet secretary is responsible makes the line sharper and provides increased transparency for when questions are asked in the chamber. I hope that those two things together will help to unblur the line, so to speak. However, if in the future members feel that there is a need for more discussion on these matters, I would be happy to discuss them.

**Patrick Harvie:** That is helpful. Thank you.

**The Convener:** I thank Mr FitzPatrick and his officials for attending this morning.

10:31

*Meeting continued in private.*

11:14

*Meeting continued in public.*

## Complaints

**The Convener:** Welcome back. The committee has been considering two complaints about MSPs. I will read two consecutive statements that set out the committee's findings.

I will first read the convener's statement regarding a complaint against Sandra White. On behalf of the committee, I would like to make the following statement in relation to the complaint against an MSP. In accordance with the rules, I will first cover whether the committee agrees with the Commissioner for Ethical Standards in Public Life in Scotland's findings in fact and conclusions on the complaint and then cover the committee's decision on sanctions.

The committee has considered a complaint from Mr Scott Simpson about Sandra White MSP following her retweeting of a cartoon deemed to be offensive. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Sandra White had not breached the code of conduct for MSPs. The committee is unanimous in the decision that it has reached on the complaint. It agrees with the findings in fact and conclusions of the commissioner.

While the circumstances surrounding this complaint do not constitute a breach of the code of conduct, actions of this nature, whether intentional or not, may not reflect well on members and the Parliament. The committee takes this opportunity to remind all MSPs that they alone are responsible for their public statements and the content of their social media channels. Full details of the complaint and the commissioner's investigation of it will be included in the committee's report, which will be published later this afternoon.

I turn to the convener's statement regarding a complaint against Neil Findlay MSP. In accordance with the rules, I will first cover whether the committee agrees with the Commissioner for Ethical Standards in Public Life in Scotland's findings in fact and conclusions on the complaint and then cover the committee's decision on sanctions.

The committee has considered a complaint from Colin Beattie MSP about Neil Findlay MSP. The complaint is that Neil Findlay made a statement to the press about his intention to make a complaint against Colin Beattie to the effect that Colin Beattie was in breach of the code of conduct—a complaint for which Mr Beattie was later exonerated by the Scottish Parliamentary Corporate Body. The Commissioner for Ethical

Standards in Public Life in Scotland investigated the complaint and found that, in disclosing to the press his intention to make a complaint, Neil Findlay was in breach of the relevant provisions of the code of conduct.

The committee is unanimous in the decisions that it has reached on the complaint. First, it agrees with the findings in fact and conclusions of the commissioner. Secondly, it does not consider that the breach in question justifies any sanctions being imposed on Mr Findlay. In reaching the decision on sanctions, the committee was mindful of the fact that Mr Findlay acknowledged that he had breached the code and stated that it was an inadvertent breach.

The committee takes all breaches of the code seriously. The rule covering disclosure is important because it allows investigations by the commissioner and the committee to be concluded in the absence of external partisan comment. During session 4 of the Parliament a similar breach of the code occurred and the previous committee issued an email to all members reminding them of the rule that members must not disclose, communicate or discuss any complaints or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during stages 1 and 2 of the procedure for dealing with complaints as set out in volume 3, "Guidance to Sections of the Code", section 9.

The committee regrets that the lessons do not appear to have been learned since that reminder was issued, and we intend to issue a letter by way of further reminder to all business managers, asking them to remind members of the rules regarding disclosure of complaints. Repeated breaches of the rule on disclosure of complaints are a matter of regret to the committee and we deplore the misuse of the complaints process by MSPs as a means of exchanging public criticism.

Full details of the complaint and the commissioner's investigation of it will be included in the committee's report, which will be published later this afternoon.

11:15

*Meeting continued in private until 11:23.*



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

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