



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 1 December 2016

Session 5



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
9th 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:

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

Douglas Wands

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 1 December 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning and welcome to the ninth meeting in session 5 of the Standards, Procedures and Public Appointments Committee. I remind everyone to switch off mobile devices as they may interfere with broadcasting.

The first agenda item is for the committee to agree to take item 3 in private. Do members agree to do that?

Members indicated agreement.

Commissioner for Ethical Standards in Public Life in Scotland

10:00

The Convener: Item 2 is the Commissioner for Ethical Standards in Public Life in Scotland's annual report. We are joined by Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland, and with him are Ian Bruce, public appointments manager, and Ruth Hogg, investigations manager, for the Commissioner for Ethical Standards in Public Life in Scotland. I welcome you all to the committee and invite Mr Thomson to make an opening statement.

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): I am grateful for the opportunity to address the committee on the annual report and to answer any questions that you may have on it or on the updated material, which you should now have before you. You will have noted from the briefing paper that my remit covers the investigation of a range of complaints. That consumes roughly two thirds of the resources of my office, and the balance is applied to my public appointments remit, on which there is a good story to tell.

I will start with the complaints side. The vast bulk of the complaints workload involves complaints against councillors, and a few complaints—albeit a growing number—against members of public bodies. Complaints about the conduct of MSPs are relatively infrequent. Even though the number received in the year covered by the report represented a significant percentage increase on previous years, most of them fell outside my remit; they were excluded complaints or were simply inept, and were therefore inadmissible. The average number of complaints about MSPs since 2004-05 is very nearly 24—it is 23 point something—so last year may have been a bit of a blip in terms of numbers.

The numbers are set out in table 11, on page 11 of the annual report, and table 13, on the following page, shows how they were dealt with. If the committee is interested, I would be happy to go into more detail about how they were dealt with, but in the interests of brevity I will skip over that detail at the moment.

I should point out that, during the year, three complaints led to reports being submitted to your predecessor committee, and one complaint was still under investigation when the Parliament was dissolved. In the first six months of the current year, the number of complaints that we received about MSP conduct was 11. If that pattern continues—and I have no idea what will happen—

the total number received by the end of the year will be near to the average that I have referred to across the past 10 years or so.

I said that there was a good story to tell in relation to public appointments, and there are two parts to that story. The first part is a significantly improved working relationship between my office, including the public appointments advisers, and the staff of the Scottish Government who are involved in the arrangement and management of public appointments and in advising on them. We have, in effect, a partnership approach that has included, among other activities, Ian Bruce's participation in a group that has been set up to take forward a range of projects designed to promote and co-ordinate efforts to improve diversity on public boards.

I am pleased to report a measure of success in taking forward those co-ordinated initiatives, the combined impact of which has been a marked improvement in the representation of several underrepresented groups on public boards to which appointments are made by Scottish ministers. I emphasise, though, that although the appointment of people from underrepresented groups in society is a good thing, it is only one part of diversity. The concept of diversity is not limited to the protected characteristics set out in the Equality Act 2010. The other important aspect is diversity of thought and outlook, based on the skills, experience, knowledge and other relevant attributes of the individuals who present themselves.

I also draw attention to the important point that the appointment of board members must be based on merit, which is what determines who is put forward for appointment. That is clearly set out in the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland" and in the guidance that I have issued. There is therefore, in my opinion, no room for tokenism. The proof of the pudding is in the eating, and I think that you will find that in table 25 on page 21 of the annual report, which shows the demographic profile of board membership at the end of 2015. Table 26, on the following page, shows how that has changed over the period from 2004-05. The update to table 25, which I hope has been made available to you, brings it almost bang up to date and shows the continuing improvements in respect of some but, admittedly, not all of the target groups.

I finish by referring to the office's strategic plan for 2016 to 2020, which was published at the beginning of this financial year. I have two strategic objectives, one for each side of the work. The first is an accessible complaints process with trusted outcomes; and the other is public boards that are effective and reflective of society.

I thank you for your attention.

The Convener: Thank you. I open up the session to questions from members and invite Clare Haughey to begin.

Clare Haughey (Rutherglen) (SNP): I thank the panel for coming along this morning. The opening statement was interesting and leads me nicely into my question. You said that two thirds of your resources are used to investigate complaints, but we see from the report that a lot of those complaints were not progressed. Can you explain why those complaints were not progressed? Can you also say what work the commission has done to publicise what it does so that you are not in receipt of complaints that are not appropriate for you to investigate and which use up your resources?

Bill Thomson: I draw a distinction between complaints about the conduct of MSPs and the other complaints with which we deal. First, on dealing with complaints about MSPs, which is obviously within the committee's remit, the MSP code is quite a lengthy document and I am not sure how many people who might be minded to make a complaint can reasonably be expected to understand it inside-out. In fact, it is clear that some MSPs do not understand parts of it—because of the complaints that I receive, I can say that with some certainty. I do not mean that as a criticism; I just think that the code is quite a heavy tome and some aspects of it are quite difficult to find.

I do not think that it is all that surprising that some of the complaints that I get about MSPs are not complaints that I can follow up, because the excluded complaints are set out in section 9 of volume 2 of the code of conduct for MSPs and somebody would have to be fairly determined, if they started at the beginning, to read that far. Even if someone looked at the index, I am not sure that that section would jump out at them. I therefore suggest that it is perfectly understandable that people who have an issue about the conduct of an MSP send it to the Commissioner for Ethical Standards in Public Life in Scotland. However, the majority of the complaints that I get are outside my remit and I think that some are outside the remit of anybody dealing with complaints.

Some complaints about MSPs go to the First Minister because they are complaints about a member's conduct as a minister. That is quite a difficult distinction for some people to make. Some go to the Presiding Officer because they are complaints about conduct in the Parliament. Usually, those are complaints about what is now section 8 of volume 2, which is on liaison and engagement with constituents. Understandably,

that causes some people to feel the need to complain.

Some complaints are simply not competent at all. There have been complaints—I am not mentioning names—that a Presiding Officer failed to stop a First Minister making a certain statement in response to a question at First Minister's questions. That just is not capable of being investigated as a complaint.

If the committee is interested, I can make some observations on the other sorts of complaints.

Clare Haughey: Please continue.

Bill Thomson: As I said, the vast bulk of the complaints are about councillors. We had a position where the volume of complaints relating to the key principles alone was quite significant—it was over a fifth of the complaints that we received. Those cannot go forward unless there is something else to do with the detailed rules. In that respect, the code is like the MSP code, in that it says that the key principles are there for guidance alone. I do not know how to make that obvious to people. It is on our website and in the complaints leaflet that we issue to people about how we investigate and what we can investigate. However, if somebody is really annoyed about what they see as dishonesty, self-serving behaviour, failure to be accountable, failure to be open or whatever, it is very tempting for them to put in the complaint under the key principles. That shows that they have paid attention to the code, which is good in itself, but it is not reasonable to expect them to have a full grasp of all the detailed rules. When a complaint comes in, we make contact with people to establish whether there is any more to it. I am glad to say that the volume of complaints relating only to key principles has been on a downward trend.

The other reason why we do not pursue things is that in some cases there is not a shred of evidence. I think that it is reasonable to say that some people read a newspaper report about what a politician may have said and they are incensed about it so they write in and make a complaint. Sometimes, the newspaper report—you will find this strange—is not accurate and I cannot find the so-called statement to which the complaint relates, so I cannot investigate. At times, we search on social media for things that have allegedly been said. Sometimes we find them, and sometimes they are quite interesting. At other times, they do not exist or they cannot be shown to have been said by the person who is being complained about.

I am sorry. That was a lengthy answer, but there are lots of reasons why complaints are not progressed. I hope that that helps.

Clare Haughey: It does. You raised an interesting point about the MSP code of conduct.

Do you have an opinion on whether it should be revised or simplified?

Bill Thomson: I am going to try to duck that one, convener, but I suspect I will not get away with it.

If it could be simplified, that would be a good thing. As it happens, I have just—somewhat diffidently—submitted comments to the Parliamentary Commissioner for Standards at Westminster, who is revising the MPs' code of conduct. I am not suggesting that it is a model—far from it. I simply observe that it is drafted in a completely different way. The code itself is very short; it is three or four pages. The trouble is that there are rules that relate to it, then there are the house rules, and there are various other things. One of the things that I have asked the commissioner is what the hierarchy is and how they work out which of those things takes priority.

Whichever way we do it, there will be difficulties. It is very hard to find your way through aspects of the MSP code—I say that as someone who has been working with it, on and off, for about 16 years now.

The Convener: It might be of interest to you, commissioner, to know that the clerks to the committee are looking at the code, not to review its content but to review its accessibility and how we can move that forward.

10:15

Patrick Harvie (Glasgow) (Green): I would like to follow up on those questions. Given that you have to look at the outpourings on social media, I think that we should all be grateful that your remit does not cover Mr Trump. I hope that nobody in Scotland is giving you challenges of that nature.

Has there ever been any sense that there is a correlation between the complaints that come in and the political cycle, either in terms of complaints being directed at incumbents during an election campaign or complaints about newly elected politicians once they are in office? Some of that might be about politically motivated complaints rather than legitimate complaints, and those might be the kind that get dismissed, but has there been a correlation and is there any connection with the political cycle that impacts on your workload?

Bill Thomson: It is something that I wonder about, but I do not have a straightforward answer, in part because, during my two and a half years in office, there has not been a quiet time politically—there has always been something major going on, and of course there is more to come. I would suggest that, rather than being to do with big events such as an election, a referendum or a

major campaign, the issue is more to do with what are best described as breakdowns in relations. Sometimes those are relations between political parties, or people representing political parties, on local authorities, but sometimes they are breakdowns within the groups themselves. In other cases, there are independent councillors who are really independent and therefore not very easy to handle, if I can put it that way, and who are not subject to any party-political discipline. Such people might have been in one of the political parties and have left for whatever reason, and that can lead to continuing conflict. Some complaints are very clearly political, but that does not mean that they are inept or should not be investigated. If there is a foundation in fact, it can be a legitimate complaint. If all the political complaints were taken out of my sphere of activity, I doubt that it would remove more than a third of the total number.

Patrick Harvie: So it would be true to say that the political cycle does not have an impact on your workload in terms of planning. You are not able to say that this will be a busy year because there are big events coming up, because there is no connection at that level.

Bill Thomson: I live in hope that I will not have a busy year, but that has not materialised so far.

Daniel Johnson (Edinburgh Southern) (Lab): Clare Haughey asked about why some complaints do not proceed. The flipside of that is to ask what competent complaints are untapped. You mentioned accessibility in your opening statement. What steps are you taking to improve your accessibility, and do you have a sense of the size of your untapped market, if you will forgive the business speak?

Bill Thomson: The honest answer is that I do not have a scooby, frankly, about the size of the untapped market. I like to think that it is quite small. It takes quite a lot of effort for people to make a serious complaint. There is the odd person who reads the newspaper, is incensed and sends in a quick note, and I am not counting them, but those who go to the trouble, as a lot of them do, of setting out what the circumstances are and why they are upset about them are doing something that requires quite a lot of effort.

You have asked two questions, in effect. On accessibility, we keep trying to improve the form that people have to complete. We are moving to a point at which it will be possible to complete that form online, which will make it more accessible to some people, although it will not make it more accessible to everybody.

We have improved the way in which we deal with complaints when they come in. As I said earlier, if they are not well expressed or they relate

only to key principles and, therefore, do not look as though they amount to anything, we go back to people. We do not help them to submit their complaint, but we ask questions to prompt information that would allow us to proceed.

I have, in human terms, an understandable reluctance to open the doors very wide, simply because I do not currently have the resources to deal properly with the volume of complaints that we receive—that is not possible within the budget—and the remit is about to be extended to the registration of certain interests by MSPs. I do not think that that will cause a major flood, but some of the areas that it could lead us into could be quite contentious in terms of election expenses.

The other imminent extension relates to lobbying. I have suggested previously—in fact, I suggested it recently to the newly appointed registrar—that consideration should be given to the approach that was taken in Ireland, where they introduced the system but not the penalties immediately. In other words, there was a running-in period. That would allow people to become familiar with the system and would allow honest mistakes to be picked up, which should reduce the risk of our receiving complaints that should be dealt with by other means.

Daniel Johnson: How easy is it for people who might struggle to articulate themselves in writing—or, indeed, through online forms of communication—to make a complaint?

Bill Thomson: Without help, it is impossible. That is the position. It is clear that some of the complaints that we receive have not come directly from the person who has complained. That does not matter, provided that they have put their name to the complaint. However, as the law stands, complaints have to be in writing. There is a risk that that excludes some people. However, if complaints did not have to be in writing, there would be an even bigger risk that people would just pick up the phone, send a text or whatever, and we would be inundated with snash, frankly.

The Convener: Mr Anderson has a supplementary question.

Alexander Stewart (Mid Scotland and Fife) (Con): Thank you, convener—

The Convener: Sorry, I meant to say Mr Stewart.

Alexander Stewart: It is okay, convener—I answer to many things, and I knew that you meant me.

Mr Thomson, you talk about the potential complexities of the code of conduct. Do those complexities give any flavour to the whole idea of how effective, efficient and fair the process that

you have to manage will be going forward? Or does that not feature within the process?

Bill Thomson: I am not trying to embarrass anybody, but, in my experience, the complexities have been handled very effectively—or so it would appear—by the clerks to the committee over the years, who have given advice to members who have had quite difficult things to be advised on. I suppose that the primary responsibility lies with them and with you and other members.

The complexity can make it difficult for me, intellectually, to sort out whether there is a valid complaint or whether the circumstances disclose behaviour that is not, to me, a breach. I do not have a complaint about that. It is reasonable that, in my post, I am prepared to tackle whatever comes up in that respect.

There is a dilemma. Arguably, all the rules have been clearly set out in the code. However, if you tried to cover every possible situation, you would have a code that was even longer than the existing one, and that would be counterproductive.

The Convener: Mr Thomson, in your opening statement you mentioned the degree of success that you have had, particularly in relation to women's representation on boards, which I am sure will be welcomed by everyone here. Can you share any particular measures that you have taken that you feel have led both to the increase in applications from females and to their success in appointments to boards?

Bill Thomson: I will pass the question to Ian Bruce—if he is ready to speak—but, before he answers, I must give credit where it is due, because it is the ministers who make the appointments. That is not a political statement—the Government has responded to suggestions and advice and taken its own initiatives.

The political climate has put diversity up there, which is a good thing and has impacted on attitudes across the board. There is a clear openness to work with my office, and with the advisers who are contracted to the office to support public appointments, in trying out new approaches.

I hand over to Ian Bruce, who can give a flavour of the things that seem to be working.

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): Thank you for the opportunity to give evidence—it is always a privilege.

Over the piece, we have indicated the broad steps that have to be taken—in combination, because there is no magic bullet to achieve diversity—to achieve more diverse boards. Today, in preference, I will give some illustrative examples of specific appointment rounds where diversity has

been achieved, to indicate how such things work in practice.

On looking to achieve gender balance, I will draw on the example of VisitScotland. Of its board of nine members, one was a woman, and it had to seek to redress underrepresentation. The context in which the board works is that the visitor economy in Scotland has changed significantly. There were two targets to meet—the board needed to redress underrepresentation by gender and there were specific new skill sets that the board would benefit from to meet the challenges that it faces.

How did the board go about making appointments? The first thing was engaging with the appointing minister to ask what their priorities for VisitScotland would be over the next three to four years, which is the typical term of appointment for new board members. The minister gave a clear steer on the different skills that they were looking for to ensure that the board was successful, and that information was provided to the panel, which then understood that it needed to design a competition. Basically, it was running four competitions in tandem to find four different types of people to meet the board's needs.

At the same time, the board needed to take positive action, as it knew that it had underrepresentation by gender. It had to ask which groups it needed to connect with to encourage applications from people who had the skills and who happened to be women. That meant contacting bodies with which we are already working, such as Changing the Chemistry, Women on Boards and the Institute of Directors. An open event was held and people from those organisations with those skills were encouraged to come forward—the event was not exclusively for women, but they were encouraged to come forward.

The competition was designed, and the material that was used was welcoming. One thing that we have introduced over the past year is that our advisers now advise panels on bias mitigation techniques that they can use, which even extend to the type of language. Believe it or not, certain terms and phrases are more attractive to men than they are to women—or are more off-putting to women than to men—so the materials are adapted to make sure that they are attractive to everyone.

A simple assessment process was designed that did not ask for too much or set out a long list of criteria for selection. That was the approach because we understand, on the basis of behavioural science, that such things may be advantageous to men.

You publicise the opportunities widely and run your competition, and you basically get the right

result. That is what happened in that case. Five appointments were made, and they met the needs of the board. Four out of the five appointees happened to be women because of the additional effort that was put in.

That is a fairly typical example of the sort of activity that is going on. The approach has to be bespoke for each underrepresented group, and it entirely comes back to the question of what a particular board needs at a particular point.

The Convener: That is extremely helpful.

10:30

Tom Arthur (Renfrewshire South) (SNP): On that very point, I note that page 36 of the annual report refers to taking steps—I suppose that that means taking further steps to build on what has been put in place—particularly to increase applications from under-50s and those who are lesbian, gay, bisexual or transgender. Will you expand on what steps you will take in that respect?

Ian Bruce: Absolutely. In relation to disability, which is clearly an issue for us, I should say in fairness to the Government that it has conducted a data cleanse, and we believe that its information on the current cohort of board members is now more accurate than it used to be. However, we identified a significant issue in that respect.

The Government had commissioned Inclusion Scotland to take an overview of all the public appointments activity that is going on, which has led to the production of a draft report. The commissioner mentioned our advisers. They are a bit of a brains trust; they are all experts in recruitment and selection, but some of them have specialisms, and we have assigned one of them—an expert in redressing underrepresentation by disability—to work with the Government on rolling out the action plan and ensuring that we make that redress.

The LGBT issue is slightly trickier. We have set up an initial meeting in April with Scottish Workplace Networking for LGBT, at which we will discuss the perceived barriers.

It is also probably worth mentioning that we will be doing much more work with public bodies. Though we can do much to design a barrier-free process, the fact is that the public body must have a welcoming culture. There is no use in a body putting in an advertisement a positive action statement such as, “We welcome applications from such and such,” if people who look at its culture do not think, “I can see myself welcomed and fitting in there.” That, too, is potentially an issue. I should note that, after this session, the commissioner and I are going along to an

induction session for recent appointees at which the commissioner will talk to them about standards.

Something else that has been very helpful this year is the breaking down of barriers in the Scottish Government. Now that the public appointments team is working with the public bodies unit, we have a clear link into public bodies and can help them with succession planning. That work goes wider than appointments.

Younger people were mentioned. We already have a link with the Scottish Youth Parliament and we will be talking to its members, largely on an educational basis, about the potential for them to consider positions in public life—although not necessarily now. Via the National Union of Students Scotland, we have lined up a seminar that is with a view to officers who are assigned to colleges, and who therefore have some board experience, considering taking on such roles. Moreover, we are speaking to employers such as RBS and Standard Life about releasing people and seeing such work as a development opportunity. After all, the time commitment is an issue.

We have irons in a great many fires and we understand that we still have to do a lot of work. The last time that we spoke to the committee, I talked about our action plan. Although we have ticked a few of the boxes, we now have a more detailed action plan. We have many more things to do and we will be happy to share that work with the committee once it is completed, if that is felt to be helpful.

Tom Arthur: I am sure that my colleagues would be delighted to receive that information. By the way, thank you for that comprehensive answer—your voice is certainly holding up well.

To turn to a potentially related matter, the Scottish ministers can approach the commissioner to request that certain provisions of the code be set aside. Of 30 such requests, 17 were granted. Will the commissioner explain what circumstances led him to agree to those requests?

Bill Thomson: This is going to sound slightly dry, but I will go into detail. On five occasions, I was asked to agree to changes of panel composition. In one case, that involved a newly appointed chair becoming involved at an early stage of the process but not at the very beginning. The code of practice requires the panel to be set and to remain as such so that we do not have, for example, three people interviewing five candidates one day and a different number of people interviewing candidates on another day—there has to be consistency.

In a number of cases, a board member’s term of appointment was extended beyond the normal

eight-year maximum. The code of practice sets an eight-year maximum, which was agreed with ministers and with the Parliament. However, the term was extended on three occasions, two of which were to provide continuity on health boards when the integration joint boards were getting up and running. I am bound to say that I have not agreed to all such requests that have come in, but three were agreed to.

In four cases, the field was so strong when the appointment round was run that instead of appointing, say, two people, the minister wanted to appoint three because they were such good candidates. On two occasions, I allowed changes to the application and assessment method, one of which was because the online system failed at a critical point in the Government's application process—that ended up with people putting in different types of application at different points. In one case, an emergency appointment was made—much more quickly than under the normal process—because a body's chair had to leave unexpectedly early. That can happen, as even chairs of bodies are human.

On two other occasions, vacancies occurred unexpectedly and I agreed that the minister could go back to the list of people who could have been but were not appointed at a recent appointment round and could offer the position to one of them, as they had already been through the recruitment process and had been identified as suitable for appointment.

I am sorry that that is not wildly interesting, but it is the reality of the position.

Tom Arthur: It is useful for you to capture that information and share it with the committee.

Your strategy is to have

"public boards which are effective, and reflective of society".

In your opening statement, you said that diversity of thought, characteristics and outlook is important and that there is no room for tokenism. How can we capture information on diversity of thought, characteristics and outlook?

Bill Thomson: There are ways—Ian Bruce is probably slightly more expert on this than I am—but they will not always work. I am bound to say that there are a number of challenges in increasing diversity in board membership, not the least of which is handling it when people are appointed. On identification, I will hand over to Ian Bruce.

Ian Bruce: One of the things that have been particularly interesting to me is the fact that ministers have taken the opportunity to look for new things. I mentioned VisitScotland, but one very good example that I have used with the

people whom I am working with in the Scottish Government on some of our outreach activity is the chair of sportscotland, who was appointed this year.

In that case, the minister said that their priority was to have someone who was passionate about sport and was equally looking to achieve equality and social change through sport. That meant that the type of person to look for was very different from what one might have in one's mind as a traditional board member. The person who was ultimately appointed was the co-founder of the Big Issue in Scotland and the founder of the homeless world cup. All that we need to do is think about proliferating that approach for all types of appointment.

We are now working together in partnership with the Government's public appointments team—I feel duty bound to namecheck Evie McLaren and Kirsty Walker, as I did previously, because we are fortunate to have continuity—and with its public bodies unit on a new project to capture what is perhaps an ineffable thing. It is easy to count the numbers of women or people who are disabled who are on our boards, but some other characteristics are a bit more ineffable.

There is lots of evidence from the private sector that difference makes a difference to a board's effectiveness. The bottom line there is that profit and loss can be looked at, but nothing equivalent is being done in the public sector. We are therefore embarking on a ground-breaking project in Scotland with boards to look at the difference that difference makes to boards' governance. What different behaviours are going on in boards as a result of the different perspectives that are now around the table? Is the chair harnessing those perspectives effectively? What difference does that make to the quality of the debate? Are proposals being properly scrutinised? Are executives being better supported because of the range of advice that is available to them?

That is a four-year project. We hope to report to the committee in due course on the difference that diversity is making to our boards. That is difficult to capture.

Tom Arthur: I look forward to hearing about that.

Bill Thomson: I want to be clear that we are looking at the impact on governance—that is what we are concerned with in the research project.

The Convener: I am sure that those updates will be welcome.

Patrick Harvie: I will follow up the questions about diversity. On the characteristics of disability and age, is there any attempt to get beyond a binary understanding of whether somebody is

disabled or not disabled or is under or over 50? There is age underrepresentation in particular but, if we end up recruiting lots of able-bodied white men in their mid-40s, we will not necessarily have had a huge impact on diversity. Similarly, we might see an increase in the number of disabled people on boards without overcoming the barriers that still exist to people whose disability requires a more significant adaptation to enable them to take part. Is there scope for more of a spectrum of understanding, rather than a binary understanding?

Bill Thomson: Those points are fair. The figures that we produce are given to us by the Government. Ian Bruce referred to a disability data cleanse. The Government, in turn, depends on what board members are prepared to disclose, which means that, on the question that you have—properly—asked, it is difficult to give a reassurance on the statistics, as they depend on what people are prepared to disclose.

I go back to my introductory remarks. We are looking at diversity in its broadest sense—not a binary understanding, as Patrick Harvie put it. I entirely agree that a board could be entirely made up of people who appear to have completely different characteristics but who all think the same way, or there could be a board of people who all look the same but think quite differently.

The research project that Ian Bruce mentioned is our attempt to dig down into that. It is quite a difficult area, but we are optimistic that we will be able at least to get some information to start with, which will open a conversation and encourage people to think differently about difference.

Patrick Harvie: There are some characteristics that many people understand in binary terms, such as gender. How do we take account of people with a non-binary gender identity? Is that recorded at all?

Bill Thomson: The short answer to that question is no.

Patrick Harvie: That is perhaps an interesting one to think about for the future.

10:45

Daniel Johnson: As this is pre-budget scrutiny, and as the biggest portion of your £853,000 budget is staff costs, I will ask a few questions about staff composition and your workload.

This year, you received 245 complaints, which formed 132 cases, up from last year's figure but down from the figure two years ago. Is it fair to say that your workload is relatively consistent? Is it trending around a stable mean?

Bill Thomson: In terms of numbers, yes it is, but there are problems in making an assessment purely on the basis of the numbers. There is significant variation in the complexity of complaints. Some consume probably only several hundred pounds of resource in my office, whereas others may consume tens of thousands of pounds of resource. You are absolutely right that, in statistical terms, you could find a mean—it is around 130 cases a year. There are significant variations from one year to another, but that is roughly the mean. As I mentioned, the average number of MSP complaints is roughly 24 although there were 30 last year, which is statistically a big shift but it is still not a big number.

However, the complexity of complaints seems to be increasing. That is, in part, down to our having reduced the number of complaints that are easily dismissed because they are not properly formed or not competent. It is a question of our being victims of our own success, because a larger percentage of those complaints that are left have to be gone into in more detail. In some cases, that is down to a tendency to involve representatives—usually legal representatives—of those against whom complaints have been made. I am a lawyer, but I know that it is true that lawyers complicate things; it is the way that it happens.

There is also, particularly in some of the politically motivated complaints, a growing tendency for people to want to throw as much into the process as possible. As a complaints body, we are not unusual in that we sometimes get hundreds of pages of stuff from people and, no matter how hard I try to get them to tell me which bits are relevant, it does not always work. Then there are people who find out something else three months later, when we are just about to finish the process, and something else comes in. People are determined to get whoever it is—or make me get them.

A further complication is that, after I have made a decision, if a report goes to the Standards Commission, the commission almost always holds a hearing—if it is an MSP complaint, it comes to this committee. At a hearing, I present my findings, or I am represented by one of the people in the office. If it is my opinion that there is no breach, there is no right of appeal. Quite a number of people do not accept that. Freedom of information, which I support in principle and think is a good thing, means that people can ask for a great deal. If we have looked at hundreds of pages of documents, people can ask for a lot of information and then they can come back with almost endless comments on little bits here and there. That consumes—and possibly wastes—quite a lot of resource.

Daniel Johnson: In the past year, you have employed two new members of staff. Is that correct?

Bill Thomson: Yes, new investigating officers.

Daniel Johnson: So there are—

Bill Thomson: Sorry, there are actually three new investigating officers.

Daniel Johnson: Your total staff is 17, is it not?

Bill Thomson: Yes.

Daniel Johnson: What has been the driver for increasing that number? I note that it has driven your median salary costs from £39,000 to £47,000 a year.

Bill Thomson: The three new investigating officers were replacements for two who had retired and one extra. They have been employed at a lower salary scale than those who were employed before, because those who were employed before had protected terms and conditions from previous iterations of the office that I now hold. This is now the third version of it in about as many years. There were two separate commissioners, then there was a commission, and now there is one commissioner, so there have been complications there.

We are also, in the course of this year, preparing to tender for a complaints management system. Although we have one, it is very old; it was developed by a member of staff in the office and it is in danger of falling over because it is not supported on the platform on which it was developed many years ago. That has put quite a lot of strain on the office. Seventeen sounds like a large number of people, but it is not, because a lot of them work part time. The investigating officers are home based, with one exception, so they are not actually in the office at all, thus we have one supernumerary member of staff to ease the administrative burden throughout the year.

The other fact to note is that staff salaries, which follow the Scottish Parliamentary Corporate Body's scales, have gone up by small percentages year on year.

Daniel Johnson: Your total salary cost has not gone up by a small percentage. It has gone up by more than £50,000.

Bill Thomson: Some of that is down to the amount of time that is spent on investigations, which I cannot readily control.

Daniel Johnson: To come back to the workload point, you are dealing with two to three full investigations on average per month, with a total of 245 complaints. Does that mean that each staff member deals with one or two full investigations a

month? How many complaints per working day would they deal with?

Bill Thomson: No. Investigating officers are generally employed one and a half days a week; I am afraid that that will skew your calculations. The number of current investigations that each investigating officer is dealing with varies during the year. At one point it was averaging at 10 each. It is currently down at four to five on average. I appreciate where you are coming from, and I am not trying to be difficult, but it is just not as simple as that, I am afraid.

Daniel Johnson: I am just trying to understand your staff costs, because that is the biggest line item on your profit and loss account.

Bill Thomson: Of course. It always will be.

Daniel Johnson: To draw a crude comparison, an MSP's office gets around £80,000 to spend on staff, but the total number of constituent contacts would be several times your 245 complaints and the number of cases would be correspondingly high. The median cost for a staff member in an MSP's office is £25,000 to £30,000. I am trying to understand why you need to employ people on a considerably higher salary than that to deal with complaints and so on, although it is ostensibly not a substantially different type of work from that done by an MSP's staff. I am trying to understand what the driver is for that high median salary.

Bill Thomson: I think that it would be a good idea to have a bit more information about the comparison that you are drawing between the sort of work done in any of your constituency offices and the sort of work that is done by an investigating officer.

Daniel Johnson: Your highest-paid member of staff is paid more than an MSP, though. Is that correct? It is over £62,000 a year.

Bill Thomson: That is a protected salary scale for somebody who does not work a full week; but yes, if that individual were employed full time, they would be paid more than an MSP.

Daniel Johnson: Is it the preparation of the reports, then, that takes so much work? I do not think that it is necessarily about the sheer volume of communications. I am trying to understand what the driver is for the work and the requirement for the higher salary.

Bill Thomson: We have talked about the complexity of the codes of conduct and my office deals with a very large number of them, such as the "Code of Conduct for Members of the Scottish Parliament", "The Councillors' Code of Conduct" and the various public bodies' codes of conduct. They are not all on the same terms. There is complexity in the issues—I think that Mr Stewart asked me about this—which the investigating

officers, who are the highest-paid staff, have to be able to assess. They are involved in the gathering of information, which sounds simple, but is not. They assess sometimes complex information and sometimes apparently simple information, and they interview people who might have a reason for not simply coming out with all the information that I need. Some of those people are in positions of authority and are not used to being challenged.

Writing up the results of investigations is quite a demanding exercise. I would be very surprised if many of your constituency staff would be expected—I am not saying that they would not be capable—to write the same sort of reports. They are my reports, because I am answerable for everything that is in them. I do not just sign them off—it is not like that at all—I question them, discuss them and change them.

I am not sure whether that gives you the answer that you want, but it is the best that I can do off the top of my head.

Daniel Johnson: Thank you.

The Convener: I think that Mr Alexander—sorry, Mr Stewart. I have been doing this all morning. Mr Stewart has a question for you, Mr Thomson.

Alexander Stewart: I will follow on from what Mr Thomson has just been talking about. The cost of investigations varies, depending on their complexity and I see from the report that the majority of your investigations are relatively low cost. Would you stop an investigation if it was moving in a direction that was incurring increasing costs for your organisation?

11:00

Bill Thomson: At the moment, I have no authority to set a cost limit. I do have discretion as to whether or not I investigate and as to how I do so. However, I am governed by administrative law, which means that my decisions have to be, in simple terms, reasonable.

If I had started an investigation, particularly if it looked as though it was going to uncover evidence of a breach, and I were then to stop it because we had already spent up to the limit—I appreciate that that is not what you are putting to me but I am trying to think how we would be able to manage cost increases in a way that was competent. I do not have an answer to that. I appreciate the point that you make; I think about it quite a lot. I have endeavoured to come up with ways of limiting the range of investigations that we do conduct. I am afraid that I did not get much response when I tried that.

It is tricky. How, and at what point, do you decide that a complaint is not important? It is

important to the person who has put it in. If there is no evidence, I will stop it and I then spend, in some cases, two years or longer to-ing and fro-ing with a person who thinks that I should have spoken to so and so who overheard such and such, or whatever. That then racks up costs that I cannot properly allocate against a current investigation, and that is part of the reason for the cost, I am afraid. I do stop things, but there are consequences.

Alexander Stewart: If the complainant does not like the answer that you give, can that continue that whole process?

Bill Thomson: We are always trying to improve. I think it only fair that I answer people's questions. If they are not clear about what I have decided or why I have decided it, it is only fair that I try to explain that. It becomes difficult if we have been doing that for months and the questioning is still going on. We do have a policy on vexatious complainants but it is very difficult, in a public post, simply to stop communicating with somebody, particularly if they are clever enough to come back with a different question, which, of course, people are.

Alexander Stewart: Thank you, convener.

The Convener: Thank you very much. Commissioner, you mentioned a couple of acts that are likely to be of interest to this committee in future. Those are the Lobbying (Scotland) Act 2016 and the Interests of Members of the Scottish Parliament (Amendment) Act 2016. Can you give us any indication of how those acts might impact on your workload, your working practices and the resource constraints you have spoken about?

Bill Thomson: I am not expecting the changes to members' interests legislation to throw up much in the way of additional work for the office. However, anything that does come through could be quite difficult because of the complexities, which you will be aware of, in how the legislation has had to be framed.

I have previously given evidence on lobbying to the effect that I am assuming that there will be very few complaints that I have to investigate. That assumption is founded on hope rather than evidence; I do not have any evidence, obviously. That is one reason why I have suggested—today and previously—that serious thought should be given to introducing the whole regime in stages, thereby giving it time to bed in before it kicks off in anger with complaints.

There are criminal offences under the act that I think people could stumble into quite innocently, through lack of appreciation. Of course, there will be education and information but people are busy and they do not always pick that up, I am afraid, or they may not realise.

The Convener: Those are all the questions from members, so I thank you and your colleagues very much for your contributions. On that note, I move the meeting into private session.

11:04

Meeting continued in private until 11:26.

Bill Thomson: Thank you, convener.

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