



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 7 September 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 7 September 2017

CONTENTS

	Col.
INTERESTS.....	1
DECISIONS ON TAKING BUSINESS IN PRIVATE	1
LOBBYING (SCOTLAND) ACT 2016	2

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
14th Meeting 2017, Session 5

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (Green)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*Emma Harper (South Scotland) (SNP)

*Daniel Johnson (Edinburgh Southern) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Billy McLaren (Scottish Parliament)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 7 September 2017

[The Convener opened the meeting at 10:00]

Interests

The Convener (Clare Adamson): Good morning, everyone, and welcome to the 14th meeting in 2017 of the Standards, Procedures and Public Appointments Committee. I remind everyone to switch electronic devices to silent as they may interfere with the broadcasting of the meeting.

Agenda item 1 is a declaration of interests. I invite Jamie Halcro Johnston to make any relevant declaration to the committee.

Jamie Halcro Johnston (Highlands and Islands) (Con): I refer members to my entry in the register of members' interests. On the interest in shares that I have in Campaignhouse, the company is being wound up. The process should be completed by the end of this month.

The Convener: Thank you very much, and welcome to the committee.

Decisions on Taking Business in Private

10:00

The Convener: Agenda item 2 is a decision on whether to take in private agenda items 5 and 6. Item 5 is a discussion of our work programme and item 6 is consideration of two complaint reports from the Commissioner for Ethical Standards in Public Life in Scotland. Do we agree to take those items in private?

Members indicated agreement.

The Convener: Agenda item 3 is a decision on whether to take in private at future meetings consideration of the reports from the commissioner and our own draft reports on the complaints. Do we agree to take that business in private?

Members indicated agreement.

Lobbying (Scotland) Act 2016

10:01

The Convener: Under agenda item 4, we will take oral evidence from the lobbying registrar on a draft direction and a draft resolution under the Lobbying (Scotland) Act 2016. I welcome to the committee Billy McLaren, the lobbying registrar, and Charles Garland and Neil Ross, who are solicitors. All are representing the Scottish Parliament. I invite Mr McLaren to make a statement.

Billy McLaren (Scottish Parliament): Thank you, convener, and good morning, everyone. As outlined in the committee paper, the first set of commencement regulations under the Lobbying (Scotland) Act 2016 came into force yesterday. That allows the Parliament to use certain provisions delegated to us under the 2016 act—essentially, those administrative areas that we thought would be useful to have in place prior to full commencement of the act in the first quarter of next year. When I last appeared before the committee before recess, I mentioned that, as of that point, we had identified only two such areas to bring to the committee. I am happy to say that that remains the case.

In addition to the committee paper, we thought that members would also find it helpful if I were to outline briefly the background to and purpose of both those areas.

The first is a direction to the Commissioner for Ethical Standards in Public Life in Scotland, which is made under powers contained in section 31 of the 2016 act. Section 31 sets out a number of areas where we might make directions to the commissioner. We have, of course, consulted the commissioner on the content of the draft direction, which is at annex A of your paper.

The direction covers administrative issues. The paragraph in annex A headed "Information as to name of a complainer" sets out the process to be followed by the commissioner in considering whether the name of the person who makes a complaint should be supplied to the person who is the subject of the complaint. That includes considering whether the person complaining might be a vulnerable person or whether the release of the complainer's name might prejudice the investigation into the complaint.

The paragraph headed "Interviews" at the top of page 2 sets out the commissioner's responsibilities in relation to what information should be provided to a person before being interviewed for the first time; the rights of a person being interviewed to have a third party present and to have their views conveyed through an

interpreter; considerations about a person appearing to be vulnerable. A copy of the draft interview summary should be made available to any person interviewed and they should have an opportunity to provide representations on that.

Still on page 2, the paragraph headed "Documents and records" sets out the record-keeping obligations of the commissioner in relation to any investigation, including the retention of copies where required, the minimum period of retention and when documents can be destroyed. On page 3, the paragraph headed "Criminal offences" outlines the commissioner's responsibilities for the further handling of potential criminal offences.

The paragraph headed "Reports under sections 24(12) and 25(4) of the Act" on page 3 briefly sets out that the commissioner should also send any report that is sent to this committee to the complainer and the subject of the complaint, unless that would prejudice the investigation.

Finally, at the top of page 4, the paragraph headed "Enquiries about complaints" indicates what response can be provided by the commissioner where he has received an inquiry about a complaint.

That takes members through the draft direction a little. A direction to the commissioner is not a new process. Current directions are in place, which were issued by your predecessor committee in March 2012 and relate to other investigatory functions carried out by the commissioner.

At annex B of the paper, we have the draft lobbying resolution. The committee will remember considering new standing orders setting out the parliamentary process for that new type of parliamentary resolution earlier this year, which were subsequently agreed by the Parliament as a whole. This is the first lobbying resolution to be drafted by the Parliament under the 2016 act. It is brief, but it covers the core matters on which the need to make provision has been identified. It is being made under section 41 of the 2016 act, the terms of which we are obliged to make provision about by means of a parliamentary resolution. In this case, it is on the procedures that are to be followed when the commissioner submits a report to Parliament.

Essentially, the resolution does three things. First, it makes clear that the commissioner will provide reports specifically to this committee for consideration. Secondly, in providing for reports to be made in writing, it allows the commissioner to send reports in an electronic form, which is an obvious efficiency, really. Thirdly, it sets out the role of the committee if the Parliament were to exercise its power under section 40 of the 2016

act to censure a person who is the subject of any report from the commissioner.

On that point, it is worth emphasising that censure can be imposed only by the Parliament as a whole. If censure is recommended by the committee following consideration of a report by the commissioner, a motion to that effect would be considered by Parliament. Such a motion can come only from a member representing this committee.

The Convener: Thank you very much. Do members have any questions?

Patrick Harvie (Glasgow) (Green): In relation to the provisions in the direction that refer to vulnerability and the potential need for names to be withheld, to what extent have equalities and human rights organisations been consulted on the drafting to ensure that any issues or concerns that they might have have been taken into account?

Billy McLaren: There has been no such consultation, as far as I am aware, but we have copied the requirements over from the previous direction, so we could easily check with the commissioner how that process has been working in terms of the other investigatory powers.

Patrick Harvie: That would be helpful. Thank you.

Daniel Johnson (Edinburgh Southern) (Lab): In broad terms, the measures look familiar. The committee is familiar with the processes involved in its relationship with the commissioner. However, is there anything specific that has had to be considered with regard to the 2016 act or any significant alteration from existing procedures that might be worth highlighting at this point?

Billy McLaren: The direction is largely based on previous directions. However, the section in the resolution that I mentioned at the end of my opening comments is worthy of note, because the committee has a role in that. Obviously, the parliamentary resolution process is new—it is a first for the Parliament. This is the first time that we have ever considered a draft lobbying resolution.

Emma Harper (South Scotland) (SNP): The direction says that a person has a

"right ... to have a third party present"

at interviews. Can you give an example of who such a third party would be?

Billy McLaren: I cannot. That is probably more a matter for the commissioner, although I could get examples and provide them to the committee after the meeting. I do not do the interviewing—that is the commissioner's role. However, I would be more than happy to get some examples for you.

Emma Harper: Okay.

The Convener: You mentioned the possibility of using section 40 of the 2016 act for censure. In that case, would it be likely to be a non-MSP who was being censured from the floor of the Parliament, and is that unique in legislation?

Billy McLaren: Yes, and that is a very good point. The measure is about the censure of individuals who are the subject of complaints, so largely they would be people in the lobbying community.

The Convener: As there are no further questions, I thank Mr McLaren for his attendance.

Do members agree the terms of the draft direction and draft resolution?

Members *indicated agreement.*

The Convener: Mr McLaren, if you could provide the information that you said you would give to Mr Harvie, I am sure that the whole committee would welcome that.

10:10

Meeting continued in private until 10:32.

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