



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 14 December 2017

Session 5



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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
22nd Meeting 2017, Session 5**

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (Green)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Claire Baker (Mid Scotland and Fife) (Lab)

*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

*Jamie Halcro Johnston (Highlands and Islands) (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

Joanna Hardy

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 14 December 2017

[The Convener opened the meeting at 10:00]

Commissioner for Ethical Standards in Public Life in Scotland

The Convener (Clare Haughey): Good morning and welcome to the 22nd meeting in 2017 of the Standards, Procedures and Public Appointments Committee. Our only agenda item is an evidence session with Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland, on his annual report. He is joined by Ian Bruce, public appointments manager, from the commissioner's office. I welcome both of you to the meeting and invite the commissioner to make a short opening statement.

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): First, I am grateful for the opportunity to discuss any issues in the annual report that interest the committee. I have set out what I need to say about the period 2016-17 in the report. We can update the committee on what has happened since then, if members are interested. I am happy to answer questions.

The Convener: Your report was published in October 2016.

Bill Thomson: Sorry—2017.

The Convener: Apologies—2017. A number of key risks for the organisation were identified, one of which was the database. A business case was put together with the Scottish Government to introduce a case management system. Where are we with that? Has it been funded? Is it in place?

Bill Thomson: We put together a detailed business case, which was submitted to the Scottish Parliamentary Corporate Body. Earlier in this financial year, we received approval from the corporate body to proceed, with funding up to a certain limit. We are about to go out to tender. As you will appreciate, we have quite a small office; we have no specialist information technology experience. That is why we are very grateful for the support from the Scottish Government's digital wing in putting together the business case. We receive support on a pay-as-you-go basis from the Government's procurement office for the tender exercise. The specification is almost finalised and

we intend to go out in January. In an ideal world, we will appoint a tenderer before the end of March. That timeframe is slightly tight but we hope to achieve it.

The Convener: What contingency plans are in place, should the current system fail before the new case management system is in place?

Bill Thomson: My answer may appear flippant, but the only contingency plan that I have is to cross my fingers. Two years ago the situation was identified as a serious risk. Since then, we have been working very hard to replace the system.

We could do things manually. However, that would be very slow and clunky, and we would be unable to obtain management information, except with a huge amount of effort. The process of dealing with complaints would slow down to a degree that would be unacceptable. The system is robust enough but, when it was developed about 13 years ago, it was not designed to cope with the volume of complaints that it has had to deal with. We do not have any back-up for the system's IT. It is helpful that the person who originally developed the system is still in the office. However, the risk is there, so getting the new system in place is a high priority for us.

The Convener: The risk was identified two years ago but there is still no solution in place.

Bill Thomson: That is true. Developing a business case properly is not a straightforward exercise, particularly when we do not have the IT specialism in the office. It was not agreed instantly by the corporate body—let me put it that way. The whole process of developing, and seeking approval for, the business case took more than a year.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I understand that you gave evidence recently to the Equalities and Human Rights Committee on the Gender Representation on Public Boards (Scotland) Bill. Although there is a higher number of women board members than before, there is underrepresentation of visible minority ethnic board members—their representation is at its lowest level in the period covered by the annual report. The underrepresentation of disabled people and people under the age of 50 increased in 2016.

I have a cheeky question. Has our focus on gender meant that we have taken our eye off the ball in ensuring that there is proper diversity in relation to other protected characteristics?

Bill Thomson: That is a statable position but, for a number of reasons, I am not sure that it is quite as straightforward as that.

First, I agree that the rate of appointment of people with the protected characteristics that you

have listed is going in the wrong direction. However, those characteristics are shared by men and women. I am sorry, but it is a straightforward point: given that women make up 50 per cent of the population, appointing women could, and should, mean appointing people who share other protected characteristics.

Secondly, we should not lose sight of the fact that the focus on gender equality has raised the profile of diversity in a positive way. It is a bit of a mixed picture.

Kate Forbes: I will ask the question in another way. Why is there an increase in the underrepresentation of those other groups?

Bill Thomson: I will try to give as simple an answer as possible. Not enough quality applicants have come forward from those groups.

To develop that point further—before I hand over to Ian Bruce, who may be able to give you more detail—I would add that attracting people to put themselves forward involves effort on the part of those who are seeking to recruit. Best practice involves the bodies, as well as the minister who is making the appointment, in outreach and trying to attract people to put themselves forward for the board. Some work is going on in relation to younger people, visible black and minority ethnic people and disabled people, but that work has not yet borne fruit. Ian Bruce will be able to give you a little more information.

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): I am happy to do so. As Bill Thomson said, outreach is very important, as is making the process accessible. You will have seen the recommendations that we made to the Government in the annual report.

We have a very positive story to tell on gender diversity. The picture is more complicated for other groups. That is why the recommendations were about getting underneath the top-line figures. For example, lumping disabled people together into the figure of around 20 per cent does not really give a proper understanding of the particular barriers that people with disabilities face. I said to the committee last year that it is quite important that boards are involved in the activity as well. If someone has a particular disability and is looking to apply to a board, they do not just think about the application process—whether that is barrier free and whether the advert and role are attractive to them. They also think about what support they will have once they are in post. That does not apply just to people with particular disabilities; women under 50 may have childcare responsibilities that they need to take into account. They need to know that the board will accommodate those responsibilities as well.

Those are the sorts of discussions that we are having with the Government and with the boards to ensure that boards are more accessible to people. It really is not just about the appointments process; it is much wider than that. The recommendations are about doing more in-depth research to identify, and take away, specific barriers.

There are a range of things in train. The Government has tasked the analytical services wing—I think that that is the term that Bill Thomson has used—with research on the appointments process, which is very helpful. Research with boards themselves is also under way. That research was really just starting when the last annual report was published. It has been fascinating; about two thirds of boards have joined up to participate in the research. Boards are asked what particular barriers to harnessing diversity they believe that they have, and what particular activities they engage in to address those barriers. The research is being done on a confidential basis but, ultimately, we will roll out the recommendations that arise. It is clear that boards are doing things to make participation much more accessible.

That work is being done in tandem with outreach. For example, last Monday evening, the Scottish Government ran a come on board event in association with Women on Boards. About 70 people attended, including two board chairs and two board members. Questions were asked from the floor: a wheelchair user asked whether support would be available in the event that they were appointed, and someone with childcare responsibilities asked a similar question. A board member from the Scottish Children's Reporter Administration spoke very openly. He currently works full time as a lecturer. He said that he is able to join board activities via videoconference. He is the chair of the audit committee. All of the other committee members are retired. They completely rearranged everything that they do, in order for him to run the audit committee. Individual boards do small, specific things to make participation more accessible. I do not know whether that helps to answer the member's question.

Patrick Harvie (Glasgow) (Green): The complaints workload has reduced again. Last year, we recognised that the number of complaints had increased from the low 20s to 30. The number has gone down again.

When we had discussions last year, you were not convinced that there was any connection to the electoral cycle—the idea that the run-up to the election might have generated politically motivated complaints. Has the reduction in the number of complaints in the past year changed your view?

Do you have any suggestions as to why the number of complaints has reduced again?

Bill Thomson: In the period 2016-17—which was after the Scottish Parliament election—we received a handful of complaints about newly elected members from those who had been involved in the political process during the election period. However, that does not fully explain the difference in numbers.

Interestingly, in the current financial year we are slightly ahead—I am not sure whether that is the right word—of where we were at this time last year.

Patrick Harvie: You mean that there has been a slightly higher volume of complaints.

Bill Thomson: Yes. The numbers fluctuate. There are no specific reasons that can be linked readily to the electoral cycle. As I said last year, there have been elections or a referendum or something major every year since I have been in post. It is difficult to tell.

Patrick Harvie: You are making no predictions.

If the volume of complaints fluctuates, but is not predictable in that way and does not follow any pattern, what effect does that have on your workload, your capacity and your planning for handling complaints in an appropriate timescale?

Bill Thomson: It has an impact on budgeting. The committee's concern is, specifically, about complaints about members of this Parliament. The total numbers involved are small—even at the highest point, there were 30 complaints—and the majority do not require full investigation because they are not admissible or are excluded from my jurisdiction. Those particular complaints do not have a major impact. However, it creates a problem for councillors and members of public bodies, where the numbers are much higher.

10:15

The solution that was adopted until this year was that we budgeted for an agreed level of investigating hours—if I can put it in that way—as well as having a reasonably significant contingency figure. The level of investigating hours was unduly low so, up until now, we have always had to call on the contingency figure. We have agreed with the corporate body to submit a budget on—in my view—a more realistic basis for the next financial year. The risk then transfers to me to try to manage the volume of complaints within our budget.

Patrick Harvie: Is reaching the view that a particular complaint is inadmissible a relatively quick and painless process, or does it involve a certain amount of investigation?

Bill Thomson: It varies a lot. Some complaints are patently outside the scope of the “Code of Conduct for Members of the Scottish Parliament”. To give you an example without any names, an individual who had a particular view on energy policy approached two MSPs, looking for their support. They did not agree with the individual's view. The complaint was that the party leader failed to discipline the two MSPs who had failed to agree with the individual's view on energy policy. That is patently outside the scope of the code, so that complaint was easily dismissed.

Other complaints raise issues that are purely legal, or legal in terms of interpretation of the code. The code is not 100 per cent specific—it would be endlessly long if it was. Those complaints can be quite difficult and, on occasion, we have to get a certain amount of evidence to make the stage 1 assessment as to whether the complaint is admissible. We have, up until now, managed to do that within the two months allowed in the legislation. I intend to continue to do that if possible.

Claire Baker (Mid Scotland and Fife) (Lab): You have possibly answered part of my question. In response to questions from the convener, you talked about the challenges in managing the budget. I was also a bit concerned that you said that there is a lack of IT specialism in the commissioner's office. In this day and age, that specialism is expected. There should be resources available to bring in IT specialism when big projects are undertaken; I would not expect a smaller organisation to have that capacity. You might want to address why that is not the case.

In response to Patrick Harvie's line of questioning, you said that there were not many complaints made against MSPs. There were 30 complaints but there are only 129 MSPs—that number of complaints is quite high compared with the number of MSPs. Given that only six of the overall number of complaints were admissible, is it possible to do a bit more so that people are clear on what your role is and where cases might be admissible? You explained that some complaints are quite easily dismissed, but other complaints that you are likely to conclude are not admissible take up the office's resources and investigative time. Can more be done in that area?

Bill Thomson: That is a fair point. I am in the process of revamping our leaflet on MSP complaints, which is available in paper form but also on our website.

The difficulty is that some people are patently incensed by something that has happened. In some cases it may be something that has been said or done in the media, or it may be something that an elected member has said during party-political activities, such as an election. People

wish to complain and because the title of my office—which is awful—is the commissioner for ethical standards, people think that anything that they perceive to be unethical has to be addressed to me.

In one sense, that is fair. It is not reasonable for me, the committee or the Parliament to expect that those who are minded to make a complaint should be fully familiar with the ins and outs of the MSP code. It is difficult to have material that is sufficiently clear and readily understood, but is also sufficiently specific to discourage people who might be minded to make a simply irrelevant complaint. It is difficult to get the balance right.

Whether people are comfortable reading materials on paper or on the web also needs to be taken into account. Even in its newly simplified form, people may find the code relatively impenetrable unless they understand the organisation and its processes.

Claire Baker: Do complaints generally come from members of the public rather than from members of political parties in the Parliament? I apologise if I missed that in the report.

Bill Thomson: That is not in the report; it is a fair question. The vast majority of complaints come from members of the public. Those people may or may not be politically active—I do not follow that up because motivation is not an issue as far as I am concerned.

Every year, a couple of complaints—I am sorry not to be more specific—come from one member about another.

Claire Baker: Those complaints are in the minority.

Bill Thomson: Yes, they are in the distinct minority.

Kate Forbes: Your report mentions that complaints relating to disrespect are growing as a percentage of the total number of complaints. I caveat that by saying that I am not sure whether the report suggests that that just relates to councils. However, some conduct that might be considered disrespectful in another context is nevertheless permitted in a political context. Why is the percentage of complaints relating to disrespect rising?

Bill Thomson: I cannot answer that question. I am pleased that, in the current financial year, the percentage of complaints relating to disrespect—what people have said about other people—has gone down. At a previous committee meeting, I described it as having reached—I did not use this phrase—the zenith of its blossoming. I hope that that category of complaint is now fading, but I do not know. Given the preponderance of unpleasant things said on social media—many of them about

elected members—you might think that there would be more complaints. Thankfully, that has not led to a huge growth in complaints either.

The bulk of complaints involve what has been said in or around council meetings, or occasionally in less formal meetings involving councillors. I may be wrong but I cannot recall any complaints of that nature involving MSPs.

Alexander Stewart (Mid Scotland and Fife) (Con): What impact do you expect the commencement of the Lobbying (Scotland) Act 2016 to have on your workload and working practices?

Bill Thomson: I had to submit some information for the financial memorandum. At that time, I received advice that it was unlikely that there would be a large number of complaints. I have not received any other advice on that. I appreciate that the lobbying regime does not come in until March 2018, so I cannot imagine it having any real impact in this financial year, other than on the preparation that we are involved in.

In the following year, the risks are that there will be complaints about failure to register lobbying—and given that people have six months to update the register, that would push it to halfway through the year at the earliest—or complaints about the registrations that people have made as lobbyists. Given that the system is now open on a trial basis, I would hope that the number of complaints in that category would be fairly small, but I have no hard information on which to base that assessment.

Alexander Stewart: You have some contingency plans in place in anticipation of what may happen.

Bill Thomson: Indeed. I have allowed a certain sum in my budget bid for one or two complaints having to be investigated fully and for some of the preparatory work that we have already started. Thankfully, we have been involved in quite a lot of the discussions that are going on behind the scenes. I am reasonably up to speed with how things are developing.

Jamie Halcro Johnston (Highlands and Islands) (Con): I did not want to come in when you were discussing diversity more widely but, as a Highlands and Islands MSP, I want to find out what regional and geographical diversity there is in appointments, what barriers there are to that diversity and what can be done to ensure that people from all areas of Scotland are represented on some of the boards.

Bill Thomson: Ian Bruce is probably in a better position to answer that.

Ian Bruce: We gather and monitor information on that issue. I am afraid that I do not have the figures with me, but we will be very happy to

provide them to you and the committee in due course.

You are absolutely right; it is something that is considered. Territorial health boards are probably a good example. Generally, they look for people with a live interest, and a stake, in the provision for that given area. National bodies do not do that as much. There is possibly a preponderance of people appointed from the central belt. Other agencies, such as Highland and Islands Enterprise, generally look to appoint people with live knowledge of the issues that affect people in their areas. We will provide you with the figures in due course.

Jamie Halcro Johnston: That would be very helpful. Are there things that we could do, such as videoconferencing or deciding when and where meetings are scheduled, to ensure that the meetings are more accessible, so that people put themselves forward for the boards?

Ian Bruce: Absolutely. We recommend doing those things in our discussions with the boards of public bodies. As a result of the research, we hope to roll out recommendations on all the accessible practices that are already in place. I know that there are lots of instances of good practice because we have had a lot of returns, but there is not necessarily a forum for them to be rolled out.

A lot of good practice has become embedded, such as regular networking events between chairs, where they discuss how they harness diversity on an informal basis. That is great. Bill Thomson and I attend those events—which were set up by the Scottish Government—two or three times a year.

A new governance hub has been established by the public bodies unit. It includes advice on things such as how boards go about succession planning.

You are absolutely right that more could be done to bring everyone in. Prior to this meeting, I mentioned to the commissioner that I met with Equate Scotland last week. Its particular focus is on younger women in science, engineering and technology. We have agreed with Equate Scotland to run a couple of sessions in March next year to encourage the people from whom we want applications to apply. Equate Scotland was very clear that we will head to Aberdeen for those sessions. I have been in touch with Food Standards Scotland, one of the few public bodies, other than the territorial ones, that is based outside the central belt. I have already got in-principle agreement from Food Standards Scotland that it would love to host that event. We will be doing that in March; the issue is on our radar.

Jamie Halcro Johnston: That is very helpful.

Claire Baker: As well as the Lobbying (Scotland) Act 2016 coming down the line, you will be aware that there is a lot of discussion in Parliament on sexual harassment. The committee, the corporate body and the Presiding Officer have taken an interest in the issue. There are different approaches and streams for dealing with a complaint depending on whether it comes from within a political party or within the Parliament. Do you anticipate any additional workload? Are you preparing for the need for additional capacity and knowledge on that particular area of concern?

Bill Thomson: Unless the code is changed, my remit in that area will stay as it is. Any increase in complaints could indicate poorer behaviour, but that is unlikely in the current climate. It would be more likely down to people feeling more inclined to make a complaint.

10:30

Claire Baker: You may not feel that it is appropriate to answer, but do you feel that the code is clear enough on those issues? My question may be too specific for you to answer, but have you had any complaints come in through the code on that area?

Bill Thomson: I am not able to talk about any current cases. I have not had any complaints under this issue. If I did receive any, in terms of my remit, they would relate to lack of respect. That was discussed at another committee last week. Respect can mean a lot of different things. If someone was minded to make a complaint about sexual harassment that fell within my remit, I think that lack of respect would be the basis for it.

I am not proposing to increase our staffing in any way to deal with those complaints. They would be dealt with as part of our business. However, I am setting out to ensure that information and links are in place to allow us—if we needed to or thought that it was helpful—to point anybody involved in the right direction if they needed support. My role is investigatory, so I cannot provide support to one side or the other. For a start, I am not qualified to do so, but that would, or could, be seen as taking sides. That could undermine the independence of the investigation. All that we can do, if we think that it would be helpful, is advise people that there are people whom they can contact here or there, as appropriate.

Claire Baker: That suggests to me that the code needs some clarity on the description of lack of respect. That is quite a broad definition of where sexual harassment might fall. It is all conjecture at the moment. As you have said, you have not had cases brought forward to deal with. Would it be challenging to investigate a case involving the

wording around lack of respect? It is quite a responsibility: it is a sexual harassment case but it falls under lack of respect—that is the definition that we are working with. To do an investigation on that basis—to make that judgment—would be quite challenging, I imagine.

Bill Thomson: I agree. That is potentially quite challenging. It would be inappropriate for me, as an investigator rather than the person in charge of the policy, to say much more about the code and its potential effectiveness ahead of the committee's inquiry. However, I am happy to contribute at an appropriate point.

Claire Baker: It has been helpful to have clarity from the commissioner that lack of respect is currently where the issue would fall.

Bill Thomson: That is my understanding.

The Convener: I am sure that the committee will be very keen to hear from you in the course of our inquiry.

Claire Baker: The report said that the length of time between dates of interviews and people being informed of the outcome has increased recently. What are the reasons for that?

Bill Thomson: I do not have information on the reasons. The information is based on statistics that are supplied to my office by the Government. On the positive side, even as extended, the periods are within the outer limit that was agreed some time ago. However, it would be better if the periods could be shortened.

For what it is worth, in the current year, the number of appointment rounds in progress has gone up significantly compared with the previous year. That will put pressure on those who are involved in the system. I do not know whether progress can be made on that front. It is not something that I can influence. I do not have any guidance, other than to report the statistics that have been given to us by the Government.

The Convener: I have not had any indication that committee members have further questions. I thank Bill Thomson and Ian Bruce for their evidence.

Meeting closed at 10:35.

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