



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 27 February 2020

Session 5



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
6th Meeting 2020, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Neil Findlay (Lothian) (Lab)

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

*Gil Paterson (Clydebank and Milngavie) (SNP)

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

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Anderson (Commissioner for Ethical Standards in Public Life in Scotland)

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

Martin Campbell (Office of the Commissioner for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 27 February 2020

[The Convener opened the meeting at 10:00]

Interests

The Convener (Bill Kidd): Welcome to the sixth meeting in 2020 of the Standards, Procedures and Public Appointments Committee. I welcome Alexander Stewart back to the committee. He joins us to replace Tom Mason, whom I thank for his time on the committee and for his contributions to it. I invite Alexander Stewart to declare any relevant interests that he may have.

Alexander Stewart (Mid Scotland and Fife) (Con): I am delighted to return to the committee and I have no relevant interests to declare.

Decisions on Taking Business in Private

10:00

The Convener: Our next item is a decision on taking in private agenda item 4, which is to consider the evidence that we will hear today from the Commissioner for Ethical Standards in Public Life in Scotland and her team. Do members agree to take that item in private?

Members indicated agreement.

The Convener: Do members also agree to consider correspondence that the committee has received and further recommendations on the commission on parliamentary reform in private at future meetings?

Members indicated agreement.

Commissioner for Ethical Standards in Public Life in Scotland

10:01

The Convener: The main meat today is an evidence session with the Commissioner for Ethical Standards in Public Life in Scotland on her annual report and strategic plan. Joining us are the commissioner, Caroline Anderson; Ian Bruce; and Martin Campbell. I welcome them all to the meeting and I invite the commissioner to make a short opening statement.

Caroline Anderson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you for the opportunity to present evidence to the committee. As this is my first such evidence session, I will open with a short introductory statement, outlining the steps that I have taken in my role as commissioner over the past 10 months, first in relation to complaints and then in relation to public appointments. That more recent information will give the committee an up-to-date picture, as the annual report and public appointments report relate to 2018-19, which was before my appointment. I am of course ready to answer questions on those reports to the best of my ability. I also have senior members of my team here to address any points of detail.

I am a qualified chartered accountant with expertise in regulation and compliance, which has been developed over the past three decades, spanning public and private sector roles in professional services and financial services, both in local jurisdictions and internationally.

When I took up office on 1 April 2019, I reviewed operations and found them to be significantly in arrears in relation to complaints about councillors. The outstanding investigation legacy dated back to August 2018, which was of great concern to me. Having held many quasi-judicial and determinative roles, including disciplinary tribunal and investigative roles focused on the application of codes of conduct, I have extensive experience in the area. That experience makes me acutely aware of the negative impact of protracted investigation completion times on the elected representatives involved.

As at 1 April 2019, that legacy equated to the average number of reports that are submitted to the Standards Commission for Scotland in an 18-month period. I have a small office and there was a critical level of vacant posts when I took over. The situation was made even more pressing by the upcoming expansion of investigation work to include sexual harassment and inappropriate

behaviour complaints and an overall backdrop of a rising volume of complaints.

I had to implement a recovery plan quickly to avoid further delays and to secure greater effectiveness and efficiency in complaint handling in order to be ready for increased demand. Previously, my office had predominantly used home-based variable-hours contractors as investigators, each working an average of only 10 hours per week.

With full Scottish Parliamentary Corporate Body approval, I moved quickly to recruit site-based investigators, who have come highly recommended from former Scottish public sector employers and international and local law firms. They include qualified lawyers and experienced investigators with outstanding qualifications and skills. My new senior investigating officer, Mr Campbell, took up post in June 2019, with other new full-time investigators taking up post in December 2019. That team is moving quickly through legacy investigations, producing high-calibre work.

In moving to full-time investigators, it has been possible to double the number of annual working hours that are available in order to more efficiently service complaints investigations. Additionally, complainers and respondents are now benefiting from having a dedicated, full-time, on-site investigator servicing their complaint. We have already received notable positive feedback on that greatly enhanced service. Those changes address the long-standing issue of the length of time taken to complete investigations, as raised by various stakeholders over the years.

I am also aware that investigator salaries have come under scrutiny by the committee in past years. The move to full-time investigators has doubled the number of available investigation hours while reducing salary costs by £75,000. The new salaries are in line with a regrading exercise that was carried out with the support of the SPCB. Former investigators had preserved rights from prior public sector posts, with an associated high price tag. I express my apologies that, due to human resources and data protection issues concerning individuals in a small office, I cannot go into much further detail.

In addition to putting in place new staff, I have overseen work to put into operation the case management system, which has been delayed for many years. In addition, all information technology hardware and software has been replaced as required, creating a robust platform from which to deliver a newly effective and efficient complaints handling approach.

Since April 2019, incoming complaints have significantly increased. Councillor complaints are

up by 90 per cent pro rata, with councillor case numbers up by 50 per cent pro rata. MSP complaints are up by 500 per cent pro rata, and cases are up by 100 per cent on the previous period. Despite that increase and the fact that the new IOs have been in post only since December, MSP complaints are completely up to date, and the vast majority of councillor complaints have been assessed through to the past few weeks' intake. I have introduced codification of procedures drawn from legislation to ensure transparency and robustness of approach in readiness for the upcoming scope expansion.

To conclude my coverage of complaints investigation, I alert members to the heightened complexity and gravitas of incoming complaints. For the first time since the relevant legislation was enacted some two decades ago, my office has—over the past six months—commenced four cases that required an interim report, with the potential suspension of the councillor concerned, pending full investigation. That represents a significant escalation in the legal complexity and profile of casework that is being handled.

Turning to public appointments, we can celebrate a milestone year in respect of gender equality, which creates a pipeline for better diversity in future board chairs of Scottish public bodies. Other diversity metrics have been slower to improve. My office previously recommended various diversity-related actions, which have not been adopted, with the Scottish Government having opted for a partnership-working-on-request approach.

With a revision of the public appointments code of practice scheduled for later in 2020, I envisage a move towards a more traditional regulatory relationship. For example, if the current code is not delivering on board diversity, I can revise the code with a view to promoting practices that will deliver that outcome. Those matters are expanded on in my public appointments report and in my strategic plan, which covers all office functions for the period of my tenure.

Thank you for the opportunity to make those introductory remarks. I look forward to answering your questions, and would particularly welcome any feedback on my strategic plan.

The Convener: Thank you, commissioner. Some of our questions will be based on what you have just said and some on the reports that you have kindly released and which we have looked at.

Jamie Halcro Johnston (Highlands and Islands) (Con): Thank you for that opening statement, which included some of the areas that I want to cover. You have said that the start to your term in office was “challenging and dynamic”. Can

you give us more detail on the challenging aspects and the impact that those might have had on complaints and on your office?

Caroline Anderson: In my annual report, I advise the reader that, when I took up the post, I faced some key issues. There were three main challenging points. First, compared to the usual workload for the office, I had a sizeable backlog of investigation reports. It was equivalent to a year to a year and half's worth of draft reports that are submitted to the Standards Commission. In recent years, between six and eight reports would usually be submitted to the Standards Commission in any given year. I had a legacy that included 18 months' worth of draft reports that still had much to do on them. That was a huge legacy of investigation reports.

Jamie Halcro Johnston: Was that down to a lack of staff capacity to deal with the reports or were there other reasons for that backlog?

Caroline Anderson: I am not completely clear about all the reasons, because I was not in post when the backlog accumulated. However, in addressing the backlog, because, over many years, stakeholders had flagged up protracted investigation times, I considered that it was incumbent on me to increase effectiveness and efficiency, particularly given the stresses on the elected members who are involved in complaints. On taking over post, I addressed the situation as I found it.

Unfortunately, the next point is about staff shortage. Because of the absence of the most senior and legally qualified staff member in the office, the detailed explanations of how the situation had eventuated were not available to me.

Jamie Halcro Johnston: My colleagues will cover some of that, but why was that member of staff not available to you?

Caroline Anderson: They had resigned in the autumn of the previous year.

Jamie Halcro Johnston: Were they approached to give information or feedback on what was not working at the organisation?

Caroline Anderson: I had a brief meeting with the individual concerned, but they had moved on to another post and, although I gathered some information, it only partially completed my view of the situation. The other issue is that, in the past, the organisation had worked in a siloed way, so knowledge of complaints was minimal among the staff members who remained in the organisation at that date.

There is one other issue with regard to the reports. In the months prior to my taking over, four investigation reports had been submitted to the Standards Commission. Unfortunately, when I

took over, no one was in place to present the reports. Therefore, I was faced with quickly putting in place legal representation to present the majority of those cases to the Standards Commission. I tried to reschedule, but my predecessor had already rescheduled some or all of them and, therefore, I was told that it was not possible to do that again, which gave another challenge on the reports side.

Jamie Halcro Johnston: The deadlines were an additional problem.

Caroline Anderson: Exactly.

10:15

Jamie Halcro Johnston: In your governance statement, you say:

"An incomplete audit trail existed in relation to certain records in the complaints-handling function of the office."

What did that mean in practice, particularly for the cases that you were dealing with?

Caroline Anderson: Draft investigation reports are produced in the first instance and then, after discussion and review, the matters that are raised in the draft are refined and are either accepted or rejected. A report moves through various iterations until it reaches final draft stage. I discovered that the draft versions of reports were being deleted at a fairly early stage after completion of the final report. In losing those draft versions, we lost all the analysis and thinking behind the points that had been considered but rejected. That thinking has an internal value, because it creates precedents and lessons that can be shared with current and future staff. It also means that drafts that explain the thinking on a current report are available to us. I stopped that practice so that the valuable audit trail that is presented by those draft reports is available.

Jamie Halcro Johnston: I am conscious of time and that my colleagues have questions. I have two more questions, which are fairly simple. When you took over, there was a backlog of cases, as well as staff shortages and an incomplete audit trail, and key staff were not available. Was the organisation fit for purpose?

Caroline Anderson: The situation in which I found the organisation was of great concern. I would not have been happy to preside over it in that state. My focus is always on efficiency and effectiveness. I felt that much improvement could be made. Historically, the organisation had been created when different offices were merged. It was time for a complete review to put it on a sound footing.

Jamie Halcro Johnston: Outside the organisation, who was aware of the problems that you faced?

Caroline Anderson: Due to the degree of my concern, at an early stage, I alerted the SPCB to the issues that I encountered.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): You have explained how you managed to double the number of hours that people work, and that by taking on new people you have reduced your staff costs. As I understand, you hope to make a saving of £75,000 a year on staff costs. Is that correct?

Caroline Anderson: Yes.

Maureen Watt: You have clearly experienced service disruption. What result does that disruption have?

You said that your handling of investigations of complaints against MSPs is up to date. How up to date are you on the backlog of complaints against councillors?

Caroline Anderson: The service disruption that came with the restructure occurred during the summer months. The Parliament is in recess over summer and people take a lot more holidays in general, so less happens in the political sphere. Consequently, we tend to see a fall in the volume of complaints that come through the door, and we receive fewer phone calls. The general level of activity decreases. Therefore, although there was a disruption while we migrated to the new management system and the remodelled staff structure, I would not have thought that it would have been any more perceptible externally than the previous suboptimal operation that I encountered when I took over.

You are right that the volume of councillor complaints is greater and that the legacy was entirely councillor complaints. Despite the fact that the new team has been in post only since December, we have moved through the legacy very quickly. The assessments are more or less up to date, other than a number of cases where we are waiting for information to come in from the respondents or, indeed, the complainers concerned. We are harvesting more information to finalise those assessments.

On the investigation numbers, I handle the investigations in two streams. I have in one stream the high gravitas matters that I mentioned in my opening statement, which are connected sometimes to interim reports and sometimes to difficult legal matters. Mr Campbell, as the most qualified and experienced legal person in the office, handles those in his position as director of investigations—obviously, with me as well. Those matters are in one stream and are being worked through and handled in a quick and timely fashion.

The committee will appreciate that we have matters where there are multiple complaints in one

case, and that the complaints come in over time. For example, in one case, complaints could come in over nine months. It is not always cut and dried from that point of view.

I counted that we are down to about 10 complaints in the other work stream, which is made up of more normal councillor complaints. Given that, as I mentioned, the volume increase over the past year has been so huge, I consider that to be a significant improvement and feel that we are very much on top of the situation.

Maureen Watt: I will tease that out a bit. Is it that there are complaints about more councillors, or are there more complaints about the same, or a smaller, number of councillors?

Caroline Anderson: Let me get my figures up, because I want to give the correct answer.

Maureen Watt: While you are looking them up, I will ask Mr Campbell some questions. Are you dealing with a stream of the more serious cases, and do you prioritise when a very serious case comes in? We have a situation where a person with a criminal record is still acting as a councillor.

Martin Campbell (Office of the Commissioner for Ethical Standards in Public Life in Scotland): That is correct. The intention of my day-to-day casework is to focus on the more serious cases. Although I obviously cannot talk about any specific case, there are measures in place to take interim steps if the statutory tests for those are met. However, the necessary evidence requires to be gathered before those steps can be taken. Although things might come out in public quickly, there is a natural lag in getting documentary evidence that backs up information that might be in the public domain.

Caroline Anderson: Coming back to the complaint numbers, for councillor complaints, the number of actual complaints is up by nearly 100 per cent pro rata. However, there is, of course, some duplication in that. The number of cases that could be converted into an investigation is up by 50 per cent. A full analysis will, of course, be available after the year end, when we will give an annual analysis of all the complaint numbers and cases.

Maureen Watt: You talked about the restructure and the disruption. That disruption took place over the summer, so you got a bit ahead. How confident are you that the restructuring will lead to sustained improvement, so that you do not have such big backlogs and can keep on top of things?

Caroline Anderson: I am completely confident. As we have discussed, we are a demand-led organisation and provide an open door, so I have no control over how many complaints we receive, their pattern and so on. The volume of complaints

that will eventuate from the scope extension is an unknown entity, too.

One has to get on top of the current situation, but I work ahead, because I always like to be ahead of the curve. Given our current situation, I think that we will shortly be ahead of that curve, so we will be in a good position to consider and respond to other matters, such as the volume of complaints that will arise from the scope expansion, in a timely manner.

Maureen Watt: You said that you have made savings on staff costs, but the restructure seems to have cost more than you budgeted for. Was that because of the transfer to a new system?

Caroline Anderson: I am sorry, but I did not budget for anything.

Maureen Watt: On pages 7 and 11, the report mentions “unanticipated costs” that were associated with the restructure. What were those costs?

Caroline Anderson: I took up my post only on 1 April 2019. At that point, I recognised the challenges and took a strategic overview. I then put together a proposal that would answer those challenges and produce an effective and efficient complaints-handling system, and I approached the SPCB for its approval of that restructuring package. It was a new and discrete matter, as it were.

The Convener: Gil Paterson has questions about the annual report and complaints against MSPs.

Gil Paterson (Clydebank and Milngavie) (SNP): I have a similar question to that of my colleague. You explained that there has been a 500 per cent increase in complaints against MSPs. Have there been more complaints about an individual, or has the number of complaints against MSPs dramatically increased?

Caroline Anderson: The total number of individual MSP cases is up by 100 per cent, so the number has doubled since the previous year.

Gil Paterson: Can you characterise that increase? Is there a theme? Has there been an increase because of the work that has been done, particularly by this committee, on tackling sexual abuse and bullying?

Caroline Anderson: No.

Gil Paterson: There is no particular reason.

Caroline Anderson: Unless my memory is failing me, the increase is nothing to do with the inappropriate behaviour matters. I anticipated that members would be interested in that area, but no immediate pattern emerged. Complaints are driven by social media and other media—no

sooner than something happens, it is out there. If it catches the public's attention, that can eventuate in a large number of complaints.

Gil Paterson: I see that there were 20 complaints against MSPs but that 75 per cent of them were inadmissible. Does that relate to those web-based complaints? That is a phenomenal amount.

Caroline Anderson: The public are so aware of social and other media, and they are just as stimulated by political debate and events. When we get to the year end, I would be happy to provide those figures—a full analysis of complaints, their sources and any breakdown that I could make—for the entire accounting year, if that would be helpful.

10:30

Gil Paterson: Yes, I am sure that that would be useful to the committee.

Associated with that, is there anything that your office, or the Parliament, can do to dissuade people from making such complaints, or is it just part of the way things are and a necessary evil that we need to put up with?

Caroline Anderson: There are two parts to my answer to that. There is an inherent value in having a body to which a member of the electorate can complain if they are unhappy with the behaviour of an MSP. Whether or not the complaint falls within the bounds of the code that is in my remit, it is a public service to have that facility. We write a detailed letter back to every such person, explaining why I can or cannot proceed with their complaint, or directing them, for example, to the Presiding Officer, if it concerns conduct in the Parliament or engagement with constituents, or to the First Minister, if it concerns a complaint about an MSP acting as a minister.

Looking at the other side, in a world of information overload, it is not fair to expect the public to become experts on such matters as codes of conduct and legislation.

I see the complaint form as being the best mechanism available to me to walk a potential complainer through the process and to explain to them what I can or cannot act on—what falls within my remit. We are redesigning the complaint form to try to filter the complaints and narrow them down to those that fall within our remit and redirect the others. That is the easiest way to engage with the potential complainer: to take them through it step by step, rather than expecting them to gain an understanding of complex legalistic documentation.

Gil Paterson: On my last point, is there anything that the committee, or the Parliament, can do to assist, or should we leave it alone?

Caroline Anderson: Nothing comes to mind at the minute. My approach is to redesign the complaint form and then monitor the outcome to see whether it has been successful. There will no doubt be some glitches that we will have to iron out, but I hope to see continuous improvement over my term of office.

The Convener: We will move on to questions about lobbying and possibly also about public appointments.

Neil Findlay (Lothian) (Lab): You planned for significant time for some of your staff to deal with complaints about lobbying, and there have been no such complaints. Do you regard that as the system working, or not working?

Caroline Anderson: I see my function as an open door, to take the complaints that come in, and to action them as appropriate. I have no overall view on your question that could assist the committee. I anticipate that the lobbying registrar may have done some interjurisdictional comparative work on the definitions in the lobbying legislation and the type of complaints that have eventuated in other jurisdictions, to consider whether the outcome was as anticipated.

My recollection is that, in some jurisdictions, the intention was to extend lobbying definitions over time. There would be a bedding-in period for a few years; the outcome would be considered; and then the definitions of lobbying would be revisited, with a view to extending what was caught within the lobbying legislation.

Neil Findlay: Was the estimate of 45 days of investigating time guesswork?

Caroline Anderson: It was before my time, so it was not my guesswork. It was necessary, because, as the member will recall, previously, investigators would have been working on such investigations for variable hours. Therefore, if 45 days' worth of lobbying complaints had eventuated, investigators would have had to be paid for those 45 days, whereas that is no longer the case. If lobbying complaints eventuate, they would now be caught within our current provision and no additional expenditure within the organisation would be required on that sudden, unexpected volume flurry.

Neil Findlay: In relation to public appointments, you say that partnership working "has drifted somewhat" and that you might need to return to a more "traditional regulatory" approach. What does that mean? It seems coded, or maybe diplomatic.

Caroline Anderson: It was meant just to be brief. Again, much of that history is before my

time, so the member might be more aware of it than I am. My understanding is that the significant gains that have been made in diversity happened with the assistance of a programme board, which was pivotal in bringing together diffuse diversity actions across Government to make the advances that have been made over the past years. That programme board was disbanded a few years back. In the absence of that board, my predecessor made various recommendations.

Neil Findlay: Why was it disbanded?

Caroline Anderson: I will answer that part of the question and then I will let Ian Bruce answer.

The board was disbanded and my predecessor made recommendations for actions that were considered to be meaningful, in relation to moving the other diversity metrics. However, the Scottish Government has not taken those up. A few months back, on request, I met the former cabinet secretary to discuss partnership working on certain recommendations. Therefore, when the Scottish Government decides that it wants to move on a diversity action, it will approach us for partnership working, rather than just adopt all the recommendations that have previously been made.

Neil Findlay: Therefore, the appointments are operating outwith any diversity plan. Are they happening on an ad hoc basis, in the hope that we fulfil diversity requirements?

Caroline Anderson: Yes, I believe so. There are two different things here—one is the outreach activities, which are to stimulate interest from various demographics and to progress that into applications. I will pass you to Mr Bruce to talk about public appointments.

Neil Findlay: Have those events stopped?

Caroline Anderson: They have fallen back. They are not as plentiful as they were, because we used to work in partnership with the Scottish Government on those events. Some still happen but they are more diffuse. I will pass on the other question.

Neil Findlay: Why was the programme board scrapped?

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): Good morning, convener and members. Thank you for the opportunity to provide evidence.

Ultimately, that was a matter for the Scottish Government. The programme board had three strands, and public appointments was one of those. Our interface was with the public appointments team, and the partnership approach was around a shared action plan to deliver a shared strategic objective—which, as members

will remember, is to have effective boards that are reflective of society.

The Government changed tack on its governance arrangements, and one thing that fell out of that was that the Government said that the action plan was its action plan. That may have been because the prior Commissioner for Ethical Standards in Public Life in Scotland felt that some of the activity in the plan was not sufficiently smart and that it would not deliver on the shared objective.

We had previously agreed a plan that was pivotal to the delivery of gender diversity on boards, but the Government took back ownership of that activity. Members will see some of the things that fell out of that in our annual report. We had previously agreed that there would be a bespoke plan to redress underreflection in respect of disability, but the Government rolled back on that commitment.

We should not be too negative about that. At the end of the day, there is still quite a lot of activity going on. We have to balance the fact that we might wish to see more central activity in order to increase and support diversity with the significant increase in the number of appointments that are being made. A limited number of officials can chair panels and provide administrative support for all that activity.

Members will have seen from the annual report that, in the space of a year, the number of applications jumped from roughly 2,000 to roughly 2,800. That is a lot of work.

However, quite a lot of very good work is still going on. We still engage in activities together. Last week, the head of the public appointments team and I talked at a PATH Scotland event. It was a workshop to encourage people from black and minority ethnic backgrounds looking to take up positions in public life to apply for roles and to give them tools to do so.

I know that the Government has also undertaken some new activities. It is concentrating on giving constructive feedback on near misses to people with disabilities or BME backgrounds who were not successful in competitions. It is also running workshops for both areas.

Over and above that, we recently agreed on a race equality action plan, and the Government is now implementing some of the actions in that.

We feel that the Government could go further, but it is not the case that there is no activity or that we do not expect at least a proportion of that activity to deliver.

Neil Findlay: I want to ask about your involvement in a specific appointment. The chair of the Scottish national investment bank was

appointed recently. That was done prior to the bank being set up in law. Given that that was a public appointment, would you have expected to have been at least consulted on it?

Caroline Anderson: Between June 2018 and May 2019, we were approached informally on three occasions on the particular matter of the Scottish national investment bank, and on all those occasions we advised, in the only way that we can advise, that we regulate the bodies that fall within our remit and that legislation has to be passed in order for that to occur. I can only regulate bodies that fall within my remit. That exchange happened on three occasions in the year leading up to May 2019.

In June 2019, we received a formal written request from the former cabinet secretary to provide oversight of the unregulated appointment of the chair. We explained yet again that doing so would be ultra vires, because it did not fall within my remit. However, we pointed out—as we had pointed out before—that, if we were given the assurance that a section 3(3) order under the Public Appointments and Public Bodies etc (Scotland) Act 2003 could be in place by the time that the appointment was made, we could act. We wanted to be co-operative and helpful, as always. However, a reply came through in the following month that, because of time pressures and the need to make the appointment, it would not be possible to lay a 3(3) order.

10:45

Neil Findlay: Was it wise for the Government to appoint someone to such an important role without your involvement?

Caroline Anderson: The Government has put in place legislation to ensure that those most important appointments are carefully considered and regulated. The Code of Practice for Ministerial Appointments to Public Bodies in Scotland has been constructed to guide the people who are making those appointments through the process and to ensure that appointees meet the requirements of committee members and the broader MSP body.

Neil Findlay: The letter that I have read, which was from the former Cabinet Secretary for Finance, Economy and Fair Work to the Economy, Energy and Fair Work Committee, confirmed that

“as part of that process, the required ‘Fit and Proper Person’ tests were completed satisfactorily for all candidates.”

The person who was appointed will be a key figure in the bank, overseeing governance and probity. That person was fined £8.6 million—the biggest ever fine for a conflict of interest case at that time—by regulators. If you had been asked to

oversee the process, would your office have agreed to such an appointment?

Caroline Anderson: I do not know whether I can opine on a hypothetical—

Neil Findlay: Let me put it this way. Person A applies for a job overseeing a national financial institution on behalf of the Government. They have been fined a large amount by City regulators for irregularities. Would you advise that person A should be appointed?

Caroline Anderson: The code of practice makes those matters very clear. That code is available to the appointing panel, as are the detailed and stringent requirements of the Financial Conduct Authority and the Prudential Regulation Authority—

Neil Findlay: Forgive me—what does the code of practice say in that regard?

Caroline Anderson: Mr Bruce can give us chapter and verse.

Ian Bruce: There is a fit-and-proper-person test in the code of practice, which I will quote if members do not mind.

Neil Findlay: Please do—that would be very helpful.

Ian Bruce: There are a number of elements to the fit-and-proper-person test. To be clear, it is the responsibility of the appointing minister, which is often delegated to the panel. The relevant part of the code is E6(ii), which says that the responsibility of the minister is in relation to

“confirmation that the applicant’s conduct to date has been compatible with the public appointment”.

That is the test.

Neil Findlay: What is your view on that?

Caroline Anderson: It would be for panel members to make the final decision.

Ian Bruce: When the responsibility is delegated, that obligation is placed on the panel. If the panel cannot reach a view, it would go back to the minister, who must reach a view on whether the conduct concerned is compatible. It is not just that test—there are other elements to it. If there are questions, the subject must be properly investigated and the person must be given an opportunity to respond before a final decision is made. They are ministerial appointments and it is ultimately for the appointing minister to determine whether someone has failed that element of the test.

Neil Findlay: As a final point on that appointment, are there any other instances of the same type of thing happening—of a similarly

prominent public appointment being made outwith the regulated process?

Caroline Anderson: I have been in post for only nine months—for that period, the answer is no. I am sorry, Ian—you are in the hot seat.

Ian Bruce: The appointments that we regulate are the ones that we know about. I am not looking to deflect, but that information is all in the public domain.

Any number of appointments have been made that were regulated; equally, appointments are being made that are unregulated. It is for members to take a view on whether those are significant and whether they ought to be regulated.

Jamie Halcro Johnston: Was your office informally approached three times by the cabinet secretary?

Caroline Anderson: No. During the year, we were approached variously by the sponsor team, by the public appointments team and then by the sponsor team again, in May 2019. That derived from a committee in private session asking the cabinet secretary to come to me for oversight of the appointment process.

Jamie Halcro Johnston: Was your answer the same each time?

Caroline Anderson: There is only one answer that we can give. The situation is fairly cut and dried.

Neil Findlay: Why did they keep coming back to you?

Ian Bruce: I am not entirely clear about that. It may be helpful if I clarify that, when the bill that became the Public Appointments and Public Bodies etc (Scotland) Act 2003 was going through Parliament, it was understood that there would be occasions on which it would be appropriate to provide oversight of a body before it was established, and the act includes that order-making power for ministers. There is no dubiety about it. Even before a body is established, section 3(3) of the 2003 act allows it to be treated as if it is regulated. For the commissioner to act lawfully, we need such an order, as a minimum, to provide that oversight.

Jamie Halcro Johnston: Do you know under whose direction those approaches were made?

Caroline Anderson: Ian, can you recall?

Ian Bruce: Ultimately, we regulate the activities of the Scottish ministers, and any approach that comes to us from any Scottish Government official is made on their behalf. It would be inappropriate for us to treat it otherwise.

Jamie Halcro Johnston: Why do you think that they informally made the same approach three times? What would be the reasons or intentions behind that?

Ian Bruce: One of commissioner's statutory functions is to offer guidance on application of the code of practice. As an organisation, it is important for us to provide that guidance when it is sought—

Jamie Halcro Johnston: But you provided the same guidance three times.

Ian Bruce: Indeed. We were consistent in the guidance that we provided.

Neil Findlay: I did not quite follow what you said about the section 3(3) thing. What does that mean? Does it mean that the act has to be approved by Parliament before that comes in?

Ian Bruce: No.

Neil Findlay: What needs to happen?

Ian Bruce: It is subordinate legislation. It is an instrument—

Neil Findlay: Could the instrument have gone through at any time before the bill was passed?

Ian Bruce: Yes. I am looking to recall what was in the letter that we ultimately received from Mr Mackay, which is in the public domain.

As I understand it, the concern of the ministers was about whether it was appropriate to lay a section 3(3) order when stage 1 of a bill had not passed. If stage 1 of a bill that seeks to establish a body has not passed, one could argue that the will of the Parliament is not clear on whether the body should be established. My understanding is that the custom and practice is not to lay a section 3(3) order until stage 1 of a bill has passed. You will excuse me. I am not a lawyer but, as I understand it, there is no legislative impediment to a section 3(3) order being laid at any time.

The Convener: Thank you, Mr Bruce. That is very helpful.

Mark Ruskell (Mid Scotland and Fife) (Green): Going back to the issue of diversity in public appointments and boards, I note that, in your annual report on public appointments, you describe the achievement last year of gender balance within public boards as “truly remarkable”. Are there particular reasons for that? Can you pick out particular approaches that have been taken? What are the lessons for wider society, particularly in relation to women's participation?

Caroline Anderson: The learnings from the five-year process that was involved in reaching that stage are encapsulated in the public appointments report. I will ask Mr Bruce to give you the detail on that.

Our attitude is that the learnings should be taken from that great success. They reflect the recommendations that my predecessor made on further action on diversity. The Scottish Government decided not to move on those in their entirety but to take an approach that involves partnership working on request, as it were. However, that is not a minor thing. The Government is still doing a lot of work; it has just not taken all the recommendations. Ian Bruce can give you some more detail on the learnings.

Ian Bruce: I understand that our time is limited, so I will try not to unnecessarily repeat things that I have already said. There is no magic bullet to redress underreflection on boards and a range of measures had to be put in place in order to achieve what has been achieved. It really is significant, and other Administrations have looked on in envy and sought to find the answer. Unfortunately, in such cases, as I am about to say to the committee, there is no single answer.

A number of things certainly helped. For example, the introduction of the core skills framework, which we put together jointly with the Scottish Government, might not sound significant, but it is a tool that selection panels can use to articulate much more clearly what is needed for a given board at a given time. It assists the appointing minister to be clear about their definition of merit. We saw it being defined differently, and in different ways from the way in which it had been defined previously. The introduction of that framework has meant more transparent decision making by selection panels. That is one technical thing.

Over and above that, positive action measures are needed. That is about targeting the people that you want to attract to particular roles. We have seen lots of evidence of that bearing fruit—it has not been done in isolation. Examples include boards holding open days alongside organisations such as Changing the Chemistry and targeting women in business—for example, the female membership of the Institute of Directors. Those packages of measures ultimately led to the difference that we have seen.

A committee member who is here today asked me last year whether boards themselves might do more in terms of attraction, and there is still scope for that.

Disability and the challenge that is attached to that is slightly different. There is scope for boards to be more accessible in the way that they operate, and I think that that would make a difference to the numbers. Alongside us, the Government is doing some very good work in that area. We are running a scheme whereby people with disabilities, supported by Inclusion Scotland, are shadowing existing board members. Not only

are they given an opportunity to develop some of the experience and skills that they might need in order to apply for board roles successfully, but equally the boards are learning from them. For example, they are learning whether papers are provided in an accessible format and whether the body's website is accessible. It is a two-way street.

We need to see such things in future in order to move the needle in other areas, but—

Mark Ruskell: What about programmes to encourage BME board members? I am aware that we reached gender balance last year, although I hope that it does not go into reverse.

Ian Bruce: Indeed.

Mark Ruskell: There is clearly a job of work to be done to ensure that that does not happen.

Ian Bruce: Agreed.

11:00

Mark Ruskell: However, the figures on people with declared disability and BME board members are going down. They appear to be going in the wrong direction. Despite the approaches that you describe, there seems to be a gap. Is it fair to say that boards are not really cutting through to deliver the diversity and balance that we need?

Ian Bruce: Yes, but programmes are under way. There was a hiatus. I do not want to be mundane about this, but there were changes in personnel, and such things make a difference to central activity. I have seen some revival in relation to some of that. I mentioned the race equality action plan, which has now been agreed with stakeholder organisations and is being rolled out. It includes a number of strands. I will be happy to provide the committee with a copy if that is felt to be helpful.

Mark Ruskell: In an answer to Mr Findlay, you described a lot of the programmes and approaches that are under way, but you also said that the Government could go further. In what areas could it go further to encourage diversity?

Ian Bruce: I mentioned some of the responsibilities that boards themselves might wish to take on. The commissioner mentioned thematic reviews and the Government not necessarily taking on board some of the recommendations. Another key thing is to learn lessons from round to round.

We produce case studies of good practice. For example, we produced some previously in relation to the Mobility and Access Committee for Scotland. It is obliged to have disabled members, and we can see the activities that it engages in in order to attract and recruit new members being adopted in other contexts. However, that requires

the Government to take an overview of all the activity that is going on and say that people should adopt much more widely what it has seen working in those areas. That is perhaps where we are not seeing evidence of the activity that we would like to see.

Caroline Anderson: The other thing that we must take into account is the external barriers that certain demographics face. In the early days of my term, I wrote to Lord Holmes about the issue that disabled persons face in that benefits can be affected on their appointment to a public body. That is off-putting; it makes it unappealing to people even to apply. Even with the best will in the world and lots of outreach activity, we will not pass go until such problems are faced up to and resolved in some way. I just wanted to balance the discussion with that comment.

Mark Ruskell: Yes. The message is understood. The figures also show that only 18.3 per cent of people on the boards of public bodies are under the age of 50. That percentage is pretty low. Do you have figures for people who are under 40 or even—imagine this—under 30 getting on to public boards?

Ian Bruce: Yes. It happens, and we have those figures. The report is quite lengthy, as our auditors previously observed, which is why we now have a separate public appointments report. However, we will happily provide anything that is of interest to the committee.

At the end of the day, a lot of it is about what a minister asks for for a particular post. One of my favourite examples is sportscotland. I might have mentioned it previously, but we have it as a case study on the website. The skill sets that were sought have delivered all sorts of diversity, including people under the age of 30. If a board feels that having someone with current, up-to-date knowledge of social media is important to it, that will have a direct impact on the demographic of the people who will be attracted and might ultimately be appointed.

Mark Ruskell: Is it enough for there to be a greater consideration of skills and merits?

Ian Bruce: No.

Mark Ruskell: Should there be a conscious decision to make posts appeal to young people and to look at the structural barriers that might prevent them from taking up posts?

Ian Bruce: You are absolutely right. As I said previously, there is no single answer. That is one part of it, but the other parts are outreach and thinking about how to attract people to apply and whether the activities of the board are sufficiently attractive to people who are of working age and might have caring responsibilities. All those factors

have an influence on whether people are willing to apply and whether they are successful if they do so.

Jamie Halcro Johnston: I come from an island and represent the Highlands and Islands. How do you ensure a geographical split? There are a lot of talented people in some of the more remote and rural parts of Scotland. How do you ensure that they, too, can play an active role on boards?

Caroline Anderson: That is addressed by the minister when they consider the type of applicant that they want to attract to the post. The geographical split is taken into account by the minister at that planning stage.

When we revise the code of practice towards the end of 2020, we will look at any areas in which there is underdelivery, and we can certainly take into account geographic representation, if that is an area of the code that needs to be strengthened. I am aware that there is a legal change afoot to ensure that the representation of people from the islands is strengthened.

The Convener: Our final series of questions is on the draft strategic plan that you produced.

Alexander Stewart: Commissioner, you spoke earlier about inheriting an organisation that required to be reviewed. Your evidence on the recovery plan and how that has progressed suggests that that has taken place.

In your governance statement, you talk about the risk management issues of the organisation and the overall assessment of effective governance arrangements. You mention the provision of a robust set of risk management policies and how that will be part of quality improvement in the future. Will you expand on how you see that developing? It is an important part of ensuring that the organisation is robust enough and that it can challenge and be effective.

Caroline Anderson: You are correct. Thank you for the question.

I have a strong risk management background, having been chief risk officer in a fund management firm. I agree that, in many ways, risk management is the key to the robustness of an organisation. However, just having lots of multicoloured papers, an extensive range of committees and sub-committees and lots of discussion does not insulate us from the problems that can be encountered, as we know from the financial crisis.

That being the case, I have been at the forefront of governance in my organisation. Part of that has been to assemble a senior management team, which includes those who are here with me as well as people who are back in the office, and we meet regularly to discuss risks arising. I work on a team

basis and take the advice and counsel of those around me hourly—not daily or monthly, but constantly, because it is such a dynamic environment. That is translated into the organisation's risk management register.

We have to make that very real. However, from the day and hour that I took over, I have seen that there is one risk at the centre and forefront, which is about the delivery of the statutory function. That is what I am here for and why the members have appointed me. That remains the leading risk, and everything that backfills to make sure that that function is delivered will be encapsulated in the risk register and the risk management policy.

Alexander Stewart: On the strategic developments that you have put in place, your report talks about a training needs analysis. Training is vital to ensure that you have individuals who have sufficient capacity, training, knowledge and understanding. That was obviously a bit lacking when you came into the process, and you have identified that as one of the main areas for development. Have you seen any opportunities to develop that area in the short to medium term?

Caroline Anderson: Surely. Although the new staff that I have recruited are well ahead of the curve, we are operating in a dynamic environment. Social media and the many intricacies that are involved in investigating cases that relate to it are constantly changing. We have joined a network of similar public bodies that are dedicated to the investigation of complaints, and we are looking to attend joint training on social-media-related investigations to ensure that we are well placed to find and capture any evidence that is available to us. By joining with other members of the network, we can cut the cost of doing so. That is one area where it is essential to stay ahead.

In moving forward, as and when we have the legislation for sexual harassment and inappropriate behaviour, we will invest in expertise in that area so that we can deal with potentially vulnerable witnesses in the best possible manner.

Alexander Stewart: You have identified a need for different skills in order to deal with individuals who are in certain situations. Your report talks about technical objectives and developments. You have referred to social media, but are there other technical areas in which you will support the staff in your team to bridge some of the gaps that you have identified in order to save time in the process and encapsulate what you are trying to achieve?

Caroline Anderson: We obviously want to embrace technology in any way that we can to drive efficiency, effectiveness and robustness. For example, the confidentiality and security of sensitive complaint material is of utmost importance, so we are right up to date on our

cybersecurity credentials. We have multilayer encryption on all our devices, and so on.

We are careful in our use of remote access—it is only for senior people. One thing in the strategic plan is to look at the use of the cloud as a backup to ensure robustness. We will look at what is available, and it will obviously change over time during my term, but we will ensure that we are ahead with technology in providing the statutory service to the best of our ability.

Alexander Stewart: All that comes at a cost. In your budget, you have indicated that you are looking at savings, but you will have to expand the technology, so you might be required to spend more and get more funds to achieve some of your goals.

Caroline Anderson: That is correct, and it is why the costings are provided in two different schedules in the strategic plan. The first schedule reflects business as usual. Although it goes up over the years, that is in essence a cost-of-living percentage inflation, and it reflects staff moving up through the points on the scale. The other schedule shows the additional costs, which I may say are very modest, because I am keen not to spend taxpayers' money unless I have to. I have therefore included modest costings to assist in achieving our objectives. They will be requested in the year concerned and will be subject to SPCB approval, with explanations and quotes to back them up.

Alexander Stewart: As you rightly say, if you are trying to improve the system, you need the resources to make that happen.

Caroline Anderson: That is right.

The Convener: Thank you, commissioner. That ends the public part of the meeting, and the committee will now move into private session.

11:15

Meeting continued in private until 11:30.

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