

HEALTH COMMITTEE

Tuesday 16 March 2004
(*Afternoon*)

Session 2

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HEALTH COMMITTEE

8th Meeting 2004, Session 2

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Shona Robison (Dundee East) (SNP)

*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Paul Martin (Glasgow Springburn) (Lab)

Mrs Nanette Milne (North East Scotland) (Con)

Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Tom McCabe (Deputy Minister for Health and Community Care)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Graeme Elliot

ASSISTANT CLERK

Hannah Reeve

LOCATION

Committee Room 4

Scottish Parliament

Health Committee

Tuesday 16 March 2004

(Afternoon)

[THE CONVENER *opened the meeting at 14:01*]

Item in Private

The Convener (Christine Grahame): I welcome everyone to the eighth meeting in 2004 of the Health Committee. Shona Robison apologises for not being here for the beginning of the meeting; she should arrive later. She is launching some healthy something or other—members can see what interest I take in it.

Agenda item 1 is to ask the committee whether it is prepared to consider in private item 5, on possible witnesses for evidence taking on two members' bills. As we will be discussing individuals, I wonder whether members believe that it would be more appropriate to do that in private.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I wonder why we will be discussing individuals. Surely it is better to let people know what our thought processes are on why we will or will not invite people to give evidence on the members' bills. It will not help the Parliament's ethos of openness and transparency if we go into private session for consideration of such an issue. I feel strongly about the matter—there are but few occasions when the committee needs to go into private session.

The Convener: Fine. Does any other member wish to say something? I am relaxed about the question either way.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): We have proved previously that discussing in private session matters such as those in item 5 aids the process and moves us along. The committee has tried discussing such matters in public and in private. I do not know what other members think, but I feel that when we discuss issues such as item 5 in private, we have a more constructive debate and arrive at a point of view that is more representative of the committee. I accept the convener's lead, which is that we should discuss item 5 in private.

Mr David Davidson (North East Scotland) (Con): On this occasion, we have for consideration opinion letters and so on from an awful lot of individuals. I believe that there may be

disputes about who should get picked to give oral evidence or about whether we should ignore the option to take oral evidence and just take the letters as written evidence. As Duncan McNeil said, it would be simpler to have a short, sharp private session on item 5 at the end of the public part of the meeting.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I agree with David Davidson.

The Convener: I take it that the majority view is that we should take item 5 in private.

Mike Rumbles: Can we have a vote on that?

The Convener: Certainly.

The question is, that we consider item 5 in private. Are we agreed?

Mike Rumbles: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

We will consider item 5 in private.

Subordinate Legislation

Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (Draft)

14:04

The Convener: We move on to item 2. I welcome the Deputy Minister for Health and Community Care, Mr Tom McCabe, and his officials, Jane Martin and Elizabeth Clarke.

No members' comments have been received on the draft order and the Subordinate Legislation Committee has no comments to make on it. I ask the minister to move the motion.

Motion moved,

That the Health Committee recommends that the Draft Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 be approved.—[Mr Tom McCabe.]

Motion agreed to.

Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004 (SSI 2004/56)

National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004 (SSI 2004/62)

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2004 (SSI 2004/66)

The Convener: The committee is now asked to consider three sets of regulations under the negative procedure. The Subordinate Legislation Committee has made no comment on the regulations, no members' comments have been received and no motions to annul have been lodged. The recommendation is that the committee does not wish to make any recommendation in relation to the regulations. Is that agreed?

Members indicated agreement.

Hepatitis C

14:05

The Convener: We move on to the next agenda item, on hepatitis C. I apologise for the issue's late appearance on the agenda, but that is because it was in the newspapers over the weekend. As the issue concerns a committee matter, I felt that it should be brought to the committee's notice as soon as possible. Briefing paper HC/S2/04/08/A2 was e-mailed to members. I ask members to consider the current position on the matter and the possible options for action.

Kate Maclean (Dundee West) (Lab): I did not see what was in the newspapers on the issue over the weekend, so can we have that clarified before we move on?

The Convener: We have circulated a briefing paper to members on the matter. I also asked the clerks to take the relevant information verbatim from the press so that, if a member had not seen the information, they could read it with the briefing paper. I will suspend the meeting for five minutes.

14:06

Meeting suspended.

14:09

On resuming—

The Convener: I reconvene the meeting.

Mr McNeil: I have an advantage over some other members of the committee, in that I had a chance conversation with members of the secret services who tapped your phone, convener, and told me that you had spoken to the clerk about the matter. However, I do not know how anyone else would have known that the issue had appeared on the agenda, and I have concerns about that.

I think that it would have been perfectly legitimate had the convener written to Malcolm Chisholm to get his comments on the newspaper article. However, I do not think that it does the committee a great deal of credit to have a newspaper article about campaigners that was published on a Sunday appear on our agenda the following Tuesday. I do not know whether the Sunday papers are going to dictate our business in future, but that is not acceptable to me.

The Convener: You asked why the matter is on the agenda. As convener, I could not write to the minister on the matter without the committee's authority—I was not going to do that. The matter is on the agenda because the article challenges evidence that was given to the committee.

Mr McNeil: No, it does not.

The Convener: I was the person who asked the questions in this regard. To me, the inference to be drawn from the expression “wrongful practices” was that there was liability, and I did not pursue those questions. Had it plainly been a matter of no-fault compensation—I do not know whether it was—I would have pursued questioning on the issue, but what we were told stopped any such questioning. I checked whether we could put the matter on the agenda and was advised that that was possible, as long as the agenda got into the public domain—and the business bulletin—soon enough.

I have no particular view on the matter, other than that I want clarity and the answers. If “wrongful practices”, as the minister put it, was simply a sloppy expression that was used in relation to what happened in Ireland and was not meant to be misleading, that is fine. However, in my view, the committee deserves clarification. That is all that is being sought.

I have told members why I put the matter on to the agenda. To leave it to fester for another week would not be a good idea, because it is an issue of the evidence that was given to the committee.

Shona Robison (Dundee East) (SNP): The committee has dealt with the matter on a number of occasions. If the convener had written to Malcolm Chisholm off her own back—as Duncan McNeil suggested she should have done—she would probably have come in for some criticism for that. It is therefore quite right—

Mr McNeil: But a private letter—

Shona Robison: Excuse me: one speaker at a time.

The Convener: Through the chair, please—both of you.

Shona Robison: It is quite right that the matter went on to the agenda for us to decide how to proceed. The simple way forward is to seek written clarification from the Minister for Health and Community Care on the possible discrepancy between the ex gratia payment system that was used here and what apparently turned out also to be an ex gratia system in Ireland, which is quite different from the description that the minister gave of the Irish scheme back in September. At the very least, we should seek written clarification of the minister's comments. We can then decide whether anything further needs to be done, but we cannot do so until we hear from the Minister for Health and Community Care.

Janis Hughes (Glasgow Rutherglen) (Lab): I echo Duncan McNeil's comments, in that it was a bit of a surprise to see the item on the agenda when I checked my e-mail this morning,

particularly given the fact that I am deputy convener. The convener has said that the committee deserves clarification, and I do not dispute that. However, I think that it is best not always immediately to believe everything that we read in the newspapers. If conflicting information appears to have been given by the minister, the simple answer is to write to the minister and ask for his comments.

Shona Robison said that the convener would have been criticised if she had written to the minister off her own bat. I had thought—perhaps naively—that one of the reasons for having deputy conveners was so that the convener could discuss such issues with the deputy convener, perhaps with a view to agreeing, on behalf of the committee, to send out a letter. That seems to be the easiest course of action that the convener could have taken. The matter could have been reported at the committee today and we could have considered the issue once we had received a response from the minister. Like Duncan McNeil, I express my concern about how the item appeared on the agenda at very short notice.

The Convener: With respect to the deputy convener, the deputy convener does not need to be consulted on such matters; that is not the deputy convener's role. I would perhaps have consulted her if I had had a longer period of time in which to do so, but we had only a very short time in which to decide whether the item should go on to the agenda.

I say again to Duncan McNeil that if, in my capacity as convener, I had written to the minister to raise the issue in question, I have no doubt that the committee would have chastised me for not taking soundings before I did so. The item is on today's agenda precisely so that members can take a collective view on whether they think that there is a probable conflict between the evidence that was given to us and the quotation in the paper, which says that payments were made by the Irish Government

“as an ex-gratia scheme”.

I do not know whether that is correct or not, but the quote is sufficient to raise concerns that what was said to us may not have been accurate. That is why the item is on the agenda.

14:15

Mike Rumbles: I think that there are two issues at stake, which need to be separated out. The first is the process by which we reached the point of discussing the matter under agenda item 4 and the second is the issue itself. I will deal with the process first.

I do not think that there is any dispute about the fact that the convener is within her rights to do what she has done. She is absolutely correct to put an item on the agenda, if that is what she wants to do. However, my comment is that I am at a disadvantage; I do not know whether other members are affected, as I have not heard their views. I read the newspapers on Sunday, as I do every Sunday. There are a huge number of different issues about health in the newspapers, and I did not expect to be speaking about this subject in a parliamentary committee today. This morning, I travelled down from Aberdeenshire in the north-east of Scotland. I checked my e-mails five minutes before coming across to the meeting to find that an e-mail was sent to my office—which is the only place where I can read my e-mails—at 5 past 6 last night. Therefore, I am at a disadvantage and I do not think that that is appropriate.

What the deputy convener has suggested would be good practice. I do not think that anyone is saying that the convener has overstepped her rights in this matter. We are talking about a question of judgment. To ease the flow of information and to take the controversy out of—and remove the political edge from—our deliberations, it would be useful if the convener could consult the deputy convener as a matter of practice. That would allow us to have a spread of views and would mean that we would not be surprised by what we found on the agenda. That is my view of the process. What has happened is unfortunate; I hope that it does not happen again, and I see no reason why it should.

On the issue itself, the point of conflict relates to the evidence that the minister gave us when he commented on the Irish case. As far as I am concerned, what the Irish Republic does is what the Irish Republic does, and what Scotland does is what Scotland does—that is as far as the issue goes. It is perfectly reasonable to ask the minister to clarify the evidence that he gave us, but I do not think that we should reopen discussions on hepatitis C, because we have already spent a great deal of time on the subject and I think that we have obtained the best solution that we can.

On the process issue, I hope that the committee can make improvements. We could deal with the issue of clarification from the minister by sending him a letter.

Kate Maclean: I have no objection to writing to the minister to ask him to clarify matters, but I do not think that that would give us the full picture. I would like us also to request copies of the correspondence that are referred to in the article because, although the Minister for Health and Community Care can respond, phrases or sentences that are picked out of a letter

sometimes do not tell the full story. We would need to see the letter from Ann McGrane, the assistant principal officer of the Irish Government's blood policy division, and the legal advice that the Irish Government got. We would need to have sight of any of the letters or documents that are referred to in the article or which the article is built around at the same time that we have sight of any response from Malcolm Chisholm. Indeed, before we even write to the Minister for Health and Community Care, we might want to clarify for ourselves the basis on which that article was written.

The Convener: That is very helpful. However, I do not think that we will get to see the legal advice. We do not get to see our own Government's legal advice, so I very much suspect that we will not get it from another country.

Kate Maclean: The legal advice is referred to in the article that appeared in the *Sunday Herald*, so I assume that whoever wrote the article has had some access to it or they would not have referred to it.

The Convener: I am simply warning members that it is highly unlikely that we will get sight of legal advice received by any state. However, we can certainly ask. It might be useful if we were to write to the minister and ask him whether he has had sight of those documents or whether his department has requested them. We could certainly move the issue along a bit to achieve clarity, given that there seems to be a conflict of words.

Mr Davidson: As far as I am concerned, I would prefer that something that has an edge of controversy about it came to the committee for a committee decision as to what action the convener should take on behalf of the committee. I am quite happy with the procedure as it is, because it gives us an opportunity to discuss the issue more fully. The good points made by Kate Maclean back up the very reason why the issue should be before us today.

I certainly think that we need to do some background work. I suggest that the convener could write on behalf of the committee to the Irish Government, which has obviously played a large part in the matter, for clarity on the points that have been raised. It is when we get that information that it will be time to write to the minister for clarification, and we should inform him that that is what we want to do. In the meantime, if he feels that he could write to us, that is fine, but I feel that we need to get all the information, as Kate Maclean rightly said.

An awful lot of people are very excited about the matter. I have had several phone calls, yesterday

and today, from people who would qualify for the current ex gratia scheme in Scotland, and they have raised time and again—as we all have over the past couple of years—the Irish situation. Mike Rumbles is right to say that we have to be absolutely clear about the fact that this is Scotland and that we need to know exactly what the minister meant. All that I said in the papers was simply that I would want the minister to explain the phrasing that he used, which seemed to be at odds with other information. I am not taking a view on the issue until I have heard his explanation.

Helen Eadie (Dunfermline East) (Lab): I would like us to get the information from the Irish Government's blood policy division. However, I do not share David Davidson's view that we are content with how things are on the process side. I am certainly not content and I feel strongly enough about that to move a motion today to say that we wish best practice to be followed in the committee and the deputy convener to be consulted on everything.

I imagine that, in most environments, what has been done would be perfectly reasonable if consulting the deputy convener was not practicable or would cause delay. In such circumstances, that would be understandable, but if there is a possibility that the deputy convener could be consulted, it is not. I therefore want to lodge a motion today to ask the committee to support my view that we agree that Janis Hughes should be consulted on all future matters.

The Convener: I am advised that, in order to bind me in any such fashion, you would have to go to the Procedures Committee and change the standing orders of the committee.

Helen Eadie: I am asking for best practice, convener; I am not asking that it be built in as a standing order of the committee. I am urging you to follow best practice and I cannot really see your argument against that. What is there to hide? You would be sharing responsibility and getting the benefit of someone else's views, which could only help to strengthen your position when such matters come to committee.

Mike Rumbles: I do not think that there is any question but that standing orders would have to be changed elsewhere—that could not be done by this committee. However, it is perfectly possible for any member of the committee to ask for support from committee members on an issue. If such a motion is not accepted by the convener—and the convener is perfectly entitled to rule on whether she accepts it or not—the committee member is left with no alternative but to take the nuclear option. I would rather avoid that, and I think that what Helen Eadie is suggesting, as a member of the committee, is perfectly reasonable, although whether or not we support that suggestion needs to be tested.

The Convener: I am taking advice so that we follow proper procedures. I do not wish to be difficult, but I am advised that the motion that Helen Eadie proposes would be a motion without notice, which would have to be lodged with the chamber desk. I do not want to be difficult. I just want to do things properly.

Helen Eadie: I will do that if—

The Convener: Let me try to defuse things a little. I am trying to remember the time of night at which, after discussion, I made the decision. It was late on Monday night when I took that view. Bear in mind that the article appeared only on Sunday. There was hardly time to discuss the matter with anybody, so I am quite astonished at the view that you have taken.

Helen Eadie: Could you not have telephoned someone, convener?

The Convener: As I recall, I discussed the agenda in the taxi home. I took the view that if, off the cuff, I was to write off the idea of putting the item on the agenda, the committee would think that that was the worst option. I know that the committee is very sensitive on such issues. I took the view that it was proper to bring the issue before the committee to allow members to clarify the evidence. I think that I worked well within the remit of my role and with the best interests of the committee at heart.

My aim is not to reopen the whole hep C issue but to ensure that an apparently grave conflict of evidence should be remedied as soon as possible. I would have thought that that would also have been in the minister's interests. I am rather concerned that we are going down this other road on an agenda item that was supposed to assist the committee to move on.

Helen Eadie: You must not confuse the two issues, convener.

The Convener: I am not confusing them.

Helen Eadie: It is understandable that the issue has been brought to the committee's attention, but it would be even more understandable if you would just listen to the views of committee members.

The Convener: I am listening.

Helen Eadie: I am not alone in supporting the idea that you should consult the deputy convener, as I have heard several committee members express strong views in support of that notion. There is nothing unreasonable about that. I hear what you say about going to the Procedures Committee. If you force me to raise the issue with that committee, I will do that. However, that could be avoided if you showed a willingness to adopt best practice. As convener, you could say that you

hear what the committee is saying and that you are willing to comply. That would defuse the issue.

The Convener: That is not my position today. I will consider what you have said, but I am not prepared to come to a view at this moment when something like this is sprung on me. I will think about the issue and consider the position.

Helen Eadie: The point has been raised before, convener.

The Convener: Can we move on, please? I want to get to the substance of the issue. It is up to the committee what it does next. I call Jean Turner.

Dr Turner: I am no expert—

Mike Rumbles: I will need to lodge a motion of no confidence in the convener after this—

The Convener: Mike, members should speak through the chair.

Dr Turner: I am no expert in procedures—I would need to go and look them up.

The most important thing is that there is a discrepancy that needs to be ironed out. We need to know what the real story is—*[Interruption.]*

The Convener: Mike, please. Jean Turner is speaking.

Dr Turner: I am not a lawyer, but I understand that an out-of-court settlement can sometimes make a difference in that, if people accept the out-of-court settlement, they cannot take the case to court. I thought that the situation in Scotland was that people were given a payment on compassionate grounds. That means that if people wanted to go ahead and take their case to court, they could do so. Am I right in thinking that?

Helen Eadie: Yes.

Dr Turner: It is clear from what the Irish have said that their ex gratia payments were offered

“without legal liability on the part of the state.”

From that, it appears that there was no court decision on the matter in Ireland, so we do not know for sure whether wrongful practices were used. We definitely need as much clarification as possible, so we should write to the minister. I agree with all Kate Maclean’s suggestions, which I shall not repeat. We could invite the minister to give evidence if that is required.

Kate Maclean: I had wanted to defuse the situation, but I do not know whether it has been defused. I think that it was inappropriate to discuss the issue today when we have important health issues to discuss. I was not particularly happy about the process, but if we are to discuss our processes and the way in which the committee and the convener operate, we should do so under

a future agenda item that has been planned for. Such a discussion need not necessarily be in public.

The Convener: Let me summarise what we have agreed. We will send a letter to the Irish Government’s blood policy division to seek out all the documentation that is referred to in the *Sunday Herald* article. We will also send a letter to the Minister for Health and Community Care to advise him of what we are doing. If he wants to comment in the meantime, he is welcome to do so. Let me clarify that a draft of both letters will be circulated to all members of the committee before being sent. Is that agreed?

Members indicated agreement.

The Convener: That ends the public part of our meeting.

14:30

Meeting continued in private until 14:43.

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