

HEALTH COMMITTEE

Tuesday 20 April 2004
(*Afternoon*)

Session 2

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HEALTH COMMITTEE

10th 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

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 20 April 2004

(Afternoon)

[THE CONVENER *opened the meeting at 14:02*]

Items in Private

The Convener (Christine Grahame): I welcome everyone to the 10th meeting this year of the Health Committee and I direct members to today's agenda. The first item of business is to ask members to consider taking items 4, 5 and 6 in private. I will expand on that. Item 4 concerns the committee's work-force planning event. Taking that item in private would allow us to discuss fully the bids that we have received and the best way of progressing matters. Incidentally, the clerks, who were part of the budgeting process, would also be able to contribute to the discussion, which obviously could not happen if we took the item in public. Are members content to take item 4 in private?

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): No, I am not content. I repeat what I have said before: it seems ironic that we should move into private session to discuss an event for which we are seeking public participation. I do not think that such an approach helps the ethos of openness and transparency that we are trying to inculcate in the Parliament and I see no overriding reason why we need to take the item in private.

The Convener: I see a lot of merit in what you are saying, Mike. However, the clerks have had a lot to do with the whole process and I would quite like them to contribute to our discussions. They simply cannot do so if we take the item in public, because standing orders do not allow them to take part. I think that it would be useful to take the item in private, because I really want them to feed into the committee's discussion.

Mike Rumbles: To me, there is quite a distinction between what we are talking about and a briefing session in which the clerks participate and give us information—the process is correct and proper in that respect. However, it is being suggested that a parliamentary committee should go into private so that the clerks can brief members on issues. That is not the correct way of working.

The Convener: I take your point. Does any other member share that view?

Members: No.

The Convener: Do you wish to press the matter to a vote, Mike?

Mike Rumbles: Yes.

The Convener: The question is, that item 4 be taken in private. Are members agreed?

Members: 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)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

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

ABSTENTIONS

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

The Convener: The result of the division is: For 7, Against 1, Abstentions 1. Item 4 will be taken in private.

It is suggested that we also take item 5 in private to allow the adviser to brief members on the budget process for 2005-06. That could not be done in public session. Does any member oppose that?

Mike Rumbles: I make the same point about this proposal as I made about the previous proposal. The item is appropriate for a briefing session for members of the committee; it is not appropriate for a public meeting of the Health Committee. We should always meet in public unless there are extenuating circumstances that require us to meet in private. I feel that we are automatically going into private session in our meetings.

The Convener: My experience from previous committees—which may be the same as that of other members—is that these are the very circumstances in which briefing sessions are held in private, as they are not evidence-taking sessions. Nonetheless, I acknowledge your views. Do you wish to put the matter to a vote?

Mike Rumbles: Yes. I wish to record my dissent.

The Convener: The question is, that item 5 be taken in private. Are we agreed?

Members: 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)
 Robison, Shona (Dundee East) (SNP)
 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. Item 5 will be taken in private.

Item 6 is on the Breastfeeding etc (Scotland) Bill and the discussion of possible witnesses. The view has sometimes been taken that, as individuals may be discussed in the selection of witnesses, it is not always best to take such items in public. I ask that the committee take the item in private. Does any member object to that?

Mike Rumbles: I object to that.

The Convener: For the same reasons?

Mike Rumbles: No, for slightly different reasons, which I will explain. On a number of occasions, we have taken the decision to go into private session when thinking about calling witnesses before the committee. It is important that the general public know the thought processes and deliberations behind our calling people or not calling people to give evidence to us.

Time is limited, so only a certain number of people can be called to give evidence to us. However, people have told me that they do not understand why the committee had invited X but not Y. I do not want to get into the nitty-gritty of that, as I appreciate that members may not want to discuss it, but I think that it is important that people understand where we are coming from. It gives a bad impression if people do not know why they have not been selected to give oral evidence to us. If people were aware of our deliberations, that would be extremely helpful in ensuring openness and transparency.

I will give one example of that and then I will shut up. We took a decision—for all the right reasons—not to proceed with the hepatitis C issue. However, that decision was taken in private and the matter has come back to us time and again. People still do not understand why we took that decision because they were not aware of our deliberations. It is important that we go into why we call witnesses to give evidence.

You make the point that individuals are identified. However, if we want to invite, for example, the Confederation of British Industry to give us evidence on the bill, we should ask the organisation to choose an individual to do so and

not pick an individual ourselves. There is no need to name the person in the briefing paper—I do not understand why we are given individual names. There seems to be an automatic response that, because individual names are involved, we cannot discuss the matter in public. All that I am pleading for is a little more openness and transparency. There is no reason why we cannot have that in this meeting.

The Convener: We sometimes want a specific person to give evidence. In our private paper, we have given a specific reason why one of the potential witnesses whom we may want to invite to give evidence on the Breastfeeding etc (Scotland) Bill has been named. Nevertheless, I am happy to hear other views on the matter. Do any other members have views that they wish to express?

Members: No.

The Convener: As it appears that no other members wish to express a view, I will put the question. The question is, that item 6 be taken in private. Are we agreed?

Members: 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)
 Robison, Shona (Dundee East) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

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

The Convener: The result of the division is: For 8, Against 1, Abstentions 0. Item 6 will be taken in private.

I thank the committee for that. Depending on how the time works out, I may ask the committee's permission to move later agenda items around a little, depending on when Arthur Midwinter arrives.

Subordinate Legislation

**Food for Particular Nutritional Uses
(Addition of Substances for Specific
Nutritional Purposes) (Scotland)
Amendment Regulations 2004
(SSI 2004/90)**

**Regulation of Care (Fees) (Scotland) Order
2004 (SSI 2004/93)**

**Regulation of Care (Requirements as to
Care Services) (Scotland) Order 2004
(SSI 2004/94)**

**Regulation of Care (Applications and
Provision of Advice) (Scotland)
Amendment Order 2004 (SSI 2004/95)**

**Regulation of Care (Registration and
Registers) (Scotland) Amendment
Regulations 2004 (SSI 2004/96)**

**National Health Service (Optical Charges
and Payments) (Scotland) Amendment
Regulations 2004 (SSI 2004/97)**

**National Health Service (General
Ophthalmic Services) (Scotland)
Amendment (No 2) Regulations 2004
(SSI 2004/98)**

**National Health Service (Dental Charges)
(Scotland) Amendment Regulations 2004
(SSI 2004/101)**

**National Health Service (Travelling
Expenses and Remission of Charges)
(Scotland) Amendment Regulations 2004
(SSI 2004/102)**

**National Assistance (Assessment of
Resources) Amendment (Scotland)
Regulations 2004 (SSI 2004/103)**

**National Assistance (Sums for Personal
Requirements) (Scotland) Regulations
2004 (SSI 2004/106)**

**National Health Service (Primary Medical
Services Performers Lists) (Scotland)
Regulations 2004 (SSI 2004/114)**

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Services Section 17C Agreements)
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**National Health Service (Tribunal)
(Scotland) Amendment Regulations 2004
(SSI 2004/122)**

**Natural Mineral Water, Spring Water and
Bottled Drinking Water Amendment
(Scotland) Regulations 2004 (SSI 2004/132)**

**Jam and Similar Products (Scotland)
Regulations 2004 (SSI 2004/133)**

14:12

The Convener: Item 2 on our agenda is subordinate legislation. I refer members to paper HC/S2/04/10/1, which you all have. You are asked to consider—and I take a deep breath here—the 17 instruments that are listed on the agenda, which are all subject to the negative procedure. For the *Official Report*, they are: Scottish statutory instruments 2004/90, 93 to 98, 101 to 103, 106, 114 to 116, 122, 132 and 133.

The Subordinate Legislation Committee has no comments on SSIs 2004/90, 94 to 97, 101 to 103, 106, 132 and 133. It has, however, commented on SSIs 2004/93, 98, 114 to 116 and 122. The committee's comments have been circulated to members. No members of this committee commented before the meeting, but does any member wish to comment now on the SSIs? I see that David Davidson and Shona Robison wish to comment; I may comment too, depending on what they say.

Mr David Davidson (North East Scotland) (Con): I am sorry that I did not notify the clerks of this earlier, but I have just come back from vacation. I wish to comment on SSI 2004/93, which is the Regulation of Care (Fees) (Scotland) Order 2004. The Subordinate Legislation Committee raises a very serious issue, which is causing great concern among those who provide care and among some of the carers and families of those who receive care.

We ought to take evidence from the Scottish Commission for the Regulation of Care, so that it can explain why it needs the funding; from the providers; from the Convention of Scottish Local Authorities, which obviously has a big interest in the care sector; from carers organisations; and from the minister. I believe that we should not just go ahead with the order today. We ought to reflect on it carefully.

Shona Robison (Dundee East) (SNP): Like David Davidson, I apologise for not notifying the

clerks of my comments in advance. Concerns arise over the practicality and feasibility of the fee structure becoming self-financing. I am aware that the timescale has been pushed back, but a number of organisations are still concerned that fees will be passed on to them and, as a result, to the users of the services. Some of the smaller organisations are saying starkly that that could put them out of business and that they might not be able to continue if the order goes ahead. Like David Davidson, I feel that we should hear further evidence from the minister to clarify the situation. We should also get more information from the organisations that have said that the order is a threat to their continued operation.

Helen Eadie (Dunfermline East) (Lab): I understand that the care commission is now obliged to be self-funding. That policy has been endorsed by the Parliament, as is explained in our papers. If the committee wants to take evidence, the most appropriate organisation from which to do so would be the care commission.

The Convener: I, too, had concerns about the matter even before the order was published. I think that I raised a question in Parliament about Executive papers that mentioned unintended consequences, such as small care homes finding it impossible to continue because of the level of fees.

Some months ago, at a conference of the National Association of Inspection and Registration Officers—the association of inspectors who work for the care commission—I learned that people were most concerned about self-funding. The obligations that have been placed on the care commission are much greater than had been anticipated, as I think is said in our papers. The commission must cover all areas, not only care of the elderly.

However, as the lead committee, we must report by 26 April. The options available to us are to write to the minister in the first instance to raise some of the concerns that have been expressed. We could then take evidence from all sides and not simply from the care commission. We might want to take evidence from care providers, for example. If members think that that would be useful, the decision is in their hands. We need to deal with the funding issue, which I am sure has been raised with other members.

14:15

Janis Hughes (Glasgow Rutherglen) (Lab): Given that we have to respond by 26 April, will the clerks clarify how it would work procedurally if we decided today to seek further information from the minister in the first instance?

Jennifer Smart (Clerk): The report will have to go to Parliament on 3 May. Our next meeting is on 27 April and so our deadline for consideration is 26 April. There is nothing to prevent members from getting more information for their own benefit, but the order will be reported to Parliament on 3 May.

The Convener: Subject to committee's approval, we could write to the minister to raise the concerns about the care commission being self-funding, but without making any particular judgment. We could also ask the minister to comment on the impact of self-funding because, if I recall correctly, it was said in one of the Executive's documents that some of the smaller care providers are saying that they cannot carry the burden of the fees. I can find that Executive document for members.

Janis Hughes: I seek further clarification. If we decided to do that, would the report still go to Parliament on 3 May, irrespective of when the minister replied?

The Convener: Yes, but we can at least raise those concerns with the minister. We can, on receipt of his response to our questions, proceed to take evidence on the impact of self-funding if we wish. Members will note from the Executive figures that it is staggering the increases in fees because of the impact that the fees would have had if the policy had been implemented in full in 2004. There might be an issue there.

Shona Robison: I feel strongly that one of the committee's roles is to look at the impact—whether intended or unintended—of legislation that Parliament considers. Although many of us raised concerns about the self-financing fee structure when we were considering the Regulation of Care (Scotland) Bill, perhaps the consequences of the measure can be seen only when the policy is implemented. In light of procedural constraints, the best way forward at this stage would be to write to the minister and, in the light of his response, to consider whether further action is required.

Kate Maclean (Dundee West) (Lab): I am not sure whether what Shona Robison suggests is the way forward. My understanding is that we agreed some time ago that we would carry out post-legislative scrutiny into the Regulation of Care (Scotland) Act 2001, under which the care commission was established. When we do that, we could consider whether it is realistic for the commission to be self-funding after two to three years. I agree absolutely that we should carry out that post-legislative scrutiny, but if we start picking away at bits of it now, we will compromise our work on it later. Because of the timescale, we can do nothing about the order, unless we lodge a motion to annul it.

The Convener: What is your view about writing to the minister about our concerns?

Kate Maclean: I am ambivalent about that. I do not see the point in doing it. If we are going to have a post-legislative inquiry into the Regulation of Care (Scotland) Act 2001, we will take evidence from ministers at that stage. There is no harm in writing to the minister now, but I worry that, if we start picking away at bits and pieces, we will compromise what we are going to do at a later stage.

The Convener: Do you suggest that we leave the proposal for hearing further evidence and that a letter to the minister would be sufficient?

Kate Maclean: I am ambivalent about such a letter—it will not do any harm, but it will not do any good.

Mr Davidson: I am sorry, but I thought that the purpose of the committee was to scrutinise each and every piece of legislation that comes before it. If there is an opportunity for members to be enlightened when a vote or whatever is to be taken in Parliament, we should be seen to be doing our duty to obtain the information that is required, so that members—not only members of the committee, but all members of Parliament—will be better able to understand what they are either agreeing to or disagreeing to. The issue is not about taking sides—I simply think that that is an important factor for the committee.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I do not know whether things could be achieved by expressing concern in a note to the minister at this point. The debate has taken place and the convener herself has said that she asked about the possible impact of this stage of self-funding of the care commission. Therefore, there have been concerns. Surely we will be able to assess the impact of the measure only after it has been implemented and has run for some time. I would have thought that dealing with it as part of post-legislative scrutiny, as Kate Maclean suggested, would have been ideal. We are going to get back into the debate involving opinions on whether the measure will have an impact and whether homes will close. We can assess matters factually only after implementation, not before it. Otherwise, we will simply repeat the debate.

The Convener: Subject to the committee's agreement, I suggest that we write to the minister. Issues have been raised and concerns have been expressed in Parliament about self-financing. As a first step, we could simply write to the minister about concerns that relate to self-financing that members have raised and ask for his comments. I am content to send a copy of the document that I mentioned, which I can locate once I have found the *Official Report* of the relevant meeting. The

report was an Executive report that spoke about unintended consequences and the possibility that some care homes might not be able to continue. We can ask the minister to comment on that matter again. If members agree to that proposal, we can thereafter consider the response and whether there are issues that we should hear more about. There will be an inquiry, but the trouble is that it might be a year away. However, we could come back to the matter, subject to what the committee thinks about the response. A reasonable issue is involved.

If members wish, we could also write to the National Association of Inspection and Registration Officers—the staff association that represents the inspectors who work for the care commission—to ask for its views. I have told members what I was told at the conference that I mentioned and I am simply trying to think of how to deal fairly with the matter and not let it slip through.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I have a question that might be a little naive. If, as we monitor matters, we find that an unintended result of the legislation is that small care homes go to the wall, what can the Executive do? We can highlight the matter, but the Executive has already stated what could happen. I am a bit confused. Perhaps there could be a letter to highlight what we have said about unintended consequences, which has already been highlighted in the report. It would be a dreadful tragedy to see homes go, because we need them. We must make some comment, but I do not know how useful our comments will be.

Janis Hughes: Kate Maclean made a valid point about the proposed post-legislative scrutiny that we want to carry out. That might be some time away, but I do not see when any other scrutiny that we propose to undertake as a result of today's discussion could be fitted into our work plan in the near future.

I do not have any major objection to the committee's writing to the minister to elicit further information that may assist with discussion of the issue in Parliament. However, if we start to consider writing to organisations such as NAIRO, we are getting into the realms of picking away piecemeal at the scrutiny that we agreed that we wanted to do properly. At this stage, the best course of action would be to write to the minister, get a response—before the parliamentary debate, I hope—and bear things in mind when we do our post-legislative scrutiny.

The Convener: There will be no debate in Parliament unless we agree to a motion today.

Mr Davidson: I agree that we should write to the minister. Perhaps we should seek from him an

assurance that he will review the situation and report his predictions to the committee as soon as possible. The instrument does not have the financial memorandum that would accompany a bill, whose effects—whether intended or not—would have full scrutiny.

I have received letters from all over Scotland, as I am sure have other members, which say that not only small homes, but many homes, are concerned about the scale of charges and the recovery aspects and about continuing to pay a fee although they are being over-investigated on issues that are of almost no relevance. That is a question of the procedures that the minister has laid down for the care commission to reach an end point on.

The Convener: A financial memorandum would have accompanied not the instrument but the primary legislation, so David Davidson will have to look for it there.

The consensus is that we should write to the minister. A draft letter that raises the issues will be passed to members for agreement, and then sent to the minister. We hope to have a response within a week. Are members content with that?

Members indicated agreement.

The Convener: Once we have a response, we can return to the matter if members wish it. There is merit in what Janis Hughes says about picking at bits. On the other hand, I am concerned that our inquiry is a year away.

The recommendation is that the committee has no recommendation to make on SSIs 2004/90, 2004/93 to 2004/98, 2004/101 to 2004/103, 2004/106, 2004/114 to 2004/116, 2004/122, 2004/132 and 2004/133, subject to what we have said. Do members agree?

Members indicated agreement.

Annual Report

14:26

The Convener: For item 3, I refer members to paper HC/S2/04/10/2, which has been circulated. Under standing order 12.9, each committee must report to Parliament its activities in each parliamentary year. The required figures in paragraphs 10 and 12 of the paper will be inserted once we have completed the year.

We will go through the paper in the usual way—paragraph by paragraph. I take it that paragraph 1 is fine and is signed off. Members' silence about paragraphs 2 and 3 indicates assent. Paragraphs 4, 5, 6 and 7—which all present facts—and paragraphs 8, 9 and 10 are also agreed to.

I know that concern has been expressed about the number of Scottish statutory instruments that the committee is seeing, so I asked for a comparison with the SSI figures from the former Health and Community Care Committee. At the same stage in the previous session, that committee had received 84 SSIs, whereas we have had 110. That figure is not within our control, of course. At the same stage, that committee had received 24 petitions, whereas we have had 30. We are slightly ahead, but such figures seem to be a Health Committee burden.

The number of petitions is a matter for the Public Petitions Committee. If we feel that we are receiving too many, we could make representations to that committee's convener to refer petitions elsewhere if other committees are not as burdened. However, sometimes a petition's subject makes it extremely difficult to refer it elsewhere.

Mr McNeil: I understand that we want to be as positive as we can about how busy the committee has been, but the overemphasis on SSIs and petitions, which take—

14:30

The Convener: Unfortunately, Duncan, SSIs are not within our control. That matter should be taken up with the minister.

Mr McNeil: Can we just count up the numbers? It would take 10 minutes.

Helen Eadie: What else would the Public Petitions Committee do with petitions on health issues but send them here?

The Convener: I agree. I just thought that I would be helpful and show how things were running this year in comparison with last year. Perhaps I was taking a hostage to fortune.

Are members content with paragraph 11, which deals with petitions?

Members indicated agreement.

The Convener: Are members content with paragraph 12?

Mike Rumbles: I am content with the first two sentences and the last sentence of paragraph 12, but I feel that the rest of the paragraph is opinion. I would rather stick to the facts.

The Convener: The rest of paragraph 12 reads:

"In the vast majority of cases, items were considered in private because they related to consideration of draft papers, or because individuals who could be identified were being discussed".

I thought that that was a matter of fact.

Mike Rumbles: I disagree: it is a matter of opinion. The first two sentences and the last sentence of paragraph 12 are a matter of fact; the sentence that you quoted is a matter of opinion.

The Convener: Perhaps we could put in a comment that the committee considered that the items

"related to consideration of draft papers"

and so on. It was a committee decision.

Mike Rumbles: No. The committee decided to move into private session. In the sentences that you quoted, an opinion is being expressed that I certainly do not agree with. In this factual report to Parliament, I am quite happy to say that the committee met so many times; that

"One meeting was held entirely in private";

and that so many were held partly in private; and that

"All the formal meetings were held in Edinburgh."

Those are facts. The other statements in paragraph 12 are not facts. They are opinions, and I do not agree with them.

The Convener: I do not want to get into a discussion about semantics with you, Mike, but I will have to. On occasions when the committee went into private session, either we were or were not discussing draft papers or either we were or were not discussing individuals as "possible witnesses". That is not a matter of opinion; it is a matter of fact. However, I am in the committee's hands about what we do with this sentence. I do not want to go to the wall over it.

Helen Eadie: I think that it is a matter of fact. We should just accept that that is what we have done.

Dr Turner: In the end, it was a committee decision. Mike Rumbles has made it clear that he wants absolutely everything to be held in public.

Mike Rumbles: I have never said that.

Dr Turner: You have more or less said that.

The Convener: I ask members to speak through the chair, not to each other.

Dr Turner: Unless Mike Rumbles puts his name to it, I say that all committee members have their say about an issue and then make a decision as a committee. That is a matter of fact.

The Convener: Can anyone propose other wording?

Mr McNeil: We could include the phrase "for reasons that were agreed by the majority of the committee". Would that be a statement of fact, Mike?

Mike Rumbles: Yes—I am content with that.

The Convener: So are we suggesting that the sentence should read "In the vast majority of cases, for reasons that were agreed by a substantial majority of the committee with one dissenter, papers were considered in private"? The report will then show that you dissented alone, Mike. Are you happy with that?

Mike Rumbles: I am happy with the form of words that Duncan McNeil just set out. I am not happy with—

The Convener: I am afraid that the phrase "the majority of the committee" might suggest that there was a four-five split in the committee when in fact only one member dissented. It is important to highlight that.

Dr Turner: But you can look up the *Official Report*. Am I missing something here?

The Convener: I will not go to the wall on this matter; I do not care. We will just put "the majority of the committee".

Mr McNeil: I suggest that we put "for reasons that were agreed by the majority of the committee".

The Convener: Okay—that paragraph is dealt with.

Mike Rumbles: Before we leave the matter, I want to make one comment. I certainly do not wish to be rude—or to be perceived to be rude—to the convener or any other committee member. However, when we move into private session, I will not remain in the meeting because, for the reasons that I outlined earlier, I feel very uncomfortable about participating in closed meetings. I want to ensure that no one feels that I am trying to insult anyone and that no one misunderstands my motives.

The Convener: Do I take it that you do not intend to sit through any of the committee's private sessions?

Mike Rumbles: Not today.

The Convener: With respect, I think that you have a duty to the committee and your position on the committee to take part in the committee's proceedings. However, that is a matter for you.

Mike Rumbles: It is indeed, convener.

The Convener: I want to put it on record that when the committee makes its decisions the rest of us are generally temperate about them. Sometimes we like decisions and sometimes we do not but, to be quite frank, members should sit through proceedings on which the majority of the committee have decided.

Mike Rumbles: As with most matters, convener, you are entitled to your opinion, as I am entitled to mine.

Shona Robison: I seek clarification, because I do not understand why Mike Rumbles is taking such a stance only for today. Surely such a stance would apply every time the committee was in private session. That will have issues for the committee's work load and it raises a question about our being minus one committee member for parts of the meeting. The rest of the committee really has a right to know about the implications.

Mike Rumbles: May I reply, convener?

The Convener: Yes—you certainly have the right to reply.

Mike Rumbles: Shona Robison is absolutely right—it appears that she has misunderstood what I have said in committee this afternoon. What I have been trying to do, as constructively as I can, is comment on the agenda. On today's agenda, item 4 is a private paper from the convener on the work force planning committee event. Item 5 is, in effect, a budget process briefing and item 6 is consideration of possible witnesses for the Breastfeeding etc (Scotland) Bill. If we want to discuss those items in private none of them should be on the agenda.

I would be very happy to come to a meeting that was not a committee meeting of the Parliament. The standing orders state that committee meetings of the Parliament should be in public. I would be happy to come along to a briefing session at which no decisions were being taken. My concern—and the point that Shona Robison is making—is that we are perhaps taking decisions in private that are not available to be understood by the public. It states clearly in the standing orders that Parliament should be open and transparent. The whole point of that is that we

should be accountable, in open session, for the decisions that we take.

I am only one member of the committee, and I have tried to make the points as constructively as I can. I have not had support—I understand fully that people have different views from mine. I am not trying to force my opinion on anyone else, but I am trying to make the point that no committee meeting of the Parliament should be having such briefing sessions because it sends out the wrong message to the people to whom the Parliament belongs.

The Convener: Before Duncan McNeil comes in, I want to make a distinction between informal briefings and the kind of briefing session that we are discussing. Informal briefings—which, I have to say, are not always well attended—are very different from this kind of briefing session, at which the committee will be required to take decisions that will bind it. It is different from simple knowledge gathering. The purpose of the kind of briefing session that we will have today is to inform the committee on how it should progress the committee's work and where it requires expert advice. That is very different from what Mike Rumbles referred to—there are two types of briefing session. Unless Duncan McNeil feels an urgent need to contribute now, I do not want to prolong the debate. What we are doing is nothing unusual for committees, certainly not to the extent that we require to address it as a foundation for the work ahead.

Mr McNeil: I will not prolong the debate, but I have a couple of points to make. I suggest something slightly different from Mike Rumbles, which is that the committee could have a briefing session to address some of those matters, and then go into a formal session that would allow it to have a brief discussion and a vote. We are all concerned that the committee's debates should be open and accountable. The committee can perhaps discuss, in a briefing session, how it can overcome a situation that bogs it down in every meeting. I accept that Mike Rumbles feels strongly about the issue, but every meeting of the committee is dominated by it. It does not serve anybody well, and the committee needs to resolve it.

I would also say—now that I am on my horse—that different arguments have been put up for each of today's sessions. I am a bit disappointed that Mike Rumbles takes the blanket view and will not be present for any of the sessions. He made half a point when he talked about the committee's discussion in private of public events—that irks me a wee bit, too—but he seems to take a different position on other issues. I ask him to consider which of today's private sessions he could stay for, and I ask the convener to set up some sort of

informal session in the near future in order to allow the committee to get to the heart of the matter and to overcome some of its problems.

The Convener: As I have made plain, there are different kinds of briefing sessions. In today's more formal sessions we are required to make decisions. Having been on the committee that piloted the Freedom of Information (Scotland) Bill, no one could be keener on openness and accountability than I am. Heaven forfend that a parliamentary committee should not be open and accountable. However, there are issues that constrain the committee and which would even imperil some of its work. The committee would not particularly want ears in the Executive to hear about the committee's methods when the committee is holding the Executive to account. Those are the reasons behind our proceeding in private. I therefore conclude the debate. That completes our business in public—we now move into private session.

14:39

Meeting continued in private until 16:49.

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