LOCAL GOVERNMENT COMMITTEE

Monday 28 February 2000
(*Afternoon*)

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CONTENTS

Monday 28 February 2000

LOCAL GOVERNMENT COMMITTEE
7th Meeting 2000, Session 1

CONVENER:

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER:

Johann Lamont (Glasgow Pollok) (Lab)

COMMITTEE MEMBERS:

*Colin Campbell (West of Scotland) (SNP)
*Mr Kenneth Gibson (Glasgow) (SNP)
*Donald Gorrie (Central Scotland) (LD)
Mr Keith Harding (Mid Scotland and Fife) (Con)
*Dr Sylvia Jackson (Stirling) (Lab)
*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESSES

Mike Bennett (Society of Local Authority Chief Executives and Senior Managers)
Ian Drummond (Glasgow City Council)
Bailie Christopher Mason (Glasgow City Council)
Douglas Sinclair (Society of Local Authority Chief Executives and Senior Managers)

CLERK TEAM LEADER

Eugene Windsor

ASSISTANT CLERK

Craig Harper

ADVISER

Mr Kenneth McKay

LOCATION

Stirling Council Chambers, Viewforth, Stirling

Scottish Parliament

Local Government Committee

Monday 28 February 2000

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:05*]

The Convener (Trish Godman): Good afternoon comrades. Welcome to Stirling.

I thank Stirling Council for allowing the committee to use this venue and for making us feel so welcome.

I have apologies from Jamie Stone, Keith Harding and Johann Lamont.

Non-domestic Rating Revaluation

The Convener: I welcome Kenneth McKay, who is the committee's adviser on non-domestic business rates. He will give us a presentation and we will question him on the comments in his paper. We will then decide how to progress.

Members will recall that, when we took evidence on this matter, Fergus Ewing attended the committee regularly. He cannot be here today, although he wished to contribute to this discussion. He has read the paper but, because of a constituency engagement, could not get down here. In some ways he might be thankful for that, as the weather is bad north of Perth.

Mr Kenneth McKay (Committee Adviser): I must confess that, when I was asked to become the adviser to the committee, I was not sure what advice would be most helpful to you so I wrote my own thoughts on this issue.

If the committee is convinced that there is a case for a permanent small business rates relief scheme, it should not get involved in working out the detail of a scheme as that is a matter for the Scottish Executive. The committee should concentrate on the main principles that it believes should apply to a scheme and outline those in a report. It might want to come back to the subject to assess how any scheme that emerges from the Scottish Executive measures up to the principles on which it agreed.

If the committee agrees with the approach that I have outlined in my paper, it might be useful for members to examine the questions that I have asked in paragraphs 6 to 13. They cover the main points that would govern any scheme, so the committee would reflect those in its report.

I am happy to answer any questions.

The Convener: We will examine paragraphs 6 to 13. Paragraph 6 states:

"It would seem clear from its deliberations to date, that the committee wants to ensure that only the former would qualify for relief."

Only small firms would qualify. Is that the feeling of the committee?

Members *indicated agreement.*

The Convener: Does anybody have any questions about paragraph 6?

Members *indicated disagreement.*

The Convener: Paragraph 7 questions whether a relief scheme should

"be free-standing and apply to all genuinely small businesses",

or whether it should

"attempt to dove-tail with the 2000 Revaluation and TR scheme".

In the following paragraph, Ken McKay goes on to explain his position.

Donald Gorrie (Central Scotland) (LD): I think that the rating system is inherently unfair to small businesses and that that must be corrected permanently. That need is quite different from the temporary relief scheme. I am therefore a keen supporter of option 7(a).

The Convener: Ken McKay points out in paragraph 7 that there might be differences in different geographical areas. Does anybody want to comment on that?

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): One of my concerns is that there might be disparities. I am therefore concerned about an option (a) commitment stating simply that everyone should benefit. Some small businesses that do fairly well under the present system might not benefit. A comprehensive system would benefit those who might not necessarily require support.

Mr McKay: It was the outcome of the revaluation that I had in mind. In previous revaluations, as I point out in the paper, there have been gainers and losers. There have also been geographical swings.

This is essentially a political point that must be addressed by those who represent an area that has a high loss relative to the average. Will businesses in that area feel happy just to get the standard scheme while other areas have gained from the revaluation? Businesses in some areas will get a double benefit, gaining because their rateable value has gone down and because a permanent scheme is introduced. Other areas

would get the benefit of a permanent scheme, but would still feel worse off compared with other areas. Human nature being what it is, the perception will be that there are winners and losers, so a political balance must be achieved.

The simplest arrangement, as Mr Gorrie has said, is to introduce the system right across the board. It would be complicated to dovetail the revaluation and transitional relief as suggested in option 7 (b), and a lot of work would be needed to ensure that it was phased in properly. Experience has shown that revaluations cause lots of difficulties between geographical areas.

Dr Sylvia Jackson (Stirling) (Lab): The free-standing option would not be able to take account of the revaluation at all. The second option seems to have many disadvantages, as it is complicated to dovetail the system and take account of the revaluation. Both options seem to have difficulties. Is there any middle ground?

Mr McKay: I suspect that there could be a compromise between the two, giving everyone a little bit of help and weighting it towards those who lose from the revaluation. There are all sorts of options.

Mr Gil Paterson (Central Scotland) (SNP): I thought that both options stood alone: either small businesses across the whole sector would be disadvantaged in their ability to earn compared with big businesses because of the impact of rates as a percentage of their profits, or the transitional scheme would offset big fluctuations. The valuation of a business may increase dramatically. That dramatic change would have to be factored in. In my view, the two options should be seen as entirely separate. A scheme that can take care of the discrepancy between big business and small business should be brought in.

Mr McKay: I think that that is a vote for option (a), if I am interpreting your comments correctly.

Mr Paterson: Yes, it is.

The Convener: Members will see, in paragraph 8 of the report, that Ken has included another comment on option (b), which is that we could invite the Scottish Executive to consider a feasibility study. Perhaps there is no enthusiasm for that.

Are there any comments on paragraphs 9 or 10?

Colin Campbell (West of Scotland) (SNP): Paragraph 10 seems to present a reasonable solution. For the reasons suggested in the paragraph, it is clear that we should avoid using a band, which creates a sudden upsurge in the amount of money that people have to pay. Paragraph 10 seems to catch the spirit of what most members want.

14:15

Mr Kenneth Gibson (Glasgow) (SNP): I agree. It is also important, as paragraph 10 states:

"to encourage businesses to grow without the risk of step increases in their rates burdens".

The last thing we want is for companies to think that if they move to bigger premises or employ more people they will face a huge increase in rates. That is one of the reasons why we would prefer tapering to the creation of cliffs. I am certainly in favour of a tapered approach.

The Convener: If there are no more comments, let us move on to paragraph 11, which suggests that we might want to propose a limit for any relief scheme, in a range of £75,000 to £11,000—that is not right.

Mr McKay: No, there are too many zeros in the report. It should say £7,500.

The Convener: It is suggested that we propose a limit between £7,500 and £11,000; the current limit is £10,000. Does anyone want to suggest a change to the limit or are we happy with £10,000?

Mr Gibson: We need to retain an element of consistency. A limit of £10,000 seems reasonable. Unless members have particular reasons for changing that, we should stick with £10,000.

Mr McKay: Before the committee reaches a final view on that, I would like to add some comments. I did some sums on the difference between banding and steps, using steps of £1,000, going from £5,000 to £10,000. If we stop at £10,000 and people up to that point get 25 per cent relief and people above £10,000—say £10,001—get no relief, the cliff would be £1,125.

Mr Gibson: Surely those people would still get 25 per cent relief on the first £10,000?

Mr McKay: That is not how it worked in the past, although the committee could suggest that approach.

Mr Gibson: Would that not be more appropriate? Perhaps the committee could consider that approach. The point of tapering is to avoid any such cliffs.

Bristow Muldoon (Livingston) (Lab): I do not think that we need to fix on a particular figure at this stage. I took Ken's suggestion of proposing a band to mean that we give ourselves some flexibility. It might be more appropriate to reach a final decision when we have considered the effects of the current revaluation. I am attracted to the suggestion that the committee proposes a band, rather than fixes a final position.

Donald Gorrie: I like the point that Ken made in the paper—about waiting until the revaluation has occurred. It is possible that all village shops, for

example, will end up at £10,500 and that we will want to shift the limit slightly. I assume that avoiding cliffs means that, at the top end, one would go from 5 per cent to 0 per cent relief. Going from 25 per cent relief to no relief is far too big a cliff and the difference needs to be more tapered.

Mr Paterson: I support Donald Gorrie. I expected the taper to be such that there would be a very small variance between £10,000 and £10,001. The broad end of the taper would be 50 per cent but the thin end would be 5 per cent, so there would be only a slight difference between the effect on a rateable value of £2,000 and the effect on a rateable value of £10,000. We are talking about a thin wedge rather than the cliffs you describe. I would prefer there to be many stepping-stone bands.

Mr Gibson: A sliding scale.

Mr Paterson: Yes.

The Convener: Does anybody disagree with that?

Dr Sylvia Jackson: Previous discussions have led us to prefer a sliding scale.

The Convener: On paragraph 12, do I take it that we agree that we should say that the introduction of any scheme should not be delayed beyond 1 April 2001?

Members *indicated agreement.*

Mr Gibson: I do not know how we can do anything else.

The Convener: No, we cannot.

Who would pay for the scheme? Are there any bids?

Mr Gibson: Gil has told me that he is willing to sell all his garages to make a contribution.

The Convener: There are three suggestions for paying for a scheme. It could be self-financed, with businesses with a rateable value above the limit of the scheme paying a higher rate poundage; it could be paid for from the Scottish block—I do not think Jack McConnell would be happy about that; or it could be paid for by a combination of those two.

Mr Paterson: The scheme will have to be self-financing. One cannot please all the people all the time, and certainly not in business, but most people will accept that the scheme has to be self-financing. In the longer term, everybody will benefit from it.

Of course the block grant arises. There will be discrepancies in Scotland—blips such as that caused by the oil industry in Aberdeen, which makes properties there more valuable. A political decision was taken some time ago that the rates at which people pay would be exactly the same in Scotland and England, so there may be scope for Jack McConnell to examine this issue. It is evident that the value of property is rising faster in England than in Scotland.

Major differences may develop between Scotland and England, and we will be back in the same hole as before, when values in England were much higher but rates were much lower. If we are to be fair, we cannot factor in a shop in Aberdeen paying the same in rates as a shop in Glasgow. However, valuations should come into play. The same should apply for England.

The Government cannot get off the hook by saying that properties are rising in value in England, when increases are much slower in Scotland. Jack McConnell should address those issues.

The Convener: Although the Confederation of British Industry and the Federation of Small Businesses perhaps disagreed, it seems from reading the *Official Report* of our meetings that we were leaning towards the first option.

Bristow Muldoon: I am rather confused by what Gil Paterson said. He seemed to argue for a unified business rate for the whole of the UK but, if there were, we could not proceed with the sort of scheme that we are considering here.

What we are proposing would, if implemented, increase the variance between the way in which businesses are treated in Scotland and the way in which they are treated in England. I do not see how we can consider this proposal if, at the same time, we are saying that we would like things to be exactly the same as they are in England.

Mr Paterson: That is the position. We have a unified business rate that is based on the charge—the amount people pay. The only difference is that we are constrained by the decision to hold rates at the same value north and south of the border. That is why there is a discrepancy of roughly 10 per cent at present. The Government has made a political decision for both countries to set rates at exactly the same level for like properties in like areas.

Mr McMahon: I cannot follow Gil Paterson's argument either. When we spoke about whether we should have dovetailing or whether the scheme should apply across the board, I asked about geography and we said that we could not take it into account. If we cannot distinguish between areas in Scotland, why should we distinguish between Scotland and England? We need to decide whether we intend to take geography into account, and the decision we make must be best for rates in Scotland.

Mr Paterson: Can I come back—

The Convener: Yes, but I do not want to prolong this argument. You have a couple of minutes.

Mr Paterson: Let us assume that every property value in Scotland is the same, and every property value in England is the same. The Government has decided that, although property values in England have grown by 10 per cent, it will charge properties in both England and Scotland at the same price. That means that the Government is funding the discrepancy between the two.

Mr McMahon: That would be the case here as well.

Mr Paterson: No, it is not the case here as well, as values are lower.

Mr McMahon: If there is a geographical discrepancy in Scotland, someone must be paying for someone else, to balance things out. I do not see why, if we take a decision to implement this scheme across the board in Scotland, we should concern ourselves with how businesses are valued in England. We should take a decision on the basis of what is best for rates in Scotland.

Mr Paterson: If the block grant were bumped up by the relevant amount, we would be happy, would we not?

Colin Campbell: In an ideal world, the Scottish block grant would be big enough to prevent us having to get other businesses to finance the scheme. As that is not the case, we are stuck with option (a).

Donald Gorrie: I agree. The big businesses will kick and scream, but they must be compelled to pay if the Scottish block is not to pay. We have a choice between a difficult thing and an impossible thing, so we must go for the difficult thing.

Mr McKay, if smaller businesses were to benefit as we envisage—many getting 50 per cent relief, and others getting a little less—would the rates for Standard Life's or the Bank of Scotland's headquarters have to rise by 5 per cent, 10 per cent or 50 per cent? Can you give us a back-of-the-envelope figure for that?

Mr McKay: Honestly, I cannot give an estimate. Everything depends on what the revaluation produces and what sort of small business relief scheme is implemented. We need to establish what the scheme costs before we can establish what we need to add on to the poundage for businesses that do not qualify for the scheme. It is impossible to do that sum on the back of an envelope.

Donald Gorrie: If the increase for big companies were very great, that would discourage people from settling their businesses in Scotland. We need to give careful consideration to that. However, if the increase were fairly marginal, companies might shriek and wail, but it would be reasonable for them to pay. From papers that we have received in the past, we know that rates make up an infinitesimal percentage of large companies' turnover or profit, compared with normal shops.

The Convener: Can we agree option (a)?

Members *indicated agreement.*

The Convener: We will now move to the conclusions. Under paragraph 14, Ken Gibson is suggesting that we may wish to invite Jack McConnell back before the committee; we would probably want to do that around December, so that we can see what progress the Scottish Executive has made towards introducing a permanent scheme by April 2001. Is there any disagreement with that?

Mr Gibson: It might be better to have it before December—perhaps in October. December is only three or four months before implementation.

14:30

The Convener: We will check our timetable and consider moving the date.

Do we agree option (a) of paragraph 13?

Members *indicated agreement.*

The Convener: It seems that Kenneth McKay does not think that we have to do an in-term report. The suggestion is that we work towards a report that outlines the main principles of the revised scheme and that we should not get bogged down in technicalities that we do not have the resources to deal with. The Scottish Executive has the resources and I think that it should deal with the technicalities.

Kenneth McKay also feels that we have taken enough evidence. However, if any member feels that we have not, we will hear more evidence before producing the report that Kenneth has offered to help us draft.

Do members agree that we have taken enough evidence?

Dr Sylvia Jackson: I would like to clarify that we have agreed option (a), described in paragraph 7, not (b), described in paragraph 8.

Members *indicated agreement.*

Dr Jackson: Could Mr McKay tell us a bit more about the geographical difference that Michael McMahon mentioned? How big is the geographical variation?

Mr McKay: It is impossible to tell. That will become clear only once the full results of the

revaluation are known. At the moment, we have only a sample that the Scottish Executive did to produce the poundage calculation for next year. History suggests that each revaluation brings big swings, so the Highlands might be better off than the Borders, or Glasgow might be better off than Edinburgh after this revaluation.

If the scheme were applied universally, everyone would have a lower bill than they would otherwise have got, but some would have gained from the revaluation and would therefore have been given a double benefit. If that happened, other areas would think it unfair when their rates—even with the influence of the permanent scheme—went up dramatically. A political balance must be struck. Geographical variation has always been a big issue in revaluations, but it will not be clear until we have the full results in May or June.

Dr Jackson: It might be useful to revisit this matter then.

The Convener: We could do that, if members want to.

Mr McMahon: I agree with Sylvia. Our decisions today do not have to be hard and fast. It is fairly safe to make decisions today based on what Kenneth McKay has put in his report. If a problem develops, there is no reason why we cannot revisit the matter.

The Convener: I have no problem with that.

I suggest that we ask Kenneth McKay to help us draft a report and give ourselves to the end of March to think of things that should be included in it. We could say that we intend to revisit certain parts. I also suggest that we invite Jack McConnell to update us in October rather than December. We will consider our timetable to see whether that is feasible.

Mr Paterson: I am a wee bit confused. I cannae see the benefit of waiting. We know that there will be discrepancies and changes; otherwise, there would be no need for a revaluation. If we decide that scheme A should be the basis for those changes, and we are deciding on the mechanics, I do not see the benefit of waiting.

Mr McKay: I am suggesting that we make a decision today on the evidence that we have. If, over the course of time, we discover a particular problem, there is no reason why we cannot revisit that.

Mr Paterson: I am sorry. I misinterpreted.

The Convener: We are not delaying anything. We are asking Ken to produce a report for us, but with the proviso that we may reconsider parts of that report later. Ken, is there anything that you would like to add?

Mr McKay: No. You could say that you are inclined towards scheme A, but that you want to revisit it if there are wide geographical variations in the outcome of the revaluation.

The Convener: That would be fine.

Mr McKay: In that way, you could keep your options open.

The Convener: I thank you for your time, Ken, and wish you a safe journey home.

Ethical Standards in Public Life etc (Scotland) Bill: Stage 1

The Convener: Before the other witnesses come in, I remind committee members—although they do not need to be reminded—that the ethical standards in public life bill has not yet been introduced. We are continuing to take evidence to inform our consideration of the bill at stage 1. I do not know when the bill will be introduced, but I suspect that it will be some time later this week. There have been delays, as members know.

I welcome the representatives of the Society of Local Authority Chief Executives and Senior Managers, who are here today to speak on the draft ethical standards in public life bill. Douglas Sinclair is a member of the executive committee and the chief executive of Fife Council. Mike Bennett is the policy officer of SOLACE. The procedure will be the same: we will ask the witnesses to speak and then members of the committee will ask questions.

Douglas Sinclair (Society of Local Authority Chief Executives and Senior Managers): I shall first distribute copies of our paper, convener, as that might be helpful.

The Convener: Thank you, Douglas.

Douglas Sinclair: SOLACE welcomes the opportunity to give evidence to the Local Government Committee. In front of you is a supplementary submission that builds on our earlier submission. SOLACE is a professional association that represents more than 80 chief executives and other senior managers in Scottish local government. Every chief executive in Scottish local government is a member of SOLACE. It is a professional association, not a trade union. We have a trade union arm—the Association of Local Authority Chief Executives—but today's presentation is on behalf of SOLACE.

SOLACE believes that public bodies have two essential characteristics in common. First, irrespective of their structure, whether local enterprise companies or councils, they all spend public money. Secondly, irrespective of their precise responsibilities, there is arguably a code of conduct that applies to them all, which the public expect them to observe. Public bodies should have a duty to uphold the law, should act solely in the public interest, should not accept gifts or hospitality that might influence their judgment, should make appointments and award contracts on the basis of merit and should declare any private interests that might relate to their public duties. Our argument is that there is a code of conduct—a code of basic standards—which the public rightfully expect all public bodies and those who serve on them to follow.

Two conclusions follow those two characteristics. First, SOLACE believes that there should be a single, overriding Scottish public service code of conduct, reflecting the core standards of conduct, albeit with supplementary provisions to reflect differences between organisations. Secondly, if there is to be a single code, it follows that there should be one standards commission, dealing with all aspects of conduct, and carrying out both investigation and adjudication across the whole public sector, including local government, appointed public bodies and the Parliament itself.

The overriding objective is to produce a system for regulating conduct which is transparent and which the public can identify with and can easily understand. We do not believe that the present proposals deliver that objective. Arguably, there has been too much focus on the differences between public bodies, rather than on the essential common characteristics that I have just highlighted. All the bodies spend public money; they should all display a common set of standards of conduct.

The Executive consultation document, "Standards in Public Life", says that public bodies do not form a homogeneous group. I notice that the Deputy Minister for Local Government, in his evidence to this committee, said the same. He highlighted the fact

"that one group is elected by the public"—

councillors—

"whereas members of non-departmental public bodies are appointed."—[*Official Report*, *Local Government Committee*, 18 January 2000; c 528.]

Up to a point, Lord Copper. That ignores the fundamental point, that they all spend public money, and the public rightly have the expectation of a common standard of conduct across all the bodies.

We pose a number of questions. Will the public understand if self-regulation is to be denied to local government, yet is acceptable for the Scottish Parliament, bearing in mind that—I hope that I do not tread on sensitive territory here—the Scottish Parliament is not a sovereign body, but a devolved legislature? Will the public understand why it is that the standards commission can only determine the sanctions to be applied to local government, but can only recommend the sanctions relating to members of appointed public bodies?

Will the public understand why any First Minister, of whatever political persuasion, can be more objective in determining the sanction to be applied to any errant member of an appointed public body, bearing in mind that he or she may well have been involved in the appointment in the

first place, whereas a council is not to be trusted in doing likewise in respect of an errant councillor? In the way in which we deal with issues relating to ethics, we seem to be running the risk of confusion and fragmentation, not transparency and co-ordination.

In relation to the standards commission and to the appointment of the chief investigating officer, SOLACE notes that this committee had accepted the explanation provided by the minister, that, to separate investigation from adjudication and to ensure transparency, the appointment of the CIO should be made by the Scottish ministers rather than the commission. Otherwise, there could be a challenge under human rights legislation.

We also note the committee's concern that such a procedure may lead to the perception that the chief investigating officer is not independent of the Executive. SOLACE's proposal would remove that perception. If the standards commission was responsible for conduct across the whole public sector, the appointment should not be undertaken exclusively by the Executive, but should be shared by the Executive, the Parliament and local government. That would remove at a stroke the perception of Executive control.

We suggest a single commission to deal with all the public comprehension and transparency aspects of the investigation and adjudication.

SOLACE would like to highlight two other points. First, there is the issue of local government's ownership of self-regulation. "Standards in Public Life" argues that the weakness of the present regulation system in relation to local government is twofold. First, it is difficult to understand because of all the modifications. It is not one single document, with all the regulatory frameworks relating to councillors. Secondly, the consultation document argues that there has been a lack of effective sanctions or means of enforcement. One might quibble about that, particularly as far as surcharge is concerned. There is truth in both those arguments, but they are only part of the story.

This document does not do sufficient justice to the fundamental point that Lord Nolan made, which is that local government is more constrained by rules of conduct than any other part of the public sector. Yet, despite that profusion of rules, a lack of clarity over standards of conduct persists, due to the fact that the responsibility for the maintenance of standards has moved away from local government. There is no sense of ownership within local government.

14:45

SOLACE accepts that the creation of a single standards commission has advantages, not least—if you accept its arguments—in ensuring consistency of approach and public confidence. However, that does not deny the importance of strengthening self-regulation within local government, through, for example, the encouragement of the creation of local standards committees to help members understand the standards of conduct that are expected of them when they join the council. More important, if, as is currently being suggested, there is to be a separate code of conduct for local government on the one hand and the relevant public bodies on the other, SOLACE believes that the proposals in the bill require strengthening, to promote ownership within local government.

As members know, the proposal is that Scottish ministers will issue a code of conduct, that the Convention of Scottish Local Authorities will be invited to prepare the first draft and that the code will be issued, once it has been approved by resolution of the Parliament. Our argument is that local government needs to be encouraged to produce not only the first draft, but effectively the final draft. The ownership of the code of conduct must lie deep within local government.

We believe that the bill's provisions could be strengthened in that regard. For example, the section, as it stands now, says that ministers may invite such associations of councils as seem appropriate, to help them to draw up and to send a suggested code. Why not "shall" invite instead of "may" invite? There is an issue there about strengthening the role of local government to take ownership over what will effectively be its own code of conduct.

The final point relates to surcharge. There is concern that the issue of surcharge has received relatively little coverage. While there is general agreement that surcharge is outdated, inappropriate and peculiar to local government, there seems to be no sense of the purpose in removing it and replacing it with a sanction that is more appropriate and relevant to today's world.

Despite the fact that the Secretary of State has made only two surcharge orders since 1975—there have been only about seven cases of the Accounts Commission recommending surcharge—there is the issue of whether, when the Secretary of State makes such an order, his action is compatible with article 6 of the European convention on human rights, which guarantees a person a fair and public hearing. Section 104 of the Local Government (Scotland) Act 1973, which allows the Secretary of State to make that surcharge order, does not provide for such a hearing.

There are two possibilities here. The first is to give the Accounts Commission the power to levy the same sanction against the person it has found

liable for financial misconduct as is open to the standards commission. The standards commission can deal with ethical misconduct. Why should the Accounts Commission not impose sanctions in relation to financial misconduct? That would mean suspending a councillor for up to 12 months, or disqualifying the person from being a councillor for up to five years.

The alternative, which SOLACE prefers, is that the Accounts Commission would make a recommendation on sanctions to the standards commission, which would then have the final responsibility for deciding on the matter. We believe that that would be more attractive, in that it would provide a single tribunal—the standards commission—that would make decisions both on breaches of ethical conduct and on breaches of financial conduct. As we pointed out earlier, that would have the advantage of public comprehension. It would be about consolidation rather than fragmentation, and transparency rather than confusion. Bill Magee of the Accounts Commission raised with the committee the issue of the number of referees in the field. In SOLACE's view, there are too many referees.

The Convener: Mike, do you want to add anything to that?

Mike Bennett (Society of Local Authority Chief Executives and Senior Managers): No, I have nothing to add.

The Convener: Once questions come up, if you want to say something, please feel free to do so.

Page 2 of the first paper concerns the scope of a new ethical framework. The committee has stated quite clearly that MSPs should be included in the same kind of rules and regulations as others. Also, the committee is saying that local enterprise companies, further education colleges and so on should also be included in it. We are with you on that and on other issues, which I may pick up on later.

Do any members have questions to ask?

Donald Gorrie: Are you suggesting that the single body, which is quite an attractive proposition, would deal with complaints about paid officials as well as elected councillors and appointed members of quangos, or should those functions be kept separate?

Douglas Sinclair: There are disciplinary procedures within councils that deal with breaches of codes of conduct by elected officials. We are suggesting that councillors, MSPs and members of appointed public bodies—the term that I prefer to quango, which is pejorative—would be dealt with by the standards commission. That commission would deal with investigation and adjudication of any complaints about such people.

Donald Gorrie: In the case of hospital boards, as I understand it, some members of such boards are full-time medical professionals and others are worthy people. Would such a commission deal with all those people?

Douglas Sinclair: The committee has covered that point in its report, in which it was suggested that executive directors should come within the purview of the standards commission. That is a reasonable point; in a sense, the role of such an official as you mention has been changed. That role is now on a par with that of a councillor, because such people must make executive policy decisions.

The Convener: On page 3 of your original submission, you mention that the promotion of ethics in all actions by councils is good practice. The committee obviously agrees with that. We are extremely concerned about the omission of the right to appeal from the original paper.

I am glad that SOLACE picked up something that the committee did not: the investigating officer might be female, in which case the language used in the document is suspect.

Douglas Sinclair: I would like to make a supplementary comment on that. The consultation paper made a point about the possibility of staff being seconded from the Executive. Why should secondment be limited to the Executive? There is an enormous amount of experience in local government and in appointed public bodies. It would be a good learning experience to second staff from all parts of the public sector.

The Convener: The committee examined that issue and felt that that would not be a bad idea.

Mr Gibson: I am glad that you have concentrated on the bulk of the document. Although it has not been mentioned, the witnesses are probably well aware of what I am about to ask them. What is your view on the infamous section 2A?

Douglas Sinclair: Our original submission said that SOLACE (Scotland) fully supports the Executive's proposal to repeal section 2A of the Local Government Act 1986. The current legislation is unacceptable, first, because banning schools from publishing material which "promotes homosexuality" perpetuates the unacceptability of homosexuality as a valid life choice. Secondly, by banning the teaching of the acceptability of homosexuality as a "pretended family relationship" the legislation degrades the value of the family relationships that exist between homosexual parents and their children. In both those respects the legislation is socially exclusive. It is also contrary to much that the Executive and councils are trying to achieve together. Our position is clear.

Mike Bennett: Douglas is referring to an earlier draft of our submission, but that is entirely within the spirit of our final submission to the committee.

Dr Jackson: On the chief investigating officer, you suggested rightly that that office should be independent of the Executive. Your submission mentions that the Executive, Parliament and local government should be involved in that appointment. From a local government perspective, how would that be achieved in practice?

Douglas Sinclair: An appointments panel, including members of such groups, would be analogous to the Scottish Parliamentary Corporate Body. COSLA, for example, might recommend a couple of people who should be on the appointments panel; it might also include a couple of Government ministers and a couple of members of this or the Standards Committee. If responsibility for the appointment is shared, the appointee will not feel beholden to any single part of the triumvirate.

Donald Gorrie: The concept of too many referees on the field is a good one, which I want to pursue. My concern is that you would have problems if you had only one all-powerful referee. There is some merit in having confusion, because then nobody has too much power. That may not be a very good argument, but—

Douglas Sinclair: We are not suggesting that there should be simply one referee; that situation will never be achieved. The bulk of the Accounts Commission's work concerns not surcharge, but the proper audit of, and value for money in, the public sector in Scotland.

The ombudsman's role will continue, although, as an aside, there may be a debate to be had about the number of ombudsmen we have in Scotland and whether we get best value from having a local authority ombudsman, a housing ombudsman, one for Highlands and Islands Enterprise, one for Scottish Enterprise and so on.

We are simply positing the argument that if the standards commission is to deal with misconduct in relation to ethics, its role might be extended so that it is the final body to deal with financial misconduct. The two aspects seem to go together.

We should also consider credibility and public comprehension. If we can say, "That is the body that deals with people who do things wrong", that is a simple message, whereas what has been proposed will not be understood readily by the average man or woman in Fife.

Donald Gorrie: Your final solution is elegant. The Accounts Commission has improved a lot, but sometimes in the past it seemed to come to some extraordinarily bad decisions about wrongness in councils. I do not think that accountants should be given too much power over the world.

The Convener: On page 4 of your original submission, you talk about your objections to the idea of an internal suspension. Although you think that internal suspension is not a good idea, you do not say what you want to put in its place. You finish by asking whether members of the Scottish Parliament would like it if the same basis of suspension applied to them while they were under scrutiny. The answer would probably be no, but the bill seems to be going the way of internal suspensions. How do we get round that?

You have read the committee's deliberations on the subject, so you will be aware that the comment has been made that the suspension of one councillor might mean a political change in how that council delivers its services. We have not resolved that matter yet. What are your comments?

Douglas Sinclair: The key thing is to ensure that the investigation is undertaken as quickly as possible. That is in everyone's interest, and must be the starting point.

The point has been made that a person who had been suspended on an interim basis would no longer be able to attend committee meetings, but somehow would still be able to discharge his duties as a councillor. To me, that seems a difficult proposition. He cannot discharge his duties without having access to the committees. We accept that if someone is suspended, they should lose any special responsibility allowance that they are receiving, because if they are suspended, they are no longer discharging that part of their duties.

You could argue that if someone was suspended and could not participate at all in council work—to continue with the football analogy, they were off the park completely—they should not continue to receive allowances at all. I think that that would be unfair, because a council official who is suspended is always suspended on full pay. It seems unfair to suspend a councillor and not recognise some entitlement to some kind of allowance. We had something of a compromise in our submission. We said, "You will continue to be a councillor and that is the justification for continuing to receive the basic allowance." As I have said, it is difficult to continue to be a councillor if you have been denied access to council committees.

The Convener: May I take that a wee bit further? It seems that you would not be totally denied access. You could read committee and council minutes, you could go to council meetings as a member of the public, you could continue to hold surgeries and so on, and keep au fait with that side of things.

15:00

I suspect that your basic allowance would continue; it is the special responsibility allowance that would be removed. I accept that, in some cases, that might be significant, but I am not sure that the argument that you could not attend to duties stands, because—and people will hate me for saying this—if you were forced to read council minutes, you might do it more when you were sitting in the committee. Not that any councillors or ex-councillors have done that here, but you get my theme. I am not sure that your argument holds up.

Douglas Sinclair: That is a fair point. It proves the sterility of many of the committee processes in local government, does it not?

Bristow Muldoon: On interim suspensions, I do not see that any allowances should be suspended, because at that point a councillor has not been found guilty of a misdemeanour. As you pointed out, an officer who was suspended pending investigations into an alleged misdemeanour would continue to receive full pay until a disciplinary hearing had been held and a decision reached. That is pretty much the case in any other form of employment. I know that an elected member is in a different type of employment from a straightforward employee, but within the system there should be the presumption of innocence until guilt is proven.

Douglas Sinclair: The difference is that an employee who is suspended on full pay stays away from work. There is a clear line between home and work in that situation. I take the convener's point that even though he was suspended from the mainstream of council business, a councillor could still undertake work on his constituents' complaints. In a sense, he would be in a letter-writing mode rather than an active mode.

A councillor gets an SRA for being the political spokesperson for a council service. That involves a hands-on approach and requires involvement in the council on a day-to-day basis. If someone is suspended, how can they continue to be the spokesperson for, say, social work? That is not tenable. The line must be that people will lose something if they are suspended.

Bristow Muldoon: But surely the same applies to senior council officials, because chief executives of a council can only be chief executives if they are at work and are not suspended.

Douglas Sinclair: Yes, but the analogy should be between the basic allowance of a member and the salary of an official. The SRA can come or go; there is no basic continuing entitlement to it. However, once you are a councillor, you are entitled to a basic £6,000 per year. There is not necessarily an automatic continuing entitlement to an SRA. That depends on whether you are voted back by the group at the annual elections. There is a distinction in those circumstances.

Mr Paterson: There is a contradiction in that: council employees are suspended on full pay but do not work, whereas councillors who are suspended do not get any money apart from their small allowance, yet they continue to work. I previously suggested how we could get round that. Many councillors get responsibility payments, and have made a commitment by giving up their everyday employment to concentrate on working as a councillor. Council employees are suspended on full pay, yet when councillors are suspended the idea is to take responsibility payments from them. Both parties should be treated the same; when councillors or council employees are suspended they should not work, but they should be paid as if they were working. That would get round the problem.

Douglas Sinclair: I am not sure that you are comparing like with like. Officials are in paid employment. Councillors do not receive a salary, but have a set of allowances. That is an important distinction.

Mr Paterson: I know what electoral law says, but you and I know that the whole thing would collapse if there were not a good number of councillors in senior positions, particularly in big authorities, who spent their whole time there. Perhaps we need to change the name from allowance to salary. I hope that that is the way it goes, not only for people in responsible positions, but for everyone. Would it be acceptable to you to change the name and treat everyone in the same way?

Douglas Sinclair: I have some sympathy with what you say. There would not be such an issue if the basic allowance were at a more sensible level. That is the fundamental problem in Scottish local government. A councillor came into my office one day and said that he represented best value, because he was paid £6,000 a year. It is difficult to argue with that.

There is a growing recognition that, in the days of multi-purpose councils, it is not credible to equate the job of councillor with voluntary service. There is an important debate to be had about raising the basic allowance to a more sensible level.

There is something fundamentally wrong with the system if two thirds of Scottish councillors are receiving special responsibility allowance. That is a sign not of abuse, but of a problem with the basic allowance.

Mike Bennett: Things might change after the Kerley committee has made its recommendations on the position of councillors.

Mr Gibson: We have talked about the difference between employees and elected members. What is the difference between a back bencher being suspended and not losing anything and a convener being suspended and perhaps losing two thirds of their income? If someone is suspended and loses part of their allowance or SRA, should not that money be refunded if they are found not guilty, even though they would not have been able to chair committees during the period of their suspension?

Mike Bennett: Councils might have a difficulty with that. If they had to pay someone else a convener's SRA and refund the six months of lost SRA to a councillor who was later proven innocent, it would put a further financial burden on them.

Mr Gibson: It might, but surely there is an element of natural justice in that. If someone has been defamed or slandered—or whatever you want to call it—and is later found to be completely innocent, why should they sustain a significant loss of income over a period, which could have an impact on their family life and, if they have a mortgage, could even make it difficult for them to maintain a roof over their head?

Mike Bennett: That is the very problem that we raise on page 5 of our submission. There is a need to strike a balance.

Donald Gorrie: I want to clear up what your organisation feels about the mechanics of suspension—not the money, which has been discussed thoroughly. Imagine that I am an allegedly naughty councillor and I am suspended. I cannot go to full council meetings or committees, but I can sit and listen, I can hold surgeries and I can pursue issues with officials. Can I do that only by letter or can I ask to see the director of housing?

Douglas Sinclair: It comes back to the debate about what is meant by off the park. If someone is suspended, it should mean that they are suspended not only from attending and participating in council meetings, but from having face-to-face contact with other members and officers, if for no other reason than that officers need some certainty about where the lines are to be drawn. I accept that it is somewhat arbitrary, but we must develop a set of rules and conventions on what we mean by suspension.

The Convener: That is a good point. Officers must be given a clear line on what to do, because it would be easy for a councillor to get an officer to respond to something when it would not be in the spirit of what we are trying to do.

Donald Gorrie: To be pedantic, what about a phone call? I tended to write because nobody could pretend that a letter did not exist; people could pretend that a phone call had not happened. However, often one makes a phone call.

Douglas Sinclair: My immediate reaction would be that correspondence would be fairer to both parties.

Mr McMahon: I agree with you, in relation to surcharging being outdated and inappropriate. I also agree that something more appropriate must be put in its place. Could you expand on what you would consider to be more appropriate and more relevant?

Douglas Sinclair: We suggest that you should do away with the financial penalty, because that takes no account of the individual's ability to pay. The same sanctions that are proposed for the standards commission—suspension for up to 12 months or disqualification for up to five years—should apply for somebody who has committed financial misconduct and, in effect, broken the law in relation to local government finance. Therefore, the sanctions would be on a level playing field. The problem with the surcharge sanction is that it is, in a sense, unlimited. It is too open-ended.

In terms of public credibility, it would seem sensible to have one standard for misconduct, irrespective of the origin of that misconduct.

Colin Campbell: I will revert to the issue of suspension and what appears to be partial suspension, as a councillor might be suspended, might not get his SRA and might not be able to carry out some of his duties, but might be able to carry out others. That contrasts with the type of suspension that Mr Sinclair would have—which I am sure will never happen—which would be, "Go home and remain there until this is solved; you are on full salary and should not contact anyone."

I understand the thinking that a councillor is a representative, has been elected, and has a constituency and a duty to those people, but if they have been suspended, does it not seem inconsistent that they are not suspended from all duties, pending the outcome of the investigation?

Douglas Sinclair: In a way, that is a cleaner resolution, but it is not what the proposal suggests. If a councillor is suspended or ill, adjacent councillors will cover for them. The key issue is the speed of the investigation; it must be undertaken as quickly as possible.

There is an argument for a clean break. If there is not a clean break, and somebody is half on the park and half off the park, we must be clear—as I suggested to Mr Gorrie—as to what rights and obligations a councillor in such a situation has.

Dr Sylvia Jackson: As a councillor is elected, if

we go for the clean option of saying, "Go home and do not do anything," there is the question of who represents those constituents. Is that why the idea of partial suspension came about?

Douglas Sinclair: I suspect so.

The other side of the argument is that there is an allegation that the councillor has broken the pledge of trust with the electorate—although it is not proven, there is a question mark. There is an interesting debate as to whether the rules that apply to officers can be transferred to councillors, or whether it is a step too far to say that a councillor is completely off the park, just because there is an allegation in relation to them. Is it right, in those circumstances, to deny their constituents the basic right of being represented by that councillor?

Mr Gibson: I do not agree that adjacent councillors can always help out. One could be an independent or a member of a political party, as is the case in many local authority areas.

Mr Paterson: Have you been there, Ken?

Mr Gibson: I am afraid that I have been there for years, and I enjoyed it.

The level of proof that is required concerns me. What is your view of that? From the draft bill, it appears that the level of proof required for the suspension of a councillor is less than would be required in a criminal case. Do you think that that is justified?

Douglas Sinclair: I must admit that I have not given any thought to that. I think that it would be difficult to justify. Suspension is a serious thing and one would have to be pretty sure that there was a strong case to answer before going down that road.

The Convener: If there are no more questions, I thank Douglas Sinclair and Mike Bennett for coming along to give evidence. When we write our pre-legislative scrutiny report, we will consider what we have heard today.

We wish you a safe journey home.

15:15

We now welcome Christopher Mason from Glasgow City Council and Ian Drummond, the council's chief solicitor. Given that we are discussing ethical standards in public life, I should declare an interest because I have known both of them for some time.

Welcome to our committee, and I hope that you have not had a terrible journey here. Perhaps coming by train was easier. You can talk to us and we will then ask questions that either one of you can answer. Will Chris speak first?

Bailie Christopher Mason (Glasgow City Council): Yes. I thank the committee for inviting me here today. I shall speak mainly about the role and procedures of Glasgow City Council's standards committee, which was set up in 1998 and with which I have been involved from the outset.

I would like to introduce Ian Drummond, solicitor to the council, who has day-to-day responsibility for procedures relating to the standards committee.

I am a Liberal Democrat member of Glasgow City Council and have taken my turn as chair of the standards committee. The establishment of the committee was recommended in April 1998, by the council's standards commission, which was proposed by Frank McAveety and brought together members of all five political parties represented on the council, as well as three independent public figures. The commission also drew up a code of conduct for councillors, based on Nolan's guiding principles for those holding public office. After public consultation, the council adopted the code in June 1998. In August 1998, we adopted a code of conduct for council employees that was agreed with all the trade unions in the council; that, too, was based on the seven Nolan principles.

The detailed work and careful consideration that the council invested in the establishment of the standards committee and the preparation of the two codes is evidence of the seriousness with which Glasgow City Council treats questions of probity touching employees and elected members. The idea that Glasgow City Council is wracked by sleaze and is indifferent to corruption is utterly false.

Members have already received copies of the code of conduct for councillors and the terms of reference and procedures of the council's standards committee. I would like to highlight briefly two aspects of our work, which are directly relevant to the committee's consideration of the bill. We will endeavour to answer any questions that members may have about the cases that we have dealt with so far.

First, there is the question of jurisdiction, or as some of the witnesses have put it, the problem of too many referees on the park, getting in one another's way. The Glasgow solution to that problem is simple and practical. If we receive a complaint about an elected member—we deal only with elected members, because employees are dealt with through established staff disciplinary procedures—we first consider whether the complaint comes within the jurisdiction of another body. If it does, we leave the matter to be dealt with by the other body.

If a complaint alleges criminal misconduct, the information is passed on to the police and we do nothing that might compromise any subsequent prosecution. If a complaint alleges matters that fall mainly within the jurisdiction of the council's auditors, they deal with it first. We have not yet had to consider an allegation against an elected member contained in a complaint to the ombudsman. However, if we do, I am sure that we should take no direct action until the council has received the ombudsman's report.

The fundamental point is that our jurisdiction is residual. We deal only with matters that are not criminal and that do not come within the established jurisdiction of another agency. It follows that we do not deal with the most serious categories of complaint, nor are we ever likely to do so. Indeed, if the Scottish Parliament were to decide to act on Nolan's recommendation to create a new offence of abuse of public office, our role would be even more restricted, and rightly so.

Our experience touches on the ethical standards in public life bill because, in practice, a national standards commission would find itself in the same position as the Glasgow standards committee: in the first instance, it would be restricted to non-criminal—and therefore less serious—breaches of the code. Its task would be to crack small nuts; how big a hammer is required for that job?

Secondly, there is the matter of procedures and penalties, which are inextricably linked. Our standards committee is an ordinary committee of the council. We are not a court or a tribunal, and cannot compel the attendance of witnesses or hear evidence under oath. The person against whom a complaint is made does not have the protection that is afforded the accused in a criminal trial by the rules of evidence and the law of contempt. Therefore, it is fortunate and right that our powers of disposal are very limited. If we find that a complaint is upheld on the facts, we can only recommend to the council that the member be censured and/or removed from some or all committees and other posts of responsibility. I am glad to say that we have not had to do that yet.

In the case of a member who holds a special responsibility allowance, our recommendation could entail a severe financial penalty. Therefore, it is important that we observe the rules of natural justice, and that we take as a standard of proof the balance of probability, which is applied in civil cases in court. However, it must also be remembered that we are discussing removal only from a political office to which the person has been appointed by the council. It is one of the delights of political life that one can be sacked from office, at any time, for no reason, and with no right to appeal, complain or be compensated.

Again, we believe that our experience bears directly on the bill. Although the national standards commission would undoubtedly be more august, the position that the bill proposes that it should have is not essentially different from that of our standards committee. It would not be a court or a tribunal, and the accused—that is how he or she would certainly be described in the tabloid press—would not have the protection that the criminal law extends to those charged with criminal offences.

Dealing effectively with serious misconduct that is outwith the scope of the criminal law is always very difficult. That is why I believe that in the bill Parliament should act on Nolan's recommendation and establish an offence of abuse of public office. That would leave only more residual and minor breaches of the code of conduct for the national commission to deal with.

You have received our written response to the bill. The council has studied with interest your initial report, which, we are glad to see, endorses many points that were put to you in evidence by Glasgow City Council and others. I refer particularly to your recommendations in paragraphs 4, 5, 6, 10, 11, 13 and 18—I do not refer to paragraph 19 today because it deals with a different subject.

We also welcome unreservedly Parliament's commitment to deal effectively with ethical standards in public life. However, we still have fundamental difficulty with the model that is proposed in the bill, even if it is amended in the ways that you have recommended.

First, we believe that councils and other bodies that are covered by the bill should be allowed, if not required, to establish their own procedures to deal with the residue of complaints of misconduct that are not covered by the criminal law or other established regimes. We think that it is unnecessary for those complaints to be dealt with nationally, and that it is desirable that all public bodies should be allowed a measure of ownership of procedures for upholding standards in public life.

Secondly, we think that it is wrong that anybody, whether at national or local level, should have power to impose the penalty of disqualification from public office, except through the due process of the criminal law. If a breach of the code is serious enough to deserve disqualification, it ought to be a criminal offence and subject to prosecution by due process of law. It is highly questionable whether any less stringent procedure would pass the tests that are set by the new human rights provisions that have come into Scots law from the European convention on human rights.

15:30

Glasgow City Council would, accordingly, welcome the bill's being amended in the following ways. First, it should be amended so that its scope extends across the whole public service. Secondly, elected members and those appointed to public bodies should be treated equally. Thirdly, the scope of the criminal law should be extended to cover all serious abuses of public office. Fourthly, a framework should be set in place for the operation of local standards committees to deal with residual breaches of the code of conduct—we could, if it would be helpful, submit further written evidence on some technical issues relating to that.

Fifthly, a framework should be put in place for a national standards commission or committee that would allow it to act as an appeals body for local committees; as a body monitoring the activities of local committees; as a committee of first instance for the investigation of complaints in those councils or other public bodies that, for various reasons, are unable to establish a local standards committee; as a committee of first instance for complaints that may be passed on to it by local committees because of the seniority of the subject of the complaint, for example; as the main provider of training and guidance on the national code; and as an adviser to Parliament on law reform in this area.

That concludes my statement. I would be happy, along with Mr Drummond, to answer any questions that the committee may have arising from what I have said or from the council's earlier written response to the Scottish Executive.

Mr McMahon: Thank you very much. That was a very detailed presentation, which gave us a lot of food for thought. You talked about councils being able to establish their own procedures. Are you not concerned that that would lead to unevenness, with what was acceptable in one area not being acceptable in another? Is it not better to have an overall standard, instead of allowing each council to set its own?

Bailie Mason: We have suggested that a framework should be established for the operation of local standards committees, so we take your point. Indeed, we anticipate it. Our committee is composed of equal numbers of administration and opposition members. The chair passes by rotation among the members, alternating between a member of the administration and a member of the opposition. The chair does not have a casting vote. We operate according to the rules of natural justice and are guided by the chief solicitor on how we should conduct ourselves so as to be fair to all parties. Our investigations are carried out by our officers, not by us; we do not pretend to be police officers. That is a framework of procedures that could be adopted by all local authorities, although we recognise that some local authorities may feel themselves to be too small to take on this role. We have no objection to such a framework being established, as it would provide all councils with a template for operating their local standards committee.

Mr McMahon: You are talking about the structure of committees, rather than the standards by which they judge conduct.

Bailie Mason: We do not have a problem with the idea of a national code. Again, I would offer you our code for councillors as an example. It is capable of improvement, but we put a great deal of work into it and have made a good start.

Mr Gibson: Over the past two or three months, I have proselytised on behalf of the Glasgow code. I have been doing missionary work in the committee on your behalf.

Bailie Mason: I am delighted to hear it.

The Convener: Could you remind me of the party political make-up of the standards committee? How many cases have you heard and what have the results been?

Bailie Mason: There are eight members of the standards committee. We are somewhat short of opposition members on the council. We have four Labour members and one each from the SNP, the Liberal Democrat party, the Conservative party and the Scottish Socialist party.

Ian Drummond has dealt with a number of cases that did not merit an appearance before the full committee. In one case, the committee decided that what had happened did not amount to anything and we rejected the complaint; in another case we passed the matter to the police as it involved allegations of criminal misconduct. Another, to which Frank McAveety referred, gave us a lot more bother; we investigated it thoroughly and dealt with it in a meeting, which I chaired, that was split over two days. A third case was reported to us recently and was also passed straight to the police. We do not have a heavy load of complaints.

Ian Drummond (Glasgow City Council): Since the committee was established in 1998, it has met on eight occasions and has dealt with six substantive complaints. As Bailie Mason said, of those cases, one has been investigated further by the monitoring officer—me—and two have been passed to the police. The others were disposed of at first occasion by the committee.

The Convener: Have you ever gone to a vote?

Bailie Mason: We have never gone to a vote. When we were discussing the issue in the standards commission, we decided that we would

try hard not to go to a vote. We have never had a discussion in which opinions were split along party lines. Nobody has brought party politics into the considerations.

Ian Drummond: I should also point out that no one has a casting vote.

Bailie Mason: We felt that it is our duty to argue until we are exhausted and have arrived at agreement on the facts.

Colin Campbell: That sounds suspiciously like this committee. We have not yet voted on anything and we await our first vote with bated breath.

I am interested that you agree with the Nolan recommendation that an offence should be established relating to abuse of public office. Are you satisfied that a definition of "abuse of public office" that would be comprehensible to the public and about which lawyers could fight could be arrived at?

Bailie Mason: The short answer would be yes. We anticipated this question and arrived at the view that a definition could be arrived at. Presumably when Lord Nolan made that recommendation, he had some idea about how the offence would be drafted. The essence is this: there are principles of public office and there are criminal offences that relate to those principles. We want a definition that says that, in addition to existing matters that are covered by the criminal law, it shall be an offence to use a public office for the purposes of private gain, financial or otherwise. Morally, the case is clear. Technically, I expect that the people responsible for drafting the law would make a meal of it. However, the offence is not unknown in other systems of jurisprudence in Europe. We are rather unusual in not having such an offence.

Colin Campbell: So there are good precedents.

Bailie Mason: There are good precedents.

Donald Gorrie: This might be a hypothetical question, as you have had limited experience so far. If a case that is brought to you is referred to the police, as there seems to be a possibility of prosecution, but the police decide not to prosecute, does it return to you? The councillor might not have acted correctly and so might deserve censure or whatever even if he had not broken the law. The same might happen to cases that would be referred to the auditors or the ombudsman. Do you take up the residue of cases that other people have rejected?

Bailie Mason: That would depend. To date, the police have been so slow in dealing with such matters that, by the time we get a decision from the Crown Office, the case is too old to proceed with. I can think of one case from the not-too-distant past in which it took two years for the Crown Office to come to a conclusion. The first case that came to us has only just been passed from the police to the procurator fiscal—12 months after we first received it—and has still to be reported to the Crown Office. We got quite stroppy about the most recent case, and I understand that a report is to be sent by the police to the procurator fiscal in three years—sorry, three weeks. That was a bad dream.

If the case was very old, we would be reluctant to return to it. I can imagine such a case in which criminality is borderline. However, if it came back swiftly from the Crown Office, which said, "We do not think that there is enough to go on here for criminal law", there might still be enough of a smell for the standards committee to consider it. Audit cases usually turn on the recovery of funds and usually involve criminality. I do not think that there is much scope for a second bite in those cases.

One can imagine a circumstance in which a complaint against the council of maladministration fell to be dealt with by the ombudsman, who, in his report to the council, mentioned what appeared to be misconduct by an individual member. The standards committee might want to examine such a case. The golden rule is: do not rush on to the pitch if there is already a referee busy about his job.

Now, have I said anything that I should not have said?

Ian Drummond: No.

I am sure that the answer is clear enough. There are circumstances in which it is open for the standards committee to revisit a case—in terms of a breach of the code—that has been considered by another authority but not upheld.

Donald Gorrie: You are enthusiastic about local standards committees; many of us here would share that enthusiasm. There is pressure from the centre—as there always is—for one standard, national whatsit and to get rid of all the local people. How do you envisage the relationship between the local standards committees and the national standards commission? If a big fish is being hooked—or whatever happens to big fish—that might go straight to the national commission. Would you elaborate on that sort of issue?

Bailie Mason: We are not enthusiastic about having a local standards committee. It is not a pleasant duty to have one, but it is a duty that is better discharged locally than nationally. A local committee can operate as effectively, and much more efficiently, than a national standards body. I must emphasise that we are not dealing with major crime, but neither would a national standards commission. If a crime is major, it is dealt with by the police. One is dealing with minor, sometimes trivial, matters.

As for relations with the national standards commission, if any party is aggrieved by a decision from the local standards committee, it would be as well that it had a right of appeal. That party is more likely to be a complainer—complaining because he did not like the report—than a councillor. The councillor can complain to his council; if he cannot convince his council, he has really had it.

15:45

We would have no objection to the national standards commission monitoring the activities of local standards committees, keeping a record of the number of complaints and how they were dealt with, and generally keeping an eye on the process and learning from it.

Some councils and other bodies might feel that they are simply too small to take on the task. If one imagines a council of, say, 20 members, evenly balanced between just two parties, those parties might prefer that the duty was taken over for them by Big Brother. In those circumstances, we think that that option should be open to them.

A local committee should have the power to refer a complaint to the national standards commission if, because of the position of the person who was the subject of the complaint, it would find it very difficult to deal with that complaint. We do not think that there should be a power to call cases in, but if people at a local level feel that they can do that, let them do it.

The national standards commission could be very valuable. On the point about a common set of standards, we think that the national commission could not only advise Parliament on a code of conduct but be the main provider of training and guidance on it. We would expect the national commission to act as an occasional adviser to Parliament on law reform in this area. That is how we see the relationship working; it is essentially a practical and organic one—with parity of esteem, of course.

Bristow Muldoon: Could you talk a little more about the sanctions currently in your remit? I have been through the council's document. I can see the parts about the standards of conduct, but I cannot see what the sanctions would be.

You have stated that you do not believe that anybody should have the right to impose disqualification unless someone has committed a misdemeanour that is subject to criminal law. Is that not inconsistent with the way in which regular employees are treated? For example, employees of Glasgow City Council who have committed a criminal offence can be dismissed from their job. Why should councillors have more protection than a regular employee has? I understand the argument for councillors having the same protection, but I do not see the argument for their having more protection.

Bailie Mason: We debated all those things fully in the council's standards commission. The sanctions are available to the council, not to the committee—the standards committee makes recommendations to the council.

We cannot advise the council to exercise a power that it does not have. All the council can do is censure people, remove them from committees and remove them from representation on outside bodies. In the past, the political groups have suspended or expelled members who have been found to be in breach of a code of conduct. Remember that we are dealing with the minor end of the scale of offences. Major matters should, in our view, be dealt with under criminal law.

Disqualification is currently treated in law as an additional penalty, which follows automatically if a person holding a councillor's office is sentenced to a term of imprisonment of three months or more. It is a penalty for a criminal offence, which has to be proved through due process. On the continent, disqualification from office or suspension of political rights is a penalty for a number of civil and political offences. No country in the Council of Europe has a system that allows political rights to be taken away by administrative action. If you allow a national standards commission that is neither a court nor a tribunal—it is an administrative body, in law—to take away someone's right to stand for election and to be elected, you are imposing what would be seen throughout most of Europe as a criminal penalty without going through criminal process. Under the new human rights provisions, that would not survive its first scrutiny in the court of appeal.

Why should councillors not be treated the same as employees? Because we are not employees. No employee could go to work on the morning of Thursday 5 May and find himself out of a job by midnight, whereas councillors can, even in Glasgow. The whole role is quite different. Furthermore, if an employee is sacked, he loses only one job. He is not forbidden to apply for another for five years. Employees, at the moment, have a heavily protected system of discipline, involving appeals. If that does not work out for them, they can run the gamut of the industrial tribunal system.

To date, elected members have not been subject to any proper system of discipline and they have not been afforded any proper system of protection. We have no objection to the introduction of a proper system of discipline. In fact, Glasgow blazed the trail, as the first authority in Scotland to introduce a proper system of discipline for elected members. If you are going to

build on that, you must do so in a way that is fair and that provides proper protection, not only for the complainer, but for the subject of the complaint. Have I answered your question?

Bristow Muldoon: You have, although I am not sure whether I agree with every part of your answer.

The Convener: Thank you. This has been very interesting—I thank the witnesses for coming along. I have no doubt that you will read the *Official Report*. When we read the report, we read everything that we have said, which is quite different from reading a minute. I found that quite frightening at first. It will be interesting for you to read what you actually said.

Thank you for coming along—I wish you a safe journey home.

Bailie Mason: Thank you for your courtesy in hearing us.

The Convener: Next week, we will be hearing evidence from the Scottish Council for Single Homeless and the Stonewall Youth Project. The Equal Opportunities Committee and the Education, Culture and Sport Committee will be hearing evidence from people as well. On 14 March, we will hear from the Association of Directors of Education in Scotland.

15:53

Meeting continued in private until 16:29.

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