

LOCAL GOVERNMENT COMMITTEE

Tuesday 28 March 2000
(*Afternoon*)

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LOCAL GOVERNMENT COMMITTEE

11th Meeting 2000, Session 1

CONVENER

*Trish Godman (West Renfrew shire) (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

Ted Davison (Scottish Executive Development Department)

Mr Frank McAveety (Deputy Minister for Local Government)

Trudi Sharp (Scottish Executive Development Department)

CLERK TEAM LEADER

Eugene Windsor

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 1

Scottish Parliament

Local Government Committee

Tuesday 28 March 2000

(Afternoon)

[THE CONVENER *opened the meeting at 13:35*]

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

The Convener (Trish Godman): We have a reasonably full agenda. Members will recall that we sent Sylvia Jackson to the Standards Committee to act as a reporter on our behalf. Members will have received copies of her comments as well as a letter to the clerk team leader, Eugene Windsor, from Bill Thomson, who is head of the chamber office. That letter comments on the fact that the committee was interested in trying to include MSPs under the Ethical Standards in Public Life etc (Scotland) Bill.

There are a couple of things that I want to tell the committee about that. First, the bill was designed to establish a framework for securing the observance of high standards and conduct for councillors and other persons holding public appointments. At present, the bill does not cover MSPs and ministers. Advice from the civil servants who drafted the bill indicates that a stage 2 amendment to include MSPs might be admissible. However, if such an amendment were admissible, the bill would require substantial redrafting. That would delay its passage for up to a year. As members know, the bill also includes a measure in relation to the controversial section 2A of the Local Government Act 1986.

The letter from Bill Thomson says:

"It also became apparent during the meeting that a number of the members of the Standards Committee would not agree to the view that MSPs should be included at this time".

We were very keen that MSPs should be included in the bill and I have not changed my position. However, I am trying to work out something that would be acceptable to us all, so that we can pursue the bill without wrecking it. I suggest that we write a section into our report, indicating that the committee has given considerable thought to the matter and that if we did not pursue the matter in this bill, we would ask the Standards Committee to consider separate legislation or other arrangements as necessary. I open that up for comment. Again, I must state that I have not changed my position: I think that MSPs

should be included somewhere. However, I accept the fact that if the bill was drafted for councillors and other public appointees, it might not be the right place to deal with MSPs. I am not saying that we should not deal with it or not ask the Standards Committee to consider it at a later date.

Mr Kenneth Gibson (Glasgow) (SNP): It seems incredible that the inclusion of another body would delay the bill for a year. Was the process explained?

The Convener: No. I am not a civil servant, but that is the advice that I was given. It might be a civil servant fear. Eugene, would it be a wrecking amendment?

Eugene Windsor (Clerk Team Leader): No. The comment about the delay of a year was in evidence given to the Standards Committee by the civil servants supporting the deputy minister.

The Convener: The Standards Committee was told that the process would take around a year. I suppose that, if the bill has to be redrafted, it will have to find a slot in which to come back to Parliament.

Mr Gibson: It seems as if it will take an awful long time. I cannot see why it would take a year and I hope that we can be told the reason and the effect that the delay will have on the process.

The Convener: I am not changing my position. I am telling you that I have been told that the process could take up to a year. If the process of redrafting the bill will hold up the bill too much, we will have to take cognisance of that. Other things in the bill are equally important and would lead us to believe that we should continue with it. However, we should pursue the matter that we are currently discussing through the Standards Committee, in the first instance.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): I agree with you about the need for MSPs to be covered by the bill. I am not aware of the technicalities, but I am sure that it would require a great deal more expertise than I have. I am also concerned about extending the bill to cover further education colleges and higher education establishments. Would the same principle apply to them?

The Convener: No. The bill is concerned with persons holding public appointments. Members know that the Executive has decided that certain people holding public appointments will not be included, such as people on local enterprise companies, university senates and college councils. We have said that those people should be included and I assume that our report will contain that message. We have not changed our position on that. MSPs and ministers are not covered in the draft bill; appointments to public

bodies are, although the Executive has chosen to take some out. The two situations are slightly different.

Donald Gorrie (Central Scotland) (LD): Subject to exploring the solidity of the advice, it is reasonable that we should not foul up the whole process. Of course, we should press hard for another bill to cover the matter that we are discussing. We should not necessarily accept the Executive's decision on the other bodies but should push our views.

The Convener: That would be my intention. Later today, we will consider what is going into the report and I expect that that will be included. It seems that the bill is not the appropriate way in which to legislate on MSPs in the manner that we would wish. I suggest that we write to the Standards Committee and suggest that it takes up the matter. It has been discussed in that committee, so it has been raised before and is not a new phenomenon.

Mr Gibson: I accept what you say, but before we go that far, we should have an explanation of some of the technicalities. We might face the same situation with other bills in the future; we do not want to debate an issue for months only to find that what we have been discussing cannot be included for reasons of time. I would like to have an explanation of the technicalities.

The Convener: I would not have any problem with writing to the Executive about that.

Perhaps Donald Gorrie can help me. At the back of my mind a bell is ringing about miscellaneous provisions bills at Westminster that can amend other bills—it is not that I want to follow the road of Westminster, but if it has good practice, it is not a bad idea. It is not for us to say whether we can do that. Kenny Gibson has a point—we need some clarification on the Executive's position in regard to why a civil servant said that there could be a delay of about a year. We could ask whether it has suggestions on how the committee could pursue the matter.

I said earlier that we would write to the Standards Committee, but rather than write to it, we will state strongly in our report that it should pick the matter up.

I am discussing the matter now because Sylvia Jackson produced a report having gone to the Standards Committee as a reporter on our behalf, and I know that members feel strongly about the issue. We will question Frank McAveety in a few minutes; I felt that we should clarify the issue before we did so because we might otherwise have spent a long time asking him about his opinion and clarifying the advice that we are getting on the legalities.

13:45

Mr Gil Paterson (Central Scotland) (SNP): Are we likely to get an answer from the officials who come with Frank McAveety?

The Convener: No. I think that my suggestion is the way to pursue the matter.

The Executive is not saying that such an amendment is inadmissible; it said that it might be admissible. We might have to pursue the issue in a different way. This is not satisfactory; Kenny Gibson is right to say that we received the information far down the road, after we had made certain comments on the issue. However, I should be happy if we could pursue it in the way that I suggest—we have the opportunity to make a strong recommendation in the report and to see what the Standards Committee does about it. We might pick up the matter then, but we can get clarification from the Executive on that.

I have been told that we cannot pick up the matter because it is not in our remit, but we can pursue it through other committees. This is complicated—it seemed easy to add MSPs and ministers to the Ethical Standards in Public Life etc (Scotland) Bill, but it looks as if it would be complicated. Rather than try to amend it because all the members of the committee agree that it should be done, we should learn to do it properly. If members bear with me, we will pursue the matter in whichever way we can.

We welcome the Deputy Minister for Local Government, Frank McAveety, who is here to answer questions again. He will be supported admirably by Trudi Sharp—whom we have met in the past—and Ted Davison. Frank McAveety will make a statement, after which members will ask questions.

The Deputy Minister for Local Government (Mr Frank McAveety): I thank the minister for inviting me back to follow through some of the issues that have been under deliberation since the last time we met. The Executive is engaged in consultation on the Ethical Standards in Public Life etc (Scotland) Bill. The Executive has received submissions from organisations that are likely to be affected by the bill. The committee has also carried out pre-legislative consultation and scrutiny.

We listened carefully to many of the views expressed on the draft bill; we considered those ideas and, where appropriate, made changes that I hope will be to the satisfaction of those who made the submissions. We have strengthened and improved the bill. I want to put on record my appreciation of the work undertaken by individuals and organisations—and by members of the committee—in responding to the draft.

Many of the initial responses to the consultation commented that there should be a right of appeal on decisions of the standards commission. The Executive recognises that a right of appeal should enhance public confidence in the new ethical framework. We will take forward discussions with those with interests in that area, on how that should be achieved, and we will lodge amendments to provide a right of appeal.

People are also concerned about parity of treatment between councillors and members of devolved public bodies. We have given further thought to that and have decided to amend the bill to provide the standards commission with the power to impose sanctions both on councillors and on members of devolved public bodies. That was not in the initial draft.

Crown appointments have a special constitutional position and it would not be appropriate for the standards commission to impose sanctions on such members. Instead, following an investigation of a Crown appointee, the commission will make its recommendation to the Queen. The Executive will lodge amendments to provide for such circumstances.

We said that we wanted to make further changes in the administrative arrangements for the standards commission for Scotland, the chief investigating officer and the staff; we have now done so, and there are a number of minor technical amendments to the bill.

Those are the areas that we have considered since we last met. Committee members will have questions on the detail.

The Convener: Thank you. We wrote to you about some other issues in the report, on which there has not been a response. I ask you again about the extension to include other public bodies, such as local enterprise companies, college councils and university senates, to name a few. My membership of the Subordinate Legislation Committee leads me to believe that people have been taken off the list, rather than put on it. I will not argue now about the ones who have been taken off. However, I am interested to know why they are not included. They are spending public money and while I accept that they may have guidelines or standards in their own set-ups, it seems unfair.

Mr McAveety: I understand that the core of your question is about other bodies; however, I would argue that the sanctions that we would expect to exist through the standards commission would not be appropriate for advisory bodies. As they do not have their own staff and budget, they make relatively minimal use of public funds.

The frameworks in which some of the LECs, the boards of the further education colleges, the area

tourist boards and the housing associations operate are autonomous from the Executive. Many have guidelines and procedures in place and should be able to take actions that are commensurate with the guidelines and procedures of the standards commission. The establishment of the standards commission will allow those bodies to reflect on their existing guidelines and to consider whether to bring them more into line with those of the standards commission.

That is why we felt that, at the moment, it is inappropriate to bring those bodies within the remit of the bill. A substantial number of bodies are still encompassed by the bill—it is reasonable to expect that. We have also indicated the three public bodies—in terms of Crown appointments—that are excluded. Once we have received further deliberations from the Crown on that, they may be brought back within the remit of the bill. There are already procedures in place that could satisfy most people's expectations of standards.

The Convener: You said that you would like to see whether those bodies would change. Do you have any "power" to give them guidelines and to say, "This is the kind of standard that we would like you to achieve," or, "Although we will not legislate for it, we will give you certain standard guidelines"?

Mr McAveety: Some of the bodies, for example LECs, are guided by company law. The problem with the higher education institutions is that they are autonomous bodies, so they are not directly accountable to ministers, through appointment or through support. The area tourist boards have annual membership—they can appoint and reappoint members. Those bodies have a number of different procedures already, which is why we did not think it necessary to include them in the bill.

Ted Davison might want to touch on the legal framework for the guidelines and whether, if we cannot directly intervene, the Executive or the Parliament could shape or influence those bodies.

Ted Davison (Scottish Executive Development Department): We cannot do a great deal, because the bodies are so miscellaneous. As the minister said, some are governed by company law and others have different kinds of constitution and control. The Executive went through the whole list with a fine-toothed comb. The bodies that are named in the bill are those that ministers agreed would need such supervision.

The Convener: Yet all these bodies spend public money. Something does not tie up there, and in the long term it should be looked at—although perhaps not in the bill. We should expect the same standards wherever public money is

being spent, regardless of whether company law applies.

Johann Lamont (Glasgow Pollok) (Lab): Even though LECs are covered by company law, they are still public bodies. Do some of the provisions in the bill that relate to folk who deal with public moneys conflict with company law?

Mr McAveety: Many of the bodies have said that they already have frameworks that are a match for anything that might emerge from the bill. I agree that the principles that apply to councils and to the public bodies that are named in the bill should be reflected in the frameworks that exist for other quasi-public organisations. I am flexible enough to look into whether we can have a dialogue on that. The bill creates a template for others to match.

Johann Lamont: It could be argued that in the bill we are standardising disciplinary and scrutiny processes across a number of bodies that already have them. We do not understand why some bodies have been excluded on the basis that they already have such processes. Local authorities already have codes of conduct, but we still feel the need for a national ethics bill. Is there something in the bill that would create a problem for the LECs and similar bodies? If there is not, that would be an argument for including them. We would not be saying to them that we did not think that they had adequate scrutiny processes, but we would be saying that we believed that it made sense for all organisations that disburse public money and are publicly accountable to sign up to the principles of the bill.

Mr McAveety: The bill covers the areas that we believe it is reasonable for it to cover. It is worth considering whether the bill can be amended to allow a greatly extended range of control, but that would require an exercise that might take us beyond the time that is available for scrutiny of the bill.

Donald Gorrie: I find your position on the matter totally unconvincing. LECs are public companies, but they are quite different from Scottish & Newcastle or the Distillers Company. In an ordinary company, the directors are responsible to the shareholders, but in the case of LECs and further education colleges, we represent the shareholders—the people of Scotland. There should be a common standard. The idea that we should set a common standard for some bodies and introduce an amendment later to extend it to others is feeble in the extreme. We should deal with all those issues at once. The suggestion that huge complications are involved is a bureaucratic smokescreen. I see no great complexity, and I believe that LECs should be included in the bill from the start.

The Convener: The minister does not wish to comment on that at this point. Michael McMahon would like to ask a question on the same subject.

Mr McMahon: Minister, I am a little concerned that we may be creating get-out clauses. If a reason for bodies not coming within the scope of the bill is that they have their own regulatory frameworks or that they come under corporate law, does that not allow them to ask whether they can re-establish themselves under their existing regulatory frameworks, thus getting themselves out of the clutches of the bill? Would it not be better to stipulate that bodies that spend public money and are accountable to the public should fall within the scope of the bill? Those bodies are responsible for looking after the public purse. We should not give regard to the regulatory frameworks within which they work just now, but should ask them to address the issues in the bill.

Mr McAveety: I do not think that people will be able to invent reasons for their exemption. The framework of the bill is built on existing building blocks. That is the start, but there may be opportunities for further development in other areas. I want to stress that to have some control over a body's capacity to intervene on a standards issue, we are trying to find a framework that brings them all together. I would not support anything that meant that folk in a quasi-public body could invent exemption clauses. That would be looked on with disdain; however, we should be able to do something about that with the framework that will exist.

The Convener: We have given the minister quite a run on this one, so I will ask Keith Harding to ask one more question before I change the subject.

Mr Keith Harding (Mid Scotland and Fife) (Con): How will you cope with the countless arm's-length companies of which the directors are councillors who operate under memorandums and company articles of association? If they misbehave, will they fall within the scope of the bill, or will they be controlled by the companies?

Mr McAveety: They will fall within the scope of the bill.

Mr Harding: So why not the others?

14:00

Trudi Sharp (Scottish Executive Development Department): The bill extends to councillors whenever they are acting in their capacity as councillors. If they are acting as directors of another body because they are councillors, they will be governed by the bill.

Mr Harding: Many councillors are also on tourist boards and involved in other areas that you say

will not be included. How will you punish them, but not the other directors, for misdemeanours?

Mr McAveety: I will come back to you on that question, Keith, because I am not quite clear about it myself.

Johann Lamont: If you do not address that problem, the councillors who sit on those boards will be answerable under this bill, but other members of the boards will not. That would be singularly unjust.

The Convener: Will you take that on board, Frank?

Mr McAveety: Yes.

The Convener: I would like to change the subject now with a question from Gil. I am sorry, Gil, I meant to bring you in earlier.

Mr Paterson: That is all right—I did not want the minister to get off the hook.

I would like to ask a question about equality in the standards that we are about to produce. At present, if a person in the private sector is suspended, that person will normally—although I must add the rider that it depends on the reason for the suspension—be suspended on full pay. Many of our councillors—and the bulk of the ones I am talking about are not from my party so I do not need to declare an interest—receive responsibility payments.

If a councillor on responsibility payments were suspended, you would, in effect, be taking their employment and their salary from them. If the person turned out to be innocent and the suspension were lifted, that person would have had an unfair burden placed upon them and there would be no way of giving them back the income they had lost. A better way to proceed would be to treat them equally and pay them until they were proven guilty, as happens in the private sector.

Mr McAveety: The difficulty is that councillors receive a special responsibility allowance rather than a salary—there is a distinction between the two. They can receive the SRA only on the basis of undertaking the duties that are covered by it. I am happy to say that we should have a further discussion on interim suspension, which happens only in the most extreme circumstances, when the chief investigating officer carries out the investigation. If the investigation indicates that there has been no breach of the code, there may be an issue of compensation for that period, which is worth exploring. I understand your concern, but there is a substantial distinction to be drawn between a salary and an allowance.

Mr Paterson: It certainly is a concern, and one that needs wider representation and investigation. People who take up public life have to give up

their employment to work in local government, especially if they are conveners of committees. It should not be a matter of transferring a name from an allowance to a salary. It is not beyond the bounds of man—and woman, I should say to keep myself politically correct—for us to come up with a suspension scheme, although it might take three months.

I understand what you are saying about the judgment that is made on people, that that is extreme and serious, and that there is an element of guilt attached. However, we know of cases in which, no matter how guilty a person may have seemed, the process has proved them innocent. Although they may make a claim back, there is something wrong in that—it should be automatic. I hope that you can reconsider that and come up with a scheme that is possible.

Mr McAveety: We will.

Mr Paterson: Well, that is fine.

Mr McAveety: We are awaiting the report of the renewing local democracy working party, and the other post-McIntosh consultation. Some of the issues concerning the nature of allowances may well be addressed by that.

The Convener: We started 15 minutes early, but that does not give members permission to make long speeches before they ask questions. Gil Paterson's question was relevant, but I ask members to try to keep their speeches shorter.

Mr Gibson: I shall try to keep it brief. Part 2, section 18—"Action on finding of contravention"—lists several sanctions. Could you outline some of the offences that would meet the criteria for those sanctions?

Mr McAveety: I shall ask Trudi to answer that question.

Trudi Sharp: The bill provides for three sanctions; it would be for the standards commission to decide which sanction was appropriate. That would clearly be within its competence. The codes have not been drawn up. It would be invidious of us to sit here and speculate on what sanctions might be imposed for different sorts of behaviour.

Mr McAveety: Do you want to touch on that further, Kenny?

Mr Gibson: I do. In its submission, our former local authority—it was Glasgow, in case you do not remember—was concerned that the bill might be harsher than a court of law in imposing penalties. It felt that the level of evidence would be less exacting but that the penalties would be more severe. That is why I wanted to know whether there would be a comparison and what sorts of offences the Executive would have in mind when

considering a disqualification, censure or suspension.

Mr McAveety: It is difficult for me to speculate, given the personality profiles that exist in all public bodies throughout Scotland, on what kind of cases would form such scenarios. The sanctions are graded to take account of the nature of breaches. On concerns that the code would be harsher than a court of law, a key element that was raised in the previous discussion was the right of appeal. We are trying to address that concern, which was expressed strongly by the Convention of Scottish Local Authorities.

It would be difficult to provide scenarios for each criterion. We require further debate, particularly once the CIO is appointed, to identify how best to respond to breaches of the code. I envisage the code acting more simply, as an overarching code that codifies and modifies how people in public bodies behave and allows them to recognise the framework within which they operate. Although there has to be gradation of intervention, I hope that we will be talking about the lower end of the scale. Where offences are very severe—I have read the Glasgow submission—the appropriate channel of intervention might be through criminal law.

Mr Gibson: I accept what you have said, minister, but will there be further consideration of this matter? I know that it may be difficult to produce individual scenarios, but could the Executive come back with a possible framework for areas in which these sanctions would be imposed?

Mr McAveety: You and I can swap names and compare case notes in private.

Mr Gibson: That leads me to a supplementary.

The Convener: A second supplementary.

Mr Gibson: I note that the Executive has not responded fully to our concerns about malevolent claims against people. You will be aware that that issue impacted on a local authority while we were both councillors there. We will both be aware of individuals who have made malevolent claims against members of that authority. Will you comment further on that?

Mr McAveety: Once we have appointed Solomon as CIO, we will address that issue clearly. It is a hard matter to deal with, because it is bound up with a range of local issues, personalities and psychological factors.

It is important that the person who is appointed to be CIO has experience of handling such cases and knows that the letters in green ink and block capitals are not reasonable assessments of whether a case is well founded.

The CIO should be broadly aware of the roots of some complaints. Many of us in public office could identify with reasonable certainty people who are likely to put in letters of complaint. There must be a good process to filter allegations to get to the heart of complaints. Some complainants might be right once in 20 times, so the CIO must have good judgment to decide when it is appropriate to investigate a case.

Trudi Sharp: There is obviously a genuine issue to be addressed. The bill proposes that the CIO should have discretion to decide whether there is merit in a claim and, if there is not, to decline to pursue the matter. Also, the CIO will be able to conduct investigations in private, which will help to keep things in perspective. It would be difficult to stop publicity about malevolent claims absolutely.

Mr McAveety: When there are clear standard guidelines, locally or nationally, one can quickly weed out many concerns, so that there is greater public clarity about what are legitimate issues of concern. In the absence of institutions, it is easy for folk to make a series of complaints because they will claim that those complaints cannot be investigated properly. The benefit of an effective CIO role is that the CIO can quickly deal with cases and make them public.

Mr Gibson: I am about to be horsewhipped by the convener for asking too many questions. Will the CIO accept only written allegations?

Mr McAveety: No. There are parallels in employment. Sometimes, issues come up that require investigation. The CIO has an independent role and could take up cases that they have not been made aware of from a written source. It is worth allowing that discretion and flexibility. It is obvious that, in the following stages, the CIO would require substantial back-up to investigate any concerns, but we would be ill-advised to restrict the role of the CIO on the basis that complaints could be in written form only—for many reasons, such as educational attainment or language comprehension, that could be a barrier to concerns being raised. We need to be sensitive to that.

14:15

Mr Gibson: I know that I am pushing you, convener.

The Convener: Not half.

Mr Gibson: I have one last point. You would not expect the CIO to accept anonymous allegations. I realise that allegations would be taken in confidence, but if someone were to send in an unsigned letter I assume that the CIO would not pursue it.

Mr McAveety: I would like to answer that.

Sometimes, anonymous allegations are received. There should be robust systems to investigate them, no matter whether it is felt the allegation is right or wrong.

As the leader of an authority I was in a position in which anonymous allegations were made in letters and by telephone. There is a responsibility to look into them, because failure to do so can result in someone claiming that you were given information three or four months previously and chose to ignore it. When that happened to me in the past, Kenny, I felt that it was important to investigate. Following thorough investigation, 90 per cent of allegations were found to be malevolent, but there have been cases in which anonymous allegations identified clear breaches, resulting in something having to be done about the conduct of personnel or the operation of services.

Colin Campbell (West of Scotland) (SNP):

Most of us have been councillors, which was probably the least well paid of the activities most of us have indulged in—and we were liable to surcharge. Having moved through the political system, we are no longer under threat of surcharge. I am curious to know why the Executive has not given its thoughts on that matter. We would like surcharging to be removed.

Mr McAveety: I am conscious of that, and I broadly share that view. We are in discussions with the Accounts Commission and other organisations to determine what would be as effective if surcharging were abolished. It is about working with folk. We have had good submissions from the Society of Local Authority Chief Executives and Senior Managers, and we hope to bring something forward in due course.

Mr McMahon: Given the large and well-deserved Labour majorities in North Lanarkshire and South Lanarkshire, this scenario would not impact on my area, but it might impact on a place such as Stirling, where the majority is tighter. It goes without saying that if someone is found guilty of an offence and is suspended, that suspension should stand, but the political complexion of an authority could change while someone is suspended. The person could then be found not guilty of the alleged offence. Has any thought been given to how such circumstances could be addressed?

Mr McAveety: We are talking about the most extreme circumstances. First, the recommendation for an interim suspension implies that a serious case is being looked into and that a proper investigation requires the suspension of the individual. I am conscious of what you are saying. Guidance notes could be given to local authorities to reflect that.

Secondly, there will be times, irrespective of the

political make-up of a council, when, through illness or a change in work circumstances, a tight situation could change quickly and the scenario Mr McMahon described could emerge. The evidence shows that that has not happened in Scottish local government, even in tight circumstances. Local government has greater maturity about addressing these issues than people give it credit for.

A clear framework can modify behaviour dramatically by concentrating people's minds even more on the fact that an individual's behaviour can have an impact on colleagues. We found that the presence of a standards committee controlled a situation more effectively than its absence, because people realised that there was a mechanism that allowed us to intervene. As a result, people became more aware of the boundaries within which they operated and the dangers of being seduced by certain opportunities.

It should be pointed out that interim suspension would apply only to more extreme cases; the bill is more concerned with the average situation.

Mr McMahon: That scenario could still occur, even if there were a general perception that people would not abuse the situation because the new standards commission existed.

Mr McAveety: Should we not have interim suspension at all then?

Mr McMahon: I think that it is better to have the foresight to address the issue now, instead of saying, "We did not see the problem coming."

Trudi Sharp: As the minister said, the situation could arise for other reasons—for example if a council member could not attend meetings because of illness. If we are to examine what might happen if interim suspension were used, we must also take account of other circumstances in which the political composition of a council might change.

Mr Harding: I do not think that the situation would arise because of illness. Having been a councillor, I can assure you that members are brought in on stretchers.

The press has reported today on proposals for a private referendum on the repeal of section 2A. Would the outcome of such a referendum affect the Executive's decision on the issue?

Mr McAveety: Because I do not know the full details of the press's speculation, it would be inappropriate to comment on that issue at the moment.

Mr Harding: Well, the speculation is about a referendum on the repeal of section 2A.

Mr McAveety: Convener, as I said, because I do not have details about any speculation, it is hard for me to comment on them or on the

Executive's position. However, we are discussing and debating the issue through the parliamentary process and ministers will consider any submissions made during that process before we decide whether the section should be repealed.

The Convener: I know how difficult it is to comment on press speculation.

Donald Gorrie: I am sorry that my previous contribution did not end with a question mark; it was supposed to.

I have two very succinct questions. First, will the minister consider including in the bill a facility for a council to have a standards committee that would fit into the national system if the council so wished?

Mr McAveety: Yes.

Donald Gorrie: I do not think that such a facility exists at the moment.

Mr McAveety: We have received a number of submissions from Scottish local authorities that want to set up their own local standards committees, and I have told them that nothing in the bill precludes them from doing so.

Donald Gorrie: That is encouraging. It might be worth considering a system of integration that allows local standards committees to fit into the national framework.

My second question concerns problems that some of your colleagues have experienced with European rules on people's independence. Are you satisfied that we would not be open to some challenge if the chief investigating officer is appointed by the Executive? Would some councillor who is being investigated not take his case to Europe and get a judgment reversed?

Mr McAveety: I will give you the technical answer as these matters are incredibly interesting.

Both the CIO and the commission are appointed by Scottish ministers. The CIO holds an investigatory role only. The commission imposes the sanction. The policy memorandum on the European convention on human rights that accompanies the bill states that the only ECHR issue that appears to arise in relation to parts 1 to 3 of the bill is whether, in imposing sanctions on the council or a member of a devolved public body, the commission is determining the civil rights and obligations of that person.

The Executive considered that the arrangements relative to the commission as set down in the bill guarantee that the commission's activities will not involve the determination of civil rights and obligations. I assure the committee that it is no more interesting reading these things out than it is listening to them.

Johann Lamont: I want to ask about the idea of there being local standards committees and organisations that would filter cases. Would it not be an idea to make that system stronger? When dealing with malevolent claims, someone who has been referred to a body as large as the standards commission is already damned in some eyes. The message has to come out that all complaints are investigated. We should also recognise that people often do not read about the conclusion of an investigation—only that someone is being investigated. I stress that in no way do we want to make what happens in local authorities less transparent. That is why I think that it might be reasonable to consider setting up a filtering mechanism at a local level.

Mr McAveety: One issue that is often forgotten about is confidentiality. A complaint is not the case. The investigation that is undertaken by the CIO has credibility only if the case is presented in front of the standards commission.

We have to address the publicity that might arise when a case has been referred to the standards commission. There must be a way to rebut allegations and ensure confidentiality. The process must be robust and not be subject to external influences such as publicity that has been generated in an attempt to cause damage to the inquiry.

If a council has a standards committee, it might have an officer who is responsible for investigation. It is important that such people be allowed to carry those duties out. Also, those who serve on standards committees have responsibility for their own behaviour as regards information that is heard in a standards committee hearing. The only matter of substance is the conclusion that the committee arrives at; any issues of acquisition of information should not be part of the public debate.

The role of the investigating officers is critical in ensuring that credible cases are assessed by a standards committee locally or the commission nationally.

Johann Lamont: Very often, there is a political context to complaints. They generate huge amounts of publicity but the conclusion of the investigation does not. Is there a process that acknowledges the level at which a complaint was made without minimising the complaint?

Mr McAveety: I do not know whether there is a legal framework by which we can prevent the political scenario that you are talking about. The only answer to that is to ensure that there is a quick and robust investigation. Clarity of audit deals with any breach of a code of conduct.

If an individual is cleared, that must be clearly indicated to ensure that the public are aware of

that fact. That is the best we can do in the circumstances. It is not an ideal world and people sometimes behave in an odd and difficult way. The public need to know that a robust investigation is taking place—one that is transparent and accountable. By doing that, we can address the concerns of the majority of the general public.

14:30

The Convener: Do you have any idea how many local standards committees there are?

Mr McAveety: I am not sure—there may be five or six.

The Convener: Is that all?

Mr McAveety: Yes. Several councils that I have visited are considering setting up their own standards committees. It would be helpful if that happened. We should develop a relationship that would allow the sharing of good practice so that we can learn from one another.

The Convener: One of the concerns that you did not address in your letter was that there seems to be evidence that there will be an overlap between the Accounts Commission, the local government ombudsman and the national standards commission. Do you share that concern and, if so, how do you see it being worked out?

Nowhere does the bill mention timing. I am sure that we can all think of examples of councillors being suspended for more than a year and not knowing why. The bill should contain some comment about the length of any investigation. I appreciate that some investigations will take longer than others, but it seems unfair that someone could be suspended and have no idea how long that might last. After all, if a person is charged with murder in this country, they must be in court within 110 days—not that I think that a councillor would ever be charged with murder, although it might not be a bad idea in some cases. Do you have any comments on that?

Mr McAveety: I have given a commitment to examine the question of overlap. We have had submissions from COSLA and SOLACE and those contributions will be brought into the debate. The ombudsman, the Accounts Commission and the standards commission would operate for different reasons. We want to bring them together to share knowledge and expertise, rather than to minimise the roles that they play.

I have no knowledge of any lengthy investigation involving the Executive. Perhaps Trudi Sharp can comment on timing.

Trudi Sharp: Everyone accepts that investigations should be carried out as quickly as possible. The question is whether it is appropriate

to legislate for that or whether the standards commission should be left to develop its own best practice. One of the dangers of legislating on timing is that people might be able to play the legislation—investigations could fall because they had been timed out. As we take the bill through, we can think further about the way in which best practice might be developed to ensure that investigations proceed as quickly as possible.

Mr McAveety: The quicker that things are dealt with, the better for everyone concerned. We should endeavour to ensure that that happens, either through the bill or the management process—the standards commission and the role of the chief investigating officer. The message from the Parliament will be that matters should be addressed thoroughly and quickly.

The Convener: There must also be a clear indication of the nature of any allegation.

Mr McAveety: Yes. That is contained in the bill.

Mr McMahon: Would it be appropriate to set a time scale for the resolution of investigations into councillors? Should legislation be introduced to determine that?

Trudi Sharp: At issue is whether legislation is needed to make things happen quickly or whether there are more appropriate ways of ensuring that. That question deserves further consideration.

Mr McAveety: It is my contention that the bill should provide for effective investigation and for cases to be dealt with as expeditiously as possible. The worry is that setting a time scale could lead to cases being strung out for political reasons.

Mr McMahon: Is legislation required or would guidance be sufficient?

Mr McAveety: The matter could be addressed through guidance and through practice.

Donald Gorrie: During an investigation, the case may be passed to the police, to see whether a criminal charge should be pressed. A set time scale could lead to difficulties if after a long time the police decided that there was no charge to answer but there were still matters for the CIO to investigate. The police are not under anyone's control.

Trudi Sharp: The bill allows for cases to be brought against people who no longer hold a position, such as ex-councillors and ex-members of public bodies. In the public interest, it might be appropriate to carry out an investigation into something that took place six months or a year earlier.

Mr Gibson: Section 26 of the bill refers to councils' duties to children. I noted with some curiosity that section 26(2) contains definitions of

the words “children” and “council”. There is concern about the phrase

“the value of stable family life in a child’s development”.

Does the Executive plan to include a definition of stable family life, given all the hysteria that has been generated on that issue?

Mr McAveety: In our framework we have indicated that we want to include as much as possible and reflect the current nature of Scotland. Stable family life includes those who operate within marriage, families in which both parents are present, even though they are not married, and, in some cases, kids living with a single parent. We need to reflect in legislation how Scotland is, rather than how we wish it to be.

Mr Gibson: I fully understand that. I simply wanted to know whether you intended to include a definition of “stable family life” to prevent bizarre interpretations of that term.

Mr McAveety: The definition is self-referential, is it not?

Mr Gibson: One could say the same about “children” or “council”.

The Convener: As there are no more questions, I thank Frank McAveety, Trudi Sharp and Ted Davison for their time.

Next week the draft report on the bill will come before us. Do we agree to consider it in private?

Members indicated agreement.

Petition PE26

The Convener: At our meeting of 15 February we agreed that we would write to the City of Edinburgh Council, Dumfries and Galloway Council, Highland Council and Stirling Council to ask for information on how they deal with petitions. The councils’ replies have been distributed to members.

The number of petitions that those councils receive seems relatively small. Petitions are subject to a scrutiny process in each council, although those processes are slightly different. Members of the public can express their views to councils in other ways, including through deputations or delegations to the councils and by turning up at committee meetings. All four responses seem to back COSLA’s opinion that it should be up to each council to decide how it deals with petitions. That would certainly be my position, but I open that up to comments from the committee.

Mr Gibson: We support subsidiarity.

Colin Campbell: Strange as that may seem.

The Convener: So, we all agree with subsidiarity and with what COSLA is saying. The councils approached this in different ways, but it seems eminently sensible that each council should be allowed to process petitions in its own way.

Donald Gorrie: If some organisation wrote to us saying, “We sent a petition from our village to council X, which just put it in the bin”, I presume that we could invite that council to pay some attention to it.

The Convener: To take it out of the bin?

Donald Gorrie: Yes. However, as long as councils have decent systems, it does not matter whether they have different systems.

The Convener: Yes. There is the Public Petitions Committee, of course.

Colin Campbell: This matter would not have arisen but for the fact that somebody felt dissatisfied with the situation. The least courtesy that any council can extend to its people is to acknowledge petitions and say which bit of the system they go through, even if the petitioner does not get the outcome that they desire. That courtesy seems to be what is lacking.

Mr Paterson: The main issue is not the petition, but access to the council for individuals or groups. The responses tell us that a system is in place in local government, which satisfies me.

We must guard against a campaign of petitions. There should be no automatic response to people

who run a campaign of petitions on one matter, which would tie everybody up. Responsible actions on the part of the public, as well as on the part of councils, must be expected.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I agree. Councillors are pretty open about the way in which they do things; there is no particular problem in Scotland regarding the openness of meetings and the publication of minutes. The public can track what is happening to a petition in which they are interested. I am not aware of poor performances by councillors on this; most match the responses that we have received. If the public feel that a petition has been binned, they have the right to adjust things at the next election—that cuts across all councils. I would be more concerned about what would happen to a petition that is sent to a local enterprise company or to a health board—on hospital closures, for example. That might be a more relevant avenue of investigation, although it is linked to the previous agenda item.

The Convener: We will write to the petitioner who wrote to us, advising him of the action that we have taken—that we have asked other councils and have found the systems satisfactory. However, the issue was not the petition, but the way in which it was dealt with.

Budget Process 2001-02

The Convener: Committee members have received a briefing note from Eugene Windsor, a copy of a letter to me from Mike Watson—the convener of the Finance Committee—and a flow chart that outlines the budget process. The departmental report was due to be released on 31 March, but that has been delayed slightly. I understand that a draft might be available for 31 March.

We suggested a timetable for taking evidence from the Executive, Professor Arthur Midwinter—whom we have invited before—COSLA and the Minister for Finance, Jack McConnell, as the minister who is responsible for local government finance. We were considering whether to invite Frank McAveety back to give evidence, as he is the minister for the spending department, if you like. We might invite them all.

14:45

Johann Lamont: It seems reasonable enough to invite those people. It might be useful to take evidence from trade unions, as they are responsible for the local government work force and have quite a lot to say about delivering public sector services.

We might also consider taking evidence from the Women's Budget Group, which includes academics, the Equal Opportunities Commission and Engender, which is responsible for developing the gender audit. The group has been brought together to examine the budget process in terms of equality, particularly in relation to women. Given that women are major users of local government services and are often the low-paid employees, the group may offer us an interesting perspective. This matter was raised at the Equal Opportunities Committee; I recall that it was agreed that the convener of that committee should write to subject committees asking them to consider taking evidence from the group. I hope that we will take that opportunity, as this is the first time that expenditure will be considered in relation to equality.

The Convener: That sounds like a good idea.

Mr Gibson: I am happy to support Johann's suggestions. Perhaps we could also hear from SOLACE. I am concerned about the third paragraph of the briefing paper, which states that

"opportunities for the Local Government Committee to make representations on the spending proposals may be more limited than those for some other subject committees."

It seems that things are being stripped out of this

committee's remit. Housing and education are being discussed elsewhere, and we are left to discuss systems and structural issues. It is fundamental that this committee should also discuss such wider issues and I hope that, like other subject committees, we can be at the forefront of discussions.

The Convener: I have discussed the matter with Eugene Windsor and I know that other committees will be discussing the budget. I thought that we should appoint reporters from this committee to go to meetings of the Health and Community Care Committee and the Education, Culture and Sport Committee at which aspects of the budget are discussed. That is quite a commitment, but the work will be spread over a year, so members will not have to attend those meetings every week. I was going to mention that next week but, as it has been brought up, I shall suggest it now.

I would be interested in attending the Health and Community Care Committee to see how community care is funded, as that is directly linked to local authorities. There would certainly be a need to sit in on the Social Inclusion, Housing and Voluntary Sector Committee's discussions on housing. I am sorry; I forgot that housing was self-financing. We should appoint reporters for transport, education, health and anything else that is covered by local government services, apart from housing, which I keep forgetting is self-financing.

Mr Gibson: Housing is still part of local government, however.

The Convener: That is right. For us to be able to consider matters thoroughly and properly, and given that we will be conducting a review of finance, we should consider appointing reporters. I would like to cover community care, and members should think over the next week about which subjects they would like to cover—it should not be a problem if more than one person wants to cover an area. This will involve extra work, but over a long period, and it will be relevant to the work of this committee.

Mr Gibson: Would it be possible to appoint a reporter to shadow each committee when they are discussing local government issues? We may need half a dozen reporters.

The Convener: That is the idea.

Bristow Muldoon (Livingston) (Lab): The proposed consultation and scrutiny periods are to be welcomed. I hope that the greater involvement of local government will be reflected and that settlements can be agreed amicably on all sides at the end of the process. I echo the comments that this committee must have a key role in examining the whole question of local government finance, rather than confining itself to systems or to the

abstract. We must reflect on the impact on service delivery in local government of whatever settlement we agree.

In addition to the people who have been mentioned, it is important that we hear evidence from the Minister for Finance and the Deputy Minister for Local Government. It would also be useful to hear from representatives of trade unions that are involved in local government, whether as a—

Johann Lamont: I already mentioned that.

Bristow Muldoon: I am sorry, I must have missed it.

Mr Gibson: We all switch off when Johann is talking.

Johann Lamont: Even I switch off when I am talking.

Bristow Muldoon: I agree with Johann that we need to talk to that group.

The Convener: Eugene Windsor has pointed out that we have to report by 23 May, so our time is limited. Why do we have to report by then?

Eugene Windsor: The time scale has been laid down by the Finance Committee, which is co-ordinating the process.

The Convener: I thought that we had a year.

Bristow Muldoon: There are several stages. The report is only the first.

The Convener: Eugene and I will have a chat about that. If there are several stages, we could invite people at different times.

Mr Stone: I want to back up the points made by Kenny Gibson and Bristow Muldoon. We have an overarching responsibility for local government finance because of the interconnectedness of revenue budgets and capital allocations. When we have time, I want to ask about local government rules, such as those that govern capital expenditure. At present, revenue must be spent in the year in which it was earned. If the years were lumped together, pressure could be taken off capital budgets with no effect on the public sector borrowing requirement. There are other ways in which we can consider revenue balances. The committee has a role to play in that kind of consideration. I admit that it is a wee bit worrying that a lot of our stuff—

The Convener: I would like us to be clear about what we are doing. We are considering our response to the budget process. Jamie, you are straying into a discussion of our examination of local government finance.

Mr Stone: I am deliberately putting down a marker for the longer term. I agree with what you

say about the time constraints.

Johann Lamont: If our time is constrained, it would be legitimate to ask for written comments from the groups that we have mentioned. My anxiety is that a process that is driven by the Finance Committee could quickly become incomprehensible and the meaning of the process—in terms of services and so on—could be lost. Our role must be to keep people away from just adding up sums.

As well as noting where things seem silly and dealing with them later, we have a responsibility to join the budget up and make sure that everything is connected. People who are involved in this area tell me that no matter how good the joint working between local government, health boards and Government departments is at a local level, budgetary issues drive them apart further up the system. We should ask the Finance Committee what system it has decided to use to ensure joined-up action. We should not view the budget process as separate from politics; one of our jobs is to examine the politics of the finance debate.

Donald Gorrie: I would make the same point about joined-up government. It should be our duty to knock the heads of various committees together. It is worth keeping an eye on the housing issues because, although council housing is funded in its own way, issues such as those surrounding the financing of housing associations are serious. Transport issues are also relevant and important. Liberal Democrat councillors talk about holes in the roads almost more than they talk about anything else. The state of the roads is a huge issue, as is local public transport. The environmental responsibilities of local councils should also be examined. Observers of the various committees should examine those issues.

Mr Gibson: In response to a question at the COSLA conference last week, Jack McConnell said that he would be more than happy to make the full resources of the Executive available for a review of local government finance. This committee should assert itself more. A COSLA representative is in the public gallery. Although the three ministers and Margaret Curran, who is convener of the Social Inclusion, Housing and Voluntary Sector Committee, spoke at that conference, nobody from the Local Government Committee was asked to speak. I hope that the convener will be asked to speak at the conference next year. There are many developments in local government of which it would have been appropriate for the committee to make delegates aware.

Bristow Muldoon: Irrespective of the tight time scale at stage 1, we should hear from the full range of people about whom we have talked today. The opportunity to influence the outcome of

the financial settlement for next year is greatest early in the process. I hope that the Executive's budget proposals will be influenced by the initial Finance Committee report, which will be produced at the end of June. If we hear from organisations only after stage 1, when the general framework will have been more or less set, there will be a danger that we will be able to amend the settlement only at the margins and that we will not be able to make a significant impact. Even if additional meetings are required, we should take the opportunity to hear at stage 1 from all the organisations that have been discussed today and play a full role.

The Convener: I will discuss that with Eugene Windsor. There may be time constraints, as the Ethical Standards in Public Bill etc (Scotland) Bill must be completed before the summer recess. If it proves impossible to hear from those organisations at stage 1, perhaps we will take up Johann Lamont's suggestion of seeking written evidence. I prefer to take oral evidence, as one question leads to another.

I want to tie this up, as we are beginning to stray from the budget to local government finance, which is a slightly different subject, and the official report will start—

Mr Stone: Strictly on the budget, I make a plea that we remember the Justice and Home Affairs Committee—the ability of police forces to requisition can cause mayhem in local authorities.

The Convener: I leave it to members to consider the matter and to inform Eugene Windsor of their thoughts over the next week.

Mr Gibson: We need reporters at every committee at which local government finance matters are being discussed. I volunteer to attend any committee meeting that you see fit that I should attend, convener. We need volunteers to say which committee they would like to report on. Because of your role in social work in Glasgow, I think that it is absolutely right that you should be on the Health and Community Care Committee; others may have particular interests, but I am happy to fill any gaps.

Johann Lamont: We should request information on when committees will meet. That will allow us to determine whether we are able to attend, given our other commitments.

Mr Gibson: We should also seek information on when these issues will arise.

The Convener: I think that this matter is so important that a member of the committee should attend if there is a meeting to be reported on. Reporters will have to attend only for the part of the meeting that deals with the budget.

Meeting closed at 14:58.

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