LOCAL GOVERNMENT COMMITTEE

Tuesday 20 March 2001
(*Afternoon*)

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LOCAL GOVERNMENT COMMITTEE
9th Meeting 2001, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Kenneth Gibson (Glasgow) (SNP)
*Mr Keith Harding (Mid Scotland and Fife) (Con)
*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)
*Iain Smith (North-East Fife) (LD)

*attended

WITNESSES

Eddie Bain (Convention of Scottish Local Authorities)
Bill Magee (Accounts Commission for Scotland)
Councillor Norman Murray (Convention of Scottish Local Authorities)
John O'Hagan (Convention of Scottish Local Authorities)
Peter Peacock (Deputy Minister for Finance and Local Government)
Professor Ian Percy (Accounts Commission for Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERKS

Craig Harper
Neil Stewart

LOCATION

Committee Room 2

Scottish Parliament

Local Government Committee

Tuesday 20 March 2001

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:32*]

Codes of Conduct

The Convener (Trish Godman): Okay comrades, we can start now, as Gil Paterson's arrival means that we are quorate. There are apologies from Sylvia Jackson and Kenny Gibson.

From the Convention of Scottish Local Authorities today we have Norman Murray, the president, and Andrew O'Neill, the policy officer. We also have Eddie Bain, a solicitor who works at the City of Edinburgh Council, and John O'Hagan, the director of administration in North Lanarkshire Council. They are working with COSLA on the code of conduct. I welcome all the witnesses. You have all been to the committee before, so you will know the procedure. We will listen to statements from you, then ask questions. As COSLA starts its conference tomorrow, the witnesses will want to be away in a hurry.

Councillor Norman Murray (Convention of Scottish Local Authorities): I thank the committee for inviting us to give evidence, which we are more than happy to do. As members will be aware, the Ethical Standards in Public Life etc (Scotland) Act 2001, on which the committee led, requires a new code of conduct for councillors to be established. Frank McAveety, who was Deputy Minister for Local Government, invited COSLA last September to prepare a draft code, which we have written and circulated for consultation. Feedback from member authorities and anyone else who cares to comment must be received by 18 April.

I should explain that COSLA established a cross-party member and officer task group to develop the code. In addition to local government, the ombudsmen and the Accounts Commission for Scotland were represented. Scottish Executive civil servants were also present as observers, and helped the group in its deliberations.

I hope that all members have copies of the code, which was issued at the same time as was the Scottish Executive's draft model code for non-departmental public bodies, or quangos. I will not go into great detail about the code. It follows the same style as the code that members of the Scottish Parliament approved last year and is based on key principles, which are carried through into the body of the code.

The code deals with the general conduct of councillors, relations with council employees, allowances, gifts and hospitality, conduct in the council chamber or committee, confidentiality requirements, use of council facilities, appointments to partner organisations, a councillor's dealings with the council on which they serve, responsibilities to the council as a member of the public, a register of interests, registration of interests, declaration of interests, lobbying and access to councillors and decisions on applications.

As the purpose of today's session is to allow committee members to ask us detailed questions, I will bring my introduction to an end. I stress that the document is in a draft state. We are keen to learn whether we have missed any points or whether we need to tighten anything. We are happy to take those issues away. If members ask me difficult questions, I will ask my advisers to answer them.

The Convener: You are the boss, so I guess that you can do that.

You have partly answered the first question that I had planned to ask, which concerned the process that you undertook to reach those key principles. I guess that the cross-party group established them.

Councillor Murray: It did.

The Convener: If a councillor serves on an outside body, they will be guided by that organisation's code of conduct. As a councillor, they will also be subject to the code of conduct for councillors. Could there be a conflict between the codes? If so, how would that be addressed?

Councillor Murray: I would like to think that there would be no conflict, because I would hope that both codes would be similar. They might not be the same, but they should be similar. If the codes were different in any way, I assume that the code for councillors would take precedence, but I ask John O'Hagan to comment on that.

John O'Hagan (Convention of Scottish Local Authorities): I think that the consensus in the working group would be that a councillor is appointed to a departmental quango, in the parlance, by and large because of their status as an elected representative, so the code for councillors would take precedence. If there were a conflict—which, generally, there should not be—the code for councillors would prevail.

The Convener: Section 3.6, on dealings with the council, says to councillors:

"You must not seek preferential treatment for yourself,

your family, friends, colleagues or employees because of your position as a councillor".

A councillor must avoid being in debt to the council, to avoid the public perception of abuse of position or poor leadership. Will you explain why the code seems to suggest that councillors must not seek preferential treatment only from the council that they serve, rather than from other public bodies and organisations with which they may come into contact?

Eddie Bain (Convention of Scottish Local Authorities): That is a valid point. If the code has a gap, we recognise it. The principle of not seeking preferential treatment should apply to all bodies on which councillors serve because of their role as councillors. We acknowledge the valid point about making that clear.

The Convener: Are there any types of behaviour outwith official duties that councillors should avoid to limit the perception of abuse of their positions? Why does the code highlight being in debt? Other behaviour may need to be highlighted.

Eddie Bain: Indeed, convener. Indebtedness was given as an example because of the public perception that a councillor might be abusing his or her position by being in debt. However, that is just one example and we recognise that there are probably others.

The code is not intended to be totally prescriptive of the kind of conduct that might contravene it, although anything that relates to a councillor's performance, and any conduct that the public might not consider as worthy or that might affect the reputation of the council, ought to be caught by it. We recognise that councillors are, like all other citizens, entitled to private lives, and we recognise that, whereas a councillor behaving in an objectionable way at a civic reception organised by the council would be in breach of the code of conduct, behaving in an objectionable way as a private citizen would not be a matter for the code.

The Convener: That is interesting.

Mr Keith Harding (Mid Scotland and Fife) (Con): In section 5, on the registration of interests, there are a number of references to a "Miscellaneous" category. Why is that not explained in further detail?

Councillor Murray: We accept that that is a fault in the code. We will consider it again, because we should have given more detail.

Mr Harding: Did you consider the requirement of councillors to register expenses that they have received from the council? That is covered in the draft code of conduct for councillors in England that has been produced by the Department of the Environment, Transport and the Regions.

Councillor Murray: Councillors should register those expenses anyway and all expenses should be open to public scrutiny. The DETR specifies expenses for foreign trips as well. We did not feel that an expense for a foreign trip was any different from an expense for a UK trip. We are not sure why the DETR split them.

Mr Harding: Provosts may go overseas two or three times a year, resulting in their expenses being way above those of other councillors. Do you not agree that that can give a misleading impression that they are getting huge expenses? Should you not differentiate between foreign and domestic expenses?

Councillor Murray: I do not think so.

John O'Hagan: We did not identify that as being a particular problem.

On the subject of allowances, I would add that, under the Local Authorities etc (Allowances) (Scotland) Regulations 1995, councils have a duty to produce an annual scheme of allowances for members, setting out the basic allowances and the special responsibility allowances. Most authorities also take the opportunity to adjust the provost's allowances and deputy provost's allowances. That process is a matter of public record. In addition, each member's claimed allowances and expenses are published each year under the regulations. They are available for public inspection. There is therefore already a significant degree of scrutiny under the existing regulations.

Mr Harding: I should perhaps declare an interest as I am still a member of Stirling Council. Stirling Council simply lists 22 councillors and their total expenses. If a councillor has been on a twinning trip, or any other foreign trip, the figures can be grossly distorted. The public perception is then that one person is getting a lot more than other people.

John O'Hagan: Different councils have different practices for publishing such figures. Corporate expenses that are incurred can go through the council's accounts and be subject to scrutiny by a member of the public under the ordinary voucher system. If a twinning trip takes place, there is no reason why the council, as a corporate body, cannot incur the expenses of the trip, so that the published expenses of the member are simply the expenses that he has personally incurred.

The Convener: Are you happy with that, Keith?

Mr Harding: Not really, no, but I thank the witnesses for their answer. It seems to me that we have an opportunity to address this issue. I do not know what happens in other council areas, but I know that comments will appear in the press that so-and-so has claimed much more than anybody

else. If the figures were broken down and published, those criticisms would not appear.

Eddie Bain: On the point about the way in which information is made publicly available, the opportunity might be taken to review the regulations. That would be an alternative to dealing with this by means of the code of conduct. As John O'Hagan says, some authorities publish information in a way that makes it easy to identify the expenses that each member has received. If we wanted to make that prescriptive, it would be easy to do so by amending the regulations.

The Convener: So councils have to publish the information, but there is no set rule as to how they do so. My understanding was the same as Keith Harding's—that names were published with the amount incurred appearing opposite.

13:45

Mr Gil Paterson (Central Scotland) (SNP): Why, in the code, do councillors have to declare, but not register, the financial and non-financial interests of a spouse or cohabitee?

Eddie Bain: That reflects existing legislation. Under the regulations that were made under the Local Government and Housing Act 1989, interests that are registered—which at the moment are only financial interests—relate only to the councillor, whereas interests that are declared are wider, and extend to the declaration of pecuniary and non-pecuniary interests under the existing national code of local government conduct. In our task group, there has been a good deal of debate about that. It was felt that requiring the registration of the interests of spouses and partners was unduly prescriptive, but it was also felt that such registration was important.

In local government, we perhaps operate in a different way from MSPs. We—and certainly my officer colleagues—probably regard declaration of interests as much more significant than registration of interests. We therefore thought that declaration of the interests of spouses and partners was more important than registration. Registration seemed to be an unnecessary intrusion—although that is arguable—into the privacy of spouses or partners of councillors.

Mr Paterson: Could the standards commission have difficulty in interpreting this part of the code?

Eddie Bain: The standards commission could have certain difficulties. We had difficulties in identifying which non-financial interests were significant. Whether or not registration or breaches relating to non-declaration are considered, the standards commission will always face difficulties in assessing whether a non-financial interest is significant, because that is very difficult to define. The DETR has tried to do so, and we may consider expanding our code. The DETR did not flinch from identifying significant non-financial interests such as membership of a masonic organisation or an organisation such as the Knights of St Columba. In the public perception, those are not financial interests but might be regarded as having a significant bearing on the way in which a councillor went about his business.

Mr Paterson: In the code, there is a lot about spouses and cohabitees. Would it not have been better to refer to a father, a son or someone more directly related, as opposed to a cohabitee, who may just be a friend who happens to live in the same flat?

Eddie Bain: When we discussed this issue in the task force, we found it very difficult to define the word "relatives" and even more difficult to define what a close friend was. Although I agree that, in some circumstances, the interests of a relative other than a spouse might be significant as far as declaration is concerned, we found a considerable definitional problem.

Mr Paterson: That leaves me with a problem. It is rather anomalous to include cohabitees if a father, mother, sister or brother is not included in the same regulation. Surely such a link with a councillor is less relevant than a link involving someone who might be involved in a family business, for example, that supplies goods or services to the council.

Eddie Bain: The word "cohabitee" was a matter of some debate, because I felt that it had unintended associations with benefit fraud. The term was intended to convey the notion of someone such as a partner who had a particularly close relationship with the councillor. However, I acknowledge that such a close relationship could be enjoyed by another relative.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): Although my question still relates to the declaration of financial and non-financial interests, it is more about dispensations from those kinds of prohibition. For example, the number of councillors with declared interests on a committee might be so great that the committee could not work. Do you know of any other examples where that might be a problem?

John O'Hagan: Yes. However, we have not set them down exhaustively, because we think that that is principally a job for the standards commission. However, we will try to assist the commission in that process.

Right from 1966, existing law and practice have recognised the secretary of state's ability to grant standing and particular dispensations. For example, there have been dispensations for councillors who are council house tenants. The

current statutory regime allows members to do certain things such as fix the levels of certain allowances that are payable to themselves and their colleagues.

Furthermore, law and practice recognised that, particularly at a time when a significant proportion of elected members were also council house tenants, it would be invidious to have a collegiate electorship that was drawn from such a small group of members that only owner-occupiers would set the annual rents. For that reason, there has been a long-standing relationship in which councillors who are council house tenants have a standing dispensation.

We have recognised that there are similar such areas, even though the level of tenure has obviously changed nationally over a significant period. For example, a standing or particular dispensation could be granted where a particular private sector employer predominated in an area, as long as it was a matter of public record and was granted through the appropriate mechanisms. The public must be aware that X number of councillors are entitled to vote on issues concerning such-and-such an organisation, even though they work for it.

Another example, which is perhaps more topical, is that there are some rural councils on which the farming community is well represented. It would be invidious if councils' ability to react to the foot-and-mouth outbreak, for example, was compromised by virtue of their having a significant number of elected members that draw their living from the farming community. There is a task to be done that we did not do. I hope that the standards commission, in co-operation with local government, will develop a series of standing dispensations of that kind.

Mr McMahon: Do you think that the process of applying for a dispensation is realistic? You mentioned standing dispensations. Should the standards commission have set criteria by which everyone should be judged, or should judgments be taken case by case?

John O'Hagan: We envisaged a combination of both. We encourage the standards commission to have standing dispensations that could be withdrawn, adjusted or tempered over time in the light of experience. Most elected members would then approach their duties aware of the standing dispensations against which they work. From time to time, individual cases may occur where dispensations might be sought. Again, fast-track mechanisms will be required to allow individual dispensations to go forward to the commission. The task group's thinking was that as far as possible things should be covered through the standing dispensation. Standing dispensations have, over time, operated fairly satisfactorily under the current regime.

Mr McMahon: Let me ask a further question on the time scale. Local government committees, in my experience, have to change rapidly and councillors have to stand in at short notice. In those circumstances, would the council have to apply to the commissioner? Would the council be able to take it as read that, as long as the councillor in that specific instance was working within the set criteria, the dispensation would automatically go through, or would there have to be a mechanism for checking out that the dispensation could be given?

John O'Hagan: Under the standing dispensations, we thought that that would not be required. If a councillor who works for employer X is replaced on a committee by another employee of employer X, the same dispensation would apply. There is no requirement to name individual members on a standing dispensation. Obviously, a fast-track mechanism would be required for particular occasions, but that would be a challenge for the commission, because the time scales, as Mr McMahon has indicated, are at times extremely tight.

Iain Smith (North-East Fife) (LD): I want to ask about section 8 of the draft code, on taking decisions on individual applications.

Let me first make the general point that, when the draft code is finally published, it might be helpful if the parts of the code that are a direct reflection of other legislation are indicated as such. For example, in section 8.3, which deals with licensing, there are some references to the restrictions on members of licensing boards, but it is not clear how many of the items come from other legislation and how many are simply part of the code. The presentation might be helped by clarifying for the reader what is a statutory restriction and what is a part of the code as such. I offer that as a suggestion.

My main concern is with section 8.2, which deals with planning, where the code is—it strikes me—fairly prescriptive. Many elected members will be rather concerned if they are expected to act in accordance with this code. For example, it states in section 8.2.4:

> "You should not organise support or opposition, lobby other councillors or act as an advocate to promote a particular recommendation on a planning application".

Having been a councillor myself, I understand why that is in the code, but there are times when councillors will feel that they must support or advocate a particular recommendation. For example, if a fairly major development was happening in a councillor's ward that the constituents were unhappy about, it would be very strange if the councillor was not involved in the

campaign.

In section 8.2.5, it states:

"You must never seek to influence professional planning officers to provide a particular recommendation".

Again, I would have thought that many councillors would have seen that as part of their normal role. For example, councillors may want to influence planning officers by drawing their attention to a road safety issue, in relation to a specific planning application. If councillors were not allowed to do that, I am not sure what they would do.

There seems to be a contradiction between sections 8.2.4 and 8.2.8. In section 8.2.4, you say that councillors should not get involved in advocacy, but in section 8.2.8 you say that, if a councillor is a member of the committee that deals with planning applications and wants to advocate a specific course of action, they should not take part in the decision.

It also strikes me that section 8.2.6 makes two completely separate points. One relates to acting on behalf of an applicant in regard to planning permission, and the other relates to an individual councillor's applications. I would have thought that those two points would require separate paragraphs.

14:00

John O'Hagan: I shall deal with your last point first. I accept that two separate issues are involved. It might be better to label them A and B or have a separate paragraph for each.

Section 8 caused us significant difficulty. We recognised that, in many ways, it would fetter the ability of a local member to react sensitively to local issues. Situations may arise in which a controversial planning application is received, on which the local community may expect the local member to have a view. However, because of the general growth in consciousness of litigation, there is possibly more temptation for people to exploit that. A member could unwittingly prejudice the council that is dealing with the application. Recent experience has shown that many organisations are not shy of using the process of judicial review at the Court of Session to expose what they regard as a prejudicial remark by an individual member, however innocent it is. In the decision-making process, the member must be protected and, more important, so must the council.

We also recognise that, as ever in such matters, the European convention on human rights has added another dimension—specifically article 6, on the right to a fair trial. There is a significant consciousness on the part of the development community generally of the fact that any potential or alleged tainting of the decision-making system can lead to disproportionate processes in court.

We realise that this is a difficult issue for local members to swallow, but it is important for them and for the decision-making process in which they are involved that members are encouraged to assure their electorate that, although they are aware that strong and different views may be held locally, for the integrity of the decision-making process it would be inappropriate for them to declare their side in advance of a planning committee meeting.

There are drafting issues that we can address regarding this code. However, we expect that much of the comment from councils will be in respect of section 8.

Iain Smith: Thank you for that answer. You have highlighted the concerns that I have. The committee may return to the issue of democratic involvement in the planning process being undermined by pretty severe restrictions on the involvement in the process of local elected members.

The Convener: Members have no further points to raise. As Iain Smith suggests, overall planning will be on our long-term agenda and the issues that you have discussed will arise.

It was right and proper to have a cross-party task group working on the code, which all members can sign up to. That is important not only for councillors going about their business, but for the view that the general public hold about councillors and the way in which councils are run. I am interested to find out what definition you will come up with, apart from cohabitee, and whether you will include fathers and sons in that.

Also, I did not realise that councils met the requirements of the regulation about the declaration of yearly expenses in different ways. I thought everybody did the same thing. That might be worth revisiting, although it is a regulation and is not dealt with specifically in the code of conduct.

I thank the witnesses for appearing today and hope that they have a good conference.

Our next witness is the Deputy Minister for Finance and Local Government, Peter Peacock. He is accompanied by Frank Duffy, who is head of the Scottish Executive local government branch A, and David Spence, who is head of the Scottish Executive public bodies unit.

The Deputy Minister for Finance and Local Government (Peter Peacock): I have little to say other than to welcome the opportunity to answer your questions and to explore issues that the committee wants to raise. I want to put on record the Scottish Executive's thanks to COSLA for the work that it has done, at our request, on drafting the code of conduct for councillors. The committee

has spent time with COSLA today and I expect that most of the committee's questions about the code have been answered. However, I am more than happy to answer any questions that remain.

As members will be aware, we are in the midst of a consultation process. We have had some responses, but by no means the number that we expect to have received by the end of the process. Anything that I say today will be subject to my hearing further views during the consultation process, so I do not intend to be too detailed in what I say about positions that may be affected materially by the nature of the responses.

The Convener: What impact will the proposed code for members of public bodies have on the way in which public bodies currently operate their own codes of guidance?

Peter Peacock: In many ways, the committee will know more about this situation than I do, as it handled the Ethical Standards in Public Life etc (Scotland) Bill. However, the essential purpose of the proposal is to establish a relationship between public bodies and the wider public that will allow the public to have trust and confidence in all the procedures that are associated with non-departmental public bodies, particularly in relation to the propriety of members of those bodies. That will strengthen the bond between the public and the NDPBs. In a material sense, that might mean that the people who sit on the NDPBs might be subject to less unjustified criticism, as they would be required to make public many of their private dealings through the register of interests. We want to make the process more open and transparent.

Board members of the NDPBs will be aware of the standards that are expected of them, as the code will set out those standards clearly when Parliament finally approves it. They will also be clear about the responsibilities that they have, as members of the NDPBs, to the public. They are supposed to serve the public and, in doing so, they will have certain obligations placed upon them. They will be aware that they must be open and transparent about the range of interests that they have that fall within the terms of the code and they will know that, if they do not pay attention to the code, they may be investigated by the standards commission. Because the code exists as a result of the Ethical Standards in Public Life etc (Scotland) Act 2000, which the Parliament passed last year, members of the NDPBs will be aware that a statutory force is at play. That will give the code greater strength than the current codes.

The code will make clear where everybody stands. We hope that it will strengthen the relationship between the public and the NDPBs and ensure that there is greater certainty about the position of NDPB members, who will be aware that there is a statutory requirement for them to declare certain interests. There will be a range of impacts, but those are the ones to which I draw attention.

The Convener: What progress has been made on the establishment of the standards commission?

Peter Peacock: A lot of progress has been made. We aim to have the commission up and running by the autumn of this year. I signed the first commencement order to the act last Thursday evening. That order will allow the codes to be drawn up in their final form and taken to Parliament for its approval. It will also enable us to appoint the members of the commission and the chief investigating officer. We hope to seek parliamentary approval for the final versions of the codes in the autumn, with a view to their coming into effect at the turn of the year. Whether that happens will depend on parliamentary time as much as anything else.

We intend to advertise for the chief investigating officer and the members of the standards commission later this month and to have completed the appointment process by Parliament's summer recess.

We have plans to advertise in May for secondees from within the Executive and from the public sector in general to act as support staff to the chief investigating officer. We intend to provide support staff by means of secondment, as it is difficult to anticipate the amount of work that the office will do. Until that is established, it will be better to staff the office on a secondment basis so that people can return to their principal task if the work load means that they are not needed.

We have commissioned a search for accommodation for the office. The office will not be large, and we hope to find accommodation within existing Government property. A budget for that has been set aside.

Steps are being taken to ensure that the commission is up and running by autumn 2001. As I said, the codes will come into effect around the end of the year. We intend to bring the code for the councillors and the code for members of the NDPBs into effect simultaneously. To do that, we need to make changes to the model code and to the NDPBs' codes, which will take about three months.

Mr McMahon: It is well known that members of a public body can serve on other public bodies. Might conflict arise from the requirement to meet the legal obligations of two organisations? If so, which set of obligations should take precedence, or what mechanisms might be used to resolve the conflict?

Peter Peacock: That is an interesting question.

Are you thinking specifically of a councillor who also serves on another public body, rather than one person who serves on two NDPBs?

Mr McMahon: There is the possibility of both.

14:15

Peter Peacock: In essence, there should not be any conflict, either for somebody who sits on one NDPB and also sits on another, or for somebody who sits as a councillor and, by virtue of that office, serves on an NDPB. The codes as drafted, for councillors and for members of the NDPBs, embrace all the mandatory elements of the procedures and codes that we want to be brought in. Therefore, anything that varied between the code for councillors and the code for NDPB members, particularly in relation to the NDPB code, would be additional to the mandatory matters and would add extra burdens, rather than removing any burdens.

The requirements in the code for councillors are, in some ways, more onerous than the requirements for NDPB members. The differences are at the margins, but there are some specific examples and we are asking questions about those in the consultation process.

I suppose your question is about whether, for a councillor who was sitting on an NDPB, the code of the NDPB would take priority over the code for councillors. I think that it would not and that, in all circumstances, it would be best to err on the side of caution and to take as one's guiding principles the more onerous code that it fell upon one to meet.

The councillors' code makes it pretty clear that, when one serves on another body, although one has a principal responsibility to that body while serving on it, one must also remember that one is a councillor with wider responsibilities and a reputation in the community. My feeling is that it would always be safer to fall back on the councillors' code as the overriding one, to err on the side of caution and to register and declare more than might otherwise be required by the NDPB code. There should not be an essential conflict in that relationship at all; the principle should be that people should err on the side of caution.

The standards commission has the power to issue guidance on resolving difficulties and that might be one of the means by which difficulties could be resolved. Ministers, ultimately, have to sign off approval of the codes, so obviously we would try to pick up any anomalies in their content. As I said, there should not be any conflict, because the mandatory elements should be the same in both codes, but we will have to keep an eye on that.

Mr McMahon: Perhaps you can tell me whether what I am about to describe is even remotely feasible. I know something of the experience of individuals who have served on bodies such as local enterprise companies and health boards. During our consultation, it was pointed out that local enterprise companies are governed by company law and would not fall under the remit of the codes of conduct. If a conflict arose from someone's serving on two such organisations, how would it be resolved?

Peter Peacock: Let me pick up on a point of general principle before I deal specifically with LECs. If the Parliament approves the model codes this autumn and they are sent out to the NDPBs for fine tuning to the specifics of each organisation, the NDPBs can only add matters; they cannot subtract mandatory matters. There could, therefore, be a situation in which one NDPB has slightly more onerous conditions of declaration than another. Obviously, people are required to follow the code of the NDPB on which they serve, but I would advise them to err on the side of caution and to be more open in declarations in relation to the first NDPB than the second. That is a general rule that should be applied.

Your point about LECs is interesting. The situation has moved on a bit since the committee last discussed it when the Ethical Standards in Public Life etc (Scotland) Bill was going through the committee and the Parliament. I understand that, because LECs are companies, the Scottish Parliament's powers do not extend to regulating their conduct. However, since the committee's previous discussions on the matter, the structure of LECs has begun to change. The Minister for Enterprise and Lifelong Learning has made it clear that there is an intention for LECs to become wholly owned subsidiaries of Scottish Enterprise or Highlands and Islands Enterprise, which are both subject to the codes. By virtue of that, it can be argued that LECs fall within the terms of the codes.

That is a general description. Specifically, as I understand it, under our powers as a Parliament, we could not require members of the LEC board to have a code within that framework. However, I understand that we could make it a condition of the contract between Scottish Enterprise or Highlands and Islands Enterprise and the individual LECs that they applied the codes to their conduct. That will be considered closely. I will discuss this further when we review all the bodies that should be listed in schedule 3 of the Ethical Standards in Public Life etc (Scotland) Act 2000 and in the light of the on-going review of NDPBs. The review process will adjust the list of organisations that might be included in schedule 3 and that might come under the additional code that we are discussing. We will pick up the LECs

issue in that context. I will also talk to Wendy Alexander about this, in relation to her responsibilities.

Given the framework that we are trying to create, and especially given the LECs' powers in relation to decisions about financial matters—although those will be made principally by officers rather than board members—it would be desirable to ensure that LECs fell within the set of disciplines that apply to the rest of the NDPBs. As a result of the new arrangements, we may well be able to make progress to ensure that the same standards are applied to LECs as to everyone else.

Mr Paterson: Can you explain why members of public bodies should have to declare, but not register, the relevant interests of their spouse or cohabitee?

Peter Peacock: That is a difficult issue. We are interested in the views that people are expressing in the consultation. A judgment had to be made in pitching the codes, and the position has been set out in the consultation. We know, from comments that we have received, that it is a matter of discussion and debate—in the committee and within the bodies—whether the position in the draft codes is right.

I am relaxed about the outcome. I want to hear people's views. The position in the draft codes was a fine judgment. Is it right that we should ask people on NDPBs, who are part-time and unelected, to declare matters in relation to their spouse or cohabitee in the same way as councillors must? The judgment, in drafting the codes, was that that would be going too far. However, we are open to the views of the committee and the other views that we will hear as a result of the consultation.

As I said, I have no hard and fast view. If the result of the consultation is that we have got the judgment wrong, I will be more than happy to review it.

Mr Paterson: I asked the COSLA witnesses about the word "cohabitee", which is a loose term. A cohabitee might be just somebody who is sharing a house with you, whereas your father, brother, uncle or sister may be involved in a business with you.

Peter Peacock: I would have to take legal advice on that. I suspect that there is a legal definition of cohabitee, whereas there is not a legal definition of bidie-in, partner or whatever. I think that I am correct in saying that in the annexes or supporting documentation to the codes, there is a description of how the terms will be applied. I have some sympathy with the view that cohabitee is not used in everyday parlance in the way that it once was. It may be that we are subject to the legal definition of what it means. There are definitions of spouse and cohabitee. If there were a different term, which meant more to people, I would be relaxed about considering it. I suspect that it would depend on the legal definitions.

Mr Paterson: "Bidie-in" is okay in Glasgow right enough.

The consultation document says:

"The section in the draft councillors' code which details the categories of interest to be registered states that councillors must register all of their heritable property: this includes the home of the councillor since the fact that a councillor is a member of the community he serves means that on occasion, there will be matters before the council that relate directly to his or her home. However, in terms of the draft model code, the home of a member of a devolved public body is not required to be registered."

I am sorry to be so long-winded.

"This is because members of public bodies will not, for the most part, be dealing with local issues and individual applications in quite the same way as a councillor and therefore the issue of the location of their home would not be relevant. If, during the consideration of a particular subject, a member of a public body felt the location of their home could be thought to be an issue, they would, under the model code, be advised to declare that interest."

The phrase "for the most part" suggests that the location of the home of the member of a public body will in some part be as relevant as it is for councillors. That consideration is addressed by the statement that in such circumstances members of public bodies should

"be advised to declare that interest."

Should the wording not be changed to ensure that such an interest would be recorded in the register?

Peter Peacock: As I understand it, there are two separate points. First, it is very much a matter of individual judgment as to what the circumstances are that would lead one to make a declaration at a meeting, which I think is the point to which you refer. However, councillors would be required to declare their heritable property, including their home, which differs from the requirement in the NDPB code and, indeed, in the MSPs' code.

Gil Paterson touched on the logic that lies behind that. Councillors have a very localised set of responsibilities, but they are very broad-ranging. Councillors could have an input into structure plan policy, local plan policy and individual planning applications. They will be consulted about the boundaries of sites of special scientific interest, the boundaries of school catchment areas, libraries and a range of matters that, as well as having an impact on the community at large, could be said to have a particular impact depending on where the councillors live. That is why it is suggested that councillors register their home as

an interest. It could be argued that some decisions could ultimately have an impact on the value of property.

NDPBs are less local in their focus. However, there will be occasions on which if one is a member of an NDPB, such as a water board or Scottish Natural Heritage, and a particular case decision relates to the area of one's home, it is incumbent on the individual to declare that interest and the fact that it may have an impact on the case. The obligation to make a declaration is not removed from NDPB members, but they have to make a judgment on that at the time.

I am more than happy to reconsider whether the precise wording in the code is adequate to describe that obligation, because we may unwittingly be allowing some people in the circumstances that I have described to judge that they do not have to declare that interest and still technically meet the terms of the code. I will examine whether we can clarify the wording.

Generally, we are looking for responses in the consultation as to whether it is fundamentally right that councillors should have to register their home as heritable property but NDPB members should not have to do so. I rather expect that, in drafting the code, COSLA has erred on the side of caution in saying that it is better that it be registered than not, but the judgment is slightly different for NDPBs, for the reasons that I have given.

Mr Paterson: My only concern is that councillors and members of NDPBs should be treated equally. I think that the word "required" would change the emphasis of the paragraph, but I am glad that you have given an assurance on that.

Peter Peacock: I am more than happy to examine the detailed wording.

Mr Harding: On the registration of interests, especially those of members of public bodies, the draft code goes further than the current general practice of most such bodies. Do you not feel that that could be a deterrent to potential board members, when we try to widen the pool of expertise? For example, if someone is in a professional partnership of which the financial information is not in the public domain, he might be reluctant to declare his earnings, or his partners may object to that.

14:30

Peter Peacock: We must make very fine judgments on such matters, and it is important that the consultation draws out opinion from people who are currently making the decision to serve on NDPBs or as councillors. There is no clear picture of where the line should be drawn. The relationship that we are trying to establish is one in which the public have genuine trust and confidence that things are being done in an open fashion. That points towards declaring more rather than less.

I anticipate circumstances in which, in a specific case, an individual may decide not to serve on an NDPB because it required them to declare matters that they felt were purely private; however, I suspect that that will not happen in the majority of cases. The rationale for what we are doing is reasonably clear; whether the boundaries that we notice now are exactly right is open to discussion. However, it would be wrong to compromise the underlying objective, which is to restore trust and confidence and to be open and transparent, by allowing people not to register key interests. That would be to the disadvantage of the system as a whole.

If, on the journey through all this, we lose two or three people from NDPBs because they are not prepared to make such declarations, that is just the price that we have to pay. Individuals in the wider public must reach their own judgments about why someone is not prepared to declare their interests. It is a matter of finding the right balance. We think that we have got the balance right, but we are prepared to reconsider fine tuning around the boundaries, to ensure that we have got it right.

Mr Harding: But you agree that the code could be a limited deterrent?

Peter Peacock: It would be only a limited deterrent. However, we must win greater public confidence in the whole system, besides openness and transparency. If that means that some people cannot serve—I imagine that they would be very few—that is a price that is worth paying.

Mr Harding: I totally agree. Thank you.

Iain Smith: Are there specific reasons why the members of public bodies do not have to declare the financial interests of their spouse or cohabitee?

Peter Peacock: The issue is where the boundary is to be drawn. In drafting the code, it was thought to be going too far to ask members of NDPBs to declare the interests of their spouse or cohabitee. That is a matter of judgment, and we are genuinely interested in hearing views on the matter. There is great merit in ensuring, as far as possible, that standards are the same throughout the public sector.

We have set out a position in the draft code that is drawing debate, which is what is desired. If it were necessary to shift the ground marginally to embrace that debate, we would be prepared to

consider that. We have no hard-and-fast view; we are testing the water to see whether people think that we have achieved the right balance. It returns us to Keith Harding's question. Would asking members to declare the interests of their spouse or cohabitee be a step too far for most people and would good people be lost as a result? We want to hear people's views on the matter.

Iain Smith: I presume that the draft code would require the declaration of a spouse or cohabitee's interests only if they were relevant interests. They would not be registered on the register of members' interests, but if an issue came up in which there was an interest, that would have to be declared. I would have thought that it is only right that a direct consideration for a member of a public body, whether a council or another public body, should be to make such a declaration.

Peter Peacock: I have some sympathy with that view. The correct behaviour is always to err on the side of caution. If someone believed that they could be perceived as not declaring something or withholding something from the public if they knew that their spouse or cohabitee had a specific interest in a matter, it would be better for them to declare that. The requirement is to declare non-financial, not financial, interests. That may appear slightly odd. Why would someone in those circumstances not declare a financial interest? That is what we are testing through the consultation. We have a relaxed view about the consultation's outcome, so we may have to re-examine that matter.

Iain Smith: I have another fairly broad question. Are you satisfied that the codes of conduct have sufficient scope to ensure that they encompass arm's-length companies or trusts that may be set up by local authorities or other organisations to administer specific functions, and that relevant interests may be declared for such bodies?

Peter Peacock: As members are aware, we have undertaken a review of the bodies that should be embraced under schedule 3 of the Ethical Standards in Public Life etc (Scotland) Act 2000. Part of the reason for our not having made progress as quickly as we might have liked when that bill was enacted relates to the NDPBs review. The whole geography of that area may change in the coming months. We need to ensure that, whenever we consider the review, we take that potential change into account.

We will then have a boundary for those bodies that definitely come under a schedule 3 grouping. There is also a further group of bodies that sit beyond that boundary. That group embraces all public bodies that are subject to the additional regime that is being discussed. The same broad principles apply.

The whole field of public bodies—including councillors, bodies that are clearly NDPBs and those bodies that are neither NDPBs nor Executive bodies but are advisory bodies—ought to be covered. Iain Smith has raised an interesting point about the specifics of council companies and arm's-length companies. Councillors acting in such bodies are bound by the code of conduct in their capacity as councillors. They are representing their council.

This will require further examination, but it may be that the same broad description that I have given for the relation between a local enterprise company—which is a company—and its owner, either Scottish Enterprise or HIE, also pertains to companies in which a council is the major shareholder. I am not clear about that at the moment, and we have to consider it further, but I am more than prepared to investigate that matter.

Iain Smith: I have one final question in relation to the planning issue that I was discussing with COSLA. Do you share any of the concerns that I raised about the possible loss of democratic involvement in the planning process if the code is imposed in its present form?

Peter Peacock: In what sense? Can you clarify that?

Iain Smith: I will read out some parts of the code from COSLA's document. Section 8.2.4 of the draft code says:

"You should not organise support or opposition, lobby other councillors or act as an advocate to promote a particular recommendation on a planning application."

Section 8.2.5 says:

"You must not seek to influence professional planning officers to provide a particular recommendation on any planning application."

I would have thought that those both related to legitimate roles of local councillors dealing with planning applications in their wards.

Peter Peacock: Having been a councillor and served on a planning committee for many years, I understand only too clearly the pressures around planning applications. Had the code been available to me a number of years ago, I would have found it extremely beneficial to be able to tell people that I genuinely could not declare my position to them. Councillors get lobbied very heavily on planning applications, and they sometimes get told some amazing stories in relation to those. Until they have all the information before them, including the lobbyist's point of view; until they note what the planning officer is saying in a professional capacity; and until they have found out what other members of the community are saying about the planning application, it is proper for councillors not to declare their view on

that application. That is a general rule.

However, Iain Smith and I—and anyone else who has served on a planning committee—know that, on occasion, a certain proposal will come forward in relation to a councillor's community, but the councillor is clear, politically, that they would not support the proposal under any circumstances whatever. They may feel obliged to side with any community group that was involved in the protest about the application in question. That is a judgment that one has to make. As far as the code of conduct is concerned, it is a matter of choice.

The councillor's first option is to side with the community and make their representations to the council publicly, but that deprives them of the ability to take the decision on it within the council. The alternative is to say to the community group, "I will not arrive at a judgment until I hear the issues." The councillor may then make an impassioned plea for the group's position at the planning committee. That is a matter of choice for the councillor.

Planning applications are of huge value, not only in monetary terms to developers but in their impact on the community. The rules have to be precise. It is not right for councillors to seek to influence the professional judgment of planning officers, who are there to give that judgment dispassionately. A councillor has the right to disagree with that in public. The code is tough but it is right in those respects.

Iain Smith: As a councillor, I often made representations to planning officers to draw their attention to an issue such as road safety. If I say to a planning officer, "You must consider this issue", that could be interpreted as my trying to influence their professional judgment. It is a fine line.

Peter Peacock: Indeed it is. To have clear, firm rules that can be challenged is better than to have unclear, unspecific rules. There is a provision, in relation to the standards commission, to give exemptions to particular forms of conduct defined under the code. I am not sure, given its immediacy, that the situation that you describe would come under that provision.

I am not convinced that a councillor who writes to a planning official to raise questions of safety arising out of an issue would be seen to be influencing the official's professional judgment and their recommendation on a planning application. The councillor may simply be saying, "Among the issues that you consider in relation to this application, please ensure that you consider this one." The councillor is not looking for a particular outcome, but rather raising a point of concern.

The other great trick at planning committees when you could not win your vote was to call for a site visit, so that the committee could see everything for itself. There are techniques available to councillors who know how to use them. I can see former councillors around the room nodding.

Mr Harding: My technique was always to refuse to serve on the planning committee.

The Convener: Smart move.

It has been good to get an update on the position of the commission and to hear that it is hoped that the advert will go out later this month. The committee is especially interested in the position of LECs and arm's-length companies—we brought that up specifically in our report. What you have told us this afternoon, especially in relation to LECs, has been helpful. I am glad that I was not the only one on a planning committee who was told amazing stories. Maybe we should write them up one day.

I thank the minister and his officials for coming along. I have no doubt that we will see you again.

We are now joined by Professor Ian Percy and Bill Magee, who are respectively the chairman and secretary of the Accounts Commission for Scotland. I think that they will be wearing two hats today, as they will also be speaking for Audit Scotland. I will hand over to Professor Percy for any introductory comments and then open the meeting up to questions.

14:45

Professor Ian Percy (Accounts Commission for Scotland): I thank the committee for this opportunity, because such dialogue is important for developing this issue. The Accounts Commission or Audit Scotland—we will not worry about which is which today—very much supports the code of conduct, because we feel that the global community should have confidence in Scotland. As ethical standards are clearly important in that regard, anything that we can do to enhance them is vital.

In all the time that I have been chairman of the Accounts Commission, although there have been abuses in some areas, abuses have not been prevalent in local government or public bodies. We have high standards in Scottish public life, but we must ensure that we maintain and enhance them.

What will be the effects of the commission that will be set up by the Ethical Standards in Public Life etc (Scotland) Act 2000? With the disappearance—which we support—of surcharge, we will have powers similar to those of the standards commission to censure, suspend or disqualify people. Many of the issues about stewardship, probity and best value from the use of public money that will emerge from the future

auditing of local government will centre not on section 83 of the Local Government (Scotland) Act 1973, as they have in the past, but on behaviour and conduct. As a result, it will be important for the Accounts Commission and the standards commission to work closely together to ensure that we do not end up with something that confuses the public and creates duplication. We need to grasp that aspect, because ethics and the stewardship of public funds become very closely interrelated.

Of course, sanctions result from an investigative process and are very powerful. It is fair to say that if any of those sanctions were used against a member of a professional body, they would be very harsh, because the body itself would also take disciplinary action. Although I support the disciplinary procedure, we should make no bones about the fact that it has a lot of teeth. Most people would not look forward to being censured in public.

I hope that, given such a regime, the standards commission will be able to modify the guidance as it goes along. From practice and experience, I think that both the letter and the substance of very detailed rules require to be considered. From my professional background in dealing with many cases in the private sector, I have found that the issue of ethics very often centres on the substance of what has happened rather than on the integral rules themselves.

The principles of the code are well drafted and are so clear that I would not propose any changes to them; they form the benchmarks against which we should work. My questions relate more to the detailed framework that surrounds the principles and particularly to its balance if we are hoping to encourage people into public life.

I will use registration of interests as an example. The standards must apply to everyone, from people who wish to make a career out of politics at one extreme to those who may be called on to give advice to an NDPB one day a month. One must consider the balance and, in that context, how much information one wants from everyone. Perhaps not everyone will want to lay bare their financial position for a small role in public life, but it is difficult to argue that that is not already the norm for people in full-time political positions. I ask members to consider the balance and whether it is necessary to know the totality of financial interests for every single public appointment.

We must also consider the practicalities that lie behind the standards for many of the people whom we wish to attract into local government—after all, McIntosh and Kerley put a lot of store into getting new people into local government. Although there is a lot of talk about quangos and NDPBs, we must remember that they were established to bring service into the public sector for particular tasks. Often, people from partnerships or professions or who have multiple employment are asked to become active in public life. However, people in professional partnerships find it almost impossible to declare their total partnership income.

For example, partners in large accountancy firms would not be allowed to make such a declaration, and the requirement to do so would restrict people from joining an NDPB or a quango. Although the legal profession would have no problem disclosing the amount of fees earned from public sector work, the requirement to declare all partnership income would cause difficulties. How far would that requirement be applied in relation to fees for people in non-executive positions? The declaration in relation to subsidiary companies and so on will be a complex affair. Many people will find it almost impossible to keep that information up to date and those people will transgress the rules almost from the beginning. Many people do not seek a role in public life, but they are prepared to become involved. I would not like the rules to change that.

I will make three concluding points. First, we support the rules. Secondly, we need a framework that is workable and whose substance the standards commission and the Accounts Commission for Scotland can look through. Thirdly, there is a question mark over whether we need so much detail on financial interests, as that might keep many people out of public life. Having made those points, I am happy to discuss them.

The Convener: I will ask a general question. Will the new codes impact on the code for the Accounts Commission board and, if so, in what way?

Professor Percy: We require all members of the Accounts Commission to register all their interests with our secretary, but the register will not include financial figures. Bill Magee has a list of all the directorships and appointments that our members hold.

Bill Magee (Accounts Commission for Scotland): I will expand on that answer.

The commission's code is based on the model code that was issued by the Treasury a number of years ago and has been updated in line with various Treasury adjustments as they have come out. Therefore, our code is basically the model code for NDPBs under the current regime. As Professor Percy said, we operate a register of interests and we list the interests of all our members each year in the commission's annual report, which is published. I do not think that members of the commission will notice a big change.

Mr McMahon: During our consultation on the

Ethical Standards in Public Life etc (Scotland) Bill, we had many discussions about whistleblowers. Should responsibility lie with someone in an NDPB or a councillor to report a breach if they know that someone else is in breach of the code, and should that also apply to employees?

Professor Percy: I will answer that from the point of view of a member of a board. In the private sector, one of the important roles of a company secretary is to ensure that a company has proper governance. When we consider commission business, the secretary of the commission, who is sitting next to me, is an important guide to me and commission members as to whether, for example, interests ought to be or have not been declared. Many people may not know that they are transgressing. Others are adept at getting round rules. It would help if someone in an organisation had responsibility for assisting in the process.

Bill Magee: The principle that underlies the whistleblowing legislation—the Public Interest Disclosure Act 1998—is that it is expected that people will pursue their difficulties internally in the first instance. I would expect every organisation in the public sector to be able to deal with that through a mechanism whereby employees, or councillors in the case of a local authority, could approach someone such as a monitoring officer to inform them of their concern, which could be dealt with independently.

The whistleblowing legislation would protect an employee who then approached an outside agency with their complaint. It would not protect a councillor. There is a general duty on members and employees to act responsibly in highlighting concerns that come to their attention. The motivation of people who make complaints may be questionable, but that does not mean that their complaints are without foundation or value.

Mr McMahon: I do not want to take us into the realm of exaggeration, but if someone knows that a crime is being committed and does not report it, they become complicit in it and are liable in law. Instead of protecting someone who presents information, should we place a responsibility on someone such as a councillor or an employee to report a breach of the standards if they know that it is taking place?

Bill Magee: Given the tenor of the codes of conduct, which are based on a common acceptance of the need to uphold ethical standards in public life, it is difficult to argue against such a responsibility or to say that people should not feel such an obligation to raise concerns. I suppose that the general trend and purpose of the legislation and the codes of conduct is to foster a cultural atmosphere in which that becomes acceptable.

Mr Harding: I was interested in Professor Percy's opening comments on the registration of interests by members of public bodies. I asked the Deputy Minister for Finance and Local Government about that before you started to give evidence. I felt that the requirements could be a deterrent to widening the pool of talent, in particular to include professional partnerships, which, as you say, cannot disclose information that is not public. Could the requirements have a large impact? The deputy minister felt that it would be limited.

Professor Percy: I think that the impact will be huge. Some people seek public appointments because they want to influence. Some seek public appointments because they want to serve. Those who want to serve will find that quite difficult. I have spoken to one or two people who serve on bodies and who are not in the front line as chairmen or employees. Many people who would like to serve and who have tremendous skills, experience and judgment would find it difficult.

The worrying question is why anybody should put their whole life and family at risk for an appointment that is for only one day a week or month over a period of time. MPs and chairmen of public companies and so on are used to that environment and it is not alien to them. Chairmen and chief executives of major companies are paid enormous amounts of money and know that there is a public risk. However, normal people who go about their day-to-day lives and perhaps have a wee holiday house or an income from a partnership—or perhaps their wife is a nurse or whatever—will find the register of interests difficult.

We live in an age in which more and more people seek to cause problems by complaining. Think about the pressure and the stress that are caused when somebody is under investigation after a complaint has been put to an investigative committee. Nobody can underestimate the stress that is caused to a person who has not sought that situation. To have one's ethics called into question is very major. Many people will stay clear of public appointments and that will be to the detriment of public service.

15:00

Mr Harding: How do you counter the argument that a register would be in the public interest and in the interests of openness and transparency?

Professor Percy: I wonder whether what a person earns from their job, or what their spouse earns, or the value of their home and so on, is of real interest. To know what earnings a person makes from public sector bodies might be relevant, but there should be a relevance test. A lot of it is curiosity.

Just because somebody has declared that they have financial earnings from certain bodies and no earnings from others does not mean that they will use the information to which they have access. People may use information to benefit organisations from which they receive no earnings. People will use information for the common good of a charity much more than they will for a profit-making organisation.

I am not sure that the declaration of interests is totally necessary. I can understand that, because the declaration of interests applies to one section of the community, there is a view that it should apply right the way through. We need to strike a balance. If it applies to everyone, it has the potential to take many people out of public life.

Iain Smith: I want to follow up that point, which seems to be the most worrying point that you have made.

Bearing it in mind that the Parliament has already made the decision to go down this route by passing the Ethical Standards in Public Life etc (Scotland) Act 2000, have you any suggestions on other ways in which the requirements of the registration could be met without being as intrusive as the draft code would be? For example, should there be de minimis levels, so that earnings below a certain level need not be declared? Alternatively, should there be bandings, which give only an indication of levels of remuneration, so that the amount is not specified? Do you have any other thoughts on how the concerns that you raise could be mitigated?

Professor Percy: Let me give an example of how the issue has been dealt with. My profession of chartered accountancy has an ethical code, the general principles of which are not dissimilar to those of the draft code. Our ethical code contains a number of examples of how the code can be threatened by the situations that people get themselves into. If there is a threat to the code's principles, it is up to the investigation committee of the institute to make a decision on whether there is a prima facie case.

At the moment, I am, in another capacity, acting as a special investigator for a major inquiry in Ireland. My task is to look at the ethical standards of the members of the body that deals with banking because the auditors were criticised by a Committee of Public Accounts report. My job is to look at those standards to decide whether there is a prima facie case, but I do not have many details of what people were supposed to disclose and did not disclose.

One goes about that task by taking evidence, looking at the individual and making a judgment as to whether there is a prima facie case before moving forward. Although I have no problem with people disclosing all their interests as members or directors of this, that and the next thing, my experience of detailed rules, particularly relating to the registration of monetary amounts, is that the financial information will be difficult to come by and people will be tripped up. If I were setting rules, I would consider the relevance of any financial information and suggest that one should publish details of any income that one receives by virtue of one's public appointments. I would leave out other interests and I would leave with the standards commission the power to change those rules over time if the system really is broken. My personal view, which is not the commission's view, is that one should not go the whole hog on day one.

Mr Paterson: Does not the declaration protect the individual from any perceived potential conflict? If someone registered only the income from the duties that they were involved in, rather than from any contract that they were involved in, for instance, while their private business was very much involved in that area, would not the fact that they had declared their interest in advance protect them rather than cause a problem?

Professor Percy: I am not quite sure what you mean. Are you talking about moneys that are nothing to do with a public entity?

Mr Paterson: Although someone may have a private business, it may very well be involved in contracts for the council. Are you suggesting that that should be declared or not?

Professor Percy: That should be declared. It seems to me that that is a relevant position. I would hope that the standards commission would be able to set out a number of guidelines from that standpoint. A lot of it will be practice.

Mr Paterson: I thought that you were saying that you should not make any financial declaration except for public activities.

Professor Percy: Let me give you an example. If I were a partner in a professional firm, as I used to be, I would see no problem in disclosing the amount of income that we received from public sector activities. I would see no problem in registering what I earned in any public sector capacity. The difficulty is in disclosing other information that is not relevant in that sense. That is the balance that I am suggesting.

Mr Paterson: I understand that point. I picked you up entirely wrongly on that.

You also referred to an elected politician who was going to make a career in public service, as opposed to someone who might drift in on a monthly basis. Do you think that someone who drifted in could have a higher impact than could someone who was devoted to public service? Should the individual with a casual involvement be

scrutinised just as much as the individual who is involved full time, although they may be involved as a councillor?

Professor Percy: At the moment, we go through quite a process of interview to become a member of a public body. I know that everybody has to apply, but sometimes it is suggested that one should apply because particular skills are being sought. There is an interview process and any board ought to have its own standing instructions. I would place on the accountable officer or on the chairman and secretary of the board a distinct role. If there are problems and they believe that somebody is abusing their position, they ought to have the right to report that to the standards commission. I think that one can suss out such people very quickly, but I do not think that the declaration of financial interests will change anybody's behaviour.

Mr Paterson: I agree with you in that respect, but that does not mean to say that we do not do it.

Mr McMahon: You will be aware that the relationship between ourselves and lobbyists is being considered by the Parliament's Standards Committee. Do you think that the section in the proposed code of conduct on lobbying is clear enough to allow representatives of public bodies and councillors to be aware of their responsibilities in that area?

Bill Magee: The section on lobbying is significantly more extensive for councillors than the provisions in the previous code were. To some extent, it is based on the provisions for MSPs, although it is not as detailed. For that reason, it is likely to get more attention from councillors than it has in the past. It sets an appropriate balance by saying that it is an expected part of public life that people will lobby and be lobbied, but that there are rules that have to be applied. I do not know of any specific ambiguities.

Mr McMahon: I do not have any specific examples. I just wonder about the clarity of it. Do you think that it will leave people knowing exactly where they stand or is there anything that needs to be added or enhanced?

Bill Magee: No. I think that, particularly in local government, the code will make people think a bit more about that. Until now, it has been an accepted part of their lives that people attempt to lobby them on various perfectly legitimate local interests. The code will make people in local government think about that a bit more, but I do not think that it should be made more extensive or explicit.

The Convener: It has been interesting to hear the other side of the argument. We have taken note of some of the things that you have said and I am sure that you will find that in our report. Thank you very much for coming along.

15:12

Meeting continued in public until 15:16.

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