

PROCEDURES COMMITTEE

Tuesday 27 November 2001
(Morning)

Session 1

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PROCEDURES COMMITTEE **12th Meeting 2001, Session 1**

CONVENER

*Mr Murray Tosh (South of Scotland) (Con)

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Donald Gorrie (Central Scotland) (LD)

Fiona Hyslop (Lothians) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Mr Gil Paterson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting)

WITNESSES

Professor Alice Brown

Dr Campbell Christie

Professor John Fairley

Dr Mark McAteer

Joyce McMillan

Andrew McNaughton (Scottish Executive Finance and Central Services Department)

Esther Robertson

Ms Pamela Tosh

Barry Winetrobe

Rev Canon Kenyon Wright

CLERK TO THE COMMITTEE

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

LOCATION

Committee Room 1

Scottish Parliament

Procedures Committee

Tuesday 27 November 2001

(Morning)

[THE CONVENER *opened the meeting at 09:33*]

Consultative Steering Group Principles Inquiry

The Convener (Mr Murray Tosh): Good morning and welcome to the Procedures Committee. We continue our inquiry into the application of the consultative steering group principles. We have received an apology from Fiona Hyslop, but everyone else is present.

We have a considerable number of witnesses this morning, but we shall start with Canon Kenyon Wright. Members will raise various issues. The clerks have also raised a number of issues that, in the interests of consistency, we are putting to just about all the witnesses in our inquiry. If we do not cover all the points in the meeting, we will write to our witnesses to cover things that may have been missed. I hope that everyone will tolerate that. Over to you, Canon Kenyon.

Rev Canon Kenyon Wright: Do I press the microphone?

The Convener: No, the man at the back of the room controls the sound. Everything here is controlled.

Rev Canon Kenyon Wright: Thank you for giving me this opportunity. Although the inquiry primarily concerns the extent to which the four principles have been implemented, my submission deals more with the future than with the past. That that should be so seems even more relevant in the light of contemporary events: in the eyes of the people at least, there seems to be a new start. On the other hand, contemporary evidence—even from yesterday—shows that corrosive and growing cynicism is a reality. Even if the evidence for that is not clear, it is there. That is the background against which my submission was made.

The hopes for the Scottish Parliament were high. I do not intend to go through my paper—I assume that members have read it—but it shows those hopes. However, I point to one statement in the CSG report:

“We see the Parliament as the central institution of a new political and community culture, and recognise that a more open democracy requires innovative institutions and attitudes in Scottish society, if ... a participative approach

... is to be achieved.”

In my submission, I have tried to put forward some ideas—they are neither exhaustive nor definitive—about what those innovative institutions and attitudes might be. I believe that the high expectations will be met. However, if cynicism and disillusion are to be overcome, it is urgent that we adopt more radical measures that will visibly fulfil those high expectations. We need to demonstrate beyond doubt to the people of Scotland their ownership of the new democracy and we need to restore their trust in it. On that basis, my written submission makes a number of specific and practical proposals that are neither exhaustive nor definitive but that are a starting point for discussion. My proposals could also be a starting point for some lateral thinking on how the new democracy differs from the highly centralised representative democracy that we have known at Westminster, and on the attempt to create a participative democracy, which I try to define in my submission.

Under the heading “Power-sharing”, I propose the idea of a constitutional commission that would be broadly representative of Scottish society. The proposal is made on the assumption that the Parliament was conceived and nurtured primarily through the Scottish Constitutional Convention in Scotland, not in Westminster—although, because of the constitutional situation that we all know about, the Westminster Parliament passed the Scotland Act 1998. There ought to be a similarly broad discussion in Scotland before any future changes are made, such as those that might come from the application of the Scotland Act 1998—for example, a reduction in the number of MSPs—or those that might come from changes to the act. Even if those discussions are held by a body that has no statutory power—the Scottish Constitutional Convention had no statutory power—such a body would nevertheless have considerable influence. We need some kind of constitutional commission or broadly representative body to examine any proposed or likely fundamental constitutional changes to the arrangements for the Scottish Parliament.

Under “Accountability”, I propose a number of ideas about the committees. The ideas are not at all new; I know that many other people have made similar points about how the committees might work even more openly. I recommend open disclosure and the co-option of non-voting members. I have also proposed that the subject committees work closely with a parallel citizens forum with experienced membership. That is something that could be developed in a number of ways; I have simply suggested it as an idea.

One idea that I have put forward is not new—it was the subject of a minority report that I made to

the code of conduct working group of which I was a member. I propose a code of practice or job description for MSPs, which would be created with two aims in mind. The first would be to get across to the Scottish public the point that the role of a member of the Scottish Parliament is not identical to the role of a member of the Westminster Parliament. The roles are different not simply on geographical grounds—they cover a different territory—but fundamentally in constitutional terms. A code of practice or job description would help to spell out in the public mind that difference and what is expected of MSPs. The role of a representative in a participative democracy is different from that of a representative in a representative democracy. The former role is no less important—far from it—but the two roles must be distinguished.

The second purpose of a job description or code of practice is to make a clearer distinction, generally and in the public mind, between the role of the constituency MSP and that of the list MSP. That could be worked out in different ways—I have deliberately not tried to work out the implications of drawing such a distinction—but I think that it would be helpful to everyone in Scotland to have a clear idea about it. If constituency and list MSPs have distinctive roles, as I believe they have, it is of course not the case that one is less worthy, less important or less to be honoured than the other. They are of equal value, but they are nevertheless distinctive in terms of the job to be done as well as in terms of the area to be covered.

Under the heading, "Participation in Policy Development", I put forward the idea of longer-term planning through policy commissions. I know that a lot of that work is already going on in different ways. Nevertheless, something that shows that there is participation in policy development would be beneficial—not just the old kind of consultation that says, "Here's what we want to do. You have three months to look at it." There should be a genuine feeling that participation is possible.

In that context, I have included an addendum that proposes a further idea with which I shall conclude my opening remarks. It would be helpful if we worked towards the recognition of three clearly structured paths by which policy can be developed and by which legislative proposals can be made. The first two paths already exist and are quite clear. The first is policy by the Government, or the Executive. I prefer to call it the Government, but that is a personal preference. I hope that, whatever the official term, the people of Scotland will begin to call it the Government—I have put "Executive" in parentheses. In practice, that first path is the main way in which policy is currently presented and developed. The second way is through the Parliament. There are encouraging

signs of at least one committee using its powers to initiate legislation, and there are members' bills. The two paths are already clearly recognised, even if the second is perhaps not used as often as CSG members hoped it might be.

I am now saying that a third path to policy development ought to be developed. I recognise that that third path will be much more difficult to structure; it is one of the new institutions that the CSG report said would have to be developed. There must be some way in which civil society, or what I have called "the People", can develop policy. In three of the four CSG principles, three partners are mentioned explicitly: the Executive, the Parliament and the people. I agree that the proposed third path is by far the hardest to give any kind of clear shape to, but it would be a tremendous advance and would overcome a great deal of the cynicism that exists. A clear third path would have to be developed by proper consultation, through which the general public and organised civil society could develop policy and propose legislation. Those proposals should be taken as seriously and given the same civil service support and back-up as anything emanating from the other two paths.

Those are some of the ideas that I propose. I am sure that none of today's witnesses wants to be regarded as an armchair critic. We have made our proposals and comments in the context of real admiration for what the Scottish Parliament is and what it has done. It has made tremendous advances, but I cannot help feeling that the next 18 months may be crucial to overcoming some of the feelings of cynicism that clearly exist, rightly or wrongly—largely wrongly, in my opinion. Nevertheless, those feelings exist. We are not armchair critics, but we hope to be genuine allies and partners in the creation of the new democracy that the people of Scotland so clearly hoped for and that I believe is still within our grasp.

09:45

The Convener: Thank you very much. My first point touches on something that you said near the beginning of your remarks. You said that there were high hopes for the Parliament and that there is now some cynicism about the way in which we are working. Were not those hopes grossly inflated? Do we not in fact have a Parliament that is getting on with doing a pretty workmanlike job? It may be failing to meet theoretical aspirations, but is it not basically doing what it was put here to do?

Rev Canon Kenyon Wright: That is a matter of opinion, of course. It is interesting that two things are widely being said that are almost complete opposites. One is what you have just said—that the hopes were too high, that we should somehow

trim those hopes and that we cannot expect much more. The other is the opposite of that. Some people have criticised the CSG for not being radical enough and for not translating the principles much more radically into proposals for standing orders or for the kind of code of practice that I have suggested. There have been criticisms both ways. However, I make a clear distinction between what I call a quantitative approach and a qualitative approach. The hopes were for a kind of democracy that would be qualitatively different, not just quantitatively a little better. That distinction is not yet clearly enough understood or followed. Expectations were certainly high, but I still believe that they can be met in time.

Mr Frank McAveety (Glasgow Shettleston) (Lab): As they asked George Best, where did it all go wrong?

Rev Canon Kenyon Wright: I beg your pardon.

Mr McAveety: They asked George Best, "Where did it all go wrong?" When did that happen to us?

Rev Canon Kenyon Wright: I did not say that it all went wrong.

Mr McAveety: Neither did George when he was asked that question, incidentally.

Rev Canon Kenyon Wright: I never said that it all went wrong, but we must recognise that, rightly or wrongly—I have said that I think it is wrongly—public perception, partly created by some elements in the media, is overly negative. That is a fact.

Mr McAveety: That is a regular response by many politicians across the board about the media, who then bristle badly about the accusation that they have brought about the problem of poor public perception of the Parliament. Could we get behind some of that? What do you mean by media perceptions of the Parliament? How do elected members overcome them?

Rev Canon Kenyon Wright: That is a difficult question to answer. I said—and I am always careful in what I say—that some elements in the media have been overly negative. That approach is quite common and applies just as much to the voluntary sector as to the media and politicians. We have all grown up with and are used to a particular way of doing politics that is highly centralised, party based and adversarial. We are trying to move towards something that, although it still incorporates those features to some extent, is different. I think that there are people in the media who have not understood that.

I do not know how we change that; I agree that it is difficult. However, I hope that anyone who has any influence on the media will help them to develop an understanding of the Parliament.

Some parts of the press understand it. I will not name newspapers, but I think that members know well which papers and which categories I mean.

Mr Gil Paterson (Central Scotland) (SNP): The subject on which I want to ask questions has almost been covered. Commentators say that the Parliament enjoys—if that is the right word—a bad press, but people who make their way to the Parliament to come to the Public Petitions Committee, to give evidence or to meet cross-party groups give much positive feedback. How do we get the message out about good work? We seem to be in a quandary. We hear from many folk about the good work that is done, but we are not reaching out. Perhaps we are reaching out to the public, but not to the press. Perhaps we are making some mistakes.

Rev Canon Kenyon Wright: I cannot speak for the press. I can say only that I have proposed a few radical ideas that would take matters in a different direction. If those ideas or something like them were adopted, they would show the press and the public that we are talking about a different political culture. To use the words of the CSG's report, that would be a

"new political and community culture".

Gil Paterson is right. I recognise in my submission the tremendous work that has been done and that

"the foundation of a fairer electoral system, its information services, legislative processes, work in committees, style of informality, and accessibility, have all provided a refreshing contrast to the past."

I would not for a moment be negative, but what is required now is qualitative, not just quantitative, difference. That is why I took the liberty of proposing some ideas.

Mr Paterson: I will ask a question that I have been in the habit of asking. Are we adding to the problem? When decisions are made in the Parliament, some are good and some are disliked by the public or the press. Could the public be confused about where to lay the blame and the credit? Are they confusing the Executive with the Parliament?

Rev Canon Kenyon Wright: Yes. That is undoubtedly true. The two are confused in the public mind. Such confusion does not seem to apply to Westminster to the same extent. People seem able to distinguish more clearly between the Westminster Government and Parliament. Perhaps because of the novelty of devolution and of having our own Parliament in Scotland, the Executive and the Parliament tend to be confused. All of us—whether MSPs or otherwise—have a responsibility to overcome that.

I notice that Jack McConnell has begun by

promising greater accountability of the Executive to the Parliament. That must be seen to be implemented. Another idea that I have proposed, which is too complex to spend much time on, is the development of the explanatory information that is supposed to accompany all legislation and should cover five important points. If that information were developed openly and made clear to the public—if, every time the Executive proposed any legislation, it had to address the five points fully and publicly—that would go some way towards achieving the accountability that we are talking about.

The groups with which I work—People and Parliament and the churches' Vision 21 group—are developing criteria that we would like to propose to committees for assessing those five points so that, in the public mind, accountability would be seen to be supplied.

Mr Paterson: I will ask you a final question that I will not ask anyone else—other people should feel free to comment later. Should the Executive be called the Government, so that when the Government does good or bad things, it is clearly identifiable? That would separate the Parliament and the Government. Would that help with public perception?

Rev Canon Kenyon Wright: I said that I would prefer to call the Executive the Government. I understand the reason for using the name “the Executive”. Technically, that name ought to make the Executive much more the servant of the Parliament, because the Executive is to carry out the will of the Parliament. However, in the public mind, the word “Executive”—especially if it confuses the old Scottish Office civil service with the Government—may be confusing. “The Government” would be better. In the Civic Forum and elsewhere, I have gone so far as to say that I hope that people and the press in Scotland will start calling the Executive the Government, whatever the theoretical position.

Mr Kenneth Macintosh (Eastwood) (Lab): I will return to the previous point. Is the overall thrust of your submission that the political culture and our political attitudes, rather than the institution, hinder the Parliament's development? The way in which the Parliament operates cannot be adapted in a minor way, because an attitudinal change is needed.

Rev Canon Kenyon Wright: That question is interesting. There is a long theological argument in the church about whether one changes society by changing people or changes people by changing society. I have never come down firmly on one side of that argument.

The answer to Kenneth Macintosh's question is that, if attitudes change, institutions are more likely

to change, but institutions can also form attitudes and help people's understanding. That is why many problems with the media are institutional, as were all the CSG's proposals for standing orders, in a sense. Those proposals were intended to create an institution that moved society in a particular direction. I cannot give an absolute answer one way or the other—forgive my little theology.

Mr Macintosh: The Parliament has followed several principles. The fact that we were established using proportional representation has created a form of consensual working. On the other hand, we have a party-political culture. I would be interested to know whether we need further radical institutional change or whether the present structure can be improved and made to work, if what needs to change is us.

Rev Canon Kenyon Wright: The CSG's report referred to new attitudes and institutions. Both must change. The quickest way of bringing about change is to have additional institutions. I do not suggest that any existing institution—including the Parliament—is wrong. I propose additions that would make the situation clear to many people and might begin to shift attitudes. I am talking about attitudes not only in the Parliament, among politicians, but in Scottish society generally. We all share the experience of having grown up with a different kind of politics and we seek something better.

Mr Macintosh: We have heard evidence that the most difficult part of power sharing is reaching people—this sounds like a Heineken advert—from non-traditional backgrounds and encouraging them to participate in our democracy. However, you seem to suggest more of the same. You propose a commission of the great and the good—the usual suspects yet again. Will that overcome our difficulty?

Rev Canon Kenyon Wright: I hope that a commission would involve not only the usual suspects. The People and Parliament project, which ran for two years before the elections to the Parliament, sought to go beyond the usual suspects, as the first paragraph of my submission says. We involved 500 groups that were spontaneously established throughout the country. The results of the exercise were tested by a System 3 poll to ensure that they were valid and not self-selecting. I very much feel the need to go beyond the usual suspects. The Civic Forum is looking beyond organised civil society.

The final proposal in the submission is for some kind of third avenue, but a lot will depend on how that is developed. It will be complex, but there must be ways of developing it that would give opportunities to the people whom you are talking about and not only to organised civil society.

10:00

Donald Gorrie (Central Scotland) (LD): I would like details on a couple of points in Kenyon's written submission. I was fascinated by the idea of a small expert commission to find out who really rules Scotland and how. I am a professional anti-establishment guy and, if you could work out for me who it is that I am against, I would be delighted. Mr Winetrobe has a slightly similar idea about another committee to establish the position of the Parliament vis-à-vis the Executive. Having a fact-finding group would certainly be helpful. Could you elaborate on those ideas?

Rev Canon Kenyon Wright: I am a simple person. We have all accepted power sharing as the first of the four CSG principles, but we can share power only if we know where it exists. Power—both politically and economically—is distributed. However, I am not sure whether there is yet a clear understanding of where it is. I cannot suggest how to get that understanding—I would have to leave that to the academics and others. Studies may already exist and other people here may know better than I do.

I am simply presenting a principle: if we are really going to share power, we have to understand where power is exercised and where decisions are shaped and we have to understand the role of the civil service, the Parliament, the Executive, business and industry, civil society, Westminster and so on. Much of that is laid down in statute, but by no means all of it.

Nothing that I am saying—and I realise that I may be going into a sensitive area—would in any way take from the Parliament the right of final decision. I always make a distinction between decision taking and decision making. Decision taking—the right to take the final decision—belongs to the representative body, elected by the people. That is absolutely clear. Decision making—the shaping of a decision or of policy—is not confined to the elected representatives at any level; it belongs to wider society. That is the principle behind what I call participative democracy as opposed to purely representative democracy.

Donald Gorrie: I was interested that you thought that we needed training. It could be helpful to have lessons on how the civil service operates, on how a bill emerges from that curious mountain of activity and on whom one has to influence to get things changed. A friend in London tells me that there has even been talk of ministers in the Westminster Government receiving training. What sort of training do you think that MSPs need?

Rev Canon Kenyon Wright: You may think it a bit of a cheek for me to suggest training for MSPs—you may be justified in that. I remember

that when we in the church suggested that bishops ought to be trained, the bishops did not like it very much.

My reference to training was in the context of some kind of job description or code of practice. Donald Gorrie refers to the nuts and bolts of how things work, which are always important. However, if there were a job description or a code of practice—which was set not by MSPs for themselves, but by their employers, the people—and if there were a clear distinction between constituency and list MSPs, people would have a much clearer idea of what it means to be a member of the Scottish Parliament, as distinct from a member of the Westminster Parliament or of local government. That job description or code of practice would provide a basis for consultation—with the bishops, we had to end up calling what we were suggesting “consultation” and not “training”, although it was the same thing.

The Convener: I do not know the equivalent of the bishops in our set-up.

Mr McAveety: I am intrigued by the theological references; in my religious faith, I do not know whether the Council of Trent was all that effective in changing attitudes in central Europe.

Participation is a big problem, especially in parts of urban Scotland. Unfortunately, turnout in my constituency was very low—just under 40 per cent—in the recent election.

Without wanting to criticise what you have said, because you have made valuable points on how to influence, shape and develop policy, I have to say that nobody has ever stopped me in the street and said, “I am really worried about whether to call you the Executive or the Government.” They are more likely just to blame me as an individual MSP for the actions of the Executive or of the UK Government.

Discussions on participation are permeating most western democracies. How can we involve people so that they feel that their vote is worth while? I am convinced that part of the answer lies in demonstrating to people that, over time, their participation has had an influence and made a difference. If we can demonstrate how decisions are taken, people can then judge their effectiveness or otherwise. However, the worry is that, even though we try many colourful approaches, we may not inspire folk to go and vote. What models can we use to encourage them?

Rev Canon Kenyon Wright: You will forgive me if I do not comment on the Council of Trent—although we can discuss it privately if you wish.

Your question is difficult to answer. I have never forgotten a comment made by one youth group

that took part in the People and Parliament project. The young people were from Aberdeenshire and their report gave lots of ideas on how the Parliament should work, some of which are incorporated in the four pages at the end of my submission. However, at the end, the young people said to us, "We don't think that any of this will make any difference—so please prove us wrong."

People used to say that devolution was not uppermost in people's minds. It was not. Similarly, if one stops people in the street now, they will not say that they are worried about whether we should use the word "Executive" or "Government". Nevertheless, I feel that the People and Parliament project, and other things, proved that a real expectation for a different kind of Parliament existed. People would use vague words: they would say that they wanted a Parliament that "listens to us", that "allows us to own it" and that "allows us to participate". I do not think that many people could have defined precisely what they meant by those words, but if we can attempt to change attitudes and the institutions so that we allow greater participation—and are seen to allow greater participation—people will respond to that. That is my conviction.

The Convener: Kenyon, I am sure that points will arise in the succeeding discussions that you may want to comment on. If so, please just indicate to me. I want to extend the discussion to include the four other representatives from the consultative steering group. We have received apologies from Paul Cullen, Deirdre Hutton, Joan Stringer, Jim Wallace and Andrew Cubie. However, I am pleased to welcome Campbell Christie, Alice Brown, Joyce McMillan and Esther Robertson. I have no idea who should go first. As heads are shaking, perhaps we should do it alphabetically and go for Alice. The other three seem quite happy with that.

Professor Alice Brown: We have not colluded in advance, so there will be no common story here. Many issues have been raised that would probably be better explored through discussion and questions. However, before we do that, I would like briefly to revisit some key points.

It is worth reminding ourselves of the process used by the CSG. The idea of having an inclusive process, of learning lessons from other countries and of thinking about what could be done differently was important, but it is not a precious thing that cannot be changed in future. Nonetheless, it is good to approach a discussion with the idea of founding principles. Doing so allows us to develop those principles in the context of what works and what does not work. In the CSG, we were certainly not saying, "This is a blueprint that must be used exactly." However, we

thought that the founding principles were valuable and that people in the Parliament would work out how to realise those principles.

To restate the point, the objective of the CSG was to build a new political culture and to raise aspirations. I do not apologise for that and I do not think that it was a naive enterprise—the people who made up the CSG could be called many things, but "naive" would not be one of them, given the political scars that all of us bear from our differing backgrounds. We wanted to rebuild trust and confidence in the political process, as we were aware that it was at a low ebb, not just in Scotland and the UK, but throughout the developed world—we should bear in mind that the problem is not specific to us.

We wanted to arrive at an open and inclusive process and to get away from the highly secretive, behind-closed-doors way in which things were done. Our ultimate objective in doing that, of course, was to make a difference to people's lives in Scotland. Institutions, mechanisms and processes are valuable only in so far as they help to meet that objective.

This inquiry gives us a good opportunity to stand back and assess in a sensible way how far we have got. There are various criteria for assessing that success. We should not have knee-jerk reactions to some of the more critical comments, but we should be critical where we have to be and learn lessons from what we hear. The research evidence that you will hear from Pamela Tosh and Professor Fairley is valuable, as it gives a broader approach.

There were many controversies early in the life of the Scottish Parliament and one might argue that going through a process similar to the CSG process might have overcome some of them, such as allowances and the Parliament building—I will leave that one with you. There were other issues that we did not develop in great detail, as we had a short time scale in which to work. We did not have the opportunity fully to develop the relationship between the Executive and the Parliament. We had a view of what that should be, but perhaps we did not articulate it fully in the documentation. Moreover, we did not get the opportunity to discuss at any great length the role of the civil service or of the political parties in the future governance of Scotland. In operating a new system, we come with certain rules of the game that derive from a particular electoral system, but we are trying to develop new rules in a new set of conditions. Again, that is about evolving ways of operating.

The press had great fun with our articulation of our ideas about a different type of politics—"What consensus?" they asked, "Everyone is arguing." However, that demonstrates a fundamental

misunderstanding of what we meant. The argument was not that we would all be nice and cosy, think everything was lovely and agree with one another all the time. The idea was that we would have open dialogue and debate, which might be contentious and radical, but which would be done in a way that meant that common ground would be found and alliances would be built, resulting in a process that worked in a much more plural way and that was not dependent simply on a set of people making decisions behind closed doors. We did not think that every consensus would be cosy; some of them might be quite uncomfortable. We wanted any consensus to include more and new voices—voices that had never been heard before.

An issue that has arisen has been how changes are made. I would be worried if that issue were driven by highly constitutional debates. We need a bit of stability in the system and should be grown-up about examining what is working and what is not. We need to ask what the Scottish Parliament can do to effect changes without having major alterations to the Scotland Act 1998 every time we want to tinker with the process.

We should remind ourselves of the key objective: it is to make a difference to the lives of people in Scotland. That is the challenge that faces everyone—not just people in the Parliament, but others who are part of the process.

Dr Campbell Christie: How is your alphabet, convener? [*Laughter.*]

The Convener: We are just about coping. Campbell Christie is indeed next to speak.

10:15

Dr Christie: As Alice Brown said, we are here as consultative steering group members, although we have not really worked out a caucus line. You are getting our individual reactions. I am conscious of the short time available, so I will be as brief as I can.

I welcome the fact that the Procedures Committee has felt it right to follow up the CSG principles and to hold this inquiry. Members will probably know that the Scottish Civic Forum has also commissioned an audit of democratic participation with regard to how the Parliament is operating. I think that it is right for the Procedures Committee and the Parliament to consider how the Parliament and the Executive are operating. Periodic external consideration of that is also probably helpful. We see the Civic Forum as the body to perform that role from time to time, auditing how procedures are developing.

I welcome the fact that the committee has taken this initiative. We hope that the Civic Forum's

contribution can add to your work and that you will continue to do this sort of work. As well as being a CSG member, I am the convener of the Civic Forum. I believe that I and others will be appearing before you in the new year, as Civic Forum members, to speak to our written evidence.

I will say one thing about the work of the Civic Forum. Generally, I join those who believe that, whatever we say about the detail of what is going on, our overall feeling is that the Scottish Parliament has added a new dimension to democratic and participative life in Scotland. We sense that the Parliament and Executive are seeking to find ways of involving Scottish citizens in a way that we—or certainly I—never felt was the case with Westminster. We start from that positive basis.

It would be easy for the Civic Forum to act simply as a rent-a-quote—an organisation that is on hand to give a quote to the media about this, that or the next thing. We do not want to act in that capacity; we do not want to provide a civic society view—after all, what is a civic society view? We believe that the forum's role is to bring into the discussion on policy those groups that are not the usual suspects—the tenants association in Drumchapel, the Gingerbread group or single parent families groups, for example. Our role is to involve such groups, which are our members, and make the discussion on policy accessible to them. That is not easy. In his evidence, Kenyon Wright says that he is disappointed by the slow start of the Civic Forum. The reason for that slow start is that we are undertaking a difficult task—ensuring that politics is not just for the usual suspects, but for those on whom politics has an impact. We have not found the answer, but we are trying. That is all that I wish to say now about the Civic Forum.

A number of us wish to make specific points and the area about which I feel most disappointed with the Parliament is, funnily enough, the one where many others say that it is successful: the work of its committees. I think that the committees have indeed worked much better than the select committees at Westminster, where there never seemed to be a debate going on; there were the party whips and the structural arrangement, but there was no real feeling that the committees were driving policy development.

The CSG envisaged committees that would scrutinise the Executive. The committee structure appears to be doing that quite well, but we envisaged the committees doing more than that. We thought that there would be more stability and that committees would become expert in their areas of expertise. We thought that party majorities would not dominate the committees.

In short, we hoped that the committees would examine their area of expertise, scrutinise the

Executive and initiate proposals for legislation. One of the disappointments is that, perhaps because of pressures of time, the committees have not done all that. People talk about having fewer MSPs in the Parliament, but I am horrified at the thought of how, if that is to happen, the remaining MSPs will deal with the committee work.

My main point is that we would have liked the committees to be a greater driving force for initiating action and legislation. Kenyon Wright said that he would have liked to see the committees initiating legislation and examining how, in some way, the community can be involved in identifying items for legislation.

In that respect, I welcome the work of the Public Petitions Committee. I was horrified to read in the press that, for various reasons, the Public Petitions Committee was for the axe. The one way in which the public can identify areas for legislation is through petitions. Those petitions should not be buried somewhere, as at Westminster; they should be considered by the committees. The Public Petitions Committee is a positive area of the work of the Parliament.

We thought that the committees would be augmented by other expertise. All sorts of technical arguments were put as to why that could not happen. I regard those arguments as gobbledegook. I am disappointed that the co-option of expertise that we envisaged has not happened. I accept that the committees appoint experts, but those are academics—the usual suspects—not the sort of experts that we would have expected them to appoint.

Why do committees not appoint experts from real life? I am referring to people who have lived the issue—for example, people who have lived in poverty and have had great difficulty in making ends meet. Those are the sort of experts that we want the committees to bring on board. They are the people who can make a real and meaningful contribution, which it is often impossible for committee members to make. When committees appoint academics, what happens is that one academic will compete with the viewpoint of another. The committees would make a difference if they appointed real, live people.

The committees should be the visible face of the Parliament. Their visibility would be greater if they met more often around Scotland. They do not do that very often; they do it merely from time to time. All the reports that we get are that committees are well received and that those meetings provide impetus. Part of the Parliament being Scotland's Parliament is that the committees go outside the central belt and are seen taking evidence and getting involved with communities. I appreciate that cost is involved and that the media do not like the Parliament to spend money. However, the

committees should say to the media, "Just shut up! We want to speak to the people directly, not through you." That might help to take things forward.

As my colleagues are following after me, that is all that I want to say at the moment. There will be the chance for debate after they have spoken.

The Convener: Thank you very much. Perhaps Joyce McMillan can speak to us of the real world.

Joyce McMillan: No, not at all. I am a theatre critic and a journalist.

I sent a written submission to the committee. I do not see it in the pack, but I hope that members have had a chance to see it. I will talk to it briefly. In the submission, I agree with much of what has been said, particularly by Kenyon Wright. I focused on the two principles of power sharing and access and participation, because I think that those are—predictably—the most problematic, as many people have said. Indeed, they are problematic for all western democracies.

The Parliament has made huge strides in improving the accountability of Scottish government. Sometimes that is rather a painful process, which might be perceived as negative—when one holds people more closely accountable, the things that come to light are not always positive. In that sense, the Parliament has made already a great difference to the openness and accountability of Scottish government. That principle, of the four, has probably clocked up the greatest success.

There have also been great strides in equality, particularly in gender equality. Going round the country, I find that the Parliament makes a positive impression, as it looks like an ordinary workplace and not like a Victorian throwback. It might not be enough that women make up 38 per cent of MSPs, but it is enough to make the place look much more like real life than the Westminster chamber routinely does. There are issues about the proper representation of other minorities, particularly ethnic minorities, but at least a start has been made on equality issues.

I want to mention quickly a few points about power sharing and access and participation. The first goes back beyond my time on the CSG to when I chaired the constitutional commission, which was in the margins of the Constitutional Convention. The Parliament's electoral system was an important consideration in the CSG's deliberations. We felt that that kind of electoral system, with a fairly high degree of proportionality and a list system that was based on regions rather than on a national list, was part of the underlying assumption about what the Parliament would be.

Changes in the electoral system are undesirable

at such an early stage in the life of an institution, which should be allowed to stabilise for at least a decade or so. In any case, there are matters of principle about the existing electoral system and the size of the Parliament, which ought to be borne in mind when any change is contemplated. Campbell Christie has already drawn attention to the difficulties that would arise if the size of the Parliament was reduced; I agree with him strongly.

That brings me to my next point, which relates to something that I have learned in the years that the Parliament has been in operation. The Parliament needs to establish strong conventions to protect the committees' independence from the Executive and their freedom from the need to operate on rigid party lines. We are now facing what must be the third if not the fourth major upheaval or reshuffle in the two and a half years of the Parliament. On every occasion, such a reshuffle has destabilised the chairmanship of major committees and has affected committee membership. In a small Parliament of 129 members, a fairly high proportion of whom are in the Executive, we need conventions that will stop the committees being destabilised on a yearly basis by reshuffles that are initiated by the Executive. That is an important issue, which the Parliament should begin to address if it is serious about implementing the CSG principles.

There are also issues about the form of consultation and the legislative pathway. I am not in favour of major disruptions of those in the short term. However, I was always slightly uneasy, as a member of the CSG, about the fact that the group adopted the idea of Executive consultation as the key form of consultation in pre-legislative deliberations. One of the Scottish people's high expectations for the Parliament was that, as a public forum, it would in some way take control of the consultative process and perhaps slow it down a bit and introduce innovative elements, so playing a key role in initiating a new age of consultation in Scotland.

Since 1999, however, the parliamentary committees have struggled to initiate new forms of consultation, particularly those committees that have had to react to large programmes of Executive legislation. Meanwhile, the Executive down at Victoria Quay has gone into a sort of frenzy of hyper-consultation in which people are becoming exhausted by being the usual suspects—they are becoming exhausted by hyper-consultative behaviour by the Executive. Functionally, that means that there is much more of the same thing that we have always had.

People expected the Parliament to adopt a new role in initiating more open and publicly accountable forms of consultation. Parliamentary committees play a key role in that and one of their

goals is to create new forms of consultation in advance of legislation. If that means questioning the traditional pathways, pace and quantity of legislation, that can only be a good thing.

10:30

Paul Grice recently invited me to join a group that will discuss communications in the Parliament. We hope the group will not be made up of the usual suspects; we are trying to widen it a little. As a journalist, I am obviously very interested in the subject. One of the key issues that I am interested in discussing with people who will take an informal part in the group is how much energy the Parliament should expend on improving its image through the media and how much it should expend on its direct relationship with the Scottish people. As someone who works in the media, I believe that the media will always be an unreliable source in the impartial and constructive engagement between a democratic body and the people.

One of the things that the Parliament has to do, as a 21st century Parliament, is to think radically about how to make individual Scottish citizens feel approached and valued by it. I say "individual" because, nowadays, people function as individuals; those who involve themselves in groups and organisations of any great strength tend to be in a minority. That is a tall order, but it is an interesting question. Given the current situation in Scotland, we might find answers that could be important not just to Scotland, but to the major issues facing all western democracies in the coming century.

Esther Robertson: It is always interesting to be in on a wash-up session.

I am glad that all my colleagues have said what I had planned to start by saying. I will start with another point. Alice Brown talked about what the CSG did, how it operated and where it started. As far as I am aware, the CSG was the first time that members of all four political parties—along with people such as Keith Geddes and Campbell Christie of the trade unions and local government—sat round the same table to discuss what the Parliament would be like.

The CSG disproved the awful cliché of the new politics, because we had disagreements. It was not the cosy consensus that Alice Brown referred to, but was sometimes quite controversial. However, we all started from the principle that we wanted the Parliament to work and that has led to some good experiences round committee tables and in the chamber. The Parliament has got off to a good start and has done a great deal.

One committee member asked about the media. Most of the media coverage is about the

Executive. I have no strong views about what things should be called, but I agree strongly with Kenyon Wright that the confusion between the Parliament and the Executive—and, more important, the Executive and the civil service—has confused people who one would expect to know better. One might not expect a local community to understand, or even care, but informed members of the public, who influence other people, get that confused. As a result, it is difficult to demonstrate what the Parliament has achieved separately from the Executive or Government, or whatever you want to call it. The media have enjoyed the vestiges of the old politics, which are still visible in many places.

The Parliament has come a long way. If the CSG had sat down on 1 May 1999 and asked how far the Parliament would get with the four key principles in the first couple of years, I would have been happy for it to get as far as it has. Unlike Campbell Christie, I believe that the committees have done a great deal of work. However, I do not believe that that work has been visible. It does not make a good news story to see people sitting round a committee table thrashing out the issues and resolving their differences in what might not be a consensual way, but is a grown-up way, leaving behind some of the childish politics of Westminster.

Kenyon Wright's point about public access is important, but we have already seen that the public can influence the legislative and policy development process—through members' bills, by lobbying their MSPs, through committees and through the petitions process. Like Campbell Christie, I was pleased that the petitions process survived.

I, too, have picked up the perception that the Parliament is Edinburgh-centric. Although I believe that more could be done, the struggle lies in making visible the fair amount of work that is already being done on that matter. Again, there is confusion in that perception between the Parliament and the Executive. When it comes to tackling that perception, we need more of the same and the work needs to have a higher profile.

Joyce McMillan picked up on my point about scrutiny and openness. Much of the bad news and the difficulties that the Parliament has experienced in the past couple of years have come about because we wanted our Parliament to provide more scrutiny and to open things up. It has been a goldfish bowl, which is very uncomfortable, but that is the price that we pay for openness and scrutiny. I suspect that the events of the past few weeks will have scunnered enough people that the pendulum will begin to swing back to something that is much more manageable and acceptable.

The Parliament—or perhaps the Executive—has

tried to do far too much in its early stages. I do not agree that expectations were too high; there would have been no point in fighting for a Parliament if we had not had very high expectations. Even now, I do not think that those expectations cannot be met. However, for understandable reasons—the enormous pressures and backlog of legislation—the Parliament and the Scottish Executive tried to do too much in too short a time. I was heartened by Jack McConnell's statement that he wanted to do less and to do it better. The legislative burden has caused difficulties for the committees and has not allowed them enough time for the thoughtful and participative policy development that we had all hoped for. Some of the committees have done a great deal, particularly those that have not had a heavy legislative burden.

That leads me to the question of consultation versus participation. We are in consultation overload, partly because there is more legislation to consult on—as long as there is legislation, there will be consultation. The CSG, and the convention before it, thought that we would have participation, which is very different from consultation. It should not be about people in the Parliament coming up with an idea and going out to test it. Instead, the committees should have the space and time to carry out thoughtful development that engages the wider community and recognises that many of the best ideas will come from the community. The consultation stage comes much further down the line, once the policies are further developed.

Some committees have tried out brave ideas—open space events and all sorts of things—but others have done much less. To use that awful expression, we must share good practice. The committees should be more innovative and adventurous. I agree that the Parliament should not listen to complaints to the effect that it should not spend money on travelling round the country and running events that involve the public. That is what people thought that they were voting for and it would be money well spent. It would also reduce the need for the constant consultation processes that we seem to be involved in at the moment. I pay tribute to those committees that have done as much as they have done.

Ken Macintosh asked whether it is the individuals or the institution that needs to change, and I agree with Kenyon Wright that the answer is both. In the short term, there is much that individual members can do. I have heard members from all parties speaking publicly about how pleased they are about the way in which the committees have worked in the main, and how disappointed they are about the way in which debates are conducted in the chamber. In the chamber, old politics rears its head and there is the usual mudslinging. Party politics will always be there, but it can be mature and grown up.

My disappointment is that the bad press has focused on the kind of politics that is about not the issues or the debate, but the personalities and the parties. That has disappointed many people—I speak from the heart, as some of you will be aware. If each member, and each party, realises that that is why the Parliament is in its current position, they can take a decision to focus on the realities, the issues and the concerns of the people of Scotland and to stop the mudslinging that goes on in various corners. If the public could see in the chamber more of the behaviour that goes on in the committees, they would believe that we have achieved the mature, grown-up politics that is consensual without being cosy, which most of us voted for in 1998.

The Convener: Several people have spoken about consensus. Alice Brown drew the distinction between having a consensual approach to policy and politics and having consensus in the sense that everyone agrees with one other—an impossible situation. Esther Robertson said that the public face of the Parliament—in the chamber—is very non-consensual in both senses. I wonder what Alice Brown thinks about the degree of consensus and the way in which we work in the committees. Are we achieving the degree and type of consensus that was envisaged at the outset?

Professor Brown: It is the degree of debate that we are talking about. In general, people would argue that the committees have been much more successful. One can read a committee *Official Report* without knowing to which political party a member belongs, because the committees have a full debate on the issues and the questions surrounding them, rather than focusing on political point scoring. That is the perception. Obviously, we do not have time to cover the committees in enough depth to know whether that is always the case; that is where we need some research.

I want to stress the points that have been made about the pre-legislative stage. The objective was to make policy differently—in a way that might take longer and involve hearing different points of view, but that would result in better policy. The idea was that, long before members of certain political parties had developed firm ideas on policies, on which they were prepared to go to the wire, there would be a broad debate on questions such as what type of education system or health system we wanted for Scotland. In the process that we were trying to engender, members would be involved in such debates before getting down to the details of specific proposals.

Mr Paterson: I think that it was Campbell Christie and Joyce McMillan who spoke about musical chairs in committees. We have been unfortunate in having had three First Ministers, which has been the fundamental reason for the

musical chairs. Joyce spoke about conventions, and I would be interested in hearing her views on what we can do to keep members on committees and to develop expertise. If we could do that, we would give stability to the committees.

Joyce McMillan: I am not a parliamentarian and I know less than Mr Paterson does about how such things work. However, if you can get consensus in the Parliament on the desirability of having a strong committee system that is a key link between the Parliament and the wider Scottish community, it should be possible to get an acknowledgement that frequent changes to the personnel and convenerships of major committees are not desirable.

The Parliament has a fixed term of only four years. It is not too much to ask that members who take on the convenership of a major policy committee at the beginning of a four-year term should, by convention, renounce the possibility of moving into ministerial office during those four years. I remember once making that suggestion to a group that included some MSPs and there was a dreadful intake of breath. I know that “events, dear boy” and, of course, the death of Donald Dewar, which was an unpredictable and tragic event for the Parliament, have meant that it might have been difficult to put such a convention fully into practice. However, if we do not begin to develop a self-denying ordinance to deal with the musical chairs, it will be impossible for the committees to build up the expertise that was hoped for, which is essential for the considered policy building that we are talking about.

To my mind, this issue is closely related to what Alice Brown said about making a difference to the lives of the Scottish people. Everyone knows that the kind of issues that are within the remit of this Parliament—the bread-and-butter issues such as health, education and local employment—are not easy to deal with. Every western democracy is facing critical questions on how those services should be financed. Without strong committees that are able to do serious and sustained work on investigation and consensus building, and on how we can shift policy along and achieve enthusiastic and powerful implementation of that policy, the chances of this Parliament making a difference to people's lives will be severely limited.

I offer the idea of the conveners of major policy committees undertaking not to move into the Executive. Committee members, as parliamentarians and people with political careers, may find that idea unrealistic, but I think that it is worth discussing.

Mr Paterson: At my age, such considerations are not a problem.

Patricia Ferguson (Glasgow Maryhill) (Lab): I

have been very interested in this morning's contributions—and more heartened by some of them than I had thought I might be. With hindsight, are you happy with the framework that you gave the Parliament? Is there anything, particularly in relation to the key principles, that you would change?

Esther Roberton: This is picking up on a point that Campbell Christie made. Perhaps the one issue on which we did not reach consensus concerned membership of committees. During the days of the convention, there was a strong view that committees should be able to co-opt members, who were not MSPs, as non-decision makers and non-voters. Given the committees' experience and the fact that many of them have become smaller, that provision would be valuable. I do not believe—I would be curious to know whether my colleagues believe—that the two and a half years in which the Parliament has been in operation have proved that we were wrong to fight for co-option of members or that there would have been anything to lose by doing that. I will be slightly bold and say that the civil servants were most unnerved by the proposal. I can understand why, but I think that it is a pity that we failed to win that battle.

10:45

Joyce McMillan: We should have been clearer about the roles of the committees and of the Executive in the legislative pathway. We should have insisted more strongly on a pre-pre-legislative period, in which the Executive would announce its intention to legislate before turning the matter over to the Parliament for a few months. I realise that, to people who are used to a traditional macho executive mode of Government, it sounds dreadful to have to hang around for months while people think about what kind of legislation they might like. However, as I have tried to make clear, the issues that are at the centre of this Parliament's work are the sort of issues that would benefit from a slower decision-making process.

I also think that we should have been clearer about the Parliament's role in debating and endorsing appointments to quangos. We intended to address that point, but in the rush to finalise the report we were not as clear about it as we should have been.

Professor Brown: I endorse the points that have been made. As I said in my brief introduction, given more time we would have pressed harder on some issues. With the benefit of hindsight, I think that we should have done so. When it came to many of the relationship questions, we did not have time to develop the implications of what was being proposed. We need to consider further the

role of civil servants and the political parties in this new process, as well as the issues that Joyce McMillan and Esther Roberton have raised.

Dr Christie: Although the CSG included members from the political parties, the political parties' strategists did not input to the discussions that took place in the CSG. We wanted the legislative process to be different and to avoid a headlong rush to pass 12 bills before the end of the parliamentary year. We envisaged a situation in which a broad issue would be raised, Parliament would debate it and consultation would take place involving the committees and civic society. Out of those discussions would come proposals for legislation. We did not have to deal with people saying that they had to face the electorate in four years' time and to produce and deliver on their manifesto. Perhaps we still need to have that debate.

Canon Kenyon Wright talked about the need for a new commission. I think that we need to see how we can make what we have at the moment work better and that it is too early to come to conclusions. However, I hope that the political parties, the committees and others will reflect on the evidence that the Procedures Committee has received in its inquiry and think again. If we want to involve the public in the legislative process, we cannot continue with the current system. At the moment there is a headlong rush to meet a timetable, to pass legislation and to deliver on manifesto commitments, before going to the electorate and starting all over again. We need to slow down the process and to get better-quality participation.

Rev Canon Kenyon Wright: I agree with much that has been said. The committees are of key importance. We were told that it was legally impossible for the committees to co-opt members, but none of us is convinced that, if the Parliament and the committees so wished, people could not be co-opted on to committees for one meeting, a series of meetings or a specified period as non-voting but otherwise fully participating members, rather than just as witnesses.

The CSG's task was to discuss the Parliament. We were not asked to talk about the Executive or the people—the other two partners in the four principles. We were asked to discuss the Parliament and, in a sense, that is partly the problem. We said some things—but not very much—about the Executive's role, the Civic Forum and the role of civil society and the people. We said quite clearly that we perceived the committees as having three roles: to scrutinise legislation; to hold Executive ministers to account in their particular areas; and to think strategically about long-term policy—to be a centre of real policy thinking.

The committees—through no fault of their own, because many are very busy and have an enormous amount of work to do—seem simply not to have been able to perform that third role. Some structures and institutions in civil society could help with that policy reflection and thinking. They could work more closely with the appropriate committees in a number of areas—particularly health, education, sustainable development and the environment—to develop a consensual approach to some of the basic issues, before the detailed legislative proposals come into being.

As I said, my other answer is that I hoped for more than a Westminster-style code of conduct.

Mr McAveety: Would you keep question time?

Dr Christie: Not First Minister's question time. We discussed that, but I cannot quite remember what we said in the report. I think that most of us envisioned retaining question time, but only the part that involves the Executive ministers—not First Minister's question time, the confrontational shadow of Westminster, which is perhaps the biggest factor in destroying the credibility of a consensual form of parliamentary democracy. We need a question time opportunity, but not the weekly confrontation between the First Minister and the others.

Esther Robertson: I want to make a small, technical point, which influences that issue. To anyone who has read our report, it is clear that we never talked about the Opposition—we talked about non-Executive parties. Like Alice Brown, I do not believe that the people round that table were naive—ambitious perhaps, but definitely not naive. We believed that we were moving towards a Parliament that would not have an official Opposition. The way in which the numbers worked out—the way in which the voters chose to cast their votes—perhaps made it more likely that we would get one. The existence of an Opposition was probably the first thing that challenged us when we considered the delivery of the kind of Parliament that we thought we would get.

The Convener: My concentration is flagging—I had meant to call in Donald Gorrie. He was next in the stacking system.

Donald Gorrie: I feel that I am on a bus that is driven by the Executive—the Executive really runs our affairs here. You provided material on early soul-searching before going into a subject in detail. Although there is probably scope for more of that initial exploration, quite a lot of time is given to it already. The first half of the legislative process is quite leisurely—there is a lot of consultation and so on. As the research that we will talk about in a few minutes indicates, once stage 2 starts the process is an unremitting slog and there is no time at all for proper consultation.

The important point was made that Parliament—not the Executive—should control the programme of consultation, which is helpful. I wondered how that should happen. In addition, the Parliamentary Bureau registers very highly in my demonology. You do not need to share my prejudices, but I would welcome your view on the bureau. In my view, it is an encapsulation of party politics at the heart of the Parliament, which wrecks the whole thing.

Esther Robertson: For my sins, I—along with Professor McCrone and others—served on the sub-group that went into the nitty-gritty of such issues. To return to Alice Brown's point about looking internationally, we believed that setting up some kind of bureau would be part of the power-sharing process.

When I tried to find out how decisions were made about the timetabling of business at Westminster, I was told that it was done through the usual channels; I discovered that even senior ministers did not know what those usual channels were. We wanted something much more open and transparent, whereby all the main parties in the Parliament would have a say. If you are saying that the bureau has turned out to have the opposite effect, that is a great pity. That is not the effect that we were led to believe that such a system has in other European parliaments, or in the European Parliament. It works there, and perhaps that is down to party politics.

Mr Macintosh: I intended to raise a similar point. Previous witnesses have raised the issue of the number of committees that meet in private, in particular the Parliamentary Bureau, the Scottish Parliamentary Corporate Body and the conveners liaison group. Do you have any views on that?

Joyce McMillan: I have quite strong views on that, which are purely pragmatic. For committees of the Parliament to meet in private when to do so is not absolutely necessary to protect members of the public who are giving evidence gives out a negative message. It is self-destructive. I am not suggesting that people should sacrifice themselves for the greater public good, but meeting in private damages the Parliament. It is one of the key ways in which people perceive the Parliament as not being the new institution that they hoped it would be.

I am one of those people who think that nomenclature matters. The Presiding Officer of the Parliament should be called the Presiding Officer, because that is what he or she is, and the Parliamentary Bureau should be called the business committee, because that is what it is. As far as I know, that is the name that we recommended and I have never known why it was changed. "Bureau" sounds like something that meets in secret; "business committee" at least

sounds like something that ought to meet in the open. I understand that, if the bureau were to meet in the open, a lot of the business that it conducts would be conducted behind closed doors anyway, in informal meetings before the official meetings.

Nonetheless, the issue goes to the heart of how the Parliament operates. I defer to the greater knowledge and creativity of those who work in the Parliament—the MSPs—regarding the way in which the business committee could be opened up, made more flexible and made to work with some balance between reasonable confidentiality and a more open method of working than at present. I do not know the details, but that is how I would want it to be.

Rev Canon Kenyon Wright: In my submission, I pointed out that the CSG was quite clear about the fact that committees should always meet in public, except in “exceptional circumstances”, when a case for secrecy could be made to safeguard legal security or on compassionate grounds. I hope that any case for secrecy in this and in other matters would be subject to independent scrutiny by a commissioner for freedom of information. That point was not made by the CSG—I have added that.

Mr Macintosh: The argument has been put to us that, because the committees to which I referred are housekeeping committees—whatever that expression means—and non-policy committees, when they are subject to scrutiny, it is politics rather than policy that is being scrutinised. Therefore, subjecting them to scrutiny or openness would illuminate the politics of the Parliament—party politics—rather than policy initiatives.

Joyce McMillan: Would that be a bad thing? The more people that knew about the party politics of the Parliament, the more inclined they might be to become radicalised and willing to participate in changing it. Illuminating the way in which the Parliament’s business is conducted would not be a bad thing. I am not really interested in who is on the blooming bureau or what in-fighting is taking place. There is no point in making wide eyes and saying, “Oh, that’s just housekeeping.” The decisions that a business committee makes are crucial to the agenda of the Parliament, to its perceived priorities and to the way in which the public will come to understand the Parliament’s view of Scotland, in terms of what it chooses to give its attention to. For a committee like that to declare itself immune from public scrutiny, on some traditional Westminsterish basis of party confidentiality, is completely against the spirit of the CSG.

I understand that there are issues that people will never be eager to discuss in public, but at least some gesture should be made towards

opening up the deliberations of the bureau. Making a public statement about the relative openness of the Parliament, compared with the usual channels at Westminster, would do a great deal of good.

11:00

Esther Robertson: I have a small point to make about the policy committees. We have had conversations about that over the years. A number of people have challenged me about their having turned up to give evidence to committees that have then announced that they were going into private session seemingly for no good reason. I share the view that has been expressed; the public perception was that committee business would be conducted in public apart from in exceptional circumstances. Those circumstances would have to be reported on at the end of each year so that committees would have to justify why they had closed their doors. The only example that anybody has given me is that committees had closed their doors to discuss how they were going to handle the business of a meeting. Like Joyce McMillan, I find that to be a trifle bizarre. That practice has not been common, but it has not endeared the committees that have done it to members of the public who have come along.

Mr McAveety: From my experience of committees, I understand your concern about that. My memory is that work programme discussions that were held in public, including comments such as “Well I cannae really make it that Tuesday, but can we try to go for the next Thursday?” that were reported in the *Official Report* were trivialised by elements of the media who asked whether members do not have more important things to worry about than where they will be next week.

It is important to stress the reasons why one aspect of committee work is done in private. The Education, Culture and Sport Committee has engaged in fairly thorough investigation of a number of issues. Processing of the details of reports is conducted in private session. The purpose of going into private session is to discuss the first draft of the report after we have taken evidence and asked questions in public. It is important that those discussions are not recorded in the *Official Report*, otherwise the public perception might be that the draft report had been leaked. There are genuine reasons for meeting in private.

Esther Robertson makes a legitimate point. The way round the problem is to monitor the reasons why committees go into private session in order to identify whether private sessions are being misused, and to set clear parameters for when it is most appropriate to go meet in private. A standardised approach to the matter would

prevent people from being cynical about it and saying that committees meet in private to discuss the really important stuff while the public are allowed to hear only the stuff that is unimportant. That view is not true. Most of committees' detailed work is done in public, which is right and proper. Perhaps an approach such as that which I suggest would address some of Esther Robertson's concerns about committees' being exclusive in their discussions. It is important that the public want openness and transparency—we should listen to that.

The Convener: Esther Robertson disagrees with some of that.

Esther Robertson: I certainly disagree with Mr McAveety's latter points. I am not convinced by what he said about committees' discussions of draft reports; I would have to think that through. The CSG did not envisage such discussions being held in private. My immediate reaction is that matters that are dealt with in public do not make it to the press because people have not tried to hide them. Things get leaked only when the press thinks that people have tried to hide them. If there is an open process of taking evidence, I am not sure whether going into private session is necessary.

Mr McAveety: Should the whole process of drafting a report, including committee members' agreement on a final draft, be public? There is a difficulty with that. We need time and space between taking evidence and deliberating on that evidence. Sensitive issues are involved—deliberating on evidence is about arriving at a considered conclusion rather than a partial account. The problem in British politics has been that we hear partial accounts of issues. The media then select those partial accounts because they are effective for that day's story. We do not get the complete picture, which is what we are striving to give. Committee reports are important. They can shape and influence much more policy development and Executive decision making than anything that happens in the United Kingdom system. That is why we need to be understanding about discussion of issues in private.

The Convener: We discussed the issue last week with the Presiding Officer. His view is that the report that is published is what matters. I disagreed somewhat with that. Academics or historians might try to study the workings of the Parliament or to follow the passage of policy and part of that analysis would be to see and hear the discussions and arguments that went on behind the scenes.

We were told last week that the Procedures Committee is not a glamorous committee. There is, in general, not a huge amount of media interest in our reports, but we have dealt in public with all

our reports. We are not necessarily looking for a big impact. The witnesses must understand that many of the committees want their reports to make an impact. However, that impact is diluted and lost if the committee discusses half a dozen drafts of a report over time and the press wants soundbites on that report. By way of defending the practice of meeting in private, that is principally where committees are coming from. However, there are genuine difficulties with producing only the final report.

Professor Brown: You have articulated the point that I was going to make. I have much sympathy for the point that Frank McAveety made. We are in a context in which we cannot do some things until other things change. If matters are driven by the media, the agenda is being set by the wrong people. That goes against the spirit of having a more open Parliament. That is crucial and we must consider it in more depth. If members have any thoughts on the process, I would be happy to feed them in to our work.

Joyce McMillan: I feel strongly that the Parliament is an interesting phenomenon, because it is following two different agendas at once. It is following a traditional political agenda, which is about the pace of legislation and having a high-profile, macho approach to sorting out Scotland's problems. The media tend to demand that kind of pace and high profile. They like a report to have impact and they might misread the subtle discussions that go before a report's publication. There is another agenda about what the people hoped for and wanted from the Parliament. That agenda moves to a completely different rhythm and drum beat. At some time in the near future, the Parliament will have to make some serious and, I hope, bold decisions about which of those drum beats it will follow. If the Parliament is to play the role that it could play in the future of democracy, it should follow the new agenda and not the old one, to which the media tends to cleave strongly.

The Convener: I am conscious that we are overrunning badly our planned time. Donald Gorrie will ask the final question on this subject before we move on.

Donald Gorrie: What do the witnesses feel about the convener's suggestion that it would be helpful to keep a record of committees' private discussions, which would then be made available when the *Official Report* was published? If there had been housekeeping discussions, at least people would be able to see that they had just been housekeeping discussions. Such a document would not be part of the *Official Report*, but it would be available somewhere. When a committee is discussing a matter, people should be able to see that Frank McAveety, for example,

keeps making good, positive contributions, whereas Donald Gorrie makes a lot of asinine comments.

Mr McAveety: You issue your comments in a press release. That is the difference. [*Laughter.*]

Donald Gorrie: People should be able to see what has been said. Discussions should not be held in private. Do you think that that suggestion would help? Matters would still be open and a text of that meeting would be available in due course.

Professor Brown: That is an issue of timing. Going down that road would be one way of squaring the circle.

The Convener: We have reached happy agreement on that. I thank the former CSG members for their participation in a very interesting discussion. You are all welcome to stay to hear our last witnesses. I do not really know what to call this part of the meeting. I suppose that it is the research and academic session. We are joined by Barry Winetrobe, who has previously appeared before the committee in his capacity as a member of the Parliament's staff. We are also joined by Ms Pamela Tosh, Professor John Fairley and Dr Mark McAteer, who will be making a joint submission. The running order is already determined; we shall hear first from Barry Winetrobe.

Barry Winetrobe: I shall be brief. It is a privilege to appear before the committee. After 20 years of working in Parliaments—at Westminster and, in the early days, at the Scottish Parliament—it is daunting to be on the other side of the fence. I want to say a few words in support of the memorandum of evidence that I submitted to the committee, entitled “The spirit of the Parliament”. That memorandum complements the more detailed report that I prepared for the constitution unit, which was entitled “Realising the Vision: a Parliament with a Purpose”, which examined in more detail the first year or so of the Parliament.

The key conclusions of the papers are that, notwithstanding the analytical and practical deficiencies of the CSG report, about which we have heard this morning, the process and the overall essence of the CSG's final report have provided the Parliament with an underlying vision and sense of purpose that has enabled it to outgrow the limitations and constraints that were imposed on it by the Scotland Act 1998, and by what became the Scottish Executive. That sense of purpose has been the catalyst for the Parliament's visible maturation over its first two and a half years as it has developed its own necessary autonomy and its own unique identity. That identity is of a Parliament that is legally and constitutionally in the Westminster-model family but which, through exploitation of that vision, can develop the more innovative characteristics that

underlie the aspirations of many of those who were involved in the constitutional convention and which were implied by the four CSG principles.

The essential prerequisite for the achievement of that potential and diversity is the Parliament's maintenance of sufficient autonomy, in particular in its relationship with the Executive. In so doing, the Parliament can be an equal partner with the Executive in Scottish devolved governance. It can also fulfil its function, as set out in the CSG principles, of providing the main—perhaps the only—forum for interaction and sharing power between the three key players in devolved Scotland. As has been said, those players are the Parliament, the Executive and—equally important—the people of Scotland.

Although the principles of the current arrangement envisage a Parliament that is not dominated by its Executive—or not so dominated, as is Westminster by its Executive—that aspiration has not been fully achieved. The main weaknesses lie in the arrangement and management of parliamentary business, in particular through the Parliamentary Bureau as it is currently constituted and operated; in gaps in the scrutiny machinery, in particular in the committee structure for holding the core Executive to account; and in inconsistencies in the internal arrangements for the operation of the Parliament as an institution.

Those weaknesses can be tackled through strategies that derive from the Parliament's underlying vision, which is designed to strengthen the autonomy and independent operation of the Parliament. Those strategies include some of the points that have been mentioned. First, there must be a restructuring of the Parliamentary Bureau to make it much less dominated by the Executive and more representative of the will of the Parliament. The bureau must also be made to be more open and transparent in its operation. Secondly, there must be expansion of committee remit to cover all the relevant areas of core Executive activity, such as the structure and operation of the Scottish Executive and the overall policy and conduct of its ministers and officials. Recently, some slight movement towards that has taken place in the widening of the remit of the Local Government Committee. However, it is a pity that that committee continues to be called the Local Government Committee.

Thirdly, there must be development of the core parliamentary machinery that provides an appropriate role for back-bench and even, dare I say it—I know Canon Wright would approve—public involvement in the operation of the Parliament. That would ensure the meaningful achievement of all aspects of the CSG vision.

Much of that can be achieved through

continuation of the present policy and through incremental development and reform of parliamentary procedures and practices. The Procedures Committee took a conscious decision in its first year to build upon the standing orders that it was bequeathed by the then Scottish Office. However, a more fundamental review of all aspects of the Parliament and its operations is required so that the Parliament can finally break free of the constraints of the residue of Westminster-Whitehall thinking, which continues to be embedded in the Parliament's initial blueprint and in its standing orders.

Such a review would need to involve all those who share the power of devolved governance but—unlike the CSG—that review would be driven and resourced by Parliament. That would mean that it could truly work from a blank sheet of paper, which was denied the CSG by the imposition of the United Kingdom Government's agenda. Free from such external restrictions and sustained by the growing body of practical experience that it has acquired since May 1999, the Parliament could build upon the CSG process and on the experience of devolution's first years. That would accord with the SPCB's published management plan and it would place the Parliament firmly and irrevocably on the road to genuine innovation and modernity.

I have sketched out briefly a proposed framework, in which I wanted to get away from the idea of a "CSG mark 2". The Parliament could establish a review group that could be convened by, for example, a Deputy Presiding Officer. That group could include back-bench members who were elected by the parliamentary groups that are represented on the bureau, members of the other parties—which are not currently represented on the bureau—and individual members. It could also include representatives of the Executive, the SPCB, and the Parliament's staff. The Procedures Committee's survey of Parliament staff and MSPs is an important innovation. Finally, the group could include representatives from wider civic Scotland, such as former members of the constitutional convention and the CSG. It could also include experts who have relevant parliamentary experience in an academic or official capacity and who are, despite claims to the contrary, real people.

The remit of such a Parliament review group would be to examine the present structure and operation of the Parliament in relation to the overall CSG vision, and to present proposals to the Parliament on achievement of that vision through revised standing orders or whatever. In its examination, the review group would have regard to the experience of the Parliament since May 1999, but it need not presume the continuation of any existing procedure or practice, whether those

are required by standing order, by resolution of the Parliament or otherwise. The group could therefore consider any consequential amendment to UK legislation that might be necessary to give effect to any of its proposals.

11:15

I envisage the Parliament review group being supported by four small review teams, each covering one of the four CSG principles. Each team would be convened by a member of the overall review group, and would have MSP and non-MSP membership. Each review team would report to the review group, and the remit of each team would be to undertake detailed examination of the Parliament, with reference to its key principles of sharing power, being accountable and open, participation and equal opportunities.

If the Procedures Committee recommended something along those lines—I have given a rough sketch—such a review could perhaps be undertaken early next year. The process could be completed in time for implementation of changes to be integrated in the newly elected Parliament in its new building in the spring 2003.

I will close with a phrase that I was delighted to learn from parliamentary colleagues who had come from the Scottish Office: "Happy to discuss."

The Convener: Parliamentspeak ought, of course, to be forbidden—that is a discussion that I have regularly with the clerk. I thank Barry Winetrobe.

Many of us are used to being picked upon by researchers and students for help with their research, so we thought that we would turn the tables today. Professor McCrone picked out Pamela Tosh's submission, not because she has an illustrious name—

Donald Gorrie: Pamela? [*Laughter.*]

Mr McAveety: Is there some cronyism there?

The Convener: Cronyism? Well, it is the only patronage that one ever gets to exercise in my party.

We thought that Pamela Tosh's paper was particularly interesting in relation to the involvement of the voluntary sector and lobbyists in the evolution of policy. The floor is at your disposal, Pamela.

Ms Pamela Tosh: I will briefly outline some of the main—

The Convener: I think that you will need to move a bit closer to the microphone, Pamela. Our sound engineer is doing wonderful work this morning—every time I nod at somebody, he seems to know whom I mean.

Ms Tosh: I will outline some of the main recurrent themes that have emerged from my research, which relates to two of the consultative steering group principles, namely openness—in terms of accessibility and responsiveness—and power sharing. The key themes to which I will allude are based on a case study of the legislative process in the Scottish Parliament. The Housing (Scotland) Bill, the biggest bill that has been considered by the Parliament so far, provides the case in question.

The preliminary findings from the research are based on a total of 64 interviews with a wide range of civic organisations, MSPs and a small number of civil servants. The interviews are complemented by survey responses from 117 organisations that I identified as potentially having an interest in the bill.

The interviews with interest groups and MSPs suggest that the principle of accessibility, openness and responsiveness is the one that has been most successfully applied. An overwhelming majority of the organisations that I interviewed commented positively on accessibility of MSPs and the openness of the Parliament. Of the organisations that were surveyed that had actual experience of the Scottish Parliament, 91 per cent think that the Parliament is open and accessible and 87 per cent think that it is responsive.

More specifically, and in relation to the legislative process, the commitment to pre-legislative consultation that has been undertaken by the Executive was also welcomed by groups. It was viewed as a way of opening up the consultation process to groups that would otherwise be excluded from informal contacts with civil servants. The evidence-taking sessions that have been undertaken by the relevant committees—such as the Social Justice Committee, the Local Government Committee and the Equal Opportunities Committee—were also welcomed by organisations. All the MSPs and all the parties that I interviewed, as well as the interest groups, expressed the feeling that the committees have been successful in reaching beyond the usual suspects, although there were differences in opinion about the effectiveness of giving evidence and whether it is a genuine chance to influence the legislative process.

Some organisations also commented positively on the non-partisan way in which evidence-taking sessions had been conducted, but some were concerned that the time between publication of a bill and giving evidence to a committee was too short for sufficient preparation, especially for local groups and volunteers. There were mixed feelings about committees' taking evidence before a bill is published.

The timetabling of stage 2 in committees was of

major concern to Opposition parties and to all the key organisations that were involved. Even one of the coalition MSPs whom I interviewed said that the time scale did not allow enough time to consult outside organisations, or to give mature thought to and reflect on proposals. Disappointment was felt at the quality of stage 2 debate, which was felt to be choreographed. The principle of power sharing proved contentious among interviewees.

Opposition members and interest groups were frustrated that the Executive and Labour members of the Social Justice Committee evinced a blanket unwillingness to accept amendments from Opposition parties, which resulted in organisations establishing a pecking order of importance for briefing MSPs. Those organisations would ideally approach the minister and civil servants, then Labour committee members, the Liberal Democrat member and then Opposition members. One organisation said that using the SNP or the Conservatives to lodge amendments would do no more than make a statement.

If power is not dispersed and shared among all parties, it appears nevertheless to be shared among the Executive and the Labour and Liberal Democrat groups. That is particularly the case with the MSPs from the coalition parties who were members of the Social Justice Committee and who took credit for several modifications to the Housing (Scotland) Bill that resulted from their discussions with ministers.

The use of working groups and task forces—of which the Executive has established many—was generally welcomed by many organisations as a process of opening up policy development to experts. However, Opposition parties and a coalition MSP were concerned about the extent to which they could scrutinise adequately the work of the task forces and any policy recommendations that emanated from them.

The feedback from the interviews suggests that the Parliament is embracing the principles of openness, accessibility and responsiveness, but that it is embracing the sharing of power less, especially in stage 2 of the legislative process, which operates differently from the way in which many interest groups expected it to.

Professor John Fairley: We are pleased to present evidence to the committee. Michael Bennett—who cannot be present—Mark McAteer, who is sitting on my right, and I conducted research during 2001 on the Scottish Parliament's impact on the fourth key player—local government. Local government was important in the creation of the Parliament and it is interesting to consider the impact that the Parliament has had on local authorities.

Our work was funded by the Joseph Rowntree

Foundation, which also funded a parallel project in Wales, which was led by our colleagues at the University of Glamorgan, with whom we are in close contact. I stress that we have only just completed the work and that we have not finished even our draft report for the Joseph Rowntree Foundation. That report will be completed by Christmas and published next March, so we bring the committee early conclusions and results from a complex project. I will be brief and set out some key points.

We conducted about 120 face-to-face interviews with key politicians and senior officials in 11 case-study local authorities. We interviewed Executive ministers, MSPs, Local Government Committee members, senior civil servants and significant others. We surveyed local councillors by questionnaire and we surveyed chief executives and chief officials who are responsible for education, housing and economic development. We did quite a lot of empirical work.

Scotland must be doing something right, because the two tiers of government work quite effectively together. Where experiments with regionalisation have been conducted elsewhere in Europe, the relationship between local government and the regional tier has often been fraught with difficulty. The relationship in Scotland has tensions, but it is overwhelmingly good and works quite well.

Irrespective of the size of the council, our local government informants and respondents from all parties and from rural and urban Scotland overwhelmingly support the Parliament. Only a small minority of our interviewees were fundamentally critical of the Parliament.

Nevertheless, most respondents were critical of the Parliament in some way. As one would expect, they were more critical of the Executive than they were of the Parliament. Our informants in local government were, in the main, very well informed about the Parliament and the Executive and were in close touch with the parts of those institutions' work that affected them most. They felt that their relationship with the Parliament and the Executive had to some extent been helped by the fact that a large number of MSPs and a significant number of ministers had senior local government experience. In our interviews with civil servants in the Executive, those matters were felt to be largely irrelevant. The experience of ministers was not seen as being directly relevant to their effectiveness.

Despite the perception that the relationship between local government and the Parliament is quite good, difficulties were mentioned. I will comment on some of those in a moment. Many of our informants felt that, if the relationship between local government and the Parliament were not

improved, that could lead to difficulties in the governance of Scotland.

The most important issues are those that we would describe as symptomatic of a clash of cultures, or at least of a complex relationship between cultures. There are several dimensions to that, but for the moment I will dwell on just two of them. First, there is a very complex set of relationships between officials in local government and civil servants. On the one hand, those relationships work—Scotland is a small place, people know one another well, they get together in overwhelmingly male cultures on both sides, agreements are made and things happen on the ground. Local government also regards its implementation of policy as being generally effective.

On the other hand, civil servants and local government officials view each other with contempt. Civil servants believe that local government is no good at policy and has no policy capacity. They see themselves as being good at policy and they believe as a consequence that the centre should lead. Local government officials believe that Executive civil servants are unable to do things in practice and that they have no hands-on experience. We were told, "They are worse than the Ministry of Agriculture, Fisheries and Food", and, "They make the Ministry of Defence look good". People who work in local government feel that, by contrast, they can achieve things.

The civil service and local government seem unable to conduct a dialogue about those issues across the divide. A number of practical devices were suggested for dealing with that problem, such as joint training events, joint management development events, secondments in both directions and attempts to broaden understanding—on both sides—of the other side's world.

Secondly, there is a difficulty that relates to the role of list MSPs that needs to be tackled, at least at the level of perceptions among the majority of elected local government politicians and local government officials to whom we spoke. Clearly, the situation in this area is evolving rapidly. We were taking a snapshot of a very complex set of issues, but a majority in the 11 authorities that were included in our case study thought that there was a problem with the role of list MSPs that must be addressed. The problem is seen as being partly one of role clarity. In its most extreme form, the perception to which I refer manifested itself as a feeling that Scotland should reconsider the electoral system for the Scottish Parliament.

Our research suggests that in local government in the broad sense there is a problem of policy capacity, which inhibits the extent to which local government might become an equal partner of the

Parliament in the governance of Scotland. The majority of our local authority informants felt that there was a partnership, but that they were in no sense equals with the Parliament in that partnership. There was also a perception that the Local Government Committee of the Parliament had been weakened by the reduction in the size of its membership and that it did not have the necessary capacity to undertake all the tasks that are envisaged for committees of the Parliament.

Within local government, although there was overwhelming support for the Parliament, there was an uneasy feeling that the Executive was acting as a centralising force in the governance of Scotland. In our written paper, we highlight three aspects of that. The first is the hypothecation of funding. One local authority chief executive told us that there had been an 8 per cent increase in revenue expenditure this year but, when it was unpacked, all but 1.9 per cent was hypothecated. He said:

"What the public sees is the Council getting more money and yet cutting core services."

That is damaging to councils' standing in their communities. The public cannot understand those complex issues.

11:30

In the civil service, there was at first a general reluctance to admit that hypothecation was taking place but, when it was acknowledged, there still existed a feeling that the Parliament had not increased hypothecation and that, if one looked south of the border, the situation was much worse.

The second aspect that we highlight was a live controversy at the time of our work, which was the privatisation of the roads maintenance contract. There was a feeling in local government that that was simply an attack on local government and on rural councils in particular.

The third aspect was the creation of local economic forums following the specific recommendation of the Enterprise and Lifelong Learning Committee last year. There was a feeling that the decision to base local economic forums on local enterprise company boundaries rather than on local authority boundaries was damaging to community planning and called into question the extent to which the Executive was serious about community planning.

Two suggestions came out of our research. First, there is perhaps a need to clarify and codify what is local and what is national in the governance of Scotland, and a need to consider giving local government some clear role in the constitution that is developing in our country. Secondly, in revisiting and perhaps modernising the CSG principles, there is perhaps an

opportunity to invite local government to embrace them as well.

The Convener: Thank you. You have covered a great deal of territory. I apologise to the parliamentary and Executive staff who are waiting for the later items on the agenda. We will be late reaching those items.

Barry Winetrobe spoke about resolving the relationship between the Parliament and the Executive. His document suggests that we should adopt a resolution. Barry, you are asking for all the difficult issues to be identified and thrashed out, but might that not heighten the tension between the Executive and the Parliament? Is there merit in seeking a more evolutionary approach? We have a new First Minister who is restating support for the principles of the Parliament and for being more transparent and accountable, and who apparently intends to ease away the difficulties. Would we be better served by a more organic and gradual approach rather than by thrashing everything out?

Barry Winetrobe: During the past two and a half years, there has been partial coverage of various protocols, resolutions and agreements between the Parliament and the Executive. That has highlighted the problem of having rules, procedures and practices in some areas but not in others. Some of those rules, procedures and practices are published and others are not. That is a matter for the Parliament itself, with decisions perhaps preceded by an inquiry by the relevant committee—this committee, the Finance Committee, the Standards Committee or another committee, depending on the topic.

The Executive started off by assuming that the relationship with the Parliament would be pretty much the relationship of Whitehall with Westminster, with accountability through ministers rather than officials. There was nothing about that in the Scotland Act 1998. Such a relationship was not required; it was just assumed by everybody and accepted by the Parliament, perhaps because it had not thought of any other way of doing it.

Mr Gorrie has made many proposals over the past two years to change the relationship. Almost exactly two years ago, problems arose because of promises by the Presiding Officer and the then First Minister that no such rules as the Osmotherly rules, which concern appearances by civil servants before committees and what they can and cannot say, would be enacted without the participation and implied consent of the Parliament. My understanding is that rules were issued in the early part of this year. I am not aware that the Parliament formally had sight of them or agreed to them. Some protocols have been concluded between Parliamentary staff and the Executive. I am not aware that those were endorsed formally in any shape or form by the

Parliament or its committees.

The confusion allows the Executive to carry on with the view that the Westminster model of accountability subsists in this Parliament and that it is not a different Parliament from Westminster. As I say, there is no statutory underpinning for that. A lot of areas need to be clarified. Problems arise running up against the Scotland Act 1998, to the extent that the civil service and various matters are reserved. Many issues could be dealt with by the Parliament on its own initiative, without the need for primary legislation at Westminster.

Donald Gorrie: In answer to the convener's question you expanded on the issue of the relationship between Parliament and the Executive. I was interested in your comments about the expansion of the remits of committees to cover all relevant areas of core Executive activities, such as the structure and organisation of the Scottish Administration and the overall policy and conduct of its ministers and officials. Could you elaborate on that? You are saying that there is a gap in our committee structure, so the murky depths of the Executive are not properly scrutinised, and that other committees must do that or we must enlarge the remit of existing committees.

Barry Winetrobe: There is a gap in the sense that the structure, organisation, working practices, operation, policies and activities of the Scottish Executive, as a core body, are not the subject of dedicated scrutiny by any one dedicated committee. Various bits are dealt with by various committees, according to ministerial portfolios. A lot of what Donald Gorrie referred to used to be in the remit of the Minister for Finance. Issues such as modernising government were dealt with, if at all, by the Finance Committee. The then Justice and Home Affairs Committee dealt with freedom of information.

There was a problem recently with Alex Neil's member's bill. The Local Government Committee's remit was extended to cover the areas that were within the remit of the Minister for Finance and Local Government. That does not seem to have been widely publicised. The committee is still called the Local Government Committee, not the Government committee or the Scottish Government committee. A lot of discussion of recent political events focused on the fact that there was no way in which the Parliament could get a handle on the conduct of the First Minister, or the conduct of the First Minister since he became First Minister, in relation to the so-called officegate affair.

Many of those issues are, for good or ill, dealt with by the Public Administration Committee at Westminster. In Northern Ireland, a Committee of the Centre examines those issues. It is even more

important that those matters are examined in a focused way, given all the soundings that we are getting about what the new Administration will be like, which suggest that there will be a strong centre with an office of First Minister and Deputy First Minister and a minister for public services. External relations, for example, are not examined by anybody except when they happen to fall within the remit of, say, the European Committee.

These questions of standards, structures and civil service organisation must be examined. They are central to how the Parliament can keep a handle on devolution and the Executive.

Donald Gorrie: You suggest that a resolution of Parliament on the relationship between Parliament and the Executive

"must be expressed through mechanisms and arrangements that are not numerically or otherwise dominated by any Executive of the day".

The problem is that most members have more loyalty to their party than to the Parliament. When push comes to shove, they will vote the party line. I am 110 per cent for achieving that relationship, but I do not see it happening. How do we achieve it?

Barry Winetrobe: If there are parties and therefore majorities, that is how Parliament operates. That is one of the single most important reasons why the Parliament has turned out the way it has and perhaps not the way that some people envisaged it would. The point about which you are asking relates to bodies such as the Parliamentary Bureau. Matters relating to the Parliament as an institution and its relationship with the Executive, rather than detailed parliamentary business, should not be matters of party politics and majorities.

I accept that such matters will ultimately come before the Parliament and that the Parliament is made up of political parties. However, before such matters are considered by the Parliament, they should be considered more openly and in forums such as committees that need not have the same political balance as the Parliament. Certainly, the bureau should not have that balance.

The nadir of the Parliament from a procedural point of view was last November's Executive-inspired motion about how information should be obtained from the Executive. That was the fallout from the Scottish Qualifications Authority inquiries. The Executive brought a motion before the Parliament without any prior consideration and asked the Parliament to endorse its view that, although the Parliament has the statutory power under the Scotland Act 1998 to get any information from the Executive, the Parliament would promise not to use that power. That was totally wrong—it sent the wrong signals about who

runs the Parliament. Those issues should be considered.

That also applies to housekeeping matters. One of the more unfortunate issues was the badly mishandled allowances debate in June 1999. The lesson that was taken from that was that all such matters should be arranged behind the scenes and cleared with the bureau by the parties, even if they are not strictly party matters. Housekeeping matters are then just presented, often without debate and certainly without a vote, for the agreement of the Parliament.

Various matters have been dealt with in that way. An example is the relationship between constituency and regional MSPs. Those issues were brought before the Parliament—which was the first time that they had been presented to the public—and just endorsed formally. That does not show a mature and confident Parliament. The lesson is to be more open. As was suggested earlier, if such matters are discussed openly, they do not become newsworthy in that shock-horror, soundbite, headline way. It does not become a question of leaks; it becomes a matter of genuine debate and open, accessible housekeeping that everyone can see.

Mr Paterson: I want to talk about the Parliamentary Bureau. In paragraph 16 of your submission, you mention ensuring that

“business is conducted as openly and transparently as possible”.

Have you reflected on the fact that the bureau does not produce an agenda or a minute of its meeting for members?

Barry Winetrobe: The main problem with the bureau is its composition, from which flows its method of working and the problems with transparency. De facto, the bureau has an Executive majority because of the coalition partners. It also operates by the block vote, which is discredited in all other respects. A couple of weeks ago, the convener was sceptical about Mr Canavan’s suggestion that the block vote could be broken down and allocated to get the true view of the parties. There must be ways to achieve that. The Labour party was planning to do it with the trade union block of its electoral college, had there been an election for a new party leader. There must be ways to say that 25 out of 35 members want one thing but the other 10 want something else.

11:45

It is a fundamental problem that back benchers do not have a direct role in the running of the Parliament. The bureau represents party business managers, which was not what was envisaged at the beginning. In my larger report, I mentioned the fact that some proposals from Bernard Crick and

David Millar envisaged a very different sort of business committee that would involve lots of interests beyond those of the parties. That sort of forum could become more like a committee and be more open. It was called a bureau deliberately to emphasise the fact that it was not a parliamentary committee and was, therefore, not required to abide by any principles of openness.

As far as I remember, the CSG proposed that the bureau should meet in private. That idea goes back to the CSG principles; it is not a betrayal of them. It was always envisaged that the business committee would operate in private. If the party blocks were broken down, it would be opened up and it would be able to go about the ordering of business according to a far more advanced programme. That would be more practical and the problems under the present arrangements, whereby business managers cannot consult their parties because things are not decided until the last minute, would perhaps not be so great.

Mr Paterson: Do you think that a good starting point would be to provide an agenda and then a minute of the bureau’s proceedings?

Barry Winetrobe: I hope that there will be something more like what was originally intended, which was a rolling programme. The Parliament has made great strides in giving advance notice of its recesses. The website has dates on it for recesses up until the beginning of 2003, which is marvellous. It can do that sort of thing. I do not see why its business cannot be arranged according to a rolling programme, instead of the one week definite, one week provisional arrangement.

It looks strange to agree to have an item that is referred to simply as a ministerial statement. That presumes that ministers have an announcement to make—they know what they are going to say—that is somehow going to be a secret until then. I find that a strange concept. It would make a symbolic statement if bureau business was not almost invariably dealt with in the chamber by the two Executive members of the bureau, as that gives the impression that it is the Executive ministers who run the Parliament’s business—it makes them look like the Leader of the House of Commons. I do not see why, if the bureau is a collegiate body, the other members should not take turns to announce bureau business in the Parliament.

Mr Paterson: May I ask a further question?

The Convener: Very briefly, Gil.

Mr Paterson: In bullet point 2 of paragraph 16 of your submission, you talk about

“a broadening of the membership of the Bureau, perhaps to reflect interests within the Parliament other than party.”

Who would those other people be, if not party

representatives?

Barry Winetrobe: The Crick and Millar proposals included the Presiding Officer as a full voting member—a full participant. They also proposed the inclusion of members from the island communities to ensure that their interests were protected in bureau business, following the reasoning that led to separate seats for Orkney and Shetland. The bureau would still deal with party business—“party” was a shorthand word—but could include representatives of the party groups or the conveners of the party groups, depending on how the parties organise themselves as party groups, separate from their business managers. The way in which parties organise themselves in the Parliament is not transparent at all. Little research has been conducted into the Parliament’s operation. That compounds some of the mystique surrounding the way in which decisions are made.

The Convener: Thank you. That is all that we will hear from Barry, although we might come back to him. We now move to Pamela Tosh. You found that the stage 2 process was much criticised by people who felt that they did not have enough time, that it was artificial and that they were not getting through. You faithfully reported what people told you. What was your view? I will start by saying that I thought that the Housing (Scotland) Bill proceeded quite sedately compared to other bills. There was plenty of time to lodge amendments, and external groups had many opportunities—and they took them—to cast about for sympathetic MSPs to lodge amendments. Is there a gap between people’s perception and reality or, having considered it, do you think that they are right to be critical?

Ms Tosh: I would prefer just to report what my respondents told me. During stage 2, the Social Justice Committee was meeting twice a week, and in the last week the committee met all day. The respondents felt that they could not brief MSPs adequately. Some MSPs felt that they did not have enough time, as one said, to give “mature thought and reflection” to what was being proposed.

When I attended the committee as a non-participant observer, I had the sense that stage 2 was very rapid. There was no chance to debate and there was no genuine dialogue. As another organisation commented, stage 2 was choreographed. It seemed to operate in a similar way to stage 3. However, there were expectations that stage 2 would operate differently and that, for example, MSPs would leave their partisan rivalry at the door. It was hoped that MSPs would operate in a more consensual way—obviously there are ideological differences and it would not have to be cosy. There was a feeling that the Labour MSPs on the Social Justice Committee and the

Executive were unwilling to accept any amendments from Opposition parties. The organisations and Opposition members that I interviewed felt that that was not in the spirit of the stage 2 process.

The Convener: Dr McAteer has indicated that he wants to come in on that. I owe you an apology, Dr McAteer, as I should have asked whether you wished to make some introductory comments.

Dr Mark McAteer: No, not at all.

The Convener: I am glad that I did not get that wrong.

Dr McAteer: Much of the work that Pamela Tosh has done is very useful. I talked to some of the organisations that were involved in drafting the bill, and they said that the key arena was the party group meetings. That was where the real horsetrading between ministers and back benchers took place. They told me that anyone who wanted to influence the bill had to nobble members, who then nobbled ministers. None of that was done in committee. It was Westminster-style politics. That came up in our research into other committees such as the Local Government Committee. It is clear that the key decisions took place behind the scenes.

The Convener: I can see that that would be a concern.

Pamela, the amendments lodged by Opposition members were not all suggested by outside organisations trying to achieve their objectives through the bill, particularly given what you have said about how those organisations tended to recruit Labour or Liberal Democrat members. I presume that some of the Opposition amendments—perhaps most of them—were political amendments, which were designed to make a point, criticise or advance party policy. Did you recognise that that might have contributed to the hostility of the Labour members towards those amendments? I would like a response from Dr McAteer on that, too.

Ms Tosh: That is a possibility. I really do not know. However, as much as Opposition members lodged amendments for partisan reasons, the respondents to my interviews felt disappointed with the process.

Dr McAteer: It is difficult to say whether some of the amendments were rejected because of party-political bias or poor wording. We had several comments along the lines that Opposition amendments would be routinely rejected, even though Labour members might pick them up later. In those cases, the amendments were tweaked slightly and then the committee agreed to them because it was more acceptable to the Executive

to approve a Labour amendment than an Opposition amendment. However, as I said, the validity of that is open to challenge.

Mr McAveety: I am probably not the best member to comment on some of what has been said, but I suggest that we move the issue further back in time to the initial debate about the future of housing. It was the language that all participants employed at the very early stages of that debate that created allegations of partisanship, in particular at stage 2.

In Scotland, the issue of housing is so important historically, and in the development of the political parties, that argument will always be created. That means that the debate around the role of social rented housing, public sector housing, and local authority housing will always be emotional. In one of yesterday's papers, the president of the Convention of Scottish Local Authorities was still being quoted about the investment strategy.

If we examine the committees, the most interesting point was the obvious partisanship that went right through a whole series of processes. That touches on the issue that Canon Wright, Joyce and others mentioned earlier about the culture of the Parliament and how we engage in debate. I am making a statement here rather than asking a question, but if we start from a core of language, argument can be made in words that speak of betrayal and rejection, rather than—if I keep the theological metaphors going today—words that try to heal.

It strikes me, as seems to be indicated in the research, that we could end up with that scenario every time we reach stage 2. We need to get beyond that and learn lessons about how we should move forward.

The Convener: What he means is that the SNP tried to get in everybody's face. That is why they lost the debate.

Mr McAveety: No. Let us not criticise the noble political process of being able to access the decision makers. People might say, "That is terrible. Everything must be done transparently in the Parliament but, by the way, can I have a quiet word with somebody?" That does not work. Real life, never mind politics, is not like that. The test of the Parliament is how the process can produce an outcome that is meaningful and, when we arrive at a decision, that it is one that is genuinely meaningful and different. Some of the language that my own people have used, and—I will not deny it—that I have used in public debates, has been robust, to say the least.

The Convener: During the progress of the Transport (Scotland) Act 2001, I was interested to see—although I did not see it for myself—how, in committee discussions and in the amendments

that were lodged, Labour members were nudging the minister towards a different view on a number of issues including workplace parking and the operation of quality contracts for buses. There was quite a tug-of-war going on in which the back benchers, by their body language and by some of the things that they said, gave out the message that they felt that they had won. That happened away from the public domain and away from scrutiny. Frank McAveety made that same point about the passage of the Housing (Scotland) Act 2001. How can that be stopped? If parliamentarians are able to use informal contact to achieve their objectives and what they see as improvements in bills, should that also be stopped? Is that informal contact not a good thing, albeit that it is not conducted in the full glare of publicity?

Dr McAteer: That goes to the heart of recent debates. When does cronyism become good networking? To deny people access to good networking opportunities would not be a good thing for the Parliament or how it functions.

The Convener: I am not sure whether the Council of Trent would have helped us to get around that question.

Mr Macintosh: The discussion has touched on broader issues and ideas. One of those is the idea that, after a Parliament is elected, committee members specialise in the area of their committee. Much of the discussion has assumed the noble ideal that every committee member is a *tabula rasa*—we can all be operated on and we will come to logical conclusions. Those who say that forget that virtually all MSPs come with strong attitudes and opinions. We are elected to reflect those attitudes and opinions. A balance has to be struck in that argument.

The Procedures Committee has looked at stage 2 and has extended some of the time, in particular for amendments. Does Pamela Tosh think that the stage 2 process can be further improved by measures such as that and others or are there fundamental weaknesses in the legislative process?

Ms Tosh: Giving the stage 2 process more time would be an advantage.

I return to an earlier point about whether Conservative members, for example, lodge as many partisan amendments as do Labour members. My research shows that all the parties supported a large proportion of amendments lodged by the Executive. They were also supported without a vote. A large proportion of Conservative, SNP, Liberal and Labour members voted in support of Executive amendments without a division, but when it came to SNP or Conservative amendments, it was totally different.

To return to the question about the process and time, giving the stage 2 process more time would be an advantage. Committees felt that meeting twice a week for example was too much.

12:00

Donald Gorrie: In paragraph 17 of your interesting submission, you mention task forces. It seems to me that, for once, the Executive has tried to be intelligent and have a forum in which there is proper discussion of the issues. However, as I understand it, the two opposition parties and the Liberal Democrat members were suspicious that it was all a stitch-up and that the task force was merely a mouthpiece for Executive policies that they did not like, and they voted against it. That raises an interesting question. I would have thought that the common-sense answer is that if the Executive had explained the thinking behind its proposition to the non-Labour members, the task forces might have worked. Would that provide an answer or is there a bigger issue about Executive consultation that does not take account of the Parliament? That was mentioned earlier today.

Ms Tosh: The interest groups and MSPs welcomed the number of working groups and task forces that were set up. There was a genuine feeling that experts were being involved in the development of policy. However, there was also a feeling that the working groups and task forces were populated by the usual suspects and professionals, not the ordinary person in the street who would be affected by the legislation.

Secondly, and of greater importance, there was a feeling that the Executive was farming out the more contentious aspects of policy to working groups and task forces. Those groups are not publicly scrutinised and that is something to consider. Although minutes of task forces are published on the website, you do not get an idea of the horse-trading that goes on and the deals that are struck; the negotiation and the bargaining.

The groups were welcomed as a way of opening up the legislative process to more participation and access, but there was a feeling that they were populated by the usual suspects and that the whole process was taking place away from parliamentary scrutiny. When MSPs scrutinised and probed the policy recommendations and, perhaps, disagreed with them, they were faced with the attitude that everything had already been agreed within the task force and that that was the way forward.

Donald Gorrie: Thank you.

Mr Macintosh: I found your presentation very interesting. We are all conscious that devolution should not stop at the Parliament. It is a principle that I hope we all accept and it is interesting to see

how it is or is not being realised in practice. Recently there has been a move to focus on outcomes in local government. Have you been able to examine how that initiative will work in practice? Do you have any views on it? Many of us regard a focus on outcomes as the way forward. We should ask local government to deliver agreed goals, instead of telling it how to do something.

Dr McAteer: I agree, but the key phrase is agreed goals. If we are to move towards outcome agreements, what will be the role of local government in setting what those agreements are trying to achieve? That is the question that we need to address. In the 1970s we used to talk about corporatism or incorporation. What is the formal incorporated role of local government in the governance of Scotland? Local government needs to agree with the Parliament and the Executive what they are trying to achieve collectively and how that will be delivered through local outcome agreements. The initiative to which Mr Macintosh referred has good possibilities, but it is critical that we define the role that local government will be asked to play. If local government is to be asked merely to deliver what the Executive has agreed, we need to ask ourselves whether we are any further forward.

Professor Fairley: I agree with Mark McAteer. When our interviews took place, the concept of outcome agreements was still being developed in practice. Our local government informants were very hopeful that the agreements would give them an enhanced role, but somewhat suspicious that the Executive would use them to tie their hands.

Mr Macintosh: Surely setting outcomes is a way round the issue of hypothecated funding.

Professor Fairley: As long as the outcomes are the result of negotiation and joint agreement, and are not imposed.

Mr McAveety: There is a never-ending tension between central Government and local government. Professors can make careers out of analysing that in the social history of the United Kingdom.

The Convener: Hopefully.

Dr McAteer: I will try.

Mr McAveety: We are dealing here with an issue of language. Quite rightly, local government is demanding openness and accountability from the Executive and the Parliament, but it, too, needs to engage in a pluralist political culture; openness and accountability should be hallmarks of local democracy. The civil service could learn an immense amount from local government about proper consultation and engagement with communities. Local government's achievements in

those areas are not being valued.

A side issue is the inner connection between local government and national Government that would enable experience and expertise to be shared. We need to find ways of bringing in folk from outside the normal charmed circles. As a minister, I took advice from people who I thought were really bright, but later I realised that they had no relevant life experience.

A debate about centralisation is taking place. Funnily enough, the two Governments that centralised power most in the UK were probably the Thatcher Government and the 1945 Labour Administration. They did so for totally different reasons; in the 1930s and 1940s there were philosophical debates about why social and regional development across the UK should be standardised. We need to consider how we can open up a debate with local government, so that it does not simply blame the Scottish Parliament for what is happening. For a year and a half I felt that local government was blaming the Scottish Parliament and Executive where it had previously blamed Westminster, instead of realising that we are all seeking to improve the quality of governance. If folk do not believe in governance, participation rates will eventually plummet. That is now starting to happen.

How do we get the language right? Someone wrote that the debate about electoral reform is not an issue on the doorsteps and seems to have come from nowhere, but McIntosh and Kerley produced major reports on the issue and it has been discussed in a series of other publications. The debate about electoral reform cannot have come from nowhere; it must have originated with parts of Scottish civic society. Electoral reform is not simply a convenient football. How can we engage with local government to improve everybody's quality of life?

Professor Fairley: That was a wide-ranging question.

Dr McAteer: Philosophy and theology in the one day.

Mr McAveety: I know. I need to stop that.

Professor Fairley: I will respond to a couple of aspects of the question. Some interesting points are made in the Angus Council submission. I am not its author and I do not agree with all of it, but one of the questions it raises is what the national role of a local authority is. If, for example, the people of Angus want to comment on some matter of Scottish Parliament business—or indeed some matter of European policy—what is the mechanism for doing that? One possibility is the local authority. It is, after all, elected.

In Scottish debates, we tend to focus almost

exclusively on the service-delivery role of local government and to forget about democracy at a local level and the community's need for a voice in regional or national debate. That said, the work that we have done suggests that local authorities are up against a big problem: they do not have the policy capacity to engage at those levels.

The Convener: Do you feel that the views that Angus Council expressed are pretty representative of local government? Obviously, as Angus Council is an SNP-run council, it may have taken an Opposition attitude to some aspects of central Government. It struck me that the Angus Council submission did not seem all that partisan. I suspect that a lot of the views that it expresses are widespread. I wondered whether you had any perspective on that.

Professor Fairley: We have 32 local authorities in Scotland. They are different, even throughout urban Scotland. There is a saying that universities do not perhaps exist except in the minds of university principals; they are just collections of departments. To some extent, that is also true of local government.

The submission from Angus Council is a corporate document, which would have come from the chief executive in consultation with senior councillors. If we sat down with the head of service for education or social work, we might get a different view. That pluralism exists within most councils.

There is a question as to what the voice of local government is in such matters. In our submission, we say that communications between local government and the Scottish Executive and the Parliament are incredibly complex. It is difficult to say that there is a single local government voice, even for one local authority.

Donald Gorrie: I am not entirely up to speed on local government issues. A year ago, in one of the numerous coups that take place, when the numbers on the committees were reduced, I got put out of the Local Government Committee. At that time, that committee was actively pursuing the covenant that is in our papers. Is the hostility between local government and the Executive or between local government and the Parliament? Might it be possible for the Parliament to act as an honest broker between local government and the Executive?

Dr McAteer: In the research that we have undertaken, the Parliament was generally viewed more favourably than was the Executive, but you do not get off lightly. There are still problems with the Parliament as far as local government is concerned. Openness and accessibility were welcomed and viewed as positive developments, but there was a feeling that interference was

increasing as a consequence of the Parliament as well as of the Executive. The feeling was that MSPs were taking up issues that councils more properly considered local, not parliamentary, issues. Work load also came up again. Something like 74 per cent of our councillor respondents to the survey said that their work load had increased as a consequence of the Parliament's existence and that that was having a serious impact on local resources and capacity.

The Parliament certainly has a role to play. Could it be an honest broker? Perhaps.

Professor Fairley: I will add one small comment. I agree entirely with what Mark McAteer said. An issue is emerging with the qualitative effect on the local government work load. One council leader told us that, before the Parliament was set up, when a big issue arose he would probably have been expected to report back to the council saying that he had written to the minister and was awaiting a reply; now, he is expected to report back quickly, saying that he has met the minister and got a result.

Donald Gorrie: I am a bit sceptical about the work load. If there is a problem about lack of street lights in Coatbridge, the council has to dig up an answer. If half a dozen MSPs write in about it, the council merely has to send out a letter half a dozen times. I do not see what the issue is. However, there is a philosophical issue. In my brief sojourn at Westminster I was astonished when a Scottish Labour MP said that he/she did not think it was part of his/her duties in any way to criticise the local authority. My concept is totally different.

12:15

Dr McAteer: The work load is not so much in the response to specific inquiries about street lights and so on; it is more about the policy development issue. That is the real problem for local government. As a former councillor, Frank McAveety will be well aware that, in recent years, the budget difficulties of local government have meant that most authorities have tried to support and protect front-line services. They shoot suits to make some of their budget cuts, and those shots invariably fall on the corporate policy people—they have had the greatest number of casualties in that sense. That affects the capacity of the local authority to think more strategically about which issues it needs to develop, who it needs to try to influence, and how it can influence the agendas of the Parliament, the Executive and so on. That is where the big problem now lies. Some councils are better placed than others. Some of the larger ones are still okay but many councils are struggling. Given COSLA's recent difficulties it is not a source of help on that at the moment. There

are real problems there. If you want authorities engaged in a dialogue and a partnership, how do you resource that partnership? That is the big question.

The Convener: That raises the point that somebody made earlier, on applying the CSG principles in local government. If you wish to make local government more consultative and you want it to build in petitions and develop a dialogue with its citizenry—which many are trying to do through the renewing democracy process—you are diverting resources away from front-line services and on to the talkers, the strategists and the paper writers in local government. If the resources are not in place, local government cannot really deliver that.

Professor Fairley: We worked in some depth with 11 case study local authorities, none of which felt able to say that they approached the Parliament or the Executive strategically, except occasionally on particular issues such as road maintenance privatisation.

Mr McAveety: The knock-on effect of the reorganisation period in local government has preoccupied many authorities. The authority I was involved in is still dealing with the consequences. How many authorities have had not external consultants, as that is a bad phrase, but independent assessment of how it organises and structures its business, in terms of service delivery and corporate support? How many have managed to keep that under review? I do not know whether much of that has occurred. Where are we getting the voices to come in to assist local government in partnership so that things are not seen as being imposed from central Government or Victoria Quay? That is my main concern. If something is coming from the civil service it will be understandably and quite rightly resisted, whereas it would be different if it were a shared debate about making improvements. Few authorities seem to get independent assessment in the way that they perhaps should.

Dr McAteer: Anyone who works with local authorities is, at times, put in the invidious position of defending the indefensible. Local government can be its own worst enemy. I share many of Frank McAveety's sentiments on that. We need to consider that. In the research, many people commented that there are some people in local government who are still stuck in a pre-1997 mentality. To them, it is easy to oppose, complain and blame others, but they are not willing to accept the responsibility of playing a part in a dialogue and therefore being accountable for the policy outcomes of that dialogue. There is a big issue there—the cultural issues that Frank McAveety spoke about earlier are critical to all of this.

Professor Fairley: To some extent, our history is a problem in two main respects. The Scottish Office was set up primarily to co-ordinate local government. Co-ordination very quickly became very tight central control, not just of such things as budgets but of the financial management process in many service areas.

It is difficult for Scotland to think itself out of being centralised. That is compounded by the likelihood that the great majority of the mostly male population that runs local government and central local government policy developed their careers during two decades when local government was seen as part of the problem. It is often difficult for those individuals to think about local government more positively. If we believe that local government can play a more positive role, that steer will have to come from outside the system.

Donald Gorrie: I have one more question, but the witnesses do not have to answer it if they do not want to. The fact that civil servants are constantly being moved about means that they never get a grip on anything; that was certainly evident when the Local Government Committee asked questions of people who—at the time, although they may have moved on yet again—were in charge of finance issues. They simply did not know their stuff. If more civil servants stayed in one department but got a real grip on the work of that department, would we improve the relationship between national and local government?

Professor Fairley: I do not know that our research allows me to comment on that specific point. However, we heard some comments, based on observations of other European countries, to the effect that, if civil servants wanted to be promoted beyond a certain point, they should perhaps be required to have a spell in local government.

Donald Gorrie: That is a good point.

The Convener: Yes, it is an interesting idea.

Mr Paterson: John Fairley spoke about concerns in 11 councils about list MSPs. What concerns did they have about list MSPs that were different from their concerns about constituency MSPs?

Professor Fairley: I will start and then let Mark McAteer come in. That is a complex issue. For some of our respondents, first past the post was a principle; they were not comfortable with thinking about disproportionality and how to correct it. The constituency MSP was widely seen as having clear accountability to a particular geographical patch, whereas the list MSP was not seen as being as accountable. In addition, there was a feeling that, because of the connection with a

territory, the role of the constituency MSP was clearer, whereas the list MSP could pick and choose his or her issues. Furthermore, there was a perception on the part of some local Executive-supporting politicians that list MSPs from Opposition parties were being put in to shadow constituencies for future contests and were cherry-picking issues in a way that was really unhelpful locally.

Dr McAteer: A concern that came through was that list MSPs would chase headlines and that their concerns were all about whom they could criticise to get their face in the paper and whom they could get publicity from; and, invariably, that was the local council. Whether that concern reflects the truth or not is another matter, but that was the perception. In most areas, the political composition of the council reflects the constituency MSP composition, and it was interesting that, even in non-Labour areas, the same issues came through. This is not simply a case of Labour councils complaining about SNP or Conservative list MSPs. The question seems to go to the heart of the issues that were raised earlier concerning the roles, responsibilities and remit of list MSPs, especially with respect to local government.

Professor Fairley: We did our research early in the life of the Parliament and it would be astonishing if everything was cut and dried within two years, but in two of our case study councils where we felt that local issues might cause difficulties, the Labour leadership said, "There is some friction, but it is just the price of extending and improving democracy." However, that was a minority view.

Mr Paterson: Is there any evidence that the friction was less if the colour of the council happened to be the same as that of the list MSP?

Professor Fairley: From our work, I do not think so. Friction often seemed to be about personality as much as about party label.

The Convener: That draws a long session to a close. I apologise to everybody for the way that we have overrun. With hindsight, I would say that we tried to do too much, but we have covered a huge amount of interesting territory.

Before we finish, I would say to David McCrone that if he has any advice that he wishes to give the committee on any aspect of the session, or if he wants to point any of his future students in the direction of wider studies of these issues, we would be pleased to hear from him, and them, again. I wanted to get David's name on the record because of the continuing discussion about the role of committee advisers.

I thank everybody for taking part. We will have an adjournment for a couple of minutes before we

deal—quickly, I hope—with the remaining agenda items.

12:25

Meeting adjourned.

12:33

On resuming—

Standing Orders (Public Bills)

The Convener: We are now able to reconvene. Our very alert sound engineer has had a splendid morning. I hope that he is regraded soon and mentioned in dispatches.

Item 2 is a report on Executive proposals for changes to chapter 9 of the standing orders. I note that the Executive does not wish to say anything about the paper relating to this matter—or does it?

Andrew McNaughton (Scottish Executive Finance and Central Services Department): I have not been scheduled to say anything at this meeting, but—

The Convener: Come and join us. We are a very inclusive and approachable committee.

Andrew McNaughton: I have no particular ministerial authority to speak today, but I will be happy to do so if it would be helpful.

The Convener: Does Andrew Mylne wish to say anything to the paper?

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting): I will make some brief remarks.

As the committee will be aware, three issues have been proposed for discussion by Executive officials. The paper before us, document PR/01/12/2, aims to address each of those in turn, and proposes what I hope are sensible, workable solutions.

The first one, about the member-in-charge rule, is the most complex and takes up most space in the paper. I would say that, given current circumstances—we are expecting some changes in ministerial portfolios shortly, which will affect bills in progress—it is now the most important. The current member-in-charge rule will, I think, work adequately in the circumstances that we are anticipating, although it does not provide anything like an ideal solution. We are therefore proposing some changes that will allow the rule to work more flexibly, as circumstances change. We have sketched out how the proposed new rule might work in paragraph 11 of the paper.

We considered two related issues, which are set out further on in the paper. One is that a comparable change in relation to committee bills would be useful to deal with a similar scenario. There is also a slightly complex matter relating to rule 12.2.3, and we explain in our paper how that might be taken on board at the same time.

The aim of our paper was to sketch out how the rules might be changed, but without giving members precise forms of words for changes to the rules. If the committee agrees to the changes in principle, we can come back with precise forms of words with which to make amendments to the standing orders fairly shortly.

The Convener: Let us deal with the first proposal, on the member-in-charge issue. Are there any questions? The recommendations are contained in paragraphs 11, 16 and 22 of the paper. Can we agree to those recommendations? If we do, that will have the effect of asking Andrew Mylne to come back to us with the precise form of words.

Members indicated agreement.

The Convener: I invite Andrew to move on to the motions for financial resolutions.

Andrew Mylne: This is a more straightforward issue. The Executive has suggested a change that would make its administrative processes slightly more simple. The paper suggests that there might also be some disadvantages, but the matter is, in many ways, not major. There is no specific recommendation; it has been a question of setting out the points that might be considered to be relevant on either side and of inviting the committee to decide how it wishes to proceed.

The Convener: It might be appropriate for Andrew McNaughton to make a pitch, as it were, for the change that the Executive wishes us to make.

Andrew McNaughton: Our line—as it is with the member-in-charge issue—is that we would have preferred a simple, generic approach. On the first issue, we suggest that the member in charge of a bill could be regarded as a Cabinet minister. The corollary of that is that we believe that our proposal for financial resolutions is a more straightforward administrative solution. I quite accept Andrew Mylne's view and the angle that he is coming from, but we have already put our proposal in my letter to the clerk. We thought that the simple approach would work more simply administratively.

The Convener: If there are no questions from members, let us take a view. Do we accept the Executive's invitation to make the change, or do we take the view that the change is unnecessary?

Mr Macintosh: The change seems harmless.

The Convener: It seems harmless. We will therefore magnanimously concede.

Members indicated agreement.

The Convener: That is agreed unanimously.

The third issue concerns budget bills.

Andrew Mylne: This is probably the simplest matter of all. The situation is set out in the paper, and it would be a relatively simple matter to allow junior Scottish ministers to play the same role as Cabinet ministers in relation to amendments to budget bills. That would make the rule on that more consistent with other rules. We are not aware of any disadvantages that such a change might have. It is a straightforward recommendation.

The Convener: There are no questions or comments. Do we agree to the proposal?

Members indicated agreement.

Members' Business

The Convener: The third item on the agenda is on the method of selection of members' business. The paper that members have in front of them is simple and straightforward. It states that we are to receive a paper in due course and suggests that in the meantime, we agree to seek the view of the Parliamentary Bureau.

Mr Paterson: It is worth while seeking the view of the bureau. However, I wonder whether we should have a questionnaire so that we could ask members at this stage, or later on, how they feel about the method of selection. I take it that if there were a ballot, members who were successful would drop out so that their name did not reappear. The number of names in the ballot would drop throughout the session.

The Convener: We had not thought about the niceties of the matter at this stage. We can consider them in the context of the paper.

The request to go to the bureau is based partly on the fact that the bureau works on the selection of members' business at the moment. When I write to the bureau, the view is expressed sometimes that I am voicing my opinion. I did not raise this matter at all; I do not know where it came from. It might have gone from members to the Presiding Officer. The paper seeks the committee's authority for writing to the bureau.

I am relaxed about the idea that we should do a survey of members' views. I think that we should. I am not entirely clear whether we should do that now or whether we should do it when we have an issues paper and a more fully fleshed out set of proposals to put to members. I agree that we should speak to members in the widest sense before we come to conclusions.

Mr Paterson: This is one of the issues of transparency. The question is why business managers decide which debates take place. It is for members to determine which rules and regulations they would be comfortable with.

I am happy to defer my suggestion until we have received a paper. I am happy that we will take members' views at some point.

The Convener: Do we agree to proceed on the basis that the consultation process will be part of the paper that we receive?

Donald Gorrie: The paper could explore the fact that the bureau never chooses any controversial motions of any description whatsoever.

The Convener: There is also the issue of a vote. The standing orders permit a vote on some

resolutions. We have never had one. It has always been decided that we will not have a vote.

Other issues arise, such as whether we could have a matter debated at the suggestion of, say, the Public Petitions Committee. The suggestions could go beyond members. There might be ways in which people could channel suggested topics through members. It is worth exploring all those areas.

Do members agree to proceed on that basis?

Members indicated agreement.

Parliament and the Executive (Protocols)

The Convener: Item 4 is on the report on protocols between the Parliament and the Executive, which says basically that there is nothing to report. The point that protocols tend to be handed down to us was raised earlier in our discussions. As part of the analysis of the evidence that we have heard this morning, it might be useful for us to take an overview of every protocol that the Executive has produced. We could consider the level of consultation and participation and whether we want to recommend, as part of what we come up with, that the way in which all the documents are provided be examined again.

In the list of the three protocols that we are considering, I underlined the parts that stated that guidance on contacts with members was written by the Executive and that guidance on contacts with the Scottish Parliament information centre was produced by the Executive. I assume that those are much the same, except that there is mention of consultation in one. It is not clear where the protocol between the committee clerks and the Scottish Executive came from. That might have been more of a joint exercise.

Those are the sort of matters that we should consider.

Donald Gorrie: Absolutely.

The Convener: Frank McAveety assures me that in the stairheads in Shettleston there is nothing like a good protocol to set the blood coursing.

Mr McAveety: It is the single demand of the revolution.

Mr Macintosh: Are any other protocols under consideration at the moment?

John Patterson (Clerk): We believe not.

The Convener: There are also codes of guidance and informal understandings. There are documents within the Executive that cover how its people relate to various aspects of the non-Executive.

We could perhaps invite the Executive to confess the lot and go over how all those practices are derived. As part of our consideration of the whole process of governance, all those questions are within our purview. We cannot necessarily change those practices, but we can consider them and express an opinion.

Do members agree to proceed on that basis?

Members indicated agreement.

Presiding Officer and Deputy Presiding Officers (Elections)

The Convener: The final item is on the elections for the Presiding Officer and Deputy Presiding Officers. The paper seeks the committee's approval for the work that is to be done. Do members agree to that?

Members indicated agreement.

The Convener: I thank everyone for their attendance.

Meeting closed at 12:45.

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