PROCEDURES COMMITTEE

Tuesday 26 November 2002
(*Morning*)

Session 1

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PROCEDURES COMMITTEE
16th Meeting 2002, Session 1

CONVENER

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

DEPUTY CONVENER

Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Susan Deacon (Edinburgh East and Musselburgh) (Lab)
*Donald Gorrie (Central Scotland) (LD)
*Fiona Hyslop (Lothians) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
Mr Gil Paterson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Phil Gallie (South of Scotland) (Con)
Trish Godman (West Renfrewshire) (Lab)
Richard Lochhead (North-East Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Andrew Welsh (Angus) (SNP)

CLERK TO THE COMMITTEE

John Patterson

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 26 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:14*]

Consultative Steering Group Report

The Convener (Mr Murray Tosh): Good morning everybody. We are now quorate so I propose to make a start. At approximately 9.30 am, we will break from our continuing work on the consultative steering group report to take an item from the Audit Committee. We have advised members of the Audit Committee that 9.30 am would be an appropriate time and I think that it would be efficient to take them when they appear.

Before we do that, I want to resume discussion of the paper that we considered last week, which is the draft text of the accountability section of the CSG report. We should consider the text in tandem with the paper that I have circulated, which contains proposed amendments.

Last week, we reached paragraph 113 of the accountability section of the report. We were about to discuss a section from paragraph 114 onwards on the Sewel convention and Sewel motions. Members are aware that we have agreed to examine that issue. We are in the process of gathering information from the United Kingdom Government and the Scottish Executive about the Sewel convention and the motions that derive from it.

The text that appears in the report is an outline of the issues and an examination of related aspects. The text contains no recommendation as such, and I propose to replace paragraph 130 by inserting a comment and a recommendation, which reads:

"We will investigate these, and any other pertinent points in a separate inquiry."

I say that because I do not want to close down any discussion because something has not been mentioned. The paragraph continues:

"We have sought the views of the Scottish Executive and the UK Government on the use of Sewel Motions, and we hope to report to the Parliament on their use before the dissolution. If we are unable to do so in the remaining available time, we recommend that our successors in the next parliament should complete the inquiry and report with appropriate recommendations."

Sewel motions came up a lot in the course of our evidence taking. The comment that we are making says that we are not in a position to address the issues in the report, as work continues on them, but we intend to report on them if we can. The paragraph to be inserted acts as a marker on the issue of Sewel motions.

As members are happy with that addition we will move on to the section on financial accountability, which begins at paragraph 131. The section sets out an analysis that we received and an outline of some of the concerns that have been raised about budgeting. The first change that I propose is to paragraph 134, which states that we will consider the procedural issues that the Finance Committee raised following its scrutiny of the budget process. I suggest that the paragraph is highlighted in bold—it is a statement of intent and not a recommendation.

I propose to highlight in bold the quotation that forms part of paragraph 146. The quotation forms part of a Finance Committee memorandum to this committee. It makes an important statement of that committee's intent on the accessibility and intelligibility of budget documents, the allocation of time for the budget process, the importance of engaging the people of Scotland in the process and progress on the equality proofing of budgets. As that is a significant statement, it would seem to merit being highlighted in bold.

I move on to paragraph 152. I suggest that we remove the last sentence, which opens with the words,

"He pointed to a lack of understanding".

The reference is to Mike Watson, the former convener of the Finance Committee. I suggest that we insert:

"Mike Watson also pointed to a lack of understanding about resource accounting and budgeting, 'year-by-year comparison and "basic accounting principles"',"—

we may have to tidy up the quotation marks at that point, although they may make sense in the context of the original document—

"and stressed the desirability of making the budget, in an appropriate form, something that was not confined to 'academics, local authorities and other groups with a direct interest'"—

that is the Finance Committee's comment—

"but was widely disseminated and understood (although he was realistic about what was possible in this area)."

The wording is similar to the sentence that we are removing, but it makes a fairly bold statement about the direction in which the former convener of the committee believes that the Finance Committee needs to go. I suggest that we add it to the document in bold text as a separate paragraph, after paragraph 152.

Donald Gorrie (Central Scotland) (LD): The report must state that the budgetary process, although well intentioned and the subject of acute effort, is a complete fiasco, on which Parliament has virtually no effect.

The Convener: We have additional text from Murray McVicar, which will show some of the progress that has been made since the evidence was taken and which outlines some of the directions in which the Finance Committee is working.

I suggest that paragraph 155 be placed in bold, because the finding is significant. It reflects Donald Gorrie's point that MSPs have found the budget difficult to grapple with. The MORI survey demonstrated that point.

Donald Gorrie: On that point, I have read the literature several times but I may have forgotten some of the content. There are significant failings on the Executive side, as well as on the Parliament side. Much of the report concentrates on the fact that committees are not doing their stuff, which is correct, but the budget is framed in an obfuscatory fashion.

The Convener: That is a fair point. I am happy to reconsider the wording of the report and to determine whether the committee might suggest changes in that direction. The flow of information and the time scale are critical to the process. The Parliament does not control the process.

I suggest that paragraph 158 is changed to strengthen the wording. It is the same point that was made about the Finance Committee and the subject committees. The paragraph should read:

"We consider that the Finance Committee and the subject committees should keep their relationships, and their division of responsibilities, under routine consideration, in order to ensure that the best possible use is made of subject committee expertise."

As members will see, that is simply a rewording of the original text.

I suggest that paragraphs 159 and 160 be removed and replaced with stronger text with some recommendations. Paragraph 159 should read:

"We concur with the recommendations by Mike Watson, outlined in paragraphs x and y above. In particular we recommend the retention of a standing budget adviser, to provide both the subject committees and the Finance Committee with the expert advice which they require."

Paragraph 160 should read:

"We commend the efforts of our own information centre, SPICe, in publishing documents which explain the budget using plain and accessible language. We consider that the importance of having budget documentation in plain English is greater than in any other area of government. Such transparency is not an end in itself: it encourages people to engage with the budget process, whereas the persistent use of 'jargon' discourages such engagement."

By "jargon" I mean almost everything that appears in the budget papers, from the use of acronyms to the use of financial conventions, which are not immediately transparent to people who do not have accountancy skills.

I suggest that paragraphs 162 to 166 be put in bold. They contain strong observations about holding meetings away from these buildings; the importance of scrutinising the substantial sums of money that are available to the Executive; the role of committee members; the advisability of training members in some of the budget's terminology and concepts; the public's participation in the budget process; and the use of our website to allow people to track the budget process.

I then propose to take out paragraph 167 because the point has already been substantially covered. Murray McVicar has suggested additional text at that point, which members ought to have in front of them. It is a single sheet with four paragraphs, numbered 167, 168, 169 and 170. We will consider those for a moment.

Paragraph 167 reads:

"Since the Committee took evidence on this in 2001, some progress has been made in the scrutiny of the budget. The Finance Committee has appointed a Standing Adviser on the budget"—

I am not sure whether we should name the adviser; we will take a view on that later—

"who has liaised closely with a number of committees and with SPICe. In addition, some committees also appointed advisers specifically to assist them in their scrutiny of the budget. Each committee received a pre-AER scoping paper and a post-AER analysis."

I suggest that we accept that paragraph, subject to the last sentence being written in jargon-free English, so that the report is consistent with what we have decided. The sentence is accurate, but it is not very transparent.

I then propose an additional paragraph:

"Whereas, Stage 1 of the process in 2001 produced no recommendations for changes to the Executive's spending plans, this year, there was a total of 12 recommendations, which were endorsed by the Finance Committee."

That picks up Donald Gorrie's point that committees were not grappling with the budget before, and the fact that there is some evidence that committees are getting a better grip of it this year.

Donald Gorrie: We should also have a figure for the number of recommendations that the Executive took any notice of whatever.

The Convener: That would be pertinent. I am quite happy to have Murray McVicar find that out for us and add it to the text.

The budget is not all plain sailing. The proposed additional paragraph 169 states:

"Problems of timing are still an issue, as is the fact that every second year is a spending review year, releasing more money into the system between Stages 1 and 2 and, in the view of some members, making Stage 1 redundant in these years."

There are continuing difficulties for the committee.

The final additional paragraph notes:

"The Finance Committee convener, adviser, clerks and spice have had a number of meetings with Executive officials and ministers to try to develop ways forward in terms of presentation, and this work is on-going as part of the Financial Scrutiny Review."

At our next meeting, having reflected on those changes, I might well suggest adding a recommendation about the way forward. The text is very much an outline of the progress made, but it is value-free and recommendation-free. It would be appropriate to add something further, but I have had no time to prepare text for that, so I may start the next meeting with that point and any other points that we need to pick up. I thought that it was very helpful to have that additional perspective on the fact that committees are making progress.

The next section is on the Auditor General for Scotland, starting at paragraph 168. As is normal, the early paragraphs outline evidence taken and perspectives given. In paragraph 177, I suggest replacing the existing text with a stronger statement, which would read:

"We consider that the Parliament should foster and encourage the work of Audit Scotland, although the suggestions made by Mr. Black in paragraphs x-y are matters in the first instance for the Audit Committee, whose work with Audit Scotland we acknowledge."

We will work out the paragraph numbers later. That beefs up our recognition of the role of the Audit Committee and endorses what it is doing.

09:30

I suggest that the following paragraphs be printed in bold text. I propose to change paragraph 178 so that the text is in bold. Paragraph 179 should also be in bold, and I have added a recommendation. I do not think that I have changed the words, but it is so long since I did it—about a week and a half. One change is that, instead of "consider", we should say that we

"recommend an element of work co-ordination, possibly overseen by the Audit Committee".

We should add that all committees should develop a capacity for audit. I was switching back and forth between a Word document of the report and an e-mail that contained the changed text. Sometimes the Word document collapsed and changes were not saved. I am sure that a line of text has been lost, but the sense is clear enough.

Paragraph 180 is changed. It should read:

"Value for money and performance issues both lie at the heart of government and scrutiny, and we agree that there could be scope for plenary debate of salient points arising from audit 'overview'. While we would defer on the precise nature of any such process to the Audit Committee, we do agree that it would be appropriate for the Parliament to raise the profile of this fundamental area of scrutiny once or twice yearly."

The committee must judge whether we should call that a recommendation. As it is, it is a reasonably strong opinion. Are members happy with that?

Members *indicated agreement*.

The Convener: It would be appropriate to break now to consider the Audit Committee issues, as colleagues from the Audit Committee have now joined the meeting.

Audit Committee Remit

The Convener: We move to item 2, which is flashed in my folder by a pale green marker, followed by a brief report. I am happy to have Andrew Welsh MSP address the committee.

Mr Andrew Welsh (Angus) (SNP): I am accompanied by Shelagh McKinlay, clerk to the Audit Committee.

Thank you for giving me the opportunity to attend the committee meeting this morning, and to explain the Audit Committee's request to amend its remit. Members will have before them a paper that sets out the background to the request in some depth, but I thought that it might be helpful to make a few opening remarks—I emphasise that it will be a few.

Under its current remit, the Audit Committee may consider and report on any report laid before the Parliament by the Auditor General for Scotland. However, the Public Finance and Accountability (Scotland) Act 2000 does not give the Auditor General any formal laying powers in relation to his economy, efficiency and effectiveness reports. Therefore, as its remit stands, properly, the Audit Committee should not consider Auditor General for Scotland reports of that type. Those reports constitute the main vehicle by which the Parliament can investigate and secure the proper use of public resources. Therefore, it is imperative that the Audit Committee is empowered to consider them.

To rectify the situation, it is suggested that standing orders be amended to allow the committee to consider

"any report laid before or made to the Parliament by the Auditor General for Scotland".

I emphasise that, if the change is agreed to, it will not result in any change in the Audit Committee's practice. The amendment is a technical one that would simply ensure that standing orders properly support the policy intention of the Parliament in relation to the operation of the Audit Committee.

Finally, I inform members of the Procedures Committee that the Parliament's legal staff have agreed to the proposed change. The Auditor General is content and the Executive has been informed of the proposal and has expressed no concerns.

The matter is technical and I appreciate the committee's assistance in ensuring a correct solution.

The Convener: The significant part for members of the Procedures Committee is at the end of paragraph 13 of the report, where the rule change is set out. As members will see, the proposal is to add the words "or made to". The fact that there is a difference between reports laid and reports made deserves a diary piece.

We would hate to think that anything important might appear in a report made that, not being able to be laid, fell outwith the Audit Committee's remit. If we include "made" along with laid we will be in a position to empower the Audit Committee to deal with reports that are made and laid. That is an important factor in its ability to scrutinise reports. I hope that we can agree the change to standing orders.

Mr Welsh: The change is worth a diary piece if it improves economy, effectiveness and efficiency.

Donald Gorrie: Do I understand from this that the Audit Committee is only responsive? If the Audit Committee thinks that a certain area—for example, the work of the Procedures Committee—needs auditing, can it invite the Auditor General to audit it? Can the committee set up an audit inquiry, or does it merely scrutinise carefully other people's audit inquiries?

Mr Welsh: The work of the Audit Committee is based on the Auditor General for Scotland's reports, but we agree to the Auditor General's work programme at the start of each year so our committee can make recommendations. The Auditor General for Scotland is rightly completely independent but, if we ask, he is usually reasonably willing to assist us. We have not yet been turned down.

The Convener: Do we agree the proposed recommendation?

Members *indicated agreement*.

The Convener: That has made Andrew Welsh's day.

At the start of the meeting, I neglected to say for the record that we had an apology from Ken Macintosh, who expected that he might not be able to be in attendance. I overlooked that.

Consultative Steering Group Report

The Convener: We now return to the paper on accountability.

We are at paragraph 181, on the parliamentary questions process. Members are aware that parallel work has been running on the matter almost since day one. I would not be at all surprised if work was on-going on parliamentary questions for as long as the Parliament exists. However, the parliamentary questions process was a significant part of the evidence that we took and we have put a reasonably substantial section on it in the paper.

As is the case with most sections, we deal first of all with opinions given and evidence received. My first suggestion is that we toughen up the wording of paragraph 187. I propose to take out the existing text and insert:

"We were surprised, however, to note from the Scottish Executive's monitoring figures that MSPs had made use of the new arrangements to contact officials of the civil service directly on points of information on only 112 occasions. These arrangements are designed to ease the pressure on the PQ system wherever possible, and to provide MSPs with an added resource for their own work. We suggest that MSPs should make greater use of this facility, which can provide answers to some inquiries far more quickly than the formal PQ system can."

I also propose to replace the existing text of paragraph 188 so that it reads:

"We intend later in this Session, time permitting, to consider the outstanding issues of Question Time and PQs concerning NDPBs and other public bodies."

Rather than use that terminology, we should use the full term, so it will state non-departmental public bodies. The paragraph continues:

"Should this not prove possible, we recommend that the balance of work should be pursued by our successors on this Committee in the next Parliament.

That is a recommendation for our successors, because I suspect that we may not get the work finished.

Fiona Hyslop (Lothians) (SNP): That is where we have a difficulty. We either make recommendations here and now, based on the evidence that we have gathered over the past 18 months and more, or we say that there is an on-going parallel inquiry, although we can perhaps make recommendations to an extent about the non-departmental public bodies—quangos.

On question time, we have probably received sufficient evidence to allow us to make some preliminary recommendations. It would be a missed opportunity if we did not do so. Other members may think that we should kick the issue into the next Parliament for the next Procedures Committee, but it would be remiss of us not to address the matter at this point.

The Convener: I am quite happy to stop and discuss that now, although I suggest that it might be better if we wait until we go over the report again and reach final conclusions. I say that, because we have preliminary results from the survey of members about the availability of time scales. Have we done anything to try to get more people to submit their surveys?

John Patterson (Clerk): Not yet.

The Convener: We will try to do that between now and the next time that we discuss the issue so that we have the fullest possible picture. There are views about changing the working week, and if they are sufficiently clear cut for us to be able to move forward, that might be the context in which we would want to talk about changes to the format of question time.

Fiona Hyslop: I am happy to wait until we can address the matter more fully. I will encourage colleagues in my party to respond to the questionnaire. I am sure that they will all want to do so, so that we can make progress rather than have to leave the matter until the next session.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I endorse the general view that has been expressed that if we can edge our recommendations further along we ought to do so, but I assume that our opportunity to discuss the substance of what we might say will occur at our meeting on 3 December. If we do so in the light of further information, that is good and well.

The Convener: For that meeting, we will complete the breakdown of such responses as we have to the survey of members. If the response is not as substantial as we would have hoped for, that is simply too bad. We can proceed only on the basis of the evidence that we have, which will inform our discussions.

Donald Gorrie: It would be possible to have an intelligent discussion about written and oral questions without getting involved in the more contentious issue of the parliamentary week. Arguably, we could make better use of the time that we have. Even if we do not wish to trespass into Mondays, Fridays and Wednesday mornings, we could have a wee bit of a discussion about questions. We may all have different points of view, which would make it difficult, but if there is a reasonably coherent point of view, it would be worth pushing the matter harder than the paper does.

The Convener: I am quite happy with the concept of pushing the recommendations in the report to the maximum extent. I am not sure that

we can do so on the NDPB issue, but we can consider that when we come to discuss it.

The section entitled "Concerns expressed" consists substantially of evidence from outside parties. My first suggestion on this section is to place in bold paragraphs 194 and 195. Paragraph 194 highlights the concern that appears to exist outside about the way in which questioning is done—people are not entirely impressed with certain aspects of questioning. Paragraph 195 is about the reasons for questions and the nature of answers. Members may wish to consider that area when they come to suggest how the final report might be fine-tuned.

The statement in paragraph 197 is important. The purpose of parliamentary questions has been a matter of discussion between us and the Executive. There have been suggestions that people possibly overuse the parliamentary questions system for political reasons. Paragraph 197 acknowledges that not every parliamentary question is designed to get at information or to extract a view from the Executive. In some cases, they are designed to demonstrate something and to put it on the public record. I think that we have reached the conclusion that that is a legitimate exercise, so I thought that paragraph 197 was worth putting in bold type.

Donald Gorrie: When we come to discuss the matter more fully, I hope that we will address my radical suggestion that answers to written questions should answer the questions. I wrote to you on that subject, convener.

The Convener: You did indeed. We might well examine that issue in this context. We are trying to gather information—we do not have it yet. When we discuss the issue, the information that we have may be enough for us to be able to come to a view. We might also discuss Mr Speaker Martin's recommendation a couple of weeks ago. He suggested that every member should have one question—there should be no long winding-up before the question; members should just get in there with the question. Ministers should then give a short answer of one paragraph, so that more members are able to contribute. That is an excellent practice. Mr Speaker Martin is to be commended on that. We might even include such a suggestion in our discussions.

I notice that Paul Martin is not saying anything.

09:45

Paul Martin (Glasgow Springburn) (Lab): I had better not.

The Convener: The next proposed changes are in paragraphs 202 and 203. The Executive has suggested that if members ask a lot of parliamentary questions for no reason other than to get the information, it would be more sensible for them to use the other mechanisms that exist rather than the PQ system. That is a fair point, which merits being highlighted.

Equally, in paragraph 203, I am restating that if members want to debate issues through questions to the Executive and want to ask follow-up questions to press ministers on their answers, those are appropriate things to do.

Donald Gorrie: There are quotation marks at the end of paragraph 203. Is that a mistake?

The Convener: It is a typographical error. No matter how many times documents are proofread, mistakes survive.

Donald Gorrie: Our adviser rebuked us in his paper that several of the paragraphs contain quotations that are not attributed to anyone or anything.

The Convener: The adviser did not want to appear to have rebuked anyone. He was simply querying certain quotes. It is important that we ensure that the footnotes reflect the quotations, and he was right to draw that to our attention.

I suggest that alternative text, including an additional paragraph, be inserted in paragraphs 210 and 211. It is close to the existing text but makes stronger statements. Paragraph 210 will read:

"We consider that the appropriate transparency standard to be applied here should be *what is evident to the public*. Members and parliamentary officials are aware that Ministerial statements herald major announcements, while more minor matters are announced in the answers to 'inspired' PQs — 'tagged' in the relevant parliamentary publication. The public will not have that complete degree of awareness however. 'Tagging' is an improvement on the previous obscure practice, but it is not *sufficiently* transparent."

I should have advised members that in the course of the analysis we said that we had discussed the "inspired" PQ issue and were ready to reach an opinion on it.

Paragraph 210 is the supporting text for a recommendation to be contained in paragraph 211, which will read:

"We consider that, when the Executive wishes to make a policy statement or comment, it should do so using the highest standard of transparency by making a Ministerial statement to the Parliament and that the practice of 'inspired', 'planted' or 'tagged' questions should cease, as has been recommended for the House of Commons."

"Ministerial statement" does not necessarily mean an oral statement, as the additional paragraph makes clear. It will read:

"We recommend that, when the Executive concludes that an item of news or comment is not of sufficient urgency or significance to merit announcement by Ministerial

statement, such announcements should be made to Parliament by means of the daily Business Bulletin. A new section in the Bulletin would be required for this purpose. An amendment would be required to Rule 5.9 of the Standing Orders to include a new permanent category in the list of matters to be included in the Bulletin."

For example, if a question is asked as to when the Executive will make a statement on the publication of its report on widgets, which is Donald Gorrie's favourite category, the answer will be given the same day that the Executive has published its report on the availability of widgets. The mechanism would take all such matters out of the system and put them in the bulletin and on the web site.

Donald Gorrie: That is a good suggestion.

Fiona Hyslop: It could be a separate section in the bulletin.

The Convener: Substantial evidence was collected regarding general debates in the chamber. Paragraph 217 acknowledges that much of the business conducted in the chamber is not hugely exciting. It is important to ensure that the Parliament is not too laid back about plenary business. That is why paragraph 217 reads:

"the Parliament will probably wish to examine its plenary arrangements on a continuing basis to ensure that these are contributing as fully as possible to sustaining an open, accessible, accountable and interesting Parliament."

It is worth putting that in bold and I do not propose changing any of the words.

Fiona Hyslop: At this point we should say something about flagging up motions and amendments in advance, as Donald Gorrie and I have suggested we should do. That would help to make the plenary debates accessible. When we give people only two days' notice of what we will speak about, it is no wonder that the debates are not covered as much as they should be or do not generate as much public interest as they should. Frankly, the general titles of debates that are given by all parties are not necessarily helpful in explaining what the content of the debate will be, which does not encourage people to try to influence the debate. Obviously, we will have to work out what sort of notice should be given, but other parliaments and the Welsh Assembly give more notice. The proposal is practical and will help to make the Parliament more accessible.

The Convener: I am quite happy to accept that suggestion. We could have an exchange about what the wording might be, unless you have some suggested wording already.

Fiona Hyslop: In our papers, Donald Gorrie and I have suggested some wording. If there were a general consensus that we should recommend the proposal, we could put in an option about the amount of notice that we would want to be given; for example, whether it should be four days, seven days or whatever.

The Convener: I suggest that the clerks and I work up some text that we could insert. We can e-mail that around for approval or we could simply hold it as interim text for the wrap-up discussions.

Paul Martin: I have some sympathy with what Fiona Hyslop is saying, but we have to bear in mind the fact that there will always be a demand for emergency business to be accommodated and for the topic of the day, about which the country is most concerned, to be discussed in Parliament, rather than the topic of seven days ago. I do not see how we could avoid having a short time frame for the announcement of business. I appreciate that that sometimes affects the quality of the debate, but the fact is that the country expects us to discuss the most recent issues rather than the issues of last week. We should ensure that there is some flexibility. However, if we say that business should be announced seven days before the day of the debate but that pressing matters can be debated if they are announced two days before the day of the debate, there will be a demand for that. We need to be clear about the kind of issues that will face the Presiding Officer at that stage.

Fiona Hyslop: Because of my role as a business manager, I am frequently involved in the drafting of motions and text and the submission of amendments. I have noticed that most of the Executive motions and the non-Executive motions could quite easily have been predicted at the time when the subject of the debate was announced.

I agree that there has to be a degree of flexibility and that all parties should be able to change the business and the text of the motion within two days of the day of the debate if they need to do so. The recent fishing debate is a good example of that. Although the SNP said a week before the debate that we wanted to use our non-Executive time to deal with fishing, we were not able to correctly frame the motion until two days before the debate because the situation was moving rapidly. That is a rare occurrence, but Paul Martin is right to say that we should allow for the fact that that will happen. Extending the usual period of notice from two days to four or five working days is necessary, I think, but we should also take cognisance of Paul Martin's point.

My proposal would mean that we would normally get notice of the subject of the debate a fortnight in advance from the Executive or a week in advance from the non-Executive parties, but we would get the text of the motion on the Thursday before the debate and amendments to the motion on the following Monday. However, if the debate dealt with a fast-moving situation such as a fishing crisis, the announcement of the motion could be

delayed. I hope that that makes sense to the clerks because I think that it covers everyone's concerns.

The Convener: It makes sense, as long as we are proposing not that we have a rule but rather that we develop a convention or a suggestion of what would happen in normal circumstances. We should be able thereby to accommodate both the desired objective and the ability to deal with matters that arise at short notice.

Susan Deacon: I strongly support the general principle of having the subject of debates and the text of motions and amendments stated earlier. Based on my experience of the process as a member of the Executive and of Parliament, I agree with Fiona Hyslop that, more often than not, that could be done. The proposal would hugely enhance the ability of external organisations that engage with parliamentary debates and seek opportunities to influence, shape and inform the debate. It would also enhance the quality of the debate as members would be able to prepare properly for the debate and consider the issues in advance.

I also agree with Paul Martin about the need to ensure that there is scope for topicality. However, I urge caution about the use of the word "emergency". Any Parliament has to have procedures for bona fide emergency situations that arise during the day, but the concept that we are talking about is topicality. The procedure that we suggest should have a fairly light touch but should ensure that the subject matter that is selected remains fresh and responsive to issues. I am sure that that is achievable.

I sense that there is broad agreement on the principle relating to the process that we follow. It would therefore be helpful if the clerks could make a stab at working into the next draft of the report some wording that we could respond to. I appreciate that that involves a huge amount of work. I was planning to make a suggestion in that regard at the end of today's meeting. We have copious quantities of drafts and it will be difficult to deal with further inputs, targeted comments and suggestions if we are all dealing with differing drafts. If we had one next-stage document that captured some of the points of agreement and to which we could all respond, that would be enormously helpful.

10:00

The Convener: Indeed. I have not encouraged anyone to expect that of the clerking team up to now, as we have all been extremely busy in producing a serviceable set of committee drafts. For today's business, we have a draft text on power sharing, and I will produce some recommendations for additions to that text. We think that the two match each other entirely, although we may find some textual inconsistencies when we start to go through them.

With that enormous amount of work cleared, there should be time for us to review the comments that have been made in committee and in additional papers. We can also address various points that have been raised. For example, the point that Paul Martin raised about how committees might engage with witnesses should be written in. We will try to pick up all the points that have been made.

However, if members raise a completely new matter or want something developed that was not covered fully in a committee discussion, they will have to let the clerks know. The clerks can prepare the text only when they have a fairly clear idea of what the committee wants, and a wee bit of to-ing and fro-ing will be necessary. I do not want to exclude any members' points at any stage for the lack of draftsmanship. If any member has a problem in working out wording, we will be happy to assist as far as possible.

Donald Gorrie: Susan Deacon has raised an important point with which I agree. I am keen for the wording about the business programme to state that it would be normal to indicate the content of debates four days or two days in advance—whatever is agreed—but with a provision for topicality, which is a good word. If more time is allowed, parties will be able to study what other parties have written in their motions or amendments. It may be that the Opposition parties could look at an Executive motion and say, "We can either accept the whole of it or we can accept bits of it and add to it." Because we have a multi-party system, members need time to look at other parties' amendments and decide whether they agree or disagree with them. That would contribute greatly to the open, democratic, consensual political process at which we are aiming. At the moment, the system leads to panic stations, knee-jerk reactions and last-minute argument among the coalition parties about the wording of motions and amendments.

The Convener: Let me add a fresh perspective on the issue. It would also be helpful in some circumstances if members could see what their parties' amendments were before they nominated themselves to speak in debates. That might have a material impact on whether a member wished to contribute. There are different ways of looking at the matter and coming to the same conclusion. However, we have broad agreement about what we want to achieve. We will get something drafted that will, I hope, cover all those points.

Paul Martin: I have a point about paragraph 224.

The Convener: Let us deal with paragraph 222 first. I suggest that we put paragraph 222 in bold type, not just because it has been one of Donald Gorrie's favourite campaign themes, but because it is a significant thing that we are asking for—to throw a topic open for debate. We had a good example of the need for that in last Thursday's members' business debate when 15 members attempted to speak in a 45-minute debate on affordable housing in rural areas. That showed that there is a huge appetite to discuss that issue.

It struck me as a subject to which it would be well worth allocating a more significant amount of time. In his summing-up, the minister was unable to respond to the huge range of points that were raised and he said that he could not do the subject justice. When such topics arise, that is the sort of debate that we might look to include in that kind of slot. I would like to highlight that as a comment in the report.

Fiona Hyslop: In whose time would such debates take place? It would make sense for the Parliament to decide what the big topics were rather than rely on the Executive to use its time to introduce one-line, one-subject topics.

The Convener: We will cover that by a proposal that I will make on power sharing about the advance planning of the business programme. Without getting into the issue of whose time will be used, we could find a way to build that in. Please note that you raised that question, in case you are not happy with what I suggest later.

Donald Gorrie: There must be a concept of neutral time. Surely we could work towards that.

Fiona Hyslop: To be fair, parliamentary time is dealt with in the power sharing part of the report.

The Convener: My next suggested change is to paragraph 223.

Paul Martin: I have a point on paragraph 222. Although I welcome the convener's suggestion, there is another side to it. Members would be concerned that debates would be secured in the neutral manner to prevent the Executive's being held to account, as there would not be a vote at the end of such debates. Whoever is in power could be accused of deciding to have a neutral debate on a subject because they do not want a vote on it, as party opinion may be split. We are considering such debates with the best intentions. However, there could be accusations that the Executive has made a debate a neutral one because it does not want there to be a vote in which the views of its members could be split—although I am not saying that that has happened. The members' business slot could be extended, but we would have to be careful and use caution on that.

The Convener: The reservation is that if Opposition parties want to force a debate on a topic with a motion and put it to a vote, they have the mechanism to do that in their time. I do not think that a neutral debate would be regarded as the Executive's ducking an issue, as there are defences built into that. If the desire to talk about a topic without constraining the debate by the artificiality of supporting a motion or partisan amendments is seen to come from the Parliament, it should be possible to get a better debate.

There are some big issues that are not properly subjects for members' business debates. The idea of a members' business debate is to raise a local constituency matter that is quite narrow. However, there are some big issues that the Parliament might want to discuss as if in a members' business debate. The challenge is to get a balance.

Let us move to paragraph 223. I suggest that we remove paragraph 223 and insert the firm recommendation:

"It would seem sensible to initiate subject debates on a trial basis, and we recommend that two trial debates of three hours each, on topical and substantive issues, are arranged for early in the next session of Parliament. These could then be reviewed, and, if thought successful, could be made a regular feature of Parliament's work."

That simply builds on the wording in paragraph 222.

I suggest that we put paragraph 224 in bold, if we are happy with it.

Paul Martin: I do not know the background to paragraph 224, as I was not involved in the committee when that paragraph was drafted. Are we saying that people who are not part of the Scottish Parliament would have the opportunity to take part in a debate in the chamber through the normal business process?

The Convener: Yes, by invitation. That is the suggestion.

Paul Martin: I have a problem with that. There are all sorts of opportunities for non-members to be involved in the Parliament. The members of the Scottish Parliament are in a privileged position because they are elected by the people of Scotland. That position should be protected. The involvement of people from outside the Parliament in the business of the Parliament is an issue. I am not coming at the issue from a self-importance point of view; I am coming at it from the point of view of protecting democracy. We allow external people to participate through the committee system and the Public Petitions Committee and as advisers to the committees. However, we must carefully protect the democratic nature of chamber business.

Fiona Hyslop: I agree with Paul on the issue of chamber business. We should also support and encourage other events such as the one-off events on a Tuesday when people come and speak to members. However, Parliament is not a debating club and the chamber is not just for the expression of opinions. There are plenty of forums for that kind of thing. The Parliament is for the democratic representation of the people of Scotland and we must respect that. I do not think that what paragraph 224 proposes would do so.

Donald Gorrie: To address members' points of concern, I suggest that the two systems could be married. For example, for a debate on homelessness there could be a professor who knows about homelessness or a director of a homelessness organisation.

The Convener: As long as it is a non-academic professor.

Donald Gorrie: They could give a talk before the chamber debate, to which interested members could come and listen. Such a talk could inform members prior to a debate and would not take place in official parliamentary time. People already come to talk to us, but we could expand that by questioning an expert after their address to us and that could lead on, perhaps after lunch time, to a debate.

Fiona Hyslop: That is a seminar, not a debate.

Donald Gorrie: Yes, but the two could be linked.

Susan Deacon: I agree with Paul Martin and Fiona Hyslop. We must differentiate between the role of elected parliamentarians in the parliamentary chamber and a range of different activities and mechanisms that take place around that to inform debate and discussion. We must always be open to suggestions about how other views can inform and impact on parliamentary debate. However, that is different from muddying, if you like, the boundaries between the role of the accountable elected politician and the roles of the multifarious individuals and organisations that might seek to influence our views and debates.

The kind of activity to which Donald Gorrie referred is obviously eminently sensible and desirable, but myriad opportunities and processes around Parliament can facilitate and support that. That kind of activity cannot and should not be built into the bona fide parliamentary processes or activities.

The Convener: I think that members have clearly expressed the view that we should delete paragraphs 224 and 225.

Members *indicated agreement*.

The Convener: That takes us to the section on members' business debates. The issues in this section are the selection of motions and the timing of debates. Paragraph 231 is the first substantial paragraph in the section. The recommendation is to insert a new paragraph after paragraph 231:

> "We recommend that consideration be given to other means of selecting topics for debate in Members' Business. In particular, we support the suggestion that a panel of backbenchers could be given this role, although we are open to suggestions that some 'slots' might be suitable occasions to debate petitions, or might be made available for nominations by the Presiding Officer."

Therefore, a back benchers' panel could replace the Parliamentary Bureau in the role of selecting motions for members' business debates. Procedurally, the motions might still come through the bureau. However, the suggestion is that the bureau would consult a panel of back benchers. We will introduce a procedural proposal later that there should be a formal back benchers' body. Therefore, the idea is that motions for members' business debates should be cross-referred from back benchers' panel to the bureau.

Fiona Hyslop: Perhaps I should wait until we deal with the issue of the back benchers' panel, but I am concerned about such an idea. Perhaps the recommendation should be that we use the experience of some back benchers in some parties to select motions for members' business debates. Some business managers already provide such an opportunity for their back benchers. They ensure that the back benchers feel that there is no difficulty about business managers proposing back benchers' motions for members' business debates to the bureau. Therefore, to propose a back benchers' panel might mean that, for some parties, we might be using a sledgehammer to crack a nut. I do not think that all parties would necessarily have to be bound by a back benchers' panel.

Donald Gorrie: I, too, have concerns about the procedure for selecting motions for members' business debates. My recollection is that, initially, such motions were chosen, notionally at least, on the merits of their case. However, members' business debates have since changed and they are now divided between the Parliament's political groups. Whether one likes it or not, that practice politicises the debates—which was not the original intention. There are two sorts of members' business debates. One sort deals with subjects such as appealing for the road to Wick, for example, to be improved, which would be a legitimate issue for the member for Caithness and Sutherland to raise. The other sort of members' business debate deals with issues such as members asking for support for an organisation.

The convention seems to be, however, that a members' business debate must be meaningless in order for it to be allowed. That is not helpful. The debate allows an expression of opinion, but

nobody has to pay any attention to that. There is no push behind a motion in a members' business debate—for example, having a sanction that would follow the passing of a motion. Motions for members' business debates should be taken more seriously. They should be allowed to call on the Executive to act and the Executive should have to respond.

The convener's suggestion for increasing back benchers' power to choose motions is a good one. The whole issue should be considered further. In addition to the convener's suggestion of having three-hour debates on subjects, one Thursday morning every month, for example, could be used for three or four members' motions. That would give back benchers more prominence and allow more back benchers to have motions debated in members' business debates. Under the current system, the chances of getting a members' business debate motion accepted are slim.

10:15

The Convener: Some of the thinking behind my suggestion is that the current system is not transparent. I remember that in the Parliament's early period we thought that one needed many signatures on a motion before it would be selected. If that mechanism is used, it causes difficulty, because some parties have whipping on the signing of members' motions and one is not allowed to sign a motion without clearance from the party whip—unless one cares to take on one's party whip. Therefore, it is not necessarily easy to get a genuine view of the support that there might be for a specific motion.

It is the case now, however, that business managers rotate the control of nominations of motions for members' business debates in a way that reflects the relative strength of the parties in the chamber. Therefore, it is difficult for the single-member parties to have a motion selected for a members' business debate. I do not know whether they often ask for a motion to be selected. Dennis Canavan got one selected by getting a huge number of signatures for it. The selection of motions for members' business debates is currently controlled by the party business managers, who select a motion and the bureau agrees it. We want a more transparent and responsive way of reflecting what members want to debate.

Susan Deacon: I want to suggest a fundamentally different way forward on the issue. The issue of members' business debates is an important one for us to address in the report. In other areas I argued that we should push the boat out for focused and specific recommendations. However, in the area of members' business debates we can make statements of intent but should not necessarily translate those into well-developed ideas about how they should be converted into practice.

I would have thought that, at the level of statements of intent to which we can all sign up, there is common ground on the impact and effectiveness of members' business debates. Many, if not all, debates have been acknowledged as high-quality debates—the convener referred to a recent example—which have highlighted issues for which members and external individuals and organisations have an appetite. We could also sign up to general observations about the impact and efficacy of members' business debates. Such aspects perhaps could not have been predicted when the CSG and others thought about members' business debates in the abstract before the establishment of the Parliament.

We can also probably all sign up to exploring ways of ensuring that debates are not overly bound up by party-political considerations, whether with reference to how topics are selected or more generally how members line up, or otherwise, in support of motions. I am sure that there are other views on that.

We may also have to redefine some of the characteristics of members' business debates. Paragraphs 226 and 229 refer to the CSG report's view that members' business debates would be an opportunity to discuss local or constituency issues. That may well have been what the CSG said, but my impression is that, in practice, a great number of the debates in that slot are certainly not about constituency issues. The only members' business debate that I have ever sponsored was on the 10th anniversary of the Children's Hospice Association Scotland. That was, by definition, a national issue, but it fitted very well in that slot. Similarly, some members have raised health issues in what have been recognised as successful debates. Alex Fergusson's debate on myalgic encephalomyelitis and Dorothy-Grace Elder's debate on chronic pain did not focus on local issues, and we need to redefine members' business accordingly.

There must be further analysis before we can convert some of the report's aspirations and observations into meaningful recommendations. Maybe that is an area in which we can lay down the parameters within which we think such an analysis can be carried out, but perhaps we should leave it to our successors to translate that into some of the finer detail. I would like analysis of the levels of engagement, what the different topics have been and what the party breakdown has been. I would like to see a paper that set out transparently how topics are selected currently; members often learn about that by a process of osmosis. A useful starting point to make changes for the future would be to set out explicitly what happens at present.

My suggestion would mean more work for someone, I am afraid, but we need a bit of a reworking of the section on members' business debates. That is an area in which there is huge potential for us to capture something that clearly has a lot of positive elements that we can build on in the Parliament for the future.

The Convener: I think that you are looking for two things to be done to that section. One would be to add a state-of-the-moment report on how members' business has evolved and to put some seal of approval on the sort of things that are discussed and how members' business is used. The second thing would be to come up with a holding paragraph on the method of selection, to commission a further report and to direct further work on that as a means of identifying any problems, such as a lack of information about how the selection is done. That would allow us to consider solutions later on. Is that fair?

Fiona Hyslop: I agree with that. We should also say that we are looking for more opportunities and that we want to reposition the debates. That could be done even within the existing system. We all want to enhance the position of members' business. Perhaps we should consider holding members' business debates first thing on a Thursday morning or starting business at 2 o'clock on a Wednesday. If we have some scope for improvement, that would be helpful.

Donald Gorrie: Gil Paterson has pushed on two occasions—with my support and that of other members—for the Monday business bulletin to reprint all the current motions in full with the names of all the members supporting them. A lot of people would find that helpful in choosing which motions to support.

We should say that it is unacceptable for a member's freedom to sign a motion to be constrained in any way.

Fiona Hyslop: That is in paragraph 235.

The Convener: On Gil Paterson's point about printing the business bulletin, it was primarily a resource issue that prevented what he suggested, as it was considered wasteful to print all the motions in full. Although there is a mechanism for the bureau to clear out time-dated motions, that tends to be done only every six months, so the bulletin can get very fat and full.

Fiona Hyslop: It is done every six weeks.

The Convener: I think that it tends to run a wee bit behind that in practice, not least because, when the time comes to excise motions, there is sometimes special pleading by back benchers to keep motions on the list while they are still gathering support for them. It was primarily a resource-driven issue, but I appreciate that putting motions on the website rather than in the bulletin means that people do not see them. I do not see them, for example. I used to look at the Monday bulletin every week to see what motions had been lodged, and I would cast my signature accordingly. I tend not to do that now that the list is available only on the web, so I have a lot of sympathy for Gil Paterson's request. Gil lodged a motion to that effect, which got a fair amount of support, but not huge support. Has he lodged that motion again? I know that he intended to, but of course I have not seen it because it has been on the website and not in the Monday bulletin.

Donald Gorrie: Yes, he did lodge it again.

Fiona Hyslop: I am not sure that that is a matter for our report. The obvious thing is for members who have concerns to raise the matter with their business managers, who can raise it with the bureau. When I consulted them, my members said, "Yes, let's just have it electronically. Why are we printing "War and Peace" every Monday?" The general view from my members was that they were quite happy with the Monday bulletin being published as it is currently. If there are difficulties with that, there are better ways of resolving them than by making key recommendations in our report.

The Convener: Looking at it from the point of view of accessibility, putting motions on the website makes them more accessible, because members of the public can access the website much more readily than they can the printed bulletin. From the point of view of accountability, I am not sure that it is material one way or the other, since members' business motions are not generally motions that hold the Executive to account. I tend to agree that it is not really a matter for our report, but it is not a negligible matter in terms of the life of the Parliament if people feel that they are deprived of easy access to information.

Paul Martin: One thing that is important is what members get out of members' business. We have all been involved in debates where we want to hear specific answers. I am not sure how to deal with that; it is an issue that we raise regularly. Members' business is a crucial opportunity for local members to raise points when they want answers to specific questions. We should find some way of framing a paragraph that deals with that point, so that we can ensure that members' business is a quality period that allows questions to be answered. I sometimes feel that the minister is not given sufficient time to deal with the points that are raised. I know that there are time constraints. I believe that ministers really do want to answer the questions, but they are given only six minutes to deal with quite a detailed debate. In most other debates, ministers have at least 10 minutes to respond.

The Convener: Ministers are allocated seven minutes. However, if a minister is making specific replies and giving specific information, we would probably tend to give them more time. Paul Martin has raised an interesting point about what the member initiating the debate gets out of it and what they are entitled to.

I disagree with Donald Gorrie. I have heard ministers make announcements and issue concessions in members' business debates. Simply because the debate has happened, the minister wants to say something positive. Ministers who come to say, "No, you're not getting it. No, no, no," usually have a pretty bad experience. I have seen that happen once or twice. Usually, the ministers are as flexible as they can be within the system, and sometimes they will make minor announcements or concessions. Members' business debates are valuable from that point of view.

When a minister has tried to respond to the points raised in the debate, it might also be reasonable to give a more comprehensive response by letter to the member. Is that what you are suggesting, Paul?

Paul Martin: That is a possibility. I am concerned that, where the member has raised specific points, the debate should provide an opportunity for quality debate.

I have a further issue to raise in connection with paragraph 235, which suggests that

"parties may wish to agree to a convention that support for members' motions should not be subject to party discipline."

I have never been asked not to support a members' business motion for party-political reasons. I have supported some members' business motions because I have wanted to; I have not supported others because I have not wanted to. I cannot speak for other members of my party, but I have never, officially or unofficially, been asked not to support a members' business motion.

10:30

The Convener: There is perhaps a degree of mystery about this.

Paul Martin: It may still be helpful to make a statement about it, but I reiterate that I have never been asked in any way whatever not to support a members' business motion for any reason.

Fiona Hyslop: I appreciate Paul Martin's comments, but the number of people who do not support members' business motions is quite marked, particularly among the Labour party. I am glad to hear what Paul Martin has said, but there are problems among all parties over the issue. There are many motions that we would want all parties to support, and there is no reason—whether the issue is a local or a national one—why members should not register their support. In our statements, we must encourage support for good members' business motions. That is the strength of the Parliament. If people want the Parliament to act as an entity in itself, rather than being driven by party-political purposes—

The Convener: I have no wish to get involved in any political wrangling over this matter, but I have sometimes looked at a motion from one of my regional colleagues, say, and have thought that I broadly agreed with it, yet there might sometimes be a wee nip in the wording, and I have wondered, "Is that in there so that I can't sign it?" People have sometimes included a certain angle or sharpness in their motions, which might have been driven by a political agenda.

Fiona Hyslop: It works both ways.

The Convener: Indeed—there are two different ways to look at it.

Susan Deacon: We need to be slightly careful in this area—as in others—about what we can recommend and to whom. This is possibly a point of semantics, but we should, in our report, feel able to comment on the issue of whipping, and indeed on any issues that we feel to be germane to the broad scope of our inquiry. I am not sure, however, that we can make recommendations to political parties as such. We could state a belief using a phrase such as "It is our view that". The same might apply to what we have to say about other areas, including issues around the civil service, on which it is beyond the scope of our authority formally to make recommendations. It is absolutely legitimate for us to comment on and observe many aspects of the party-political process and the way in which procedures that are operated by political parties impact on the parliamentary process. We perhaps have to think about how we express that.

I have a completely separate point about members' business debates, which goes back to our earlier discussion about the lead time for the decision of their topics. One would assume that that would be absorbed in our earlier discussion—the point was made about identifying business ahead of the game. It might be useful for us to be explicit about topics for members' business, however. It is a real pity that, often, the topic for debate is known only a week ahead. If there is a greater lead time for knowing the subject of members' business debates, and considering the fact that they are generally consensual in nature, that gives organisations a tremendous opportunity to organise themselves and for their representatives to attend the debates. Advance notification of subject matter is paramount for that to happen.

The Convener: The current timing of the notification of the subjects for debate relates partly to the advance agreement about which slot is whose, politically. It might well be that the business manager in question has difficulty determining a topic from among competing claims for those slots. Sometimes, there has not been anything all that worth while to submit, and members have been asked to come up with something. Those realities perhaps apply more to the smaller parties, which do not have the same volume of people who are free to promote the issues picked.

I sense that the existing system does not work as well as it should in delivering debates on topics for which there is a lot of support across the Parliament. If members are reduced to thinking up topics to fill a slot, then, by definition, they will have come up with an issue that is not necessarily all that pressing. That is an inefficiency in the system.

We have jumped ahead of ourselves in that we have been discussing recommendations that are not yet in the public domain. I had got as far as the proposal for paragraph 231, which we have not agreed. We will reconsider the replacement text.

On paragraph 233, the recommendation is to replace the existing text with the following:

"We recommend the re-positioning of at least one of the Members' Business sessions during the period 14.00-17.00 on Wednesday or 09.30-17.00 on Thursday early in the next Session on a trial basis and where a motion has attracted a high level of support. The Committee would review this experience and report to the Parliament. An amendment to Rule 5.6.1(c) would be required."

That is a suck-it-and-see proposal. In other words, we could hold some members' business debates at a different time and see how well that goes.

I have suggested that paragraph 234 be placed in bold. It is possible that, from the other work that we have discussed, the Parliament may, at some future time, decide to increase the time that it devotes to plenary business. In that event, it is important to note that some of that extra plenary time might be made available for members' business. That is not a specific demand, but the recommendation is that members' business should be given its due place in whatever consideration takes place at that point in the future. I propose, therefore, to make paragraph 234 a recommendation.

I have suggested that we word paragraph 235 as follows:

"Fourthly, given the largely non-party political subjects of motions for Members' Business debates, we recommend to the political parties that they should agree to a convention that support for members' motions should not be subject to party discipline."

I take on board Susan Deacon's point, and I would like to reflect on whether the way in which the wording has been framed is reasonable. It may well be that we should not use the phrase

"we recommend to the political parties",

but should instead express a statement of the committee's opinion—if it is indeed the committee's opinion. We may return to the wording later—in fact, we will return to it, so that we are absolutely clear that everybody is happy with it. If anyone has any practical suggestion to make in the interim, about how we could reword that paragraph, I would be very happy to consider it and circulate any suggestion.

Donald Gorrie: I feel that we can recommend anything to anyone we want; what attention they pay to it is their affair. I do not view political parties as being above the law. We can make recommendations; if parties wish to ignore them, that is up to them.

The Convener: It is not a question of whether parties are "above the law"; it is more about a recognition of the role of business manager and business management. Whipping is a slightly different matter. In some parties, party whipping and business management are done by the same person, but party whipping is an internal, private matter. Susan Deacon, appropriately, pointed out last week that it is a very real, if relatively unstated and unknown, facet of parliamentary life. The issue for us is how to address things that are real and significant but that are not really part of the formal constitution and are not governed by parliamentary procedures. I do not know the answer to that, but will reflect on it.

Paul Martin: What Donald Gorrie says is all very well, but there is the possibility of abuse of the members' business motion process. Somebody might lodge a members' business motion to say that all the members of the Executive should be sacked. As long as the process is clearly used for members' business motions, that is the main thing, but I am not aware of anything to prevent a member from lodging any motion, with whatever content.

Fiona Hyslop: It is much simpler than Paul Martin suggests: a motion to sack the Executive would need the support of 20 members, and it must be debated. Ironically, it is easier to get that than a members' business debate.

The Convener: Paul Martin's point is more general.

Fiona Hyslop: Yes—I understand Paul's point, which is well made.

Paul Martin: If members make political statements through members' business, how can that be prevented? I do not want members'

business to be controlled by political whipping, but the option to turn a members' business debate into a political debate will exist. It is up to the member of the Parliamentary Bureau whose party has selected that business to be careful.

I am living in the real world. Members' business should not be subject to whipping. I have never been whipped on members' business. No one has ever approached me and told me not to support a members' business motion. I have supported it because I have wanted to or not supported it because that was my wish. Nonetheless, the system could be open to political abuse, although I do not think that that has happened to date. I have not seen any evidence of that.

The Convener: Few debates have been especially partisan.

Paul Martin: Nevertheless, the opportunity is there for political abuse. We live in the real world. We know that the possibility exists.

The Convener: We may want to cover that in defining the circumstances for members' business that arose from our earlier discussion.

Donald Gorrie: I have a minor point. Paragraph 230 states that we are considering three changes, but there are actually four.

The Convener: One probably derives from another, but we will pick that up. Thank you.

The next section deals with "Time in the Chamber". I suggest that we put paragraph 240 in bold type to reflect the fact that we are still working on the matter and expect to produce some recommendations, some of which may be in this report and some of which may come later. Paragraph 240 is a statement of intent, not a recommendation or a call for anything; it is really just some comments on the issue in passing.

I suggest also that we insert a new paragraph after section 240 that reads:

"We intend to report on the results of the preliminary questionnaire, and we recommend that our successors in the next parliament should consider taking forward such proposals for changes to the Parliamentary week as appear to command significant support from Members."

That is simply a stronger nod in the direction of the parallel work.

The next section is under the heading "Civil service, 'arms length' bodies, and modernisation of government". We had some difficulty in working out a heading for the section, as some of the arm's-length bodies include civil servants and some do not.

There has been a debate about the relationship of the civil service to the Parliament. The suggestion is that we put paragraphs 246 and 247 in bold type. Paragraph 246 points out what the CSG report did not cover. I am mindful that when we first discussed the report, we picked up the issue of whether the CSG principles ought to apply to the Executive's workings more broadly, rather than simply to its dealings with the Parliament. That paragraph is there as a platform on which to build any further points that we wish to make about the application of the principles.

When we consider our relationship with the civil service, it is important that we are aware that civil servants are not negligible players; they interact with us a great deal. Therefore, how we interrelate with civil servants and the nature of the exchanges that we have with them are legitimate procedural issues for us to consider. Paragraph 247 contains fairly important statements of our right to consider the issue and make recommendations.

Fiona Hyslop: Paragraph 242 talks about the confusion about who constitutes the Government, the Executive, the civil service, and so on. I take it that we will return to that issue.

The Convener: Yes. We will come back to that when we discuss power sharing. There is a significant section on that in that part of the report.

Let us move past the "Evidence" section to the "Discussion" section. In saying that we have a relationship with civil servants and discussing what that is, it is important that we also reflect on the role of the civil service. The quote in paragraph 253 was not made in evidence to us, but comes from a work that is explained in the footnote. It is a classic definition of the relationship between civil servants and ministers, which touches on who answers to Parliament. I think that the statement is reasonably important and that we should render it in bold type. Whether or not we agree with it, it is the argument that is made.

Donald Gorrie: Let me move into Paul Martin's real world. The quote says:

"Save in special circumstances…civil servants have no powers of their own."

That certainly contradicts my experience. The chance of a minister controlling all his or her civil servants is nil. A great many decisions to which we object are made by civil servants.

10:45

The Convener: Such decisions are made under the terms of any delegation to them by ministers, although some civil service actions are not necessarily delegated by ministers. The statement is not our perspective; it is Sir Edward Bridges's perspective. We can agree with it or disagree with it. It is a statement of the role of civil servants. It is included simply to balance the argument.

I propose that we also highlight the quote in paragraph 255, which is the Scottish Executive's

rendering of the Bridges formula. The Executive's view is:

"civil servants are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament".

The Executive believes firmly that civil servants should not be accountable directly to us. That is stated again in the document that is quoted in paragraph 256. I propose that we pick out the three paragraphs, which contain significant statements.

Paragraph 258 outlines the status quo at Westminster. If we are to examine the role of civil servants, we must examine it in the context of what has been the defined and stoutly defended position. Those are the citadels that you must storm, Donald, so I have identified them for you.

Donald Gorrie: I am sharpening my bayonet.

The Convener: Did Susan Deacon want to comment on that?

Susan Deacon: I was distracted by the image of Donald Gorrie storming St Andrews House with his bayonet.

I am struggling with this section.

The Convener: We all are.

Susan Deacon: I would like to record some observations, although I have not worked out my final view on the matter. This section of the report does not feel right structurally—I said the same about another section last week. A number of pages have a lot of words on them but say very little. I am not sure that that adds value to the report.

That said, there are some fairly sharp-edged things that we can and should say about the role and impact of the civil service in the overall operation of the Parliament and the post-devolution arrangements. For example, I recall numerous witnesses identifying in various ways a distinction between their experience of interacting with ministers and their experience of interacting with officials who were acting on ministers' behalf. I am not sure that we have captured that theme in the evidence. With the greatest respect, I would like to strip back the stodgier background of the section overall and ensure that we capture the real-world experiences that people have of interacting with the political process post devolution.

In a similar vein, I do not think that we have done justice to the issue of arm's-length bodies and other organisations. The clerk knows that I was concerned that we did not call enough NDPBs or Government-related agencies—including, for example, the health service—to give evidence. The Parliament's relationships with such organisations are different and their impact on the political process is different. We took evidence from Scottish Enterprise, but that was one of the few NDPBs that we heard from. There was an imbalance in the kinds of organisations from which we took oral evidence, although I accept the fact that there were other opportunities for evidence to be given.

I do not want to go further at this point of the report or at this point in our discussion. I record the fact that both those bundles of issues are incredibly important and must be referred to in our report, otherwise they would be horribly conspicuous by their absence. I sense a need for us to revisit those issues and consider what we want to say, but I would rather do that once we have worked through the next section. The committee probably agrees with that. That might help to shape our thoughts on how best to revisit the issues.

The Convener: As we were drafting the report—with John Patterson working up the report and me considering the recommendations—we felt that there was a lot of significant evidence on the matter and that there was a desire to change patterns and relationships, but that it was difficult to establish precisely how and by what mechanisms that could be done.

I am happy to consider strengthening this section of the report and to consider laying markers for further work. I suspect that we have not done nearly enough rigorous work on the issue to be able to come up with a set of fully worked-out recommendations. Therefore, it might be better to conclude the discussion and end the process simply by putting in something to direct further work.

The point about NDPBs, to which we will come shortly, is similar. It became increasingly clear that, however well accountability might work in theory, in practice, it is cumbersome. Huge areas of Executive responsibility are farmed out or devolved to arm's-length bodies whose relationship with the Parliament is entirely different from that of the departments and civil servants that are directly under ministerial control.

We have a lot to examine, such as how officials appear before committees, how they answer questions and letters and how the Parliament uses the information that members get. A lot of stuff needs a lot of further work, but we have to draw a line somewhere. It is perhaps a question of identifying the areas that Susan Deacon mentioned for further work.

Fiona Hyslop: We should be open about why the section on civil servants and arm's-length bodies is in the paper. It is there not because the committee wanted to examine their role as a major issue at the outset but because of evidence that

emerged during the inquiry. When we considered all the references to the Executive, it was clear that most witnesses' experience of the Executive was not of ministers but of the civil service. It was striking that most of those at the public meeting in Ullapool did not have experience of ministers but had considerable experience of dealing with the civil service and quangos.

The way to address the matter is to make it evident that, during the course of the inquiry, it became quite clear that the role of the civil service is acute. We should beef up the evidence—if we can—with further references, which would allow us to make the point. We could then say that it was not possible for us to do a comprehensive review of the civil service's role as part of the inquiry. As the convener says, we can make initial points in the paper and express a strong view that we cannot let the matter lie and need to come back to it.

The Convener: Paragraph 260 was meant to act as a stepping stone. To consider the structure of the civil service and how it works with everybody is not within our remit. That is a far bigger issue than the Procedures Committee can take on, as is the relationship between Scottish Executive civil servants and United Kingdom Government civil servants, which cropped up quite a lot.

We have an undoubted claim on considering the role of civil servants when their work comes within the Parliament's procedures. That relates to the Parliament's work of scrutiny and concerns civil servants' direct relationship with the Parliament. We might want to try to establish more parliamentary control over other aspects of their work or to empower the Parliament to consider them, but we are limited in what we are able to do by our remit to consider the practice and procedures of the Parliament.

Fiona Hyslop: Do not we need to reflect what the evidence showed us, even if it is not within our remit? The fact that we started on an inquiry and the witnesses did not tell us what we expected to hear does not mean that we should ignore what they said to us. We need strong wording in the report to say that it became evident that witnesses had a strong view that their experience of the Executive was of the civil service, although it was not possible to do a full inquiry into that. Not to acknowledge that would be remiss of us. If the committee is in agreement, I believe that we should strengthen the report.

The Convener: Yes, although I am not sure that that is a sufficiently clear instruction to enable the clerks to draft suggested additional text.

Fiona Hyslop: I am happy to draft something on our experiences, such as those in Ullapool, and to reflect on a number of our evidence-taking sessions. The point is evidence driven, as opposed to being driven by the committee's opinion.

The Convener: If something is evidence driven, to put it in the report is entirely appropriate. I am happy to do that. It would be helpful if you would draft something.

Donald Gorrie: The evidence provided examples of groups that pursue voluntary activity of great importance to a community and who find the ministers helpful, but are then told to go off and see the civil servants, who are extremely unhelpful. I am sure that all of us have examples of that. I am not sure what the mechanism is, if there is one, for addressing that. Would the relevant committee be asked to invite the civil servants concerned, to ask them why they did not help the disabled people more, for example?

The Convener: I have been in committee meetings, including in this committee, when Michael Lugton and various others from the same branch of the Executive have spoken openly about practices and options in their work. When I was a member of the Transport and the Environment Committee, civil servants would come and have detailed discussions about statutory instruments or the Executive's railway policy, for example. Civil servants have appeared before committees extensively. If an individual committee found that it was not getting the response to which it felt it was entitled, it would be up to that committee to take the matter up with the minister or the head of the department in question.

Paul Martin: When I have contacted civil servants regarding a local matter or for information or policy guidance, either they have been reluctant to speak to me unless they speak to the minister first or they have instructed me to speak to or write to the minister. That conflicts with my experience in local government, where being able to contact an official was helpful. I appreciate that there are different protocols, but my experience in local government was that I was able to contact an official directly and receive an immediate response on factual matters.

Although I do not want to get into specifics, I was surprised that I was not able to extract financial information, which would have prevented the backlog of correspondence with the minister. We have the Executive directory and can contact civil servants directly, but they are not always the most effective points of contact for local issues with which we might be dealing. One of the issues for me is the local contact. Most inquiries to ministers will be about local issues, such as planning inquiries or capital bids for projects.

The Convener: That is an important perspective. Having been in local government, I

share it. As members who are adjusting to another system, the problem for us is that the model in local government is entirely different. In local government, the officials work for the council, so they serve the council. Primarily, they work for the administration, but they also service the opposition. Council officials would regularly brief opposition groups on policy development and issues of which they should be aware. They would answer questions. They would not betray confidential information about the administration's policy, but they were there to serve the whole council. They appeared at and would speak to committees—or executives, if that was the model.

The civil service is entirely different. Civil servants are not employed by the Parliament—although, ultimately, they are funded out of the same budget—and they work for the Executive and advise ministers. We do not have the same claim on them and, currently, Opposition parties are not entitled to ask for briefings and information. Whereas a senior local government officer might have given advice and suggested going about something differently or expressed opinions on something, civil servants do not have any opinions; they advise ministers who have opinions. We have built up a system of Chinese walls whereby civil servants relate to us only through ministers or at the discretion of ministers.

If one wanted to change that—and I will put my hand up and say that I would like to change it—one would have to become involved in a massive project of changing the way in which the civil service works. I am not sure that we have the remit in Scotland to do that, because the entire civil service works to the head of the home civil service and, therefore, directly to the Prime Minister. To that extent, our civil service is part of the UK civil service. I am not sure what the line management arrangement is in terms of reporting to the Executive ministers and the First Minister.

11:00

Paul Martin: I appreciate what you are saying, but I was trying to say that we might be able to improve the system without considering the extensive process that you have outlined.

The Executive directory provides personal contact, but I think that civil servants feel threatened when they are contacted by an MSP. They appear to ask themselves what political game the MSP is playing. A degree of training is required on both sides to ensure that we can engage with each other. My personal crusade has been to try to communicate to the civil service what the role of a locally elected member is. As you said, council officials are more aware of the role of elected members than the civil service is.

Susan Deacon: I am on record as saying that there must be a debate about the role of the civil service in a post-devolution Scotland. That said, we have to be realistic about how far we can go within the scope of this inquiry. I am not saying that we should adopt a deferential approach, whereby we do not talk about certain matters because the civil service is nothing to do with us, but we need to think about what we are realistically equipped to comment on, given the scope of our inquiry.

I am attracted to Fiona Hyslop's suggestion that we should address this section on an evidence-led basis and reflect back what we have heard on the issues, without going too far down the road of saying what our findings might mean for the future of the civil service.

It is important that we do not confuse a range of interrelated but differing issues. The constitutional relationship of the civil service to ministers and the Parliament stands as a fact. Any wider debate on the role of the civil service should touch on that. However, issues of culture and practice have arisen in evidence that should be addressed. We have started to confuse the relationship that has evolved between civil servants and parliamentarians with the relationship that has evolved between civil servants and other organisations and people in the wider world. We have seen good and bad aspects of both, but there is a difference between the formal arrangements between civil servants and parliamentary committees and the experience that people have shared with us of their dealings with government, not through meetings with ministers—as few people will have face-to-face contact with ministers—but through the machinery of government in the form of civil servants.

We must continually remind ourselves of the importance of the implementation of the process. I know that there are those who say that we should not oversimplify the process of policy development and implementation, and I tend to agree with that. Nonetheless, there are distinct phases in the process, as legislation moves from the initial consultative process to implementation. Earlier in our inquiry, we recognised that the debate around devolution and the development of the Parliament had focused on ways in which people can have a say and can interface with the Parliament. Increasingly, there has been a shift towards the question of how the Parliament can make a difference to people's lives by implementing the legislation that we pass. That brings into sharp focus the role of civil servants, as they are directly responsible—if not accountable—for the implementation of legislation.

I would like our work to capture the point about implementation but, for now, Fiona Hyslop has

helpfully suggested a way through all that. We will have to be realistic about how far we can go, but we can be much sharper than what we have before us suggests we can be. I say that with the greatest respect to those who have got us this far.

Donald Gorrie: I entirely agree that we have to be realistic and that there is a limit to what we can achieve.

If a community group or a pressure group has a bad experience with a civil servant, that contributes to their thinking that the whole government exercise, including the Scottish Parliament, is a waste of time and space. We have to address that.

I understand that, in Wales, which has an assembly rather than a parliament, civil servants are responsible to the National Assembly for Wales. It might be worth talking to Assembly members to find out how that system works. I take the point that Paul Martin and others made about the fact that, in local authorities, local government officials are reasonably helpful to members of all parties and I wonder whether that is what happens in Wales. You might say that the National Assembly for Wales is a sort of halfway house between local government and the way in which a traditional parliament works. We might have lessons to learn from that.

Fiona Hyslop: I have a practical suggestion. I understand that Plaid Cymru's business manager in the National Assembly for Wales will be in the Scottish Parliament on Thursday. Either you or the clerks might want to meet her, convener.

The Convener: We could have a special committee meeting and take more evidence. That might be interesting.

Donald, although your point is interesting and helpful, it would be better dealt with in a further phase of work rather than embodied in this report.

Although Fiona Hyslop will come back to the committee with further suggestions, I would like to read into the record the recommended paragraphs.

I want to put paragraph 265 in bold and to change the wording to read:

"We consider that it is important that the Parliament and its committees continue to call for evidence from officials serving the Scottish Executive and generally nurture this highly significant relationship."

That might not be strong enough, but we are saying that, as a matter of principle, committees should take evidence from civil servants when appropriate.

I want to add to paragraph 266 a restatement to make the point more clearly:

"We consider that Members should take the opportunity, when appropriate, to use the facility - now agreed between the Parliament and the Executive - to telephone or e-mail officials directly using the Executive telephone directory on the Parliament's intranet facility."

Perhaps we should seek to amplify that to address the issues that Paul Martin raised and to encourage civil servants to understand what members want and need and to be more forthcoming. At the moment, we have to approach heads of sections. Perhaps civil servants should be more relaxed about whom we approach. Paul may want to reflect on that and suggest some further text on the issue. The clerks would be happy to discuss that with him.

My suggested change to paragraph 271 again seeks development. The suggested new text is:

"We welcome the fact that the Executive has facilitated civil servants' presence at committees, and they have provided committees with evidence which is full and helpful. We encourage all Committees to develop these relationships to the fullest extent possible."

If we can put more flesh on that bone, so much the better. The text tries as strongly as we thought we could to encourage dialogue between civil servants and the committees that shadow the relevant departments. I would be happy to reconsider that and to develop further text.

Donald Gorrie: Would it be possible to suggest that a committee could consider asking a civil servant to be an adviser for a specific inquiry, possibly along with an academic?

The Convener: That is an area for further work. It would seriously delay us if we went into that now, as I suspect that it would throw up huge issues. However, I do not dismiss the idea out of hand: it is worth exploring.

Let us move on to the section on "Arm's-length Bodies". A lot of the paragraphs are transactional explanation stuff. I want to strengthen the text in paragraph 280 to say:

"We consider that it is clearly vital to the scrutiny of 'arms length' bodies that the Parliament develops a high profile, well-resourced and systematic approach to scrutinising such bodies. Without such an approach accountability is unlikely to prove adequate."

The word "systematic" is key. I know that committees have undertaken scrutiny of some arm's-length bodies. However, across the Parliament we have not engaged fully with the nature of the beast and established the relationships that need to be established. That is why I suggest that we put the quotation in paragraph 281 in bold type. The quotation came from Scottish Natural Heritage, which is sometimes said not to be the most responsive of arm's-length bodies. Nonetheless, SNH suggests that there is scope for better scrutiny of its work. I feel that that is quite significant and worth highlighting. All committees should reflect on that

in relation to the bodies that could report or be accountable to them.

Let us move to the section on "Modernisation". My suggested paragraph 286 follows on directly from the previous paragraph. The suggested text is:

"We had some difficulty, however, in detecting how these policy objectives were to be delivered in ways that fitted in with the new participative, post-devolution politics in Scotland. We wondered where the strategy was for involving the Parliament and the people directly in the development of these policies."

Members may find a way to sharpen that paragraph up and make it more precise. Basically, it says that the Executive formulates policies and rolls them out, and it questions how deeply involved we are in that process and what dialogue exists between us and the Executive. It asks how well the Executive is applying the principles that we would apply in seeking support for policies from the wider public.

I suggest that we insert a new paragraph after paragraph 290:

"We consider that the Parliament should be an active partner in the modernising and open government process, being given the opportunity to initiate and comment on proposals in such areas as the structure, staffing and operation of the Scottish Administration and others central to modernising government. We consider that this would be fully consistent with the principles of the Parliament, and we recommend that the Scottish Executive and the Parliament should reach agreement on how to draw the parliament into active partnership."

That is the best way that I can see to get the Parliament involved in a big part of Executive activity in which we feel we are not included.

The next section is on "Parliamentary consideration of constitutional and governance matters". I suggest that, in paragraph 294, the quotation from the evidence that was given by the chief executive should be highlighted in bold type. The quotation came from his discussion with us about how we might consider some of the constitutional issues. I also suggest that we replace the text in paragraph 295 with the following:

"We have been pursuing the extension of the committee's"—

that word should have a capital C, as we are referring to ourselves—

"remit separately. We believe that so extending our remit would be helpful in enabling the Parliament to formulate views on constitutional and governance matters. We recommend that the remit of the Procedures Committee is extended accordingly."

We discovered that there is a bit of a lacuna in the way in which certain aspects of the governmental machine are scrutinised, and we felt that we could fill that.

That concludes our discussion on accountability. If we are all happy to proceed on the basis of those changes, I shall suspend the meeting for five minutes. After the break, we will make a start on the issue of power sharing.

11:16

Meeting suspended.

11:29

On resuming—

The Convener: I am obliged to the broadcasting people for having replaced the caption that was being broadcast on the internal television screens that advised that we were in private session with a more accurate caption, which said that we had adjourned, as indeed we had. We are all suitably refreshed and steeled for the second half of the report, which is just as well, as this is a lopsided report and many of the substantive issues arise in the section on power sharing.

Members will need for this section the document on power sharing, which is a committee draft. There is also a document from me containing a number of recommendations about amended text and additional paragraphs. Furthermore, because I completely forgot about the first change that I was going to make, there is a first page containing my little oversight, which I e-mailed to you yesterday evening at 21:41 and which ought to have been put on your desks by the clerks.

I begin by acknowledging that the point in the first line of the document on power sharing, which reads

"Power sharing is an attractive if elusive notion"

is the key to our discussion.

I have suggested paragraphs that might be placed in bold text, which we have placed in the basic text rather than in my recommendations.

The first paragraph that I have put in bold is paragraph 3, which is an attempt to define power sharing as something that recognises everybody's roles. It does not suggest that the Parliament should be doing the work of the Executive or the Executive the work of the Parliament but that, in our respective roles, there are areas in which we work together and areas in which we work separately and that, to facilitate that, we should attempt to remove barriers to communication between us and to make all the various agencies that are involved in the process of government work more effectively and fully together.

I also propose to put paragraph 4 in bold, as it deals with a significant finding from the MORI research, which was that MSPs felt that power sharing was the principle that had been least

successfully implemented. Of course, some of that feeling will be due to the frustration that Opposition politicians feel about shaping the outcome of policy and legislation, but it was still a clear finding of the research and I suggest that we highlight it.

Fiona Hyslop: I do not want to nit-pick, but the first sentence talks of power sharing as a notion. That makes it sound as if it is something transitory that we just came up with that morning. Perhaps the word "concept" should be used instead.

The Convener: You are quite right. I think that we should change that. I assume that the clerk was feeling particularly fey on the day that he wrote that.

John Patterson: I can confirm that, convener.

The Convener: On the operation of parliamentary committees, I want to put paragraph 9 in bold because the fact that committees are powerful bodies is central to the ethos of the Scottish Parliament. In the evidence that we received the strong role that committees have to play in the process of achieving power sharing came through.

The concerns that were expressed in the evidence have been summarised in paragraph 12, which I suggest should be placed in bold text. The concerns are significant and need to be responded to. The first response that we have given, in paragraph 13, relates to third parties on committees of the Parliament. That is where the e-mail that I sent you comes in, as it contains the text that I propose to insert instead of the present text of paragraph 13. The suggested amendment gives more context to the point that the paragraph makes and gives a specific statement of intent, which has to be conditional.

The proposed replacement text is:

"We recognised the concerns expressed that non-MSPs had not been allowed to join committees, and participate in committee discussion. We were aware that that point had been raised early in the Parliament's life by the Conveners' Liaison Group and that very definite legal advice had been given that it was not possible to co-opt non-MSPs, given the terms of the Scotland Act 1998. We recognised the strength of the evidence given in support of a power of co-option and that there was widespread support for it. We therefore recommend that the Scotland Act 1998 should be amended to permit the co-option of non-MSPs, in a non-voting capacity, to committees of the Parliament."

We discussed that last week and were broadly in agreement about the approach, although it is not something that the Parliament is currently empowered to do.

Susan Deacon: I do not think that we discussed it last week and I am not in agreement with the suggestion. The idea is similar to that which we discussed earlier about non-MSPs participating in plenary business. Again, for the record, I state that I am all for consideration of innovative ways of increasing opportunities for a wide range of individuals and organisations to impact on and influence parliamentary proceedings, but that is different from putting in place a mechanism that would give individuals the same status as a democratically elected member.

The Scotland Act 1998 got it right. There is a good reason why the CSG's earlier view on this matter was not implemented. I would not be comfortable with this suggestion becoming a recommendation.

Paul Martin: I have the exact same view as Susan Deacon. We need to protect the role of the elected member and ensure that the elected member is supported in every way possible. Including a non-MSP in the committee could open up the Parliament's system to abuse, even though I assume that the non-MSP would be required to register any interests and so on.

I do not mean to sound self-important, but we are in a privileged position as we have been democratically elected by the Scottish people. If someone who had not been democratically elected could influence a committee's proceedings, that could leave us open to all sorts of abuse. When MSPs raise concerns, they do so as representatives of their constituents. If someone who was not an MSP were to raise a concern, on whose behalf would they be doing so?

We have not touched on the people who might become non-MSP members of a committee. We regularly raise concerns about the fact that the membership of quangos does not necessarily represent the great Scottish public. Would it be another one of the so-called great and good who would serve on a committee or would it be the chairperson of the Springburn tenants association?

I am absolutely opposed to the suggestion.

The Convener: The question was first raised by the Equal Opportunities Committee because it had hoped to co-opt on to the committee people who would be representative of ethnic minorities who were not directly represented in the Parliament. That position was supported at the time by the conveners liaison group, which obtained advice from the Parliament's legal people.

As far as I am aware, the view of the committee conveners remains that they would like to be able to involve people from outwith the Parliament in their discussions. For example, we have found ourselves limited in the sense that, when we have had an adviser to help us with our inquiry, we have had to go through the process of asking the adviser to give us advice because it is not permissible under the standing orders that he should participate freely in our discussions. We

have played a silly game wherein the adviser has caught my eye and I have asked him to advise us.

The current rules are quite restrictive and there have been strong calls from within the Parliament to loosen them.

Fiona Hyslop: I am wondering how we resolve this. There will be different opinions and strongly held positions among committee members. I am in favour of the proposal to have non-MSP committee members. I think that people in ethnic minorities in particular, who are not represented in the Parliament, should certainly have access to the workings of the Parliament, especially the Equal Opportunities Committee.

My colleague Gil Paterson may have views that are more reflective of those of other committee members. It should not necessarily be a matter of going through the arguments—we are conscious of what they are. Do we have to put this to a vote? I hope that we will not be putting most of the report to votes and that it will, in the main, come from a position of consensus. I think, however, that different views are, for legitimate reasons, held on this matter. Whether it is now or at the next meeting, we probably need to ask who is in favour of the proposal and who is not. There might well be different opinions.

The Convener: I think that it would be better to leave the existing text at the moment, to discuss the matter at the end and not have it entered into the record just now. There are at least two cross-references to it earlier in the report. We need to consider the matter in the round and, if we made a change, we would have to ask the clerks to reflect on the areas where this emerged previously, in other words, where I formed a different view about what the probable view of the committee would be. We want to tease out all those issues, give people time to reflect on them and then reach our conclusion.

Donald Gorrie: Any wording that is agreed should make clear the fact that the non-MSPs would not be voting committee members, but would be usefully involved in inquiries. It would be helpful to the committee examining housing matters to have somebody like the chairman of the Springburn tenants association as a non-voting member. They could ask people pungent questions on the basis of their knowledge—as opposed to just theoretical knowledge—of what is going on. I think that that would be helpful. Clearly, those people should not vote, and any wording would have to make that clear.

The Convener: Conveners try to get round non-co-option by seeking advisers. The basis on which co-optees could not participate related to the wording about who could participate in parliamentary proceedings. The only non-members who are allowed to participate are the two law officers. Because they are specified as the people who can participate, the legal definition is that no one other than MSPs and them can participate. That rules out advisers as well as co-optees. Not only is there no power for co-option, but the role of adviser is a vague one.

In coming to a final view on this matter, members may wish to differentiate between the two roles. If they are not in sympathy with the co-option avenue, they might wish to explore ways of loosening up the area of advisers.

Paul Martin: I appreciate the point that Fiona Hyslop made—and it was well made as concerns the representation of ethnic minorities—but we are talking about a non-elected member who will take part in committee proceedings and who will effectively be able to sway the committee's persuasion, although without being able to vote. I have a fundamental problem with that. It is similar to the argument about unelected quangos, which is raised quite often in the Parliament. We have to make it clear that we are talking about someone who will not be elected.

How are we going to appoint these people? Do we decide who the ethnic minority individual should be? Is that equal opportunities? Which ethnic minority should the person come from? Would we be able to cover every single process? Would the people concerned be elected by their own organisations? We could find ourselves among a serious number of landmines, which would be created as a result of this proposal. This is about the real world, from my point of view, and the one way of ensuring that people are represented is to consider how they are selected through the various political processes—how they are democratically elected in their local areas.

I welcome the important role that advisers have played in committees. Their participation is important. However, I do not think that we should go down the road of having unelected external members or non-MSPs. I think that it would be wrong for the Parliament.

The Convener: I suggest that, when we come to decide the matter, we found our decision on the essential principle rather than on the practical difficulties. If we agree with the principle, it will be for further work to establish how such matters can be dealt with. I am not saying that the practicalities should not inform our view, but a decision must be made on the basis of the principle.

11:45

Paul Martin: I take issue with that. Surely we do not want to make a recommendation that cannot be delivered on. You are saying that we are setting out the principles of what we could deliver.

The difficulty that I have is that we cannot deliver what Fiona Hyslop is looking for on an equal opportunities basis. Also, we have to consider the process of how the Parliament would operate with a non-MSP.

The Convener: I think that answers can be found to those practical difficulties. In the local authority of which I was a member, there were committees with co-opted members. The committees co-opted members for a year at a time, and it might be possible for us to come up with a mechanism to do so. Any mechanism that is produced can be criticised and fault can be found with it: that is clear. However, the difficulties that you cite are not insuperable if we are prepared to make the decision.

Susan Deacon: I would not want us to say that, because something is prohibited, we should not do it. We must be willing to go back to first principles and think about what we want to achieve.

I found some of your points of clarification useful, convener, regarding what is and is not permissible under the existing rules. On such issues, there is often common ground on which all members can unite. The proposal is a bit more sensible and relaxed than some of the practices that exist at present. However, I do not know whether the controls—for example, concerning the way in which an adviser interacts with a committee—derive from standing orders or from statute.

Fiona Hyslop: They are in the Scotland Act 1998.

Susan Deacon: It would be useful to have a short summary note on that. I am sure that one has been produced previously for other purposes. I would find it useful to understand where some of the current controls and protocols derive from. That would help in shaping where we go from here.

The Convener: There is a paper somewhere about this issue, which was submitted to the conveners liaison group. I am sure that the directorate of clerking will be able to find it.

The same point inherently affects the status of committee clerks as well. Members may wonder where we found these shy, retiring, wallflower-type people who do not say an awful lot at committee meetings. One of the first decisions that the committee made was that the clerk would speak if the clerk needed to speak. That decision sent great reverberations through the cloisters of the directorate, as it was never envisaged that clerks would speak in committee. They are not law officers, as far as I am aware, so they do not have any locus to speak. However, we have got round that on the basis that whenever the clerk speaks, he is giving advice. On that basis, clerks now speak in committee. Some committees have pushed that principle quite far, whereas others have preferred the original reticence. It is a decision with which some people are still uncomfortable. The clerk is nodding.

John Patterson: Personally, I am not uncomfortable with it.

The Convener: There are issues to be considered, and we will circulate what advice we can dig out on that. I suggest that we leave paragraph 13 as it is and come back to it later in the round.

The next section is on meetings in private. I suggest that we put in bold type the bit about the complaints about meetings in private being one of the comments that was voiced most consistently by all the people who appeared before us. In a sense, it was perhaps the easiest point for people to make, but there was no doubt that people felt frustrated by the fact that meetings were taking place in private. The basis for the dispute is the requirement in standing orders, which is stated in paragraph 16. I suggest that we put that quote in bold type. The standing orders require meetings to be held in public, but there are provisions for committees to meet in private when they decide to do so. This section sets all that out.

I shall first address the areas where it is clear that committee privacy is sensible and would not widely be disputed, to separate those from the more difficult areas. I suggest that, after paragraph 19, we insert four paragraphs detailing situations in which committees can meet in private. The first is:

"We concluded that the current arrangements for appointing committee advisers are appropriate. We do not consider that there should be public discussion of such appointments, which require consideration of candidates' personal details, and of the relative suitability of candidates for particular posts."

I am fairly confident that nobody disputed any of that.

The second paragraph is:

"We also concluded that matters which are the subject of evidence to a committee and are genuinely commercially confidential, that is, material whose publication would seriously undermine the financial and operational structure of a company or other business, including the Parliament itself, should also be discussed in private."

The third paragraph is:

"We also concluded that discussions or draft reports concerning complaints against MSPs referred to the Standards Committee should not be held in public, as these could lead to damaging, unfair, speculative public comment about individual MSPs ahead of any investigation being completed."

I do not know how often this has happened, but what the fourth paragraph outlines is also part of the calculation.

"In addition, where a witness had expressed the wish to give evidence in private for strong personal reasons, and in particular where privacy was effectively a condition of a committee receiving that evidence, committees were justified in meeting in private, and, in the case of vulnerable witnesses, ensuring that the identities of witnesses were not revealed in subsequent discussions or written material."

It has been accepted that evidence-gathering sessions have always been the public aspect of committee meetings. However, there are times when evidence taking might justifiably take place in private. I feel that those are all areas where there is an established acceptance of committee privacy.

Fiona Hyslop: We might add to the last line of the fourth paragraph "or in broadcasting". When the Social Justice Committee conducted its inquiry into asylum seekers and their conditions in Glasgow, we took evidence from an asylum seeker. By agreement with the committee, the witness was filmed from the back, so that his identity was not revealed. I understand that that also happened recently when the Public Petitions Committee took evidence on the subject of abuse from a vulnerable witness. It is worth adding something about broadcasting to the fourth paragraph.

The Convener: The final line would end with "not revealed in subsequent discussions or written and broadcast material." That seems sensible.

Susan Deacon: What are the implications of that recommendation for the official report? I am strongly in favour of the recommendation. Members should be prepared to express and defend their views at all stages of an inquiry, as we are doing now, in discussion of our draft report but what impact would the recommendation have on the official report? Am I correct in saying that the recommendation brings into the recording process a range of work that currently falls outwith it?

The Convener: I do not know. There might be entirely private evidence sessions, at which the official report would not be present. The clerk would take a note of those sessions. However, there could be circumstances such as those to which Fiona Hyslop has just alluded, in which someone gives evidence but the identity of the witness is protected. I do not know the basis for either of those situations under the standing orders, but I suggest that the official report and the broadcasting people could be present in certain circumstances, although the committee may decide to meet without them in other circumstances.

Susan Deacon: That relates to taking evidence. What about the simple issue, which has been raised most often, of a committee discussing a draft report in private?

The Convener: We will come to all that. I am clearing out all the areas about which there is not, or ought not to be, any particular dispute because committees have been doing such things. No one who gave evidence to us was surprised that advisers were appointed in private or that commercially confidential discussions took place in private. Those are commonplace, widely understood actions. The dispute is about discussing reports in private, so I am anxious to get to that as a separate issue, having cleared out easier matters first.

Paragraph 20 is about guidance for committee conveners to explain when committees are going into private session. I propose to replace paragraph 20 with a much clearer and fuller explanation:

"We consider that committee conveners should be scrupulous in anticipating the requirement to take evidence in private, and why."

That should apply to any business that the convener wants to take in private. The suggested new paragraph continues:

"We recommend that proposals that committees take items in private are published in the Business Bulletin in advance, wherever possible, in order to minimise any public misunderstanding or inconvenience. Where circumstances do not permit a private session to be anticipated in this way, we recommend that committee conveners should ensure that a full explanation is provided to the public gallery in the Committee Room and that the Official Report records this."

Current procedures require conveners to explain why a committee is going into private session. However, that is sometimes not done, as members will know from their presence at meetings or observation of televised meetings. Therefore, the new recommendation is simply an underlining of good practice. If a committee goes into private session in the middle of a public meeting, the convener must clearly explain why to anyone who must leave the meeting and ensure that the reason is recorded in the *Official Report.*

I propose to add two new paragraphs after the new paragraph 20:

"We believe that almost all consultees and witnesses"—

I would say all, but I could not swear to that—

"understood and accepted the need for committee confidentiality in the circumstances outlined in paragraphs x-y above. However, it is apparent from the evidence that they accepted less readily committee confidentiality when reports were being discussed and finalised. For example, Graham Blount told us:

"The discussion of future work programmes … and the discussion of draft reports are important parts of the process, from which members of the public, whether in person or through the Official Report, should not be routinely excluded. Power cannot be shared if people are excluded - especially if they are excluded on the basis that they will fail to understand what is happening and will

confuse a draft report with a final decision." (Procedures Committee, SPOR, Col 1218)."

For the purposes of this discussion, we identify two distinct, major categories of committee report. Committees invest heavily in their own investigations, and attach great importance to delivering fully concluded Reports, in order to achieve the greatest possible public and political impact at the point of publication. Reports on Stage 1 consideration of Bills and on subordinate legislation, on the other hand, are part of the legislative framework."

Therefore, there are two categories of committee reports: reports on legislation and reports on committee investigations. If we add the two new paragraphs, we go on to a section headed, "Draft Reports on Committee Inquiries." That refers not to reports on legislation but to reports on committee inquiries. An argument is developed in this section. Paragraph 21 recapitulates the Graham Blount evidence about people who have contributed wanting to know what the outcome is. Paragraph 22 deals with the view that the conveners liaison group expressed to us, which was that private meetings aided consensus by allowing members to compromise more readily.

I suggest that we replace paragraph 23 with the following:

"We accept that it is more comfortable for committee members to discuss draft reports in private than in public. We understand that there are likely to be a variety of pressures on Members which might be more smoothly resolved in private, leading to more consensual reports, and we agree that committees have every right to consider how to make the greatest possible public impact when they publish their reports."

Paragraph 24 in annexe B goes on to raise a counter-argument about openness. I suggest that paragraph 24 should be replaced with the following:

"These considerations need to be weighed against the strong sense of disappointment which came through much of the evidence given by those who had engaged at earlier stages with committees. Consultees and witnesses argued that committee privacy breached the principles of power sharing and openness, which underlie the fundamental rule (Rule 15.1.1) that the Parliament's business should normally be done in public."

Those two paragraphs show the counter-arguments, one of which is that everything should be done openly and the other of which is that there are benefits in committees discussing their reports in private.

12:00

I was then going to go on and add text at the beginning of paragraph 25, as follows:

"There have been circumstances when more controversial committee reports, which members might expect to make a greater public impact have been 'leaked' to the media. In some cases, the Executive has felt itself obliged to respond to such 'leaks', and committees have felt their efforts further undermined."

The existing text would then go on to say that,

"where there is openness, 'leaks' of information are not an issue. Many of the ills listed in the Code of Conduct arising from restricting the open flow of material are therefore avoided."

I am trying to develop the points for and against, so that we are clear when we come to a decision what the arguments are.

I was then going to replace paragraph 26 with the following:

"We do not dismiss the arguments advanced by committee conveners for finalising their reports in private, but we have great difficulty in understanding how committees 'share power', or act inclusively, if, at particular points in the process of producing conclusions about matters which are often of great public interest, they exclude third parties, the press and the public."

I will stop at that point, because that is the meat of the issue. We either agree with that, and conclusions follow from it, or we disagree, and conclusions do not follow from it. That is the point at which we must decide whether to endorse broadly the current practice of the Parliament, which is to deal with those reports by routine in private, or whether to respond to the criticisms that were made in evidence that to take reports in private is a breach of the principles that we have embraced.

I have developed further points, but members must decide whether they are willing to put the proposed additional text into the report as the basis for a final discussion when we sort it all out.

Susan Deacon: Having jumped the gun earlier, I am coming in at the right point now. I support the proposal. There has definitely been a gradual move towards more and more business being taken in private, and the statistics support that. That impacts on the culture of the Parliament, which in turn impacts on the perception of the Parliament. Now is the time for us to work to reverse that process. I am sure that the wording could be open to some tweaking and refinement, but the exceptions that you have set out are broadly the right ones.

We must recognise that there will be legitimate occasions when committees go into private, but I fundamentally do not accept the idea that it is difficult for MSPs to express a view as a reason in and of itself for holding meetings in private. I have heard MSPs argue that it is difficult because they are dealing with controversial issues and that they have therefore had a hard time from members of the public contacting them. I am sorry, but elected parliamentarians have an obligation to be willing to express their views honestly and openly and to be held to account for them.

It is right that we move in the direction suggested. We would be doing an enormous

disservice to the wide array of individuals and organisations that raised the issue were we not to move in that direction. There are some practical issues. That is why I asked earlier about the *Official Report*, but we can come back to that. However, I strongly support the general principle and direction of travel.

Paul Martin: I support the principle of the Parliament being reported and I think that people would be interested in it. There are fly-on-the-wall documentaries on television almost every day and we know that the greater public would be interested in the proceedings.

Let us get back to the real world. Would members' behaviour change if we moved from informal consideration of reports—I am thinking of one of the justice committee's reports—to formal consideration in the public eye? I honestly think that it would.

The informal process in which we consider reports in private allows for discussion that could not be conducted in public. Members sometimes make flippant remarks and they could feel constrained as a result of items being taken in public. I support business being held in public, but I think that, especially if the report concerned a local issue, members might play to the gallery.

We have to be clear about the fact that members' behaviour would change as a result of the fly-on-the-wall-documentary opportunity being made available to them. I am concerned about the fact that the discussion would be broadcast, rather than about the principle of items being considered in private.

The Convener: I put a broadly similar point to Graham Blount when he gave evidence to us. His response was that what was at issue was the maturation of the Parliament and of individuals learning to cope with pressure. I did not have an answer to that.

The point is not entirely germane, as it relates to the legislative process, but earlier this year the Education, Culture and Sport Committee dealt with the stage 1 report on the School Meals (Scotland) Bill in public and on the record. It could not do otherwise without excluding the proposer of the bill, which the committee felt that it could not do.

I read the *Official Report* of those meetings and it did not read too badly. I agree that there were flippant remarks, unfinished sentences, interruptions and "Ah, buts", and that the informality of the meetings could be sensed. However, members seemed to rise to the occasion pretty well. I think that the discomfort factor might be transitional. We need only think about some of the stuff that members are quite happy to say on the record all the time. I am not saying that Paul Martin does not have a point. I agree that he does, but we are talking about what is the more important principle.

Donald Gorrie: Some of the arguments stem from the point that housekeeping matters are not of interest to the general public. That is not an argument, however, for holding items in private. Committees vary in how prescriptive they are about who asks what question. Some committees deal with that matter in private. They do not need to do that, as there is nothing very secret about the process. The fact that business is boring does not mean that it should be held in private.

The paper deals with the question of leaks. Paul Martin and I sit on the Justice 1 Committee, which has just had one of its reports leaked. Unlike on other occasions, the leak was reasonably accurate, which means that it was more than likely a leak and not speculation. I did not leak the report and I am sure that Paul Martin did not, but somebody did. The argument goes that committees lose the opportunity of making a great official statement and getting coverage, but that is not true. I would argue for openness.

Committees could deal with reports in public and, if there was a difficult issue on which they needed to negotiate, they could put that aside and deal with it in private. That would mean that most of the meeting would be held in public, which would be a step forward. I would like all our business to be held in public, but knowing how things are, I suggest that the presumption should be that most meetings be held in public with the opportunity to go into private if necessary. That would represent a big step forward.

Fiona Hyslop: I am sympathetic and supportive of the wording in the paper, but I am conscious that we are talking about the real world. Paul Martin made a point about broadcasting. The question arises about the ways in which the Parliament is reported by broadcasting, the *Official Report* and so forth. The conveners liaison group holds such strong views on the subject that, even if the Procedures Committee reaches agreement, I do not know whether the conveners group would agree.

If we prepare a report, will it go for debate or will it just be noted? Who has the authority to implement the findings of such a report and are they able to implement all of it or bits of it? Would the report be treated almost like a bill, which would mean that members would have the opportunity to vote on each of the key decisions? If so, taking decisions on the report would be similar to the decisions that are taken on groupings of amendments. I can see the subject being presented as a grouping. I think that members would agree on a number of paragraphs but there are others that, going by evidence from the conveners liaison group, several conveners would not want to support.

The Convener: I am acutely conscious of that difficulty. One way in which it might be possible to resolve the problem would be by passing a standing order, but the standing order would be prescriptive and would not allow scope for judgment. We would also run the risk of moving a change in the standing orders that did not command a majority. If that happened and the motion fell, existing practice would be reinforced.

It will be possible to change the practice only by building a weight of opinion and expectation and by people gathering confidence in the process. I suggest that we complete the section so that we can discuss the issue in the round. On the assumption that members are basically happy with the direction, I prepared a further amendment to paragraph 27 to remove the words "these were arguably not" and to insert

"we do not believe that these are".

By doing so, we set out that the compromise among the political interests is not the only legitimate interest that is involved.

At the end of paragraph 27, I propose that we add:

"Closed committee meetings appear to us to be incompatible with such an aspiration."

I am thinking of the aspiration to include and encourage those who have been excluded to feel included.

I suggest that we add at the end of paragraph 34, which covers some of the practicalities that are involved, text that tries to pick up the whipping argument. The text is entirely my own initiative. It may not be what the committee wants, but I will run it past members:

"There have been suggestions, however, that MSPs may ultimately be reluctant to finalise reports in public because they anticipate coming under pressure from their party whips in areas where they might themselves be willing to compromise, in order to achieve a consensual report."

I propose that we insert after that a new paragraph:

"Party whipping is an acknowledged and accepted part of Parliamentary life, and we consider it to be legitimate when the Parliament is debating party political motions and amendments, and when it is finalising legislation at Stage 3 of a Bill. We do not see a place for party whipping in Stages 1 or 2 of the legislative process, or in the finalisation of committee reports, and we recommend that all of the political parties in the Parliament should make a public commitment to impose whipping only where necessary, and should issue an agreed code to define the circumstances in which they consider it to be necessary."

That is a big jump from existing practice, but it is an attempt to pick up on our discussion of last week about the role of whipping in relation to the legislative process.

I suggest that we replace paragraph 40 with the following text:

"While we accept that public discussion of committee reports might make it harder for committees to reach compromises, we do not consider that consensus should be impossible,"—

and, slightly differently—

"or that a consensual approach would be undermined, if committees were to discuss reports in public. We considered the argument that confusion would arise if draft reports were publicly available, and changes were made later, but we concluded that the public would be likely to come to understand this process very quickly."

I also propose to remove paragraph 43 and replace it with the following new text, which forms a response to the conveners liaison group:

"We have considered the strongly-argued evidence of the Conveners' Group that draft reports should continue to be considered in private session. We accept that Parliamentary opinion may not be ready to support all such meetings being taken in public, and we suggest that progress might be made voluntarily, and not by standing orders, at this stage.

However, we are concerned that decisions about finalising reports in private have come to be taken automatically, and we consider, at the very least, that committees should take these decisions on a case-by-case basis, deciding to take some reports in public and some in private. We recommend that each committee should take every decision about finalising reports in privacy on the merits of the case; should guard against holding every discussion in private; and should be prepared to finalise reports in private only where there are powerful reasons advanced for so doing."

12:15

That is the best formulation I could devise for moving members forward on the issue. The wording not only lays down an expectation that committees should meet in public when finalising reports, but allows for the fact that committees are reluctant to do so and that arguments against doing so will be advanced in specific cases. I do not see any other way to move members forward other than to lay down a rule and put it in standing orders. However, my fear is that such a move would be defeated and that that would bring the Parliament into disrepute. In addition, if committees retreated into automatically holding meetings to finalise reports in private, that would, in a sense, make matters worse.

The suggested new paragraph 43 is how I propose to approach the issue of meetings to finalise reports on committee inquiries. I will suggest a different approach—for reasons that I will explain more fully later—for meetings to finalise draft reports on bills, because I think that that situation involves a different principle.

If members are broadly happy with the proposed text, we can incorporate it into the agreed text for the final discussion. That would allow members to come back later with refinements and, perhaps, radical alternatives. Members could say, for

example, that a particular suggestion has gone too far and that we should rein it back. Alternatively, they could say that we should go the whole hog and test out parliamentary opinion. All avenues are possible from here on, but I wanted to establish the general mood of the committee on where we should go. That is reasonably clear and it now becomes a matter of how we should play it hereafter.

Fiona Hyslop: Your proposals take a sensible and wise approach.

Susan Deacon: I have three addendums to my earlier comments, which also respond to the convener's points. As I said, I broadly agree with the convener's approach, but I wonder whether lessons can be learned from elsewhere about how we should move the matter forward. We probably agree on the direction of travel, but work remains to be done, as the convener acknowledged, on how that will be translated into recommendations in our report and, ultimately, possible changes to standing orders.

First, I wonder whether it might be appropriate to commission a little piece of work around, for example, the work that is done in local government on public access to official discussion and information. Local government has grappled with that area for a long time. Procedures for access to information are set out fully in local government. I was a local government official in a bygone era, so I am rusty on the matter, but processes are set out against which individual items must be tested to decide whether they can or should be legitimately taken outwith the public domain. Therefore, some of the kind of work that we are discussing has been done in other sectors and contexts and we could draw upon that.

Secondly, I appreciate how difficult it is to address the issue of party whipping and I acknowledge the convener's efforts to get to grips with it. However, I worry about a blanket approach that says that there should not be whipping at one stage but that there could be at another stage. A lot will depend on the issues involved. For example, if an issue is a headline policy commitment or from a party's manifesto, it is democratically legitimate to have a tight whipping process whenever the issue is considered. One could trace that party whip back, in terms of its democratic mandate. However, several members expressed concern about areas in which party whipping has become the norm, even when there is no firmly established party position on an issue.

The key issue is that there should be greater transparency about the fact that whips are in operation. If committee business were moved into the public domain, that would happen naturally. If debates took place in full public view and people adhered to party lines, it would quickly become apparent that whipping had taken place.

Rather than attempting to address those issues in the form of recommendations in our report, we should acknowledge one of the by-products of moving away from privacy as being the creation of transparency and a freeing-up of the whole process. Trying to make a recommendation in that area might prove to be superfluous if we were to make recommendations on some of those other things.

A regular discomfort that I have with much of the terrain that we are in comes from the fact that we say that openness and transparency are ends in themselves. As part of the maturing process of the Parliament, we should be saying that the reasons for moving in that direction are wider than simply openness and transparency in their own right—that we think that it would improve the quality of the exchange and the quality of the thinking and debate in the Parliament. I would like that idea to be suitably woven into the narrative.

The Convener: I am not sure how we could do that, but I agree with the principle. It is much easier to vote something down than to come up with an argument to say why something is not a good idea. I think that that is what Susan Deacon means.

I cannot argue about whipping being a central part of party policy. However, I do not think that all issues—stage 2 amendments, for example—are determined by whipping. There are few substantive issues, and the whips would probably have no difficulty in getting members to accept the issues that are matters of substantive party policy. There is perhaps a better way of phrasing the paragraph to get at that. Similarly, stage 1 ought to be fairly relaxed. I do not know the extent to which members feel that they would be under pressure from the whips at stage 1. Members should be free to consider the broad themes of bills in a relatively independent way. It is likely that most committee members will agree with their party policy on the broad principles of a bill without feeling that they have to live or die by everything they might say about each aspect of it.

Susan Deacon's first point about the local government analogy is perfectly fair. I am sure that we could come up with something on that. The local government exclusions revolve around commercial confidentiality, and the sorts of circumstances that I have mentioned are legitimate reasons for exclusion. When it comes to debating policy, unless the policy report itself contains commercially sensitive information—which it might—the policy tends to come forward in a report from a director and then be debated by the members at a committee or a council meeting, possibly to be amended. All that tends to take place freely and publicly, although there might be circumstances in which that might not happen. I

am not sure of the statutory basis for that process, and it might help us to have a closer look at it.

Donald Gorrie: The issue of whipping, which you introduced in your new paragraph after paragraph 34, is different from the secrecy issue because, at the moment, the meetings are held in public. Whipping is a separate issue, which is of great importance. As we have no second chamber to revise our legislation, it is essential that we get it right first time. Stage 2 gives us the opportunity to do that. Perhaps I have been on the wrong committees, but I cannot recollect any amendments that have touched at the heart of a party's policy. The amendments are efforts by members to improve the bill and often reflect the views of outside groups that know a bit about the subject.

Normally, the minister, on the advice of his civil servants, says "Nice idea, but your wording is wrong. We cannot agree." The members should be allowed to make up their own minds. If the minister cannot persuade the members that his view is correct, he deserves to lose. On the occasions when I have been given a hymn sheet from which to sing at a committee, it has gone straight in the waste bucket. It is really bad to use party machinery to protect ministers from mild discomfort about some amendment or other. However, that is what usually happens.

Whipping is an important issue, but it is separate from the privacy issue.

The Convener: I am conscious of the advancing clock and I would like to get to the end of paragraph 51, so that we will have dealt with this part of the report. I will rattle through the further changes that I would like to make in this section and we can then agree or not agree on what we are going to put in the report.

Fiona Hyslop: Pamela Tosh's investigation into the Housing (Scotland) Bill gave strong backing to some of the proposals in paragraph 34. I suggest that that might be added as evidence.

The Convener: Okay, we can look at that.

I suggest replacing paragraph 44 with two paragraphs. The first follows from what we have been saying:

"We recommend that committee draft reports on non-legislative matters should be decided by committees in public, wherever possible, and that, over time, this should become the normal practice of the Parliament."

That would be a recommendation. A further recommendation would be:

"Rule 12.9 of the Standing Orders presently states that committees' annual reports should indicate the number of times that each committee has met in private. To aid transparency, we recommend that Rule 12.9 should be amended to ensure that all committees place on record in their annual reports the reasons for each instance when it decides to meet privately, or to take a particular agenda item in private."

Next, I suggest that paragraph 47 be reworded as follows:

"Committees already undertake work as a result of external factors, such as suggestions from third parties, and it seems to be a relatively small step for them to be open with these third parties about the pressures on them and the reasons for their decisions. Committees do not have infinite amounts of time available, and they have to be strict in prioritising their work, to achieve the maximum effect from their efforts. We consider that opening up the rationale for committee choices could be helpful in allowing those competing for committee attention both to understand the pressures on committee time, and the reasons why committees make the choices they do. We therefore recommend that the committees should publish (and update) their draft forward work programmes on a regular basis, and should normally discuss these in public."

That answers the argument that is sometimes made that committees are not discussing what people outside the Parliament want them to discuss. Often, that is because of the impossibility of considering everything. The paragraph is an attempt to strengthen committees' hands in saying, "Sorry, but no," or at least, "Not yet."

I suggest an addition to paragraph 50, which I have already suggested should be in bold type. Although we acknowledge that committees generally decide to discuss lines of questioning in public, to be open with people attending committees, the point was made that at certain witness sessions that were expected to be exceptionally difficult or sensitive a particular body was named as being very unco-operative. I therefore suggest that, to strengthen paragraph 50, we add:

"We consider that it is justifiable for committees to meet in private where they judge it necessary, in the circumstances, to deal with any witnesses who are likely to be evasive, combative or in other respects difficult to deal with."

I am trying to create an expectation that, although the discussion of questioning can take place in public, a committee may meet in private—as some committees have—if it feels genuinely that there is a good reason to prepare a line of questioning for what is going to be more like a cross-examination than an interview.

I then suggest adding a further paragraph after paragraph 50:

"We recommend therefore that committees should ordinarily discuss their lines of questioning in public, but that they will be justified in meeting in private where they consider public discussion might undermine the effectiveness of the subsequent evidence session."

I suggest that paragraph 51 should stand as it is, but I would add the following text to it:

"However, we do recommend that substantive decisions about forward work programmes should be recorded on the OR, as it is important that third parties are aware of committees' reasons for such decisions."

It is difficult for people outside the Parliament to understand why committees have decided to undertake work on X rather than on Y. If the matter has been discussed in committee—even allowing that a lot of housekeeping stuff does not need to appear in the *Official Report*—the prioritisation of one piece of work over another is a substantive decision that has reasons attached to it, which the people outside who are interested in the matter ought to know about.

If we are happy for all that to acquire the semi-official status of draft text for later discussion purposes, I am content to conclude at that point and to resume the discussion in a week's time. I hope that we will complete consideration of the rest of the power-sharing section then.

Meeting closed at 12:30.

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