

# **PROCEDURES COMMITTEE**

Tuesday 3 December 2002  
(*Morning*)

Session 1

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## **PROCEDURES COMMITTEE** **17<sup>th</sup> 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

### **CLERK TO THE COMMITTEE**

John Patterson

### **ASSISTANT CLERK**

Lewis McNaughton

### **LOCATION**

Committee Room 4



## Scottish Parliament

### Procedures Committee

*Tuesday 3 December 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 09:04*]

### Consultative Steering Group Report

**The Convener (Mr Murray Tosh):** We are now quorate, so we will make a start. I welcome everyone to the 17<sup>th</sup> meeting this year of the Procedures Committee—do not all shout at once, “Is it only 17?” I welcome Trish Godman, who is a substitute member of the committee. She is not here in that capacity today, but simply because she is interested in our discussion. Trish, if you want to contribute, I am happy for you to do so. That will probably break all the rules, but there are no signs of objection and I do not see anything wrong with it.

I remind the committee that essentially we are creating a draft report. We are adding text to a clerk’s draft to identify issues and tentative conclusions, on which we will try to agree next week. The purpose of the discussion is to identify areas on which members want further work to be done between now and next week. We are also trying to flag up areas of potential difficulty, so that we can target our discussion next week.

In order to make progress this morning, we have two reports. One is the remaining section of the draft committee report, which is numbered paragraphs 52 to 322. That is solely the power-sharing section of the overall report and those paragraph numbers will not apply ultimately. There is also the paper that I circulated last week as annexe A, which contains several additions to the text. Although we will not consider it until next week, a paper by Donald Gorrie was lodged this morning to flag up some additional issues and points on issues that we have discussed previously.

On annexe A, which is my paper, the first item is a proposed new paragraph to be added after paragraph 51. I draw that to the committee’s attention because I think that we agreed last week that it belonged with the previous section on committee reports, which we completed. It is simply there for the record.

This morning’s first discussion is about draft committee reports on bills at stage 1. The committee will recall that last week we looked at the issue of committee reports. In framing this

report, we have drawn the distinction between committee reports on inquiries and committee reports on bills. The reason for that is because the standing orders are arguably slightly different on the two kinds of report. The issue was most clearly put by Tommy Sheridan, who sent us legal opinion from the legal group with which he worked on his member’s bill. Mike Dailly presented a closely argued paper that concluded that reports on bills were treated differently from other committee reports—a report on a bill is part of the legislative process, which is covered in standing orders. We have had to take his arguments into account.

I suggest that we highlight paragraph 53, because the general thrust of the letter that was sent to the committee and the Presiding Officer—which was that we had a private Parliament—was unreasonable, unfair and unjustified. We should be prepared to say so.

A certain amount of argument on the specific point is covered in paragraphs 54 and 57. Indeed, paragraph 57 states the issue

“whether the consideration of and agreement by a committee of its Stage 1 report is included in the phrase in Rule 6.2.2(b) ‘proposals for legislation’.”

Accepting that there is some uncertainty in the standing orders, I propose that an additional paragraph be inserted after paragraph 54. The paragraph reads:

“We do not dispute the Presiding Officer’s interpretation of the Standing Orders, and we agree that private committee consideration of draft reports on Bills at Stage 1 has been in order. We do consider, however, that the relevant Rules in the Standing Orders require to be scrutinised closely for internal consistency, and also tested against the CSG principles.”

The last phrase is important. It could be argued that the point is not so much what the standing orders say, as what they should say.

I also propose that, after paragraph 57, we add the following text:

“It is fundamental to the procedures of the Parliament that consideration of legislation is in public. The importance of this is seen by the existence of Rule 6.2.2 which specifies the public consideration of legislative ‘proposals’.”

Perhaps we should underline the word “public” in that sentence. The text continues:

“It is reasonable to interpret ‘proposals for legislation’ as all aspects of the legislative process because no exceptions to such proposals are noted in the relevant rules. The Stage 1 procedure is defined in Rule 9 as the consideration by a committee of ‘the general principles of the Bill and preparing its report’ (Rule 9.6.3). This consideration and report are therefore intrinsic parts of the legislative process.

It follows that the treatment of the Stage 1 consideration, and the report arising from that, must be consistent with the approach to legislative matters generally adopted by the Standing Orders which is to consider such matters in public.

The cases of committee draft reports arising from non-legislative matters dealt with earlier; and those arising from legislative matters are distinct. In the former committees have discretion to move to private consideration. In the latter it appears to us that they do not, for the reasons set out above.

We recommend therefore that Rule 6.2.2 is amended to clarify the requirement that the draft reports of committees on the general principles of Bills (Stage 1 debates) shall be considered and agreed in public."

That recommendation is quite important and signals a fairly significant departure from our practice until now. Although items on bill reports have sometimes been held in public, most of them have been held in private. Do members have any comments?

**Donald Gorrie (Central Scotland) (LD):** The distinction is quite useful. Indeed, I did not realise that there was such a distinction about whether reports on legislation and other committee reports are taken in private or in public. The argument advanced by the privatists—if I can call them that—is that one reaches a better consensus in a private discussion. That might well be as applicable to discussions about stage 1 consideration of bills as it is to other aspects of committee work. As I do not totally buy that argument, I think that the proposal represents an interesting step forward. I am not a lawyer, but it seems to be legally well founded. As a result, I support the recommendation.

**The Convener:** We are not necessarily taking opinions for and against. I am simply trying to identify whether the committee is in broad agreement or whether it wants to return to the issue next week.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I would not mind some more examples. I do not want to hear further evidence, but I would not mind refreshing my mind on some of the work that committees do at stage 1. I agree with the principle that committees should meet in public when possible. I see no objection to the recommendation, but I would not mind refreshing my mind with some examples. Did we hear evidence on the matter? I remember nothing other than Mike Dailly's letter.

09:15

**The Convener:** We took much evidence on committees meeting in private.

**Mr Macintosh:** Was that in relation to discussing bills?

**The Convener:** The distinction came from Mike Dailly's letter. Subsequently, the Presiding Officer's office has been involved in correspondence.

**Paul Martin (Glasgow Springburn) (Lab):** I appreciate many of the points that Donald Gorrie made. He will recall that, as Justice 1 Committee

members, we have considered some stage 1 reports together. In private, some of the references to witnesses have been more flippant than they would be in public. Perhaps our discussions in private have been more robust.

We should consider that, because it is a helpful part of stage 1 to sit round the table and have a frank discussion about some witnesses and, sometimes, about a lack of participation in the process. I am not sure how willing we would be to be so frank in public. I take the objective view that it is crucial that we hold all the evidence sessions in public, but that frank and honest—perhaps that is the wrong word to use—exchange about some of the witnesses is helpful.

**The Convener:** Do we agree that that is an item for discussion next week? We will leave that text on the table and consider whether to include it or any alternatives. That will give people time to consider precedents and the cases that they want to make. Is that fair enough?

**Members indicated agreement.**

**The Convener:** The next issue that emerged in evidence was whether some committees should not have Executive majorities. The text on that is in paragraphs 58 to 60. It is proposed that paragraph 60 will be in bold simply to highlight the difficulty of what would be involved, because if we departed from the pattern of representing the parties proportionally on committees, we would require to change the Scotland Act 1998, which would be a significant step.

I have suggested two new paragraphs after paragraph 60. The first paragraph picks up on the comments in previous paragraphs about having regard to the balance of parties in the Parliament. I have added:

"On the other hand, it is now here made clear what weight is to be put on having 'regard' to the balance of parties in the Parliament. We note, for example, that the allocation of committee convenerships in the current Parliament has favoured the Labour Party significantly, as it holds 9 out of 17 posts, with just under 43% of the seats in the Parliament. There is therefore a precedent for allocating places on less than a precise pro rata share of the seats in the Parliament."

I thought that that balanced out the argument.

My suggested conclusion is:

"Having considered the matter carefully, we believe that the rules on party balance are appropriate, and we do not recommend any changes to create majorities of non-Executive parties on any committees. However, we recommend that the principle of party balance should be applied consistently across all committees and convenerships."

We must go one of two ways. We can say that party balance does not matter and can be departed from, or we can say that it matters and should be applied. My opinion is that, realistically, it ought to be applied.

**Fiona Hyslop (Lothians) (SNP):** The issue is that the principle should be applied. The convener is right that the Scotland Act 1998 says that due consideration must be given to party balance, but because nominations for convenerships are made by the Parliamentary Bureau, which has a weighted vote in favour of the Executive, the balance of power in the bureau could mean that every position went to the Executive or that, instead of the Executive party having nine out of 17 conveners, it could easily have 13 out of 17. Unless that were challenged in the courts, nothing could be done.

I agree with the convener's recommended text, but the key point is that the principle has to be applied consistently. One of the recommendations is to have an open paper on how the allocations take place. Given that we are approaching the dissolution and the new session of Parliament, it would be helpful to have such a paper. The convener's recommendation strikes the right balance.

**The Convener:** I assume that, when those decisions are taken in the next session, the proportionality aspect of convenerships will be restored. As Fiona Hyslop knows, the disproportionate nature of convenerships arose because they were allocated on an incremental basis as and when extra committees were created. I assume that that will sort itself out in the new session of Parliament. Do members have any other thoughts?

**Mr Macintosh:** I have two thoughts. The first relates to paragraph 59. I apologise for my absence from a couple of meetings, which means that I have not been able to address the point earlier. One argument that is made throughout the report is also to be found in the middle of paragraph 59. It is that

"the existence of an Executive majority on key Parliamentary bodies perpetuates the politics of governmental dominance which the Scottish Parliament was designed to move beyond".

We keep returning to that argument about a representative versus a participative democracy. However, nowhere in the report do we reflect on the point that people vote along party lines. Although there is an aspiration for us to behave in a representative manner, the fact of the matter is that people vote along party lines.

Party-whipped activity in the Scottish Parliament is extremely common and yet the Procedures Committee tends to skirt around the issue without addressing it face on. It is as if we were in denial of the existence of party politics. However, there is good reason for avoiding party politics, because its worst aspects are not very attractive.

I want to add something along the lines of the following: "Although that argument is often cited as

a principle of the Parliament, the practice of the voting public is to vote on party lines. It would seem reasonable to reflect the public's behaviour and attitudes as much as any aspirations." In other words, Labour has a majority on committees because of the public vote. The public expect people to behave along party lines and that fact has to be reflected.

My second point relates to the new paragraph that the convener has suggested on the allocation of committee convenerships and memberships. When the Parliament was first established, we used the d'Hondt system to allocate seats, memberships and convenerships fairly or according to an agreed system. The d'Hondt system was thought to be fair. It would therefore seem to be unfair not to mention that system in the paper, particularly as I recollect that the d'Hondt system would have given Labour a majority on many of the committees. I remember that the Labour party chose not to exercise that right, as it seemed to be against the spirit of the Parliament.

**The Convener:** We could mention the d'Hondt principle.

**Fiona Hyslop:** I think that we should do so.

**The Convener:** I do not think that the principle was ever officially enshrined in any sense, but it is the convention that is followed. I am happy to work something into the new paragraph in that respect. If members are agreeable, we will try to work Kenny Macintosh's text into the paper as an additional paragraph. We can look at it in black and white next week. We will also adjust the paragraph that I have suggested to include the point that was made about the d'Hondt principle.

**Mr Macintosh:** I disagree with the final recommendation. The implication is that the system is not applied consistently.

**The Convener:** The committee convenerships were allocated on the d'Hondt principle at the beginning, but an additional committee was created.

**Mr Macintosh:** That should be spelled out.

**The Convener:** The new convenership was then allocated on a decision that I think was unanimous—I may be wrong—but took the balance away from what would have happened under the d'Hondt principles. We are suggesting only that, regardless of whether the rule is d'Hondt or something else, it should be applied properly.

**Fiona Hyslop:** I agree that if we have used d'Hondt, we should reflect that. I prefer d'Hondt but, whatever system is used, it should be applied consistently. When the Justice 2 Committee was created, it would have had an SNP convener if we had used d'Hondt, so the issue is more about the application than the rule. I agree with many of

the comments. We have to open up so that the public, and many MSPs, can understand why the balance is as it is. If rules are applied consistently and openly, people will know why we operate as we do.

**The Convener:** I should just add that, in our discussion last week, we spoke about whipping and included a paragraph on it, although we did not all agree on it. We will come back next week to how that issue is reflected and what is said about it.

**Mr Gil Paterson (Central Scotland) (SNP):** Convener, you said that the decision to appoint a Labour member as convener of the Justice 2 Committee was unanimous. However, another part of the agreement that allowed that to happen was not implemented, so the whole arrangement fell apart. We want a system that means that no second decisions need to be taken. The system should be clear and simple, so that everyone knows the rules. We cannot have a system in which committee membership is decided in one fashion but who should be convener and deputy convener is decided in another. We should be consistent—the question whether we use d'Hondt or another mechanism is irrelevant. Consistency is the main point.

**Donald Gorrie:** I was desperately trying to remember the title of the alternative version to d'Hondt. D'Hondt has a built-in bias towards the biggest party, but there is a system with a double-barrelled name that the Liberal Democrats would regard as fairer but that other parties might believe was too much in favour of the smaller parties. Having been on a lot of councils, on which such posts had to be divided up, I do not believe that we need a formula. We have to ensure merely that the membership of committees reflects as closely as possible the percentages of members in Parliament.

At the moment, the seven-member committees roughly reflect the strength of the parties on a 3:2:1:1 basis. The next election may bring changes whereby, for example, the Conservatives go down and we go up, or vice versa, so that one party deserves one and a half places compared with half a place for the other. If that happens, we could aggregate all the committee places and decide that one party is entitled to 30 places and the other to 20, for example. We cannot assume that election results will make it easy to divide the committee places among the parties.

Despite being a non-establishment guy, I believe that the Executive should have a majority on the committees if they have a majority of the seats. Related to that is the fact that members are put on committees not as representatives of the Executive. They have their views and their party has its views, but they are elected to exercise their

judgment, especially on legislation and reports. The question of majorities on committees and a more relaxed view on whipping go together.

**The Convener:** I will sum up. Subject to the possibility of making further amendments next week, we agree broadly with those additions. We accept that there is a role for party majorities on committees. We will mention the d'Hondt principle. We are not necessarily all wedded to it, but we are saying that whatever system is chosen should be applied consistently across the allocation of committees and convenerships. On the fundamental question whether there should be Executive majorities on committees, we agree that it should. We will return to the whipping issue next week.

We will move on to consider committee meetings outside Edinburgh. We took much evidence about committee meetings and the next section of the report is an attempt to summarise that. I suggest that paragraph 68 be put in bold print. I believe that we should not meet outside Edinburgh for the sake of it, but we should look for opportunities to meet in different locations when we are discussing matters that are of clear relevance.

My only other suggested change to this section is to follow through on the logic of the evidence and recommend the insertion of a new paragraph 69:

"We recommend that committees should continue to take every reasonable opportunity to meet outside Edinburgh. MSPs are the obviously the primary ambassadors of the Parliament and a powerful resource in consolidating the significance of committees amongst the people. Formal committee meetings can often be combined with other local events, including civic participation events, which will be of benefit and interest to people outside Edinburgh."

That paragraph does nothing other than recommend existing good practice, because many committees that meet elsewhere combine their meetings with various civic participation events.

09:30

**Mr Macintosh:** I want to use this section to make a point that I want to be included in the report. In this context, we are considering committees to be an extension of the Parliament and are talking about the geographical location of meetings. I am not sure that the report as a whole reflects the work that MSPs do individually in constituencies and regions. The report focuses too much on the Parliament as a bricks-and-mortar institution, or even as a formal committee gathering in Edinburgh. This might not fit into the paragraphs that we are discussing, but I want the report to flag up the public face of the Parliament—the individual relationships of MSPs with their constituents.



**The Convener:** This is not a bad place to include that. It might be quite relevant.

**Mr Macintosh:** The point needs to be made somewhere, as it is important. Because I have missed some of the discussion, it is difficult to know exactly where that fits in.

**Paul Martin:** I have one point to add. The suggested paragraph is excellent. However, when committees meet outside Edinburgh, they tend to do so in Glasgow City Chambers. Although I love that building, we do not meet in Balgrayhill community hall in Springburn. One of the issues for the Parliament is that—I am using Glasgow as my usual parochial example—we can look at other parts of Glasgow for the Parliament to reach out to. The same applies to other parts of Scotland.

Meeting outside Edinburgh could also provide fact-finding opportunities for committees. For example, the Social Justice Committee could visit social inclusion partnership areas. When committees meet outside Edinburgh, there can be difficulties with official report support and many other technical issues. We will have to set out in the report the fact that we expect the Parliament to consider ways of overcoming the difficulties—we must not just say that we want to meet outside Edinburgh, but ensure that that happens. We must also ensure that we are not just talking about meeting in city centres.

**The Convener:** In order to complete your thinking on that, you need to consider whether you are calling for more informal meetings, which would not be covered by the official report. If you want more formality, there is a significant resource issue in equipping the official report to give that level of coverage. I assume that you will make specific suggestions next week on the issues that you raised about committees a few meetings ago. This is a related point. I suggest that you nail down your thinking on the either/or issue.

**Trish Godman (West Renfrewshire) (Lab):** Paul Martin has already said what I was going to say. However, perhaps the report should flag up the distinction between having a full committee meeting outside the Parliament and sending groups of committee members out for specific reasons. If the full committee goes out, there are problems in relation to the official report and so on. However, sending committee members to parts of Scotland that a full committee might not reach spreads our coverage a little bit more.

**The Convener:** Perhaps we should highlight the significance of the rapporteur mechanism as a means of achieving the objective of meeting outside Edinburgh and getting away from the city-hall type of idea.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I apologise for arriving late

and therefore missing the early part of the discussion. However, the committee has reached the section on which I particularly wanted to comment.

I want strongly to endorse Ken Macintosh's comments. The report omits to mention the amount of contact that people have with individual MSPs and how much that contact shapes their view of the Parliament. There is an evidence base for that assertion not only from what witnesses have told us but from members' direct experience.

From what I have caught of the discussion, I suspect that my second point goes against the grain. I am not comfortable with the wording of the paragraph.

**The Convener:** Which paragraph?

**Susan Deacon:** I mean the suggested new paragraph to be inserted after paragraph 69.

I am uncomfortable not because I am opposed to the idea of the Parliament meeting elsewhere—I want to make it clear that I am not opposed to that—but because I do not agree with the suggestion that committees should

“take every reasonable opportunity to meet outside Edinburgh”.

I apologise again if the committee has already been in this loop, but I feel that the paragraph reads as if the Parliament is going out and about just for the sake of it. I am sure that that is not what it means, but that is how it might come across. As a result, it could work against the Parliament, because meetings outwith Edinburgh could be seen simply as a cosmetic, rather than real, exercise in engagement.

As a result, I would prefer a formulation like, “We recommend that committees should identify appropriate opportunities to meet outside Edinburgh where they are particularly relevant to the business under consideration by the committee or where they add value to the work of the committee”. For example, if the Rural Development Committee were to conduct an inquiry into the fishing industry, it would make eminent sense for some of that work to be carried out in the north of Scotland where the industry is most prevalent. I can think of numerous other examples, some of which would involve Springburn.

However, I am concerned that the paragraph is simply a general exhortation for committees to get out and about. We need to consider resource implications and public perception issues. That said, my anxieties would be allayed if we could get a nuance of what I have suggested into that paragraph.

**The Convener:** That was the purpose of putting in bold paragraph 68, which clearly states that we

should not be tokenistic about meeting outside Edinburgh. I have no difficulty at all with your suggested change about “appropriate opportunities”. The proposed new paragraph could include a reference to paragraph 68, although I am not keen on that kind of cross-referencing because it means that the recommendation summary does not stand on its own. We will look at the dynamics between the two paragraphs.

**Donald Gorrie:** Some very useful points have been made. Perhaps we should emphasise the option of holding informal meetings that do not require a full record. For example, I had the honour of serving under Trish Godman in the Local Government Committee and by breaking up into two or three-member groups, we rapidly covered a large number of councils and noted down what people were saying.

If the committee goes to a community centre in Springburn, it will not need the full apparatus, but it will need someone to take notes if, for example, “Mrs McTavish” makes a good point about such and such, which should be addressed. The informal side is important. Also, my limited experience is that public attendance at formal committee meetings outside Edinburgh is often disappointing, and, therefore, if the committee decides to hold such meetings, they should, as the convener suggested, be combined with local events.

**Fiona Hyslop:** I remind members that we are considering the power-sharing section of the draft report. I understand that the committee sections have been put together because it makes a nice package and I understand that committees are very much a part of the realigning of powers in the Parliament, but the section on committees meeting outside Edinburgh is more relevant to openness, accessibility and accountability. It is not necessarily about power sharing because it is not about influencing the decisions of the committee through its location.

I take on board the points that were made by Ken Macintosh and Susan Deacon about reflecting individual constituents’ roles and relationships with their MSPs but, again, that is not to do with power sharing; rather, it is to do with accountability, openness and accessibility.

Although some mention was made of constituents’ relationships with MSPs, the committee did not receive much evidence on that subject. I agree that more on that should be in the report. I am not sure whether they are evidence based, but members’ opinions are worthy of inclusion.

The section on committees meeting outside Edinburgh is more about access to Parliament and MSPs being accountable; taking note of Mrs

McTavish at Springburn community centre is not to say that she suddenly has a share in power in the Parliament, but that visits make members more accountable and accessible.

**The Convener:** That is a good point. We will consider how best to reshape the section and, perhaps, relocate it. More emphasis must be placed on members’ constituency work and on the local work that they do as rapporteurs on sub-committees—although we do not call them that—and on the use of informal meetings and evidence-gathering sessions. Committee meetings outside Edinburgh should not be seen as full meetings, which are recorded in committee reports and commented on publicly, but should reflect all the work that is done outside Edinburgh, which is quite considerable.

Our meetings so far have tended to concentrate on a summary of evidence about committees, and I take the point that some of our discussions have not necessarily been about power sharing.

I am not sure where best to insert the section on changes to committee membership, but many people have stated that they do not like the frequent changes to committee membership, which some have suggested are unnecessary and undesirable. We have tried to summarise those opinions in paragraphs 70 to 82. I suggest that paragraph 76 be put in bold because it makes the important point that a lot of the people who said that the changes to committee membership affected the quality of committee work had little evidence to prove that theory. This committee would not agree that the quality or volume of committee work was affected by changes to committee personnel.

I suggest a new paragraph after paragraph 77 to respond directly to the argument that committee personnel should not change. It will read:

“We also insist that committee changes must be made to accommodate Ministerial reshuffles, as well as reshuffles of the front-bench teams of the non-Executive parties. Such changes run counter to the legitimate objective of minimising changes in committee membership (to allow MSPs to build up subject expertise and to maintain overall committee stability), but we see them as an inescapable fact of parliamentary life.”

I understand why people do not like changes to committee personnel, but they must accept that there will be changes that will inevitably cause further changes. That is not going to change, and there is no point in making heavy recommendations against it.

09:45

On paragraph 78, we examined the evidence in favour of a voluntary agreement that committee memberships do not change too often. I suggest a conclusion to paragraph 78, which would read:

"We concluded, however, that such a convention would be inappropriate, as it would be unenforceable."

On paragraph 82, I propose to add, in the context of examining how members are appointed to committees and as conveners:

"We consider that, in the interests of transparency, it would be most desirable were there to be more information about the considerations which guide the Bureau in arriving at the proposals for motions on these matters. We recommend that such information is brought into the public domain and made accessible."

This is another accessibility issue; the passage says in essence that if it is simply a question of parliamentary business managers allocating their personnel accordingly, we should own up that that is how committee convenerships and places are filled. We should not wrap it up in any mystery about bureau motions, but just be transparent.

**Mr Macintosh:** My first comment is on paragraph 76. There was little objective evidence offered, although concerns were expressed, and it would be interesting to hear whether the fears that were voiced have been realised—I suspect that most have not. I have been encouraged by the work of smaller committees. It might be just my perception and experience, but I find that the seven-member committees are more focused and perhaps more committed, although I am not sure whether that is the right word.

The group dynamics of seven-member committees tend to be better than in 11-member committees, in which members are able to hide among the larger membership and take less interest in the committee's work. Furthermore, there is the classic situation during evidence taking when every member feels obliged to ask a vaguely party-political question. I have felt that to be the case in some committees in the past, so my experience is that the changes have been beneficial. If we are going to make any recommendations along that line, we should commission a survey of members' views. We have done a lot of surveys, and I do not think that it is a pressing need, but if we are going to support change, I would welcome hearing members' views of how committees currently work.

**The Convener:** I am always happy to ask members what they think, but I agree with Ken Macintosh. The argument about reducing committee membership from 11 to seven has been shown to be sensible. No members are now on three committees; that was a nightmare for those who were on three and must have diminished the quality of their work. I do not know whether we need a survey to establish that point, but it might help us to find out other useful aspects.

**Mr Paterson:** I take a slightly different view. Going back to the evidence, I think that it was

conclusive that most people thought that the reshuffle to reduce numbers was far too early. Most people could not understand why it had happened—I do not understand why the numbers were changed. I also take a different view from Ken Macintosh and the convener, in that it might be okay to have only seven members on a committee when they all turn up, but the problem is that there is pressure on MSPs if they are on a train, for example, or are pregnant—I do not want to separate men from women on this.

**The Convener:** There are not too many pregnant men.

**Mr Paterson:** There are the men who are involved in pregnancies in terms of a baby coming on stream.

**Fiona Hyslop:** Just move on.

**Mr Paterson:** Okay. There are all sorts of pressures on MSPs, and my concern is simply that it might appear as if a member is sitting in the background and not contributing and that that it is deliberate.

For evidence taking, the tendency is to provide a hit sheet of questions and to allocate quotas of questions, but that is not the best way to operate. Sometimes in other forums, the question that a member asks is the question that others want to latch on to and to press. The tendency in small committees is to ask the questions, fulfil the quota and move on to the next questions. Members concentrate on asking their own questions rather than on developing points that have been made. That is okay when seven members are present, but when the figure drops to five or four, or the convener is sweating to ensure that somebody walks in the door, that is not good for the Parliament.

The evidence that I heard pointed in that direction and nothing has changed my mind, no matter how many surveys have been conducted. It might be more convenient for an MSP not to be a member of three committees. I am a member of two committees; I will have to leave this meeting at 10 past 10 to go to the Equal Opportunities Committee, because it is taking evidence on the European year of people with disabilities and I am that committee's disability reporter. I would like to remain here, but I must be there. Membership of more than one committee might be inconvenient, but a reduction in membership is not good for the Parliament.

**The Convener:** I thought that the issue was clear cut, but obviously it is not.

**Susan Deacon:** I say for the record that some of us missed only two parliamentary committee meetings as a consequence of pregnancy, although that is two more than Gil Paterson has missed as a consequence of pregnancy.

Joking apart, I am starting to be anxious about some paragraphs and some of the discussion and my anxiety is along the same lines as Fiona Hyslop's. We are in danger of becoming lost in too much operational detail. That is not to say that commenting on some of those operational aspects is not germane to our inquiry and our conclusions, but if we go into too much detail the danger is that the bigger picture will be lost. For instance, on committee membership changes we have a couple of pages that could be encapsulated in a paragraph that rests on the general principle. I think that there is consensus on the need to maintain continuity of membership as much as possible, because that allows expertise to be built up and allows external organisations to learn with whom they are dealing. We seem to drill into some points to a degree that does not add much value to our report and which I am not sure is germane to our intention.

We were given some one-off suggestions that we might cite in the report, but we seem to omit matters on which many people commented. For example, paragraph 80 says:

"It was suggested to us that, once appointed, conveners should by established Parliamentary convention deny themselves political preferment."

We said that we were happy to have a report without footnotes, but a paragraph such as that makes us ask who or how many people suggested that. I remember the suggestion vaguely, but I do not think that a body of opinion seriously suggested that, unless I blinked and missed it.

We must be terribly careful that we do not go into too much detail on some operational matters and that we do not elevate one-off ideas from one witness to the status of a big idea when we have sometimes failed to sweep up some bigger issues about the bigger power-sharing questions, for example.

Some issues in the later sections, such as how committees interact with witnesses, are more germane to power sharing and how it works in practice, as are some specific issues about going beyond the so-called usual suspects. I make that wider comment because we need to balance some sections of the report.

It should not be about the quantum of what is said on a particular subject—that is often how a report will come across. If we spend a lot of time focusing on one particular area, it could be seen as being given a prominence that we have not attributed to it. Some of the points that we have discussed are interesting and relevant to the committee, and wholly relevant for us to discuss. However, they are not the issues on which the report should concentrate.

**Donald Gorrie:** The report must reflect the evidence. We do not need to agree with the

evidence, but we must accept it. Undoubtedly, that was one of the areas of most criticism. People felt that committees were not as good as they should have been because of a lack of continuity. We must reflect that in the report.

I strongly opposed the change of committee membership to seven members, although it has, in certain cases, worked better than I thought it would. It is worth exploring a distinction, which might appear inward looking. At the risk of being a sook, a committee like this works well because it is focused on an issue and, as Gil Patterson said, provided that most members manage to attend, seven is a good number.

The Rural Development Committee still has 11 members. As I understand it, that was a stitch-up to ensure that my party and the Tories each had two members on that committee. I was not a party to that decision. I think that the Enterprise and Lifelong Learning Committee has 11 members, too. We could perhaps learn from those committees. A committee such as the Local Government Committee, where a wide spread of knowledge is very helpful, would benefit from being bigger, whereas seven is not an unreasonable number for the more focused committees, such as the Procedures Committee, the Petitions Committee, the Audit Committee or perhaps the Finance Committee. It is worth making that point and exploring how well members think that 11-person committees work as opposed to seven-person committees, if there are members who serve on both.

**Fiona Hyslop:** This issue is about real politics and power sharing. Donald Gorrie is absolutely right—the deals that were reached for different sizes of committee had absolutely everything to do with power sharing. The decisions were absolutely about parties with rural interests—specifically the Conservatives and the Liberal Democrats—ensuring that they had sufficient members on committees.

We should recommend that the size of committees be reviewed. I do not think that we took a huge amount of evidence. As Gil Patterson said, we must reflect the evidence that witnesses gave about their concerns about committees' memberships being reduced from 11 to seven. The jury is out on what works and what does not.

I want to hear an argument for why the Enterprise and Lifelong Learning Committee should have 11 members, but the Social Justice Committee only seven, especially because when the Labour party asked what committees members were interested in, most back benchers wanted to serve on the Social Justice Committee. If committees are meant to reflect the balance of power by allowing back benchers to pursue their interests, why was the Social Justice Committee

cut to seven members while the Rural Development Committee was allowed to retain 11 members? I do not think that there is any logic in that; there is a power issue and a political issue and we should reflect that in the report. I am not sure that we can draw any firm conclusions, but we can acknowledge that the issue exists and say that we need to ensure that we consider the size of committees at some point in the future.

**The Convener:** There were lots of suggestions there.

**Mr Paterson:** I support Fiona Hyslop's line. We all have our opinions about committee membership—for example on when it was decided and how it was decided. However, I am more than happy to support Fiona Hyslop's suggestion, which would address the concerns that witnesses brought to the committee.

**The Convener:** There is a clear view that we should insert something that reflects the committee changes that have been made and whether members feel that those changes were appropriate. We could also give some consideration to the suggestion that there ought to be a review and a strategic view taken in the early days of the next Parliament, when the committees are set up. We should also include some attempt to beef up the argument about stability, although I suspect that the larger the committee, the more difficult it is to get stability. All the points are legitimate, and we should try to encapsulate them in revised text.

**Mr Macintosh:** I have a separate point that has not come up in the report and which would best be dealt with at this point. At one time, the idea of Opposition spokespeople—I am sorry to raise such a difficult point—being leads on certain committees, or just being on certain committees, caused a great deal of concern in the Parliament. That was a high-profile argument for a while, and I am not quite sure how it was resolved. Opposition spokespeople are still prominent members on certain subject committees, which creates difficulties in that it is difficult to reach consensus because spokespeople are almost obliged—I will not say that they are obliged—to toe the party line.

10:00

I will give an example—which happened before the committees were changed—from the Education, Culture and Sport Committee's meetings during the Scottish Qualifications Authority difficulties. Very strong party lines were taken, which coloured the debate. In the end, the situation was resolved—with great difficulty—because we had evidence that backed up the final consensus. However, that consensus was almost defeated by the fact that party spokespeople were members of the committee and they took very

party-political lines throughout the inquiry. The Opposition resolved that situation unofficially, I think.

I would welcome guidance on that issue. Executive ministers cannot be on committees because of the rules; a good rule would be that Opposition spokespeople could not be on subject committees that relate to their briefs.

**The Convener:** The situation is different for the Liberal Democrats and the Conservatives, who have fewer members and cannot split up the roles as well as the Labour party can. There might be a slightly different perspective from the Scottish National Party, because it has more personnel.

I think that the only spokesmen who remain conveners are Margaret Smith, who has been the convener of the Health and Community Care Committee throughout the parliamentary session, and Alex Fergusson, who succeeded Alex Johnstone as convener of the Rural Development Committee and who, as Alex Johnstone was, is also a rural affairs spokesman. That has not been a difficulty recently, because of the way in which those individuals have conducted their convenerships.

**Mr Macintosh:** I agree with that.

**The Convener:** The broader issue of the Opposition front-bench spokesmen being on committees has perhaps been a difficulty in some committees, although not in others—it is all about personalities. I am not sure that we can do anything that will resolve those difficulties, but we will talk it through.

**Fiona Hyslop:** The SNP experience has changed during the course of the past four years. Initially, front-bench spokespersons were not only on committees but, in some cases, conveners of the committees.

The Opposition in particular holds the Executive to account. Spokespersons understand issues far better if they are committee members. They see the committee papers and have a far better grasp of the issues. On the other hand, we must balance that with the fact that difficulties have been identified. For example, I wanted to take a party-political position on the Housing (Scotland) Bill and deliberately came off the Social Inclusion, Housing and Voluntary Sector Committee to do that.

More recently, a number of front benchers have deliberately not served on the related subject committees. Practice has evolved in that way. Only in the past few weeks has Tricia Marwick gone back on to the Local Government Committee and Bruce Crawford gone back on to the Transport and the Environment Committee. That is about logistics and trying to spread the work, because there are so few people to cover different

committees. It is not necessarily about seeking party-political advantage.

I will say, "Trust me—I'm a politician." The development of the Parliament has been evolution in practice. It is a matter of culture and, even from an Opposition point of view, there are merits to having strong committees. It is difficult for anyone who takes a completely party-political line to take a committee with them down that line. The maturity of the Parliament and the maturity and strength of the committee system prove that it is unwise for Opposition spokespersons to try to railroad party-political lines through committees. Regardless of the colours of the next Executive and Parliament, members have learned that from experience.

I am reluctant to be prescriptive about spokespersons being members of committees. Experience means that it is, as the convener said, horses for courses. In some cases, it makes sense to ensure that a spokesperson is involved in a committee, but, by and large, spokespersons are prepared to stand back a bit.

**The Convener:** Of course, if a member can duck out of a committee for a particular inquiry or bill because they are too partisan and that is offered as good practice, we immediately run into the difficulty that they are destabilising the personnel of the committee. People will start to think that there is a lack of continuity. Perhaps we are chasing incompatible objectives.

**Paul Martin:** I should also mention that ministerial parliamentary aides have been required to be removed from committees. I was a member of the Audit Committee, but was required to leave it when I was appointed as Andy Kerr's MPA. That was meant to ensure that there was no conflict of interest.

Some parties would have difficulties. If a party has four MSPs, those MSPs will probably be spokespersons on several subjects. With the d'Hondt system or whatever other system we adopt, it is likely that that party's committee membership will be reduced compared to that of other parties. If we can avoid conflicts of interest, we should do so. If a party is a particular size and such conflicts can be avoided, they should be—I am thinking of the Executive in that respect. In my case, it was decided that there was a potential conflict of interest. If a member is a spokesperson, it could be perceived that there is a potential for conflicts of interest.

Ken Macintosh mentioned his experience with the Education, Culture and Sport Committee. I do not have experience of members not being objective, although there have been differences of opinion about how to deal with matters. However, the issue is not about what happens in practice—it is about public perception.

In discussing the paper, we have talked about openness, accountability and public perception. Fiona Hyslop said the words:

"Trust me—I'm a politician."

However, there might be a conflict of interest. If a member is a front-bench spokesperson, the public will perceive that that could present a difficulty. We must deal with that matter where possible. Fiona Hyslop has suggested how to deal with it, but where possible, we should ensure that there are no conflicts of interest. I am not making a political point.

**Mr Paterson:** I am sorry for breaking the consensus again, but all spokespersons are in political parties. In the real world, spokespersons and junior spokespersons will make their political points in a committee or elsewhere. It is horses for courses—it is down to individuals as to how to conduct themselves. A route map is not needed to know when a spokesperson is making a party-political point—everybody, including every journalist, knows when they are doing so, anyway.

It is inconceivable that we could come up with a set of rules that would preclude a spokesperson from being a member of a particular committee. The matter should be left to individuals. I have often said in the committee that if such people overstep their authority and abuse their position, they will get it in the neck from the Labour party, as the Executive party, or the press. There should be self-regulation, as the other approach is not possible with the numbers that we have.

**The Convener:** Putting an additional paragraph in the report to cover the issue and reflect the fact that we have had a discussion and identified a number of contrary views would be pertinent. Neither ministerial aides nor front-bench Opposition spokesmen and deputy spokesmen are dealt with in the standing orders and I do not know how they could be defined. There is a clear case for covering ministerial aides, but not in the standing orders. I presume that they could be covered by the ministerial code, even if they are not at the moment. There should probably be something about them in the ministerial code.

The issue of Opposition spokesmen is more difficult. Perhaps the issue could best be covered by the example of good practice that Fiona Hyslop mentioned, although I am not sure that putting Lloyd Quinan on a committee in place of her means that it would be more consensual. Perhaps Lloyd Quinan was on the committee that was mentioned at the time.

**Fiona Hyslop:** It was Sandra White and Brian Adam.

**The Convener:** Okay, maybe Brian Adam managed it. I am not talking about individuals; I

am looking at the practice. How can Kenny MacAskill, as the front-bench transport spokesman, sit on the Transport and the Environment Committee and be non-controversial?

**Fiona Hyslop:** He is not on that committee.

**The Convener:** No, but he was at the outset. I am trying to think of another example. How can Brian Monteith be on the Education, Culture and Sport Committee and be the Conservative education spokesman and not be controversial or party political? I do not think that that can happen. All we can do is suggest that people look for good practice. It is a question of the dynamics of individuals on given committees.

Probably we could all dip into our experience and remember occasions when somebody made a straightforward party-political speech at a committee and it cut no ice with anybody. The more partisan someone is, the less effective they will be as a committee member. That is something that every Opposition spokesperson will have to manage for him or herself. It is a challenge and a problem for them, rather than something that confers a political advantage on them, but it would be legitimate to include a section in the report to cover those issues. I do not see a conclusion to recommend, but if anyone wants to add to what we have suggested, it would be fair to do so when we come back to finalise the report.

**Paul Martin:** We have to be clear about the issue of ministerial aides, which might cause a conflict of interest. In effect, someone could be perceived as being accountable to a certain individual. It is the same issue with Opposition spokespersons. In a sense, they are accountable to the party leadership for taking the party line. I can understand that parliamentary aides will be covered by the ministerial code of conduct, but they could be perceived as being accountable to the minister whom they aid, which is why they have been removed from particular committees.

**The Convener:** The difficulty is that whoever the SNP puts on the Transport and the Environment Committee, whether it is the front-bench spokesman or not, theirs is a party-political appointment and they are answerable to the party leader. You are almost saying that Opposition members cannot go on committees, because anything that they say might be perceived as being opposition for the sake of it. I am not sure that you can draw a clear distinction between the front-line Opposition spokesman and the deputy spokesman and, to take it down to a third level, the person who is neither, but happens to be the lead on the particular committee. Those differentials are difficult to sustain in any practical way.

**Fiona Hyslop:** The issue of parliamentary aides is an important one, but there is an absolute distinction between the Executive and Parliament. Parliamentary aides have a relationship with the Executive. Part of the job of the rest of us in the Parliament is to hold the Executive to account. There is an issue of accountability, which is more pronounced than it is within the Parliament. I had not thought about the issue until Paul Martin raised it, but it is an important point that has been identified and it should be made in the report, because the issue is accountability between Parliament and the Executive.

**Donald Gorrie:** We are a very small Parliament, and the more we remove people's right to sit on committees, the more we make life difficult for ourselves. I would have thought that it would be quite adequate for ministerial aides to say, "I am a ministerial aide to minister X," and for that to be taken into account when people assess their views. I do not think that that should preclude them from playing an active part as a back bencher who may be critical of the Executive on occasion.

For the record, I am interested in Fiona Hyslop's experience with spokespeople on committees. In the case of Liberal Democrats, the only conflict of interests arose with Margaret Smith. With the agreement of our group, she initially took the view that she should not be a convener and a party spokesman. When some committees were reduced to seven members, she was the only Liberal Democrat member on the Health and Community Care Committee. Other members tried to be the spokesperson, but it is very hard to be up to speed on that subject if one is not a member of the committee.

That arrangement simply did not work, so she reverted to being our health spokesperson, as well as the convener of the Health and Community Care Committee. When she makes a speech, she always tries to make it clear which hat she is wearing. I have certainly heard Murray Tosh or one of his colleagues in the chair asking Christine Grahame, for example, whether she is speaking as the Justice 1 Committee's convener or as an SNP member—I do not think that she is the SNP's justice spokesperson. Those matters are made clear.

We must be reasonably flexible. The convener's last set of remarks covered the issue well. We should not be too prescriptive. The more members who can take an active part in committees, the better. We should not try to keep people off committees.

10:15

**Fiona Hyslop:** There is an important point about ministerial aides. I agree with Donald Gorrie's

sentiment—we are a small Parliament and we should not restrict people. Although the Parliament does not necessarily have a problem in relation to ministerial aides being on committees, the ministerial aides' code creates a problem. The code makes it clear that aides are not allowed to do or say anything that contradicts their minister. If an aide were to be on a committee that covered an area for which their minister had responsibility, they would be breaking their MPA code. That is why that set-up is impractical.

**The Convener:** I think that it is clear that that is the ministerial code. That was provided for everyone's interest and it was the correct thing to do, but it is not necessary from a parliamentary point of view; it is more of an Executive consideration.

**Susan Deacon:** I will pick up where Fiona Hyslop left off. Her observation illustrates two points. First, at least the position of MPAs is codified and explicitly recognised, which means that there is a degree of transparency. Such transparency is lacking in relation to party spokespeople. Secondly, it recognises that there can be conflicts of interest. Some of our discussion has suggested that there is no conflict of interest in relation to party spokespeople. It strikes me that if a party spokesperson argues assertively against their party's policy on an issue in a committee, someone might have something to say about that, even if nothing were laid down in any parliamentary rules. I am sure that some provision about it would be buried away in the rules or standing orders of the political party in question.

There is much commonality around the different categories of people and many similar issues about potential conflict of roles are involved. That said, we are far from knowing how to handle that. For the purposes of the report, I would prefer it if we were to acknowledge that issues arise with both those categories of individuals. We should acknowledge that there are practical issues associated with a small Parliament and that separation of functions to the  $n^{\text{th}}$  degree is not always possible, on the basis of numerical considerations alone. Although we should stop short of being overly prescriptive about how the potential conflict of roles might be addressed, we could suggest that the area merits further consideration.

I am not sure which would be the appropriate body to consider those issues. The Parliamentary Bureau might be such a body and the Executive will want to have a view. I mention the bureau, because it has a link with committee sizes and so on. It is important that we do not start to differentiate too much between ministerial aides and party spokespeople. The potential for

perceived conflicts of interest is similar in both cases. The Parliament has not yet determined the right way to deal with the issue.

**The Convener:** We will come up with some additional text for this section next week.

**Mr Macintosh:** Are we agreeing your paragraphs?

**The Convener:** I think that although we agreed that we would add the paragraphs, we accept that the additions are contingent on further changes. Susan Deacon suggested a new form of words for paragraph 77. Those should be included on a contingent basis. We did not discuss paragraph 82, but we might want to examine that for next week. It probably needs a bit more work on transparency and could link into how Susan Deacon wrapped up that discussion. I will ask for approval of the changes at the end of the meeting, but the text will still be in draft form, so nothing will be unchallengeable.

The next section is on "Other operational committee matters" and covers a mixture of points that were raised and we felt had to be responded to. It is a summary of the evidence, and my first suggested change is to paragraph 91, which deals with the selection of advisers, on which we received evidence. The suggestion is to add:

"We recommend that guidelines on the selection of advisers should be published. We consider that academic expertise is often useful to committees, but that it is clearly not their only potential source of advice and expertise."

That may sound like a bit of a cop-out, but we received a lot of criticism for taking advisers predominantly from the academic world. The addition is to say that it is not inappropriate for us to take academic advisers, but there are circumstances in which other interests and expertise would be useful. It is a question of committees exercising good judgment, but there should be scope for guidance to be formed to steer and advise them.

**Donald Gorrie:** That has to be taken with the next suggestion about expert panels, which could include the convener of the Springburn community association for example. It is a good proposal, and my paper includes the suggestion that a civil servant could be permanently attached for each inquiry or bill, which might be helpful. We may wish to consider that another time, however.

**The Convener:** I thought that it was a good suggestion that would probably send shock waves reverberating around Victoria Quay, although perhaps not—the Executive might see it as useful.

**Donald Gorrie:** My politics are seen to be, and probably are, anti-civil service, but the suggestion recognised that the civil service could make a good contribution. It is an untapped resource. My experience of advisers has been good on the



whole. The academic people are academic, but they are not too based on *parti pris*.

**The Convener:** You referred to the recommendation about citizens' forums. That follows from paragraph 93, which relates back to the discussion of the section on accountability. All the principles inter-relate and overlap, and the new paragraph proposed after paragraph 93 is simply to put in print that we recommend that committees should consider creating panels. That would be a way for them to experiment in dialogue with civic Scotland and the people of Scotland.

**Donald Gorrie:** There was the issue of talking to witnesses in a friendlier manner. Does that appear here or somewhere else in the report?

**The Convener:** Either Ken Macintosh or Paul Martin was going to suggest something on that. We identified a logical place for that to be included—in the accountability section, I think—but I do not remember where that is off hand. However, all the points that were made in committee appear in the *Official Report*, and John Patterson is doing further work on them. I am not sure how we will manage them, but that is an issue for several other days.

**Susan Deacon:** I want to come back to the point about academic expertise. I recall the comments that were made in evidence, and I understand and share the view that expertise should be drawn from a range of sources. However, we must guard against any inference being drawn that we are somehow anti-academic. I think that such an inference might still be drawn from the suggested revision. Aside from anything else, people cannot be simply labelled as academics or non-academics because, in a place such as Scotland, many people have floated in and out of academia, which they have combined with other walks of life.

I would rather that we put a positive construction on things. Rather than finger academics specifically—whosoever “academics” might be—we should talk about the importance of committees working to ensure that a wide range of expertise is drawn on. We should recognise that there are not only many different people or sources of expertise but many different ways in which that expertise can be sourced. To say something like that would be a much more positive construction than playing to what verges on anti-intellectual prejudice.

**The Convener:** I am faintly astonished that Susan Deacon took that gloss from what I wrote. I am all in favour of academic advice and have always believed that committees ought to accept evidence and advice from people who have studied the issues and know what they are talking about. The committees on which I have been a

member have been well served by academics. I am perfectly confident that academics are appropriate sources of advice.

As for fingering academics, I think that it was the witnesses who appeared in front of the committees who fingered them. What I am trying to say is, “Come on, it is reasonable to take advice from academics; it is almost always a good idea, but it is a fair point that committees should be expected to look at other sources for expert advice.”

**Susan Deacon:** I agree with the convener absolutely on the substance of those arguments. The more unguarded comments about, and caricatures of, academics came more in the evidence than in the report's suggestions. All that I am saying is that we could give the issue a more positive, more inclusive and broader construction by going a step further so that, instead of just fingering academic expertise, we make the positive point about the need for a breadth of expertise to be drawn on.

We are back to the point about horses for courses, which we have mentioned in several areas. Understandably, the evidence and comments of witnesses are often based on their experience of perhaps one inquiry. Our committee needs to look at the big picture, which is that the Parliament deals with a whole range of different topics, which are of varying degrees of sensitivity and of technical detail. I do not want to get locked into semantics, but I hope that we can capture that wider point as effectively as we can.

**The Convener:** Indeed, if we have said anything to tease the adviser for our inquiry, who is an academic, we hope that he takes it in good part and realises that we are only pulling his leg.

**Mr Macintosh:** I welcome the point that Donald Gorrie makes in his paper about committees having access to a civil servant, which sounds like a good idea. We almost followed that in the Enterprise and Lifelong Learning Committee during our tourism inquiry, when we certainly had that sort of access to the lead civil servant who deals with tourism. That proved useful.

That brings me on to the point about witnesses' experience of giving evidence. I am not sure which section is the best place to put this, but it is important that our report contains a section about the fact that some witnesses had a negative experience of giving evidence because they found it rather intimidating. Some thought needs to be given to drawing up guidance to mitigate that. At the same time, we obviously need to have a balance. Committee meetings are formal proceedings that require a degree of formality and should not be treated lightly.

Some positive suggestions were made about the way in which committees take evidence. It was

suggested that, physically, a round table would be better than the horseshoe, where someone must sit in the dock, as it were. Also, people mentioned the possibility of witnesses cross-questioning each other rather than just giving a formal statement or participating in a question-and-answer session with members. Committees might benefit from witnesses' experience if the witnesses could question each other.

I do not necessarily want to go into all the points about good practice, which will develop over time. However, the experience of using the chamber, which is by far the worst place to have committee meetings, is that we have banks of people lined up to give evidence—the Procedures Committee has had that. Groups of four witnesses at a time come in and they all hang around all morning. The setting is utterly non-conducive to giving evidence.

10:30

I turn to formal and informal evidence sessions and the public or private nature of committee meetings. Some of the committees that I have been on have had extremely positive informal evidence sessions that have not been repeated in public. I cite again the example of the Enterprise and Lifelong Learning Committee. We had more success in focusing our ideas on the direction of the committee in a one-hour informal meeting before our work started than we had with the same witnesses appearing in several meetings over three or four hours. I do not think that we have quite got to the bottom of that, which is something to do with the relationship with the civil service.

**The Convener:** How do you capture the evidence that is given in an informal session? I surmise that you are saying that the same people will not be as open in public session.

**Mr Macintosh:** It is difficult to know. There are mechanisms. The Enterprise and Lifelong Learning Committee had a convention. We have had gatherings—I am not necessarily thinking of the one that we had in the Borders—where we have gone round and about and reported back. I suspect that some of the things that we have reported back are discussions that have taken place off committee, as it were. There are mechanisms, but we have not grasped the whole picture. I am afraid that I do not have the magic solution.

**The Convener:** I wish you had.

**Susan Deacon:** I want to comment on how we capture the evidence. Perhaps we have to touch on something a wee bit more fundamental—the language and concepts that underpin the relationship between the members and machinery of the Parliament and those who engage with us. The words “evidence” and “witnesses” imply that

we are simply bringing people in to dispense facts to us, when we are patently not. We have inadvertently imported Westminster language and conventions, which have had an impact on the way that we relate to people coming to committees. It has perhaps led to the interrogative style that people have observed. There are occasions when people will come in as witnesses in the sense that they will be putting before us evidence of what has happened in a particular sector or the impact of a particular policy. However, often they are sharing their views and experience with us, so we are hearing a perspective rather than something that would hold up as being the dictionary definition of evidence.

We are engaged in a more meaningful manifestation of power sharing in a modern Parliament, which is about dialogue with a range of people, players and experts in different places. The job is not to capture the evidence per se; it is to inform our thinking. Ultimately, the buck stops with us as elected politicians as to what conclusions we reach after our thinking has been so informed.

**The Convener:** If we get more from people in an informal session where what they say is not all written down, how do we record that evidence in a way that encourages them to give it? They are clearly not willing, in the examples that Ken Macintosh gave, to produce the evidence, perspectives or opinions in a more formal context.

**Susan Deacon:** That is where I draw the distinction between evidence, opinion and experience. Clearly, there is a spectrum and one cannot draw an absolute distinction, but we ought to recognise that there are different levels of engagement with and providing information to parliamentarians. There will be cases in which individuals and organisations are more comfortable in an informal session. That might be partly to do with privacy, but it is more likely that it will be because certain dialogue and interchange can be had in that context but not in the formal committee context. I understand that we must strike a balance and that the committee has a clear preference for openness and transparency, but we are not talking about an either/or situation.

The convener made a point about recording, and it is important that MSPs' deliberations are open, transparent and recorded. Elected politicians are accountable, but those who speak to us are not. There are other opportunities for informing our thinking, but it is incumbent on us to be explicit about why we have reached certain conclusions and made certain observations. My comments do not address the issue fully, but I am interested in other members' views on evidence and witnesses, as they are locking up our thinking on the issue of informal meetings. We would go a

long way to moving on thinking and language in the Parliament if we recognised that we are not talking about an either/or situation and that there are different layers of engagement and levels of dialogue, and therefore different levels of recording.

**Paul Martin:** I have difficulty with both points. I am absolutely opposed to the cross-questioning of witnesses. I remember when Muir Russell—he is now a sir—gave evidence to the Audit Committee. I would not have welcomed him cross-questioning another witness while the committee was interrogating him on the Scottish Parliament building project, information about which required to be brought into the public domain. I am opposed fundamentally to cross-questioning because the purpose of evidence sessions is for committee members to question the witnesses. If the witnesses want to interrogate one another or have a discussion, it is up to them to do that outwith the meeting. The legislation allows committees to call witnesses so that elected representatives can question them and, as a matter of public record, ensure that they and the organisation that they represent are accountable.

I am opposed to the idea of off-line committee meetings because such a system might be abused by civil servants who would like to meet with a committee but who would rather have an off-line meeting. How many times do civil servants tell us openly that they do not want to meet committees? As I said, the legislation gives Parliament the power to call witnesses. The idea of off-line meetings is open to abuse because people might ask for an off-line meeting when they do not want to go public on an issue.

I appreciate Susan Deacon's point that there are different ways of collecting evidence. For example, it is possible to ask a witness questions in writing and for them to respond in writing. We could examine ways of sharing such information. However, formalising off-line sessions would allow organisations and individuals to ask for that route, which would demean the powers of the Parliament and open up the system to abuse.

We must be clear. On the one hand we want accountability, but on the other we say that some witnesses might feel more comfortable in an off-line session. Perhaps they would, but elected members' role is to interrogate witnesses and I do not make excuses for that. People often come before committees—particularly the Audit Committee—on serious issues that must be brought into the public domain. The role of elected members is to interrogate those witnesses and to do so in a constructive and robust manner if that is what they want to do. It would be a mistake if the Parliament went down the route of holding off-line meetings. I appreciate the good intention with

which those issues have been raised. We have often said, "Let's be more friendly and look at off-line opportunities." However, to go down that route rather than the public route would be fundamentally wrong.

**Fiona Hyslop:** It is a question of balance and of what works. We must respect the Parliament and recognise that formal evidence is given more weight than informal work is. That is my experience so far. Whether that judgment is right or wrong is not the issue.

I am interested in the change of wording on witnesses and evidence. What we are probably saying is that witnesses are Parliament informants and that they make contributions rather than give evidence. We must be careful. In some areas—the Audit Committee is a good example—interviewing witnesses is at the more formal end of the spectrum: such committee work is about evidence and witnesses.

At the other end of the spectrum, we get information and contributions, as I know from my experience of the Social Justice Committee. Sometimes we have gone out on visits. I went to speak to a mother in Methil about her son's drugs problem; I would not have got the same evidence from her had I dragged her to Edinburgh to speak to the committee.

We should have faith in the approach that some of the committees are taking to their work. The Social Justice Committee heard from the Communities Against Poverty Network at informal sessions. For those sessions, and for some of the visits for our drugs inquiry, we put the views that we had gained on the record, so that they would be written into the *Official Report*. As Susan Deacon said, it is important that we know what MSPs have taken from informal sessions and that those views are on the record. We produced papers on the Communities Against Poverty Network meetings and on the drugs inquiry and read them into the *Official Report* by saying, "This is what we learned and this is what witnesses told us." That made it a bit more formal.

I am somewhat reluctant to agree to the proposed wording. Each committee must judge how it approaches evidence taking. Paul Martin is right to say that we must not lose the sense of accountability or of how serious people's evidence to parliamentary committees is. If that sense was lost, the power of the Parliament would be undermined. However, committees have to make judgments about when they might get more out of witnesses by taking evidence more informally, and I think that committees are doing that well at the moment. There is a spectrum and a balance must be struck.

**The Convener:** That sums it up quite well.

**Mr Macintosh:** I do not want to prolong the argument. I have every sympathy with Paul Martin's point of view, as echoed by Fiona Hyslop, that there is definitely a need for formal meetings of parliamentary committees to hold people to account. However, one point has not quite been captured. Mechanisms are already in place through which MSPs are briefed informally, off the record and unofficially, and people outside the Parliament are not aware of that. I do not think that that is a particularly good practice.

Susan Deacon suggested that MSPs have a duty to explain how they came to their views. Sometimes, we have to interrogate witnesses, but at other times, we are trying to grasp a deeper understanding of an issue. In the latter situation, we do not try to make the witness defend their position; we try to get them to explain the difficulties that they have already grappled with. There are arguments on both sides—things are rarely black and white—and most witnesses come to a balanced view, having looked at both sides. Whether they are sympathetic or not, members need to try to get a feel for that.

Existing mechanisms are in danger of privileging certain groups of people by giving them access. We talk about access to MSPs, but those systems are already in operation. We must be careful, because evidence should be on the record and people should be notified about it. People should know who is speaking to MSPs and what is being said, because those are influential discussions. If the informal discussions influence MSPs' conclusions and thinking more than formal evidence sessions do, we must find a way of getting such discussions and arguments into the official business of the Parliament.

**The Convener:** That is right. You are pointing us towards an addition to the guidance for committees that would require committees to report on informal briefings.

My presumption is against having informal briefings and meetings. As members know, during the inquiry some of us met privately with representatives of the Convention of Scottish Local Authorities at their request. I do not understand why they wanted to meet privately and I wish that they had not requested to do so. However, we felt that, on balance, it was better to accord with their wishes rather than not meet them. There should be a general presumption in favour of openness. However, I acknowledge that other settings can sometimes create better opportunities for getting at people's judgments, opinions and expertise. However, all members of a committee should judge whether to have such meetings.

Ken Macintosh made a powerful point: at such meetings, people communicate views to members that might influence reports and legislation, and they must be recorded or reported in some way. That will probably mean a wee bit more work for all of us, but we must put on record what we take from informal sessions.

That wraps up that part of the discussion, which was good—thank you.

10:45

**Susan Deacon:** Will we take on board Donald Gorrie's suggestions about civil servants at this stage of the draft report? If not, will we come back to his suggestions separately?

**The Convener:** Donald Gorrie produced a full paper but before we discuss it, we should consider where in our report we should insert the issues that it raises. I do not want to build in his paper as an annexe. I would rather that we tried to incorporate its salient points in relevant sections of the report. If necessary, we can create a new section, but we should insert it at a relevant point in the report. I envisaged us discussing Donald's points at the next committee meeting but, given our rate of progress, we might need to delay that until the following meeting. However, I guarantee that all Donald Gorrie's points will be discussed. We are discussing my points because I put them in context and established a running order. As we are not dealing with a bill, we can return with additional suggestions to areas that we previously discussed. All committee members can come back with further points.

To continue with this section, I propose an addition to paragraph 95. Some witnesses told us of committees' problems with cross-cutting issues because they were not separating out properly into lead and secondary committees. I hope that that criticism has become outdated. I believe that it has, so I suggest adding to paragraph 95:

"There is now considerable good practice in handling overlapping inquiries, and we believe that committees have become skilled in avoiding the duplicate evidence sessions which occurred in the first year or so."

I think that that is all that needs to be said on that matter.

On paragraph 97, an issue that we picked up was that some people were disappointed that they were not called to give oral evidence after submitting written evidence. Members know that we cannot call everybody to give oral evidence, but I thought that we might add to paragraph 97:

"Clerks and conveners should be clear about committees' reasons for selecting which witnesses and consultees are invited to give oral evidence, and should be ready to explain their reasons to those not selected."

That does not mean that we blast a letter out to everybody to explain why they were not picked to

give oral evidence. However, if an organisation complains that it was not given the opportunity to give oral evidence, a committee clerk and convener should be able to offer a rational reason to such complaining organisations.

**Donald Gorrie:** I presume that all such organisations would be invited to give written evidence anyway.

**The Convener:** Yes. Some organisations' bone of contention is that they were not called to committee meetings to develop their written points orally. Such situations are unavoidable, but perhaps there is a better way of handling them. There should at least be a standard approach to doing so. However, I do not know which approach would be best in practice.

**Donald Gorrie:** I am guilty of giving more weight to oral evidence than I do to written evidence. I do not know whether other members do the same or whether we can legislate or advise on the weighting that we should give to oral and written evidence.

**The Convener:** It would be difficult to do so. A feature of the inquiry is that we have received masses of written evidence. The clerk, John Patterson, tried to pick out what he felt was the most important evidence. Occasionally, I would ask, "Is there any evidence on X?" if I felt that we needed a bit more on some area to balance a particular session. We have not put all the written evidence before the committee, but it is accessible if committee members want to see it. When we publish that evidence—we have about five volumes—the report will be substantial indeed.

The committee is more likely to reflect on oral evidence. Members remember those sessions, which is why people want to attend them. That is entirely understandable. It is a question of being realistic about how much more information the committee can handle. Can members imagine the size of our work load if we had held oral interviews with each of the 300 or so people who submitted responses? It may seem as if that was what we did, but, in fact, we interviewed only a small proportion of respondents.

John Patterson read all the responses. The report contains many of the interesting and pertinent points that were made and tries to reflect the significant issues. There is a degree of subjectivity; we are only human and must get by as best we can.

I suggest that we beef up paragraph 101, which refers to the Scottish Council for Voluntary Organisations' suggestion of an annual accessibility report. The paragraph will read:

"We consider an annual accessibility report to be a useful idea, and recommend that, from next year, committees should include a specific paragraph on civic participation in their Annual Reports."

That is a minor, but important, addition.

Paragraph 104 has disappeared because of editing. I am stating that to ensure that that does not disturb the sequencing between this version of the report and other versions of it that members might have seen.

I suggest that a new paragraph be inserted after paragraph 106:

"We invite the Conveners' Group to consider whether the present brief reports convey adequately the considerable work which committees undertake annually and whether committees should be encouraged to use these reports more expansively for reflection and forward looking, in addition to summarising the past year."

That may not be precise enough. However, it states that committee annual reports tend to be very transactional, merely recording that the committee met X times and published reports on A, B and C. The reports should be seen as an opportunity for committees to highlight what they do and think and what they aspire to.

**Donald Gorrie:** So long as the reports do not have a glossy cover or contain artwork.

**The Convener:** If they have glossy covers, Donald, we will refer them to the bumf-busting committee, of which you will be the tsar. Of course, that is assuming that the Executive sets one up.

**Mr Macintosh:** The first parliamentary annual report, instead of being A4, was A4 and a half. Therefore, it did not fit in anywhere.

**Fiona Hyslop:** The right answer is, "Just don't go there."

**The Convener:** The bureau featured heavily in the evidence that the committee received. The first section is definitional and descriptive. Paragraphs 108 and 109 deal with the origin of the name, Parliamentary Bureau. Paragraph 110 deals with the functions. Paragraph 111 deals with membership. Paragraphs 112 and 113 deal with how the bureau works. Paragraphs 114 and 115 deal with the scope of the bureau's work. The purpose of the section is to establish that the bureau is a significant player in the activities of the parliament. Paragraph 116 should be in bold because it states clearly that the bureau is important.

The committee does not need to discuss the contents of those paragraphs because they are largely descriptive. The issues are more about the concerns that were expressed about the bureau, and I suggest that those are put in bold in paragraphs 117 and 118. They confirm that the bureau is private; its membership is confined; although it does not vote very often, its voting structure gives the Executive too much power; the note of decisions is too brief; committee conveners

are insufficiently involved in discussions about timetables, though it must be noted that conflicting evidence was received on that; and no agenda is issued, so people do not know in advance what will be discussed.

The Presiding Officer brought up the fact that he has a casting vote in the bureau but it is not possible for him ever to cast it; therefore, he asked why he has it. Some of our witnesses also suggested that the word bureau is inappropriate and conjures up all sorts of connotations that they felt were poor. Nonetheless, positive things were said about the bureau as well. The Presiding Officer said that it worked better than the usual channels, and the then Minister for Parliament said that it worked very well in practice.

Let us move on to paragraphs 120, 121, 122 and 123. The first issue that I have highlighted is the privacy of bureau meetings, partly because a lot of our witnesses commented on that and partly because it relates to the issue of committee confidentiality, which we discussed earlier. I suggest that paragraph 123 be put in bold type. It acknowledges the fact that key decisions can be made informally, off-meeting, by members getting together beforehand. Saying that members will meet in public may increase the propensity for them to pre-meet and make phone calls beforehand. All we can say is that, if we go down the public route, there will be more pressure on members to do that. It is a fact of life at the moment, and there is nothing that anyone can do about one member making a phone call to another and agreeing a line. It is a fact of all committee life, although I do not think that anyone has done that in preparation for today's meeting.

I suggest that, to balance paragraph 123, we add:

"However, we consider that formal procedures and practices should, wherever possible and practicable, reflect the Parliament's own principles."

I cannot say that party business manager A will not have a conversation with party business manager B before the bureau meets. Nobody can say that, and we cannot write rules to stop it happening. However, we can say that a bureau meeting is a formal part of parliamentary business that is on the record, and we can decide whether that record should be published and whether the issues should be discussed in public. On the basis of the evidence that we have been given, we must decide whether to recommend that the bureau should meet routinely in public, with the occasional private session for relevant and agreed areas, or whether to retain the status quo, which is that the bureau meets entirely in private. We could, perhaps, review some of the operational issues, such as agendas and minutes. All the recommendations that I have made point in the

direction of having bureau meetings in public. It will be for the committee to decide whether to agree to those recommendations.

Following the change to paragraph 123, my first substantive change is to add a new paragraph after paragraph 123:

"If discussions ahead of formal meetings cover the same ground as the agenda, they must undermine the presumption that the discussion will be open to all members of the Bureau equally and that decisions will be taken transparently. We consider informal meetings to be contrary to the spirit of the principles to which the Parliament is committed."

If we agree to that, that will reflect some of our earlier discussions about having informal committee meetings as well.

I suggest that we add a new paragraph after paragraph 124, which outlines the argument for having bureau meetings in private. The proposed new paragraph will contain a counter-argument:

"On the other hand, it appeared to us that most Bureau decisions were non-controversial management decisions. The Bureau routinely agrees business motions, designates lead committees and agrees timetables for committee stages of Bills, and presents motions to Parliament to approve Scottish Statutory Instruments. These motions are rarely opposed. Most of the business appears therefore to be non-contentious and might be of very little general interest, and we consider that there is no substantial reason why these decisions should be taken in private."

After paragraph 125, I propose to make the following recommendation:

"We do not consider it justifiable that the Bureau should meet invariably in private. We recommend that, where the Bureau considers that open discussion will not infringe commercial confidentiality, reveal confidential personal information or prove a severe block to the business of the Parliament, its meetings should be held in public."

To link that recommendation to the standing orders, I also suggest the following change to paragraph 126:

"If accepted, this recommendation will require an amendment to Rule 5.3.2. We recommend that no Official Report need be kept of open Bureau meetings, but a clerk's note should be taken and published."

As the next set of issues relates to membership, voting systems and so on, it would be appropriate to draw a line at that point to discuss whether bureau meetings should be held in public or in private. That is a discrete issue in its own right. Do members have any comments?

11:00

**Fiona Hyslop:** Why is everyone looking at me?

**The Convener:** Inevitably, one's eyes stray to the bottom of the table. Anyway, you are on the bureau.

**Mr Macintosh:** Or it is guilt.

**Fiona Hyslop:** On the new paragraph to be inserted after paragraph 123, which deals with formal and informal meetings, it is fair to say that business managers quite often meet before bureau meetings and discuss matters. I do not think that it is a waste of time to repeat the same things later on; it goes back to another time, another place and other individuals.

We should name the contributing members of the Parliamentary Bureau, which comprises the four business managers and the Presiding Officer. If paragraph 123 really means that the other business managers should not meet separately from the Presiding Officer, perhaps we should state that explicitly instead of dancing around the issue.

**The Convener:** The Deputy Presiding Officers are also members of the bureau, but do not have a vote. Neither does the Presiding Officer, unless a casting vote is required.

**Fiona Hyslop:** There has been so much concern about the bureau because no one has seen it or knows what it does. People tend—quite rightly—to be more suspicious about things that they cannot see, but they would be grossly disappointed if they attended a bureau meeting.

As for meeting in public, I have always thought that the more MSPs that can attend bureau meetings, the better. Any MSP should be able to do so if they ask the Presiding Officer beforehand. I have some difficulty with press coverage of decisions and discussions in the bureau. As a result, although I am quite enthusiastic about making the bureau more open, I am concerned about how that openness would be used by the press and therefore for political purposes.

I confess that I have discussed the issue with other business managers, one of whom said that they would not want the bureau to meet in public, because meetings in private are an awful lot shorter. If the meetings were held in public, we might simply have a rehearsal of First Minister's question time with Opposition parties grandstanding on the issues of the day and insisting that the Parliament has a debate about this or that matter. That would be artificial, because decision making tends to be a matter of consensus and is tied up with the Executive's voting majority. As an Opposition business manager, I can bluster, argue and complain as much as I like about the proposals for parliamentary business, but if I take the matter to a vote, I will never win.

I have no problem with the fact that the Executive needs to get its business through. As a result, the matter is tied up with the voting balance on the bureau. Some issues that are discussed involve commercial confidentiality or might

embarrass or make things difficult for individual members; however, people would know in advance whether that was the case. The point is that the bureau decides parliamentary business and people want to influence that process. My paper suggests that we need to re-engineer the procedure for bureau papers and so on. More forward planning would mean that members knew the draft programme of business for the next four months; if any of them wanted to influence that process, they could contact me. At the moment, I have only a short time to check the draft programme with my committee conveners and check that they are happy with the timetabling. I double-check what the bureau clerks do, because they always check that committee conveners are happy.

I am reasonably relaxed about the issue. I am not saying that, in future, another business manager from the Opposition or, indeed, the Executive might not have a different view. It is almost like slaying the dragon—the view that the bureau is somehow the devil incarnate. Some colleagues, even on this committee, seem to think that. Making the bureau more open will dispel that notion. That may destroy what is seen as the overwhelming power and influence of the business manager and the mystery of the bureau, but if it helps to have more open government and better understanding of how the Parliament works, then I am reasonably relaxed about it.

**The Convener:** I suspect that, if the bureau ever goes public, attendance by members who are not members of the bureau will entirely disappear after the second week. Press attendance will probably disappear even quicker than that. It is about demythologising the bureau. Most of it is humdrum and entirely devoid of excitement.

Fiona Hyslop made a legitimate point about how she, or any member, might be under pressure to grandstand if the bureau is held in public session. People may play up if the press covers meetings of the bureau. I do not think that the press will do that, but that remains to be seen. That is a fair summation of the issues.

**Susan Deacon:** I have a couple of observations. This is a small point, but it is worth noting lest we forget how far we have come. In the report, I cannot find an explicit acknowledgement of how much the machinery of the bureau, however imperfect, differs from its Westminster equivalent. The bureau is a big move towards the Parliament controlling its business itself, and all parties being represented, as distinct from the Government controlling business. That is important. The report must recapture those points, lest people forget how far the Parliament has come in attempting to change.

It is clear from our discussion and from the report that there are several recurrent themes in

the evidence and in the committee's emergent views. One theme is the private-public issue, and transparency more generally. It is important that the final report somehow captures such big themes and identifies them as such, even if we also break the issues down into recommendations for specific parts of the Parliament. We keep coming back to the issue, be it in relation to the operation of committees, the bureau or the Scottish Parliamentary Corporate Body, which we will discuss later. There are parallel issues.

For our part, it is important that we put in lights the fact that that is a big chunky issue that we absolutely expect to be addressed. We recognise that there are different ways in which to address it. Again, it is a matter of horses for courses. I want us to be directive rather than prescriptive, if that is the right distinction. Different bodies make changes to their practices that are seen as substantive improvements in the degree of openness and transparency. We should be quite insistent that there must be improvement, but not prescriptive about what the improvement ought to be. Apart from anything else, it is quite important to give ownership to the different arms of the Parliament and to recognise the expertise of those who have been involved in them. There will be different ways of bringing our aspirations to life.

We could translate that specifically into the report by adding some of the bigger umbrella points. A couple of the statements that set out our recognition of the issues refer only to the SPCB and the committees, but they relate to key themes. If the body itself brings forward change, there is quite a strong degree of ownership.

It is important to distinguish between the mechanical issues and the more deep-rooted, structural issues—Fiona Hyslop also made that point. In a moment we will come to the structural issues, including party balance and so on. I have one addendum to make on the mechanical, non-structural issues, which is that there is no umbrella point—if I can call it that—or theme in the report about language. We talk about the Executive or the Government and use the label “the bureau” or the Scottish Parliamentary Corporate Body, which is my least favourite label of them all—I know few people who even begin to understand what that means.

**The Convener:** I think that it is something to do with being overweight.

**Susan Deacon:** You might say that. We ought to make an umbrella point about the part played by language and terminology. I would hate to think that people think that all we are interested in is what people call themselves, but there is no question but that labels act as impediments to people's understanding of what different parts of the Parliament do and have added to suspicions about who decides what.

I would like us to capture some of the big themes and be directive about the bodies that must address them. At this stage, we should not be too prescriptive about what the solutions should look like. I am not sure that we have got the balance right. I want to reflect on the issue once we have been through the whole process.

**The Convener:** I think that that is right.

**Paul Martin:** I have some difficulties with the section that deals with public access to the bureau. Parliamentary committees should be open and accountable, as should business in the chamber. We should distinguish between business in parliamentary committees and in the chamber, which deals with the legislative process, and business that is conducted by the bureau.

The bureau is not a legislative entity; it sets the agenda for the Parliament. That function may not be part of our need for openness and accessibility. There is a good argument for some bodies in the Parliament not to be open to the public. The bureau is one of them. The bureau does not take political decisions, although it could be said to be a political body by virtue of being made up of the four party business managers. A good case can be made for its meetings to be held in private.

Like the inquisitive child who wants to get into the cupboard, the media will always want to find out about mysterious things. The media says that it wants the key to unlock the cupboard to find out what it contains. As Fiona Hyslop said, once the cupboard is unlocked, we will discover that it contains very little worth investigating. Is it right to say that, because of the interest, we should open up the bureau? Surely we should do what is right for the Parliament.

What is right for the Parliament is for its legislative processes to be as open and accessible as possible. We also need to consider whether there should be public access to some of the parliamentary bodies. I know that this is a ridiculous example, but the political groups in the Parliament have decision-making processes. Should the public have access to party meetings?

We know that there is an inquisitive interest in the work of the parliamentary bodies, but whether that should lead to public access is open to debate. I would go 51 per cent in favour of there not being public access, although I appreciate that that leaves 49 per cent in favour of being open to the media and interrogation.

11:15

**Donald Gorrie:** To my mind, these issues are linked to back-bench representation, which we will deal with later. If we get back-bench representation, I am reasonably relaxed about the private-public business. As one of the people



spreading myths about the Parliamentary Bureau—like MacPherson writing about Ossian—I agree with Paul Martin that the closed-door approach fosters the suspicion that something is going on. However, there is a difference between access to party meetings, which are a matter of internal democracy, and the bureau, which is a fixers meeting. I mean that in a good sense, as the fixers involved are trying to make our activities as sensible as possible. Therefore, I reserve most of my fire for paragraph 131.

**Mr Macintosh:** Some issues of accountability are internal parliamentary ones that concern back benchers and the smaller parties, but for the public, the key issue to do with the bureau is transparency.

Transparency does not necessarily mean that every meeting should be in public. As long as we are aware of a committee's work, it can be quite transparent without being public. We might not have proved that point yet, but we could do so.

Although I agree with the thrust of the suggested changes, I am slightly concerned that we will end up with a convoluted series of recommendations that are too complex and do not get to the essence of the matter. The bureau is already heading in the direction of publishing its notes and publicising its decisions. We need to know who makes decisions in the bureau and what the decisions are. That is the important part, not whether its meetings are in public.

In the experience of the Parliament's committees, what has been more important: the decision that was finally agreed to, or the arguments that were raised in reaching that decision? There is no doubt that the press would concentrate on the arguments, but we would probably want to concentrate on the agreement, as that will have the most important effect on the output of the Parliament. The fact that a committee has agreed a common view is more important than the disagreements that were involved in getting to that point.

If the bureau met in public, attention would undoubtedly be focused on disputes rather than on agreed outcomes.

**The Convener:** I do not sense any consensus on this issue.

**Mr Macintosh:** I do. I thought that we all agreed that the bureau should continue to meet in private but there should be greater transparency in its operation.

**The Convener:** How would you get that greater transparency?

**Mr Macintosh:** As I said, I do not agree entirely with the wording of the suggested changes, but the essence of the matter relates to furthering the

work that the bureau has already done and ensuring that it publishes its notes and publishes its agenda in advance.

**The Convener:** It does not do that.

**Mr Macintosh:** It does not do so yet, but it should. If we made a suggestion to that effect, I do not imagine that the bureau would have much difficulty with it.

**Susan Deacon:** Can we not simply ask the bureau to report back to us on the proposals to improve transparency? Perhaps we could incorporate in our communication to the bureau some of the suggestions that we would make or those that have been made to us in evidence. I recognise that there is an issue about how much we push change along and how much we just suggest it or aspire to it happening. I still think that we can give the issue quite a bit of momentum if we are insistent about asking for a report from the bureau.

**Fiona Hyslop:** I prefer to go with Ken Macintosh's proposals. We can do some practical things, as long as we have more advanced business planning in which everyone can share. Members need to know what is on the agenda so that if they want to influence it, they can see their business manager or send a note to the Presiding Officer. Whether the matter is discussed in public or not then becomes less of an issue, particularly if we take into account Donald Gorrie's point about back benchers' involvement. That would satisfy the what's-in-the-cupboard inquisitiveness.

It would be remiss of us not to reflect the strong views that were expressed about meeting in private. If the committee allows it to continue, we will have to be able to justify to witnesses or whoever comes before the bureau why the meeting is in private. As a member of the bureau, I am relaxed about it meeting in public sometimes—not always—if that would help to satisfy the curiosity.

**Mr Macintosh:** I agree. We could strongly recommend that the committee wants the bureau to dispel any notion of secrecy because it is damaging to the ethos of the Parliament and to the bureau's work. The steps that the bureau could take to do that might include publishing an agenda in advance and publishing notes or minutes or a report along the lines that Susan Deacon suggested.

**Paul Martin:** There should be publicity material that tells us what the bureau does. I know that we have touched on that. It should set out the remit and the membership. I do not think that I have ever been able to find a page on the website that describes the bureau, although I might be mistaken. We should try to find a way of setting that out.

**The Convener:** We are talking about coming up with alternative text that encapsulates today's discussion to replace paragraphs 123 to 127 of the draft report. It would call for the bureau to make its activities more transparent and convey to the bureau the points that have been made by witnesses and also the practical points that the committee has made about agendas, minutes and possible occasional public sessions. They should be framed as suggestions rather than prescriptions.

**Mr Macintosh:** We should mention the information on the website.

**The Convener:** Yes.

We move to paragraph 128 of the draft report and what will come after that. Paragraph 128, which is about membership of the bureau, simply reflects a point that witnesses have made to us:

"The present membership of the Bureau is tightly drawn. The Parliament is the national political forum and its business should be of national interest and concern."

I propose that we add:

"We consider that the Bureau, as manager of Parliamentary business proposals, needs to be as fully aware as possible of the issues which people wish to see discussed in the Parliament, and we propose a number of changes to make Bureau membership more representative and operation more flexible."

That paragraph should be included if we agree the subsequent changes. If we do not, it would become redundant. It is a piece of bridging text to the issues that follow.

The next couple of paragraphs deal with the position of back-bench MSPs and quote the views of the Scottish Parliamentary Corporate Body, or SPCB—Susan Deacon's least favourite acronym—about protecting back benchers' rights to contribute. I propose to add:

"We recommend that there should be backbench representation on the Bureau, to ensure that due weight is given to the views of backbench MSPs in discussion of business programming and management; and that backbenchers should be enabled to elect a Bureau representative—

or representatives—

"annually. We return to the issue of voting rights on the Bureau later in this report. If the Parliament agree to this proposal in principle, we will bring forward detailed implementation proposals in due course."

That ties in with a later recommendation, which Donald Gorrie mentioned, of the creation of a back benchers committee. The suggestion is for back-bench representation on the bureau, which might be a single member or two members. If the principle were agreed, those issues would be for discussion. What do we think of that suggestion?

**Donald Gorrie:** The suggestion is good. The system fails when it is not in any party's interest to

discuss a matter. The view might be widespread in the Parliament that we should discuss Iraq or whether Scottish arrangements for the fire service or terrorist attacks are adequate, for example. Nobody in high places really wants those issues to be discussed, but they should be discussed. Some way of pushing in such subjects should exist.

Many feel that members' motions that draw a lot of signatures and support are considered a bit embarrassing by somebody or other and are therefore not debated. A representative of members—the majority of whom might want a subject discussed—is wanted. I do not know whether one member would be enough. It might be good to have at least one Executive representative and one Opposition representative, but they would speak not on behalf of their parties, but on behalf of members as a whole. The issue is important.

**The Convener:** I had not thought that the representative would insist on a debate on a subject that nobody else wanted to debate; I do not know how they would do that. I had thought that the role would involve suggesting that a matter that was up for debate merited three hours of debate rather than an hour and a half, because of the level of interest in it. Donald Gorrie talked about the selection of motions. The representative could say which motions had much back-bench support. I think that the role would involve influence rather than radically refocusing the shape of the parliamentary week, but Donald Gorrie has a fair point.

**Susan Deacon:** We are confusing different matters. Ken Macintosh talked about staying focused on the outcome that we want to achieve, rather than being preoccupied with the process. We have identified a problem that relates to aspects of the Parliament's operation. The report suggests that the solution lies in a mechanical change to a body's make-up instead of in thinking about the wider process and even culture changes that need to take place in the Parliament.

It is interesting that we quote evidence not from back benchers, but from the SPCB. I do not remember the context, but I guess that the SPCB members were—rightly—acknowledging that in their work as managers or custodians of the Parliament, they must ensure that back benchers have a positive role to play. In the same way, we as parliamentarians say that it is important that the public feel that they can relate to and are engaged with what we do. However, we do not translate that into taking six people off the street and bringing them into a committee or the SPCB to help us to manage that task. We have jumped to a step that will not deliver the required outcome.

Fiona Hyslop used the phrase "process re-engineering", but the issue is more to do with

putting in place processes that would enable the range of views across the Parliament on many issues to be expressed and fed more effectively into bodies such as the Parliamentary Bureau or the SPCB. It would be a brave man or woman who went on to the bureau and suggested that somehow they represented the views of members across the parties.

11:30

In any event, I question the meaningfulness of the label "back benchers". Members have a range of different labels, from minister and front-bench spokesperson through to member of X committee or member of the bureau. The label of back benchers is one of the least relevant in shaping one's identity within the Parliament. As for drivers behind the way that we operate, party allegiances come into play in a series of ways before the fact that a member is a back benchers.

We should not seek to create another Chinese wall by building into our structure talk of back benchers, as if that is a label that members display with pride or otherwise, and as if it fundamentally shapes our parliamentary and political contributions. I share the aspiration

"that the views of backbenchers should be given a stronger and focussed voice in the planning and management of Parliamentary business",

as per paragraph 129, but I reject the conclusion that is being reached, which is that some form of tokenistic representation of back-bench interests in the formal management process is the way to achieve that.

**The Convener:** The issue is linked, of course, to changes to the recommended voting practice, whereby the bureau would operate, essentially, on a one representative, one vote basis, and would be more like a committee in the way that it operates.

**Fiona Hyslop:** We cannot set paragraph 130 apart from the issue of voting rights; if we did that, there would be little point in having a back-bench representative on the bureau with one vote. or even 15 votes. I do not think that even then could anything be engineered that would allow the outcome of votes to be changed. If a back-bench representative has no power, what is the point of having one? The issue is power. It could be argued that the Presiding Officer is on the bureau to represent the wider views of back benchers and the Parliament as a whole but, as we have heard, there is no point in him having his casting vote, because it is redundant. Back-bench representation is tied to the voting balance on the bureau.

As a business manager who sits on the bureau, whenever possible I ask for extra time for debates on more controversial issues. I am the one who

knows when there is a lot of interest in an issue, and I try to get more time. Attempts to get more time happen already, and are more likely to come from Opposition channels, but I have also seen Executive business managers ask for more time when they know that a lot of their back benchers are interested in a debate.

The issue is, who is a back benchers? According to our definition, we probably only have about five back benchers, and the majority of them are conveners of committees, who also have influence through the conveners liaison group. There is an issue about whether a representative of the conveners liaison group should sit on the bureau. Actually, there is such a representative, in the form of the Deputy Presiding Officer who chairs the conveners liaison group. I would be comfortable with back-bench representation, so long as the voting rights were changed and balanced. If that cannot be done, having such a representative would be tokenistic and pointless.

**Paul Martin:** I know where Donald Gorrie is coming from in seeking to ensure that the bureau is held to account, and a way to do that would be to have the safety valve of back-bench representation. Fiona Hyslop's point is that that would be tokenistic, but I would not support the change to voting rights that she mentioned.

Donald Gorrie's point was well made, but from my experience, I cannot think of occasions when there have been severe difficulties for back-bench members. I am not sure whether I dare say anything else, but I do not have any difficulties with conveying my concerns to the business manager. To make the case for back-bench representation on the bureau, Donald Gorrie would have to be specific, if he dares, about any difficulties that he has experienced in the current system. Regardless of Fiona Hyslop's point on voting rights, it would be tokenistic to say that there should be back-bench representation for the sake of it.

I would have to hear hard evidence of back-bench views not being considered. If someone has prevented free-spirited back benchers from putting their objective views, that would be an abuse of power. That is why I am lost. I do not see how having a back-bench representative would be any different from the current system. We would be changing the system for the sake of it, and I would have to hear evidence of negative experiences before being convinced.

**Mr Macintosh:** I have sympathy with Donald Gorrie's point on behalf of back benchers. However, I would follow the line that Susan Deacon was developing about how we would define a back benchers and whether we would want to formalise and create a position that is defined by the fact that it is not a front-bench or Executive

position. That would not be helpful, although I have sympathy with some back-bench concerns. The amount of time for speaking slots is ridiculous, and there are particular weaknesses with members' business.

There are broader concerns about the opportunities for MSPs to promote legislation or ideas, even just for debate, in the Parliament. I suspect that we should do that through different mechanisms, particularly our committees, rather than by creating a new mechanism. I am content that I know the line of accountability through the bureau, because our business manager reports to us every Tuesday lunch time. He tells us what is going on and there is an opportunity to discuss forthcoming business and any issues of concern. That is what business managers exist for. There is a straight line of accountability. It would be difficult to create some sort of back-bench committee or representation.

Fiona Hyslop suggested that we could open up the bureau to back benchers who wanted to sit in on meetings so that they could be aware of what was happening. That is a good idea, but I would be against any idea of a back-bench member sitting on the bureau and having voting rights. Again, it is a question of accountability. The current lines of accountability are clear, but to whom would such representatives be accountable?

Although I have sympathy with the concerns that have been expressed by Donald Gorrie and other back benchers, I think that there are different ways of addressing them. There is the specific argument that the bureau should not be a vehicle for repressing the opinions of back benchers with non-whipped views.

**Donald Gorrie:** The awkward squad.

**Mr Macintosh:** Yes, exactly.

There should be an outlet for the discussions. For various reasons, I am slightly put off by the subjects that Donald Gorrie used as examples, including Iraq. I do not think that changing the structure or membership of the bureau is the solution; there are other solutions that involve members' business. Much as I appreciate the excellent work that the convener has put into the recommendations and adjustments, I do not think that they capture how the bureau should change and operate from now on.

**Donald Gorrie:** Euan Robson is very good at his job. I have no problems with him: he is open and we discuss things. Perhaps I am old Labour in some respects, as I am a trade unionist. The concept of a trade union or a trades association is people with a common interest coming together.

I disagree with almost everything that Susan Deacon said. It is clear that back benchers are different from ministers and have different interests, although if they are Executive supporters they will support the Executive's programme—mostly, anyway.

Ken Macintosh mentioned speaking times. Back benchers have an interest in securing more time in the middle of a debate for them to speak, whereas ministers have an interest in going on and on from the front benches. There is a clear conflict of interest, and there should be some organisation to represent that, which should not be tokenistic.

It is often said that the Germans did very well in the 20 or 30 years after the war because they had trade union representatives on their company boards. The trade unions did not have a majority, but they had a voice, and having a voice is important. If the voices of the back benchers say, "It is important that we have X. There is a great deal of groundswell for that," the bureau should pay some attention. If we had—as is suggested later in the report—a back benchers group, or whatever it is called, that would be a line of accountability from the members of the bureau to the back benchers. Using e-mail and so on, it is not difficult to get members' views on issues fairly rapidly. It is important that back benchers have a voice, and what is proposed in the draft report is a way forward.

**Fiona Hyslop:** Something occurred to me while Donald Gorrie was speaking. Do the Presiding Officers hold regular open sessions at which members of the Parliament can express their views about what they think should be happening? The committee conveners do that, but I do not know whether the Presiding Officers do.

Donald Gorrie has a point. Things are more difficult for back benchers of the Executive parties. There is a difference between back benchers from the Executive parties and back benchers from the Opposition parties. Obviously, Executive ministers have to put forward their programme for government. The views of back benchers must be represented, but I am not sure what the vehicle for that should be.

If it is our common understanding that back benchers' views must be expressed and that back benchers should have the opportunity to influence Parliament, it is a matter for the Presiding Officers, who should represent the wider views and balance of the Parliament. I have heard the Presiding Officers say that they are receiving representations and notes of concern. Perhaps we need to strengthen their role. Donald Gorrie might view the Presiding Officers as the establishment and, therefore, more difficult to influence, but they might be an avenue to explore if we have difficulty in reaching agreement.

**The Convener:** The Presiding Officers do not hold open meetings with members of the Parliament. The Presiding Officer goes round the political group meetings and discusses the points that members raise with him. I do not attend those meetings, as I do not think that that would be appropriate. However, that is another issue.

Susan Deacon made the point about the Presiding Officers representing the interests of back benchers. The Presiding Officer sees himself as a voice on the bureau for the unrepresented. His evidence to the committee was that, at times, he feels a degree of frustration at his inability to influence. He does not have a vote in the bureau and, if he did, it would not matter. He has a casting vote, but the arithmetic means that it is never possible for the casting vote to be used. In any case, the vote is immaterial.

The Presiding Officer will sometimes tell the bureau that more time should be allocated for an item of business; sometimes that suggestion is agreed to and sometimes it is not. Fiona Hyslop alluded to the pre-meeting of the party business managers. Such matters are sometimes resolved at the pre-meeting before they come to the bureau, but sometimes they are not and Fiona Hyslop makes a pitch for more time—it is usually Fiona who seeks more time, although sometimes there is agreement that more time should be allocated. However, under the present arrangements, the Presiding Officer has no function other than to say occasionally that, as there seems to be a lot of interest in an issue, it should be allocated more time. That is where the Presiding Officer's function on the matter begins and ends.

11:45

**Paul Martin:** Donald Gorrie said that he is more than happy with Euan Robson. If everyone is happy with the representation on the bureau and the modes of communication with the parties that Ken Macintosh set out, I am lost as to the need for change. I have a lot of sympathy with the point about time in the chamber, but if Euan Robson, Patricia Ferguson or Fiona Hyslop has not been prevented from pursuing that issue in the bureau, where is the missing link? Perhaps something needs to be done on the issue, but that is an internal matter and relates to communication between business managers and their parties.

**The Convener:** I am not sure that it is possible to reduce the issue to being a matter for each party. It is fairly clear that there is widespread dissatisfaction among members who do not consider themselves to be front benchers because they do not have an adequate share of the available resources, which means, principally, time. There are regular complaints about the time that is allocated for speeches, the pressure that

members are put under to finish their speeches in time and the issue of who is called or not called to speak. That general atmosphere of dissatisfaction is neither addressed nor resolved. There is a missing link and it is a collective matter for the parties, rather than one for individual business managers.

**Paul Martin:** There are forums other than the bureau in which that issue can be raised. The Procedures Committee provides the opportunity for members to take up such matters directly with the Presiding Officer. There are modes of raising the matter other than through representation of back benchers on the bureau; I am not opposed to that possibility, but I am not convinced that it is required. If we consider the matter objectively, none of Donald Gorrie's evidence proves that such representation is required. He says that he is satisfied with the way in which his business manager operates and there have been no other complaints about that. I remain unconvinced.

**Donald Gorrie:** The evidence is that the system has not delivered. As the convener says, there is widespread dissatisfaction, which we should do something about. In my view, MSPs do not have an existence only as members of parties. When members of different parties discuss issues, there is often the feeling that although one of the business managers has raised the issue, the other business managers have not responded. A widespread and substantial view in the Parliament is not represented in the bureau's conclusions.

**Susan Deacon:** Once again, we are in danger of confusing two different matters and therefore of using a sledgehammer to crack a nut. We all agree—and, believe it or not, I think that many ministers would agree—that some processes in the Parliament could and should be improved. Time and again, the committee has returned to the flow and structure of debates and how they might be improved by rebalancing the timing of speeches or by changing the formulaic approach to Executive motions and Opposition amendments. I do not want to revisit those matters now; my point is that our report has room for further consideration of, and recommendations on, the matter. There should be an on-going process of dialogue and discussion among a range of people and bodies in the Parliament to secure continued improvements in the areas that we are discussing.

If there are better ways of drawing in the views and suggestions of a range of people within the Parliament, we should absolutely encourage that. We, around this table, do not have a monopoly of good ideas on such matters. The right time to start doing that would be now, as we near the end of the first session of the first Administration.

However, we need to differentiate between improving the functioning and operation of the institution and tackling the deep-rooted issues that strike at the heart of the role and purpose of politics, of the democratic process and of our role as individual politicians. I am glad that Donald Gorrie articulated some points of dispute between the two of us on this issue, because there surfaces a fundamentally different view of the role of an MSP.

Personally—many colleagues, not just in my party, would agree with this—I do not define what I do as a politician simply by the position that I hold in the Parliament or, indeed, by the party label that I have. The issue is altogether more complex than that. I do not see my role in life as to beat the Executive around the ears regularly, which is sometimes seen as the definition of the common interest of back benchers, as if we existed purely to do that.

Nor do I see my role as being lobby fodder for the Executive simply because I am a member of an Executive party. Having recently celebrated my first anniversary of sitting on the back benches, I feel that I can now say that I have completed the transition from one side of the divide to the other. I therefore have a bit of perspective on the issue. What drives many of us is how we can best contribute to the complex process of decision making and legislating to make a fundamental difference for the people out there.

The common interests of back benchers have been mentioned. I am sorry, but I do not share many common interests with Phil Gallie about what our schools or hospitals should look like. I might occasionally agree with him on some technical point about the way in which parliamentary debates should be structured, so I would be happy to sit around a cross-party table to consider that. However, I cannot relate to the idea that a couple of back benchers could be thrust right into the middle of the meeting that both selects the subject of business and deals with the technicalities of how that business is processed. Those members could not speak on behalf of all back benchers. Suffice it to say that I cannot see how that could be effective.

I have taken issue quite strongly with some of what Donald Gorrie has said, but in the spirit of consensus let me say that there are points of agreement. There is a need to ensure that we have effective channels to address concerns from wherever they arise. I can assure members that there are many parliamentary processes that do not work for ministers either, such as the flow of debates and some of the other points that have been identified. The dividing line is not between front bench and back bench or between Executive and Opposition.

Therefore, I agree that we should open up some of those things for consideration but, for goodness' sake, let us not build a fault line into the Parliament's structures and operations. It is false to think that the finer nuances of how we conduct our business in the institution matter to our constituents, who are interested in how we make progress on the policy issues. That is where many of us would start to identify common interests, not by where we sit in the chamber.

**Fiona Hyslop:** I am conscious of the fact that Gil Paterson had to leave, as he explained, to attend a meeting of the Equal Opportunities Committee. I suggest that if Gil Paterson were present, he would have some sympathy with Donald Gorrie's proposal.

Given our different perspectives, we are unlikely to resolve the issue unless we vote on it, as we are probably in three different camps. We should perhaps put forward options on which we could make a formal decision at a future meeting.

**The Convener:** My summation of the discussion is that there is no consensus in favour of paragraph 130. We will need to devise some form of text to explain the consensus that we have, which is that members have frustrations about aspects of the parliamentary process, and that the Parliamentary Bureau needs to find ways in which to consider and resolve those frustrations. I do not see that any specific recommendation will emerge from our discussion, unless we were to engineer a series of votes that produced a narrow decision.

**Paul Martin:** I wonder whether we could deal with Donald Gorrie's point by recommending in the report that a group of back-bench MSPs should have a formal session with the bureau in order to raise concerns. Perhaps we should also find some way of ensuring that the bureau takes those concerns into account. Certainly no opportunity for such a meeting exists at the moment. That would certainly be a less tokenistic approach, because it would allow direct contact.

**The Convener:** We will try to include that very practical suggestion in the form of text that we find to replace the new paragraph to be inserted after paragraph 130. I think that I said before that we were discussing paragraph 130.

The next issue identified in the report is the forward programme for parliamentary business, which most of us see a week or two in advance but which actually exists in embryonic form over a much longer period. That aspect has also been criticised. I suggest that, after paragraph 131, we add three new paragraphs to create greater transparency about the forward programming of business. They read:

"We recommend therefore that an annual Parliamentary outline business programme is drawn up"—

members should note the emphasis on “outline”—

“and noted by the Parliament as an early item of business after the summer recess. It should indicate provisional time allocations for Executive, non-Executive Party, Committee, and all other identifiable Parliamentary business in the chamber. The indicative”—

or outline—

“programme should be regularly revised by the Bureau as the programme is developed in detail, with a major input from the Conveners’ Group on behalf of committees.

We recognise that items in the programme would have to be added, removed, or adjusted as the year proceeded, as priorities changed. For example, there will obviously be an element of unpredictability in allocating time for some Ministerial statements, and the completion of committee stages of Bills cannot be predicted absolutely. The object would be to bring a degree of certainty to the programming of Parliamentary business over much longer periods than is currently publicly available; to provide certainty for the Executive about time for its own programme; to ensure that the Executive programme is considered fully in the context of the priorities of the non-Executive parties, committees and backbenchers; and to provide as high a degree of transparency about Parliamentary business as possible.

This work is likely to involve a great deal of effort by Parliamentary staff and the main contributors to the programme. It would require to be carefully planned and some extra resources may be required. We recommend that a detailed implementation plan for consideration is drawn up in due course by the Bureau, including any proposals for changes to the Standing Orders (Rule 5), to implement the proposals for a programme set out above by the start of, say, the Parliamentary year 2004-2005.”

One might say that those paragraphs are more about transparency than about power sharing, but the issue clearly relates to power sharing, because the more one knows about the forward programme of business, the more opportunity one might have to influence it in the debates that take place.

I am not absolutely sure, but I believe that there is quite a degree of forward knowledge about what might be debated on such-and-such a date. I say that because the conveners liaison group, of which I am a member, frequently knows the dates and time allocations that are available for committee business. There is clearly a forward master plan; I do not know whether it is a secret, but it is certainly not openly divulged. I suspect that people are unhappy about divulging very much too far in advance, because that might make it difficult to change things. However, if we approached the matter from the other direction and accepted that the programme should be flexible, there could be more transparency, which in turn would make a contribution to power sharing. I seek members’ comments on those suggested paragraphs.

**Susan Deacon:** I am strongly in favour of improving forward programming as much as possible. I have spoken about that previously. I am not clear how far such a forward plan would go in stating subjects for debate, although I imagine that it would be useful for legislation. How do you

envisage the Parliament and the public being informed about proposed topics in Executive and non-Executive debating times?

12:00

**The Convener:** Realistically, I do not think that much more can be done than is done at present. If the Executive flagged up topics in advance over a longer period, that would be helpful to everybody. A point was made about non-Executive business last week.

Essentially, the subjects that will be up for debate in two months’ time cannot be predicted. It can be identified that there will be Executive time for subjects, and it is up to the Executive to firm up its proposals as quickly as it can. My suggestion is a way of shaping the parliamentary year. With bills, one can be reasonably indicative of what is expected and when. That would give people an idea of legislative timetables and how long debates will last. That is probably done informally in the forward planning. I do not think that subject material will be presented very early—a week or so in advance at best and only on a voluntary basis.

**Fiona Hyslop:** It is very sensible to know what is coming up. If all the bits were pieced together, a plan could be put together almost for a parliamentary year.

It would be helpful if the Executive could indicate what is likely to come up in the next six months. For example, invariably there is a debate on domestic abuse at this time of year, precisely because of issues that arise during the Christmas period. At certain times, we have budget information, not least about spend from the comprehensive spending review.

Through commonsense understandings, it would be possible to earmark what is likely to come up during a year. Voluntary organisations or organisations that deal with the Executive know what consultations are likely to come up. Whether there is a debate or a ministerial statement, one will know that there is likely to be something on house improvement or whatever. A plan could be given a reasonable shape so that people will know that certain subjects are on the radar. Back benchers can say what they think is an important issue—perhaps one that created much interest during a members’ business debate. The agenda could be shared in a way that does not threaten what the Executive wants to do, but allows the Parliament to be informed about how issues are likely to be dealt with. That is a win-win situation.

We also need process management. There are long-term, medium-term and week-to-week plans. Improvements could be made to those. Information can be power, but only if the information is there. It is right that the proposal is in the power-sharing section of the report,

because we can all gain from it.

**Mr Macintosh:** Paragraph 131 states the case for all of us: we do not know the business more than two weeks in advance. That is intensely irritating. If that were changed, everybody would welcome it. I was thinking that there could be an outline programme perhaps a month or even two months ahead. I was not thinking of the entire year. The convener has emphasised that the programme would be outline and indicative, but I am slightly concerned that such a formal creation would be a hostage to fortune for the Executive. The Executive publishes its programme for the forthcoming year anyway, but I imagine that it would be sensitive about the idea of timetabling bills so far in advance. If bills are not passed when they were planned to be, perhaps because consideration has been slowed down for a reason, that can be politically sensitive. Although such a plan would seem to be helpful, I am not sure that it actually would be.

It would be helpful to have a plan that was drawn up on the basis of the information that is already available but that has not been collated for the benefit of back benchers. Committee clerks often have such information—they know that their next slot is January 19, for example. It is bizarre that we, as MSPs, do not have that information, which would be helpful. Although I agree with the suggested direction, the wording is perhaps a little too formal for my taste.

**Susan Deacon:** I agree with the general aim of the convener's proposal. That should be the direction of travel. I also agree with the comments that other members have made about the need for short and medium-term planning horizons. In particular, I echo Ken Macintosh's view that a change to the short-term planning horizon would be highly useful in effecting a fundamental improvement in MSPs' and, even more so, outside bodies' capacity to engage and contribute effectively. It would be very helpful to have more than just a few days' or a week's notice of what the business will be. As we have discussed, efforts in that direction can be made.

In relation to how we handle the issue in the report, we ought to recommend the establishment of a focused short-life group, which would draw in the necessary expertise from the bureau and the Executive, for example. Such a group would be able to put some of those issues to the test. In other words, there is a danger of too much abstract discussion. People need to start putting the planner together to find out what is doable.

A consensus among committee members would enable us to send a clear message to different parts of the Parliament. We would like to see better advance planning and greater transparency in parliamentary planning. We recognise that there

are different time horizons. There are long horizons, such as a year or a parliamentary session—four years—and there is short-term planning. There is a significant difference between knowing the proposed topic for a debate a week in advance and knowing it three weeks in advance. That would be my suggestion for progressing the issue, provided that there is consensus for movement in that general direction.

**The Convener:** There seems to be general agreement, in spite of a certain reluctance to embrace the annual outline programme. I suggest that we delete the word "annual" in the first paragraph and replace "the year" in the second paragraph with "time". We can include the proposed paragraphs in the draft and consider refinements on the basis of the need to look at medium and long-term horizons. We need to incorporate some of last week's discussion and we should take on board some of what Ken Macintosh said about trying to have greater certainty in relation to the immediate time period, which is particularly important for back benchers. We must try to conceive such a beast.

**Donald Gorrie:** I agree with those proposals. I suggest that an absolute date is not necessary, but it would be helpful if the Executive could say, for example, that it expected the report from the licensing committee under Sheriff Principal Nicholson to come out next autumn and that there would be a debate in the autumn. That would give people a rough idea. It would also help if, for example, the Scottish National Party said, "We are anxious to debate subject X some time in the next few weeks." That sort of thing would help; there is no need to specify a date.

**The Convener:** That picks up on Susan Deacon's point about getting greater advance knowledge of topics. Although we cannot expect the Executive to indicate that subject X will be debated on December 17, it would be realistic to have an indication of the sort of topics that were being considered for debate, such as the publication of a report or the launch of a policy initiative. We could consider additional text that would recommend such good practice.

The next area that I want to look at follows on from paragraph 132, which picks up the block-voting arrangement. We touched on the matter earlier, without going into it. I suggest that we add two new paragraphs after paragraph 132. I propose to add:

"In the circumstances envisaged above, where a flexible medium term business plan existed and had been agreed by the Parliament, it would be possible to move away from block voting procedure in the Bureau to a one member, one vote, arrangement. The membership of the Bureau would have to be increased to include backbench representation"—



perhaps not now—

“and to maintain the balance of parties in the Parliament. We emphasise that, in these circumstances, there could be no question of the Executive party or parties being unable to achieve their business over the period of the plan, because that business, together with provisional timetabling priorities, would have been agreed by the Parliament.

We recommend therefore that the Parliament agrees in principle to move away from the Bureau's present arrangements, in the light of the future improvements to business planning as proposed in paragraphs x-y above, and that the Bureau should consider consequential changes to Standing Orders and present them to this Committee for consideration, with a view to implementation at the start of the 2004-05 Parliamentary year.”

I have not suggested what numbers there might be in the bureau or what the arrangements might be. I am simply suggesting that the bureau should perhaps operate more like a committee, where the members debate the issues and resolve them by consensus where they can and by vote if they cannot. In the context of one member, one vote, the Presiding Officer's vote will count occasionally, his influence will be more significant and his ability to protect or speak for back-bench and other interests will be greater. Whether there is official back-bench representation on the bureau is almost immaterial. There is a possibility that the bureau might meet, discuss and decide an issue without the block vote predetermining every outcome. I throw those ideas out for discussion.

**Mr Macintosh:** Given what I said earlier, you will not be surprised to hear that I do not agree with that recommendation. We have discussed accountability issues to do with representing back benchers, which need to be addressed. From my experience, which is limited because I am not on the bureau, the bureau works relatively effectively with the block vote and the voting representation weighted as it is. It is open to any member to challenge any decision by the bureau. If controversial issues are forced through, which does not happen very often, I assume that we will hear about them, because they come back to the chamber. That is right, because we all get a chance to voice our opinion.

Fiona Hyslop has given us a taste of what it is like to discuss issues in the bureau knowing full well that Opposition parties can be outvoted by the Executive parties. The Presiding Officer does not cast his deciding vote, but there is still pressure on members working on any committee in the Parliament to come to an agreement—that is as it should be. It is useful to underpin that with the fact that behind every person on the bureau is the weight of their party. Therefore, it is useful to confine any disagreement to the bureau where possible. If something cannot be confined to the bureau, it will always come to the Parliament anyway.

I do not see any advantage in one member, one

vote on the bureau. I do not see how it would improve the system or how it would be fair to members of the Parliament to introduce it in the operation of the bureau. I am happy with the lines of accountability to the business managers in the bureau and I am happy that they reflect the voting strengths that they are likely to carry if something was to be contentious and debated in the Parliament.

**The Convener:** I am a bit startled that you think that one member, one vote is unfair, because that is how every committee of the Parliament operates.

**Mr Macintosh:** Each parliamentary committee is drawn up using the d'Hondt principle so that the committees roughly reflect party balance.

**The Convener:** It is proposed that we would “maintain the balance of parties in the Parliament”,

so that there would be an Executive majority on the Parliamentary Bureau.

**Mr Macintosh:** Changing the structure would be a possibility. The bureau would become a different kind of committee.

**The Convener:** It would become a committee in which outcomes would sometimes have to be argued for and defended on their merits.

**Mr Macintosh:** I am sorry, but I missed that point. I thought that there would be four members and that there would be one member, one vote.

12:15

**The Convener:** You might remember that I discounted the idea that any parliamentary body should have an in-built anti-Executive majority.

**Fiona Hyslop:** I am in the Opposition, but I think that it would be inappropriate for the bureau to have an anti-Executive majority. However, a one member, one vote system in which there is consensus and issues are genuinely debated would make more sense.

It should be remembered that the Scottish Parliamentary Corporate Body operates on a one member, one vote basis at the moment. Perhaps people are not aware of some of the major decisions that the corporate body takes. It takes huge decisions, but those decisions are not taken on a party-political basis—they are taken with regard to the best interests of the Parliament. If the bureau should be a vehicle that represents the interests of the Parliament as a whole, business can reasonably be done on a one member, one vote basis, as long as there is not an in-built majority against the Executive in working out who will be Deputy Presiding Officers and the work of back benchers—I would be the last person to argue for that. That would be a more commonsense way of working. Issues could be argued on their merits.

Sometimes it is in the Executive's interests to listen to the Opposition, because we can forewarn it about issues. As a business manager, I sometimes think that I am like a lightning conductor that prevents just everything from being referred to the Parliament every day and every week for debate. If I brought every matter with which I disagree to the Parliament through business motions, business would be curtailed. Part of the purpose of the bureau is to contain business within the bureau.

It is not a case of blocking the Executive's programme. The programme for Government and the legislative programme have been supported and voted on by motions. The bureau cannot work against that, because to do so would be to work against the instructions of the Parliament.

We should examine the matter seriously. The objective is to achieve party balance that does not give non-Executive parties a majority. Giving non-Executive parties a majority is the last thing that would make sense—I say that as a member of the Opposition. We must remember that the Executive must get the business in its outline plan done. Much depends on the individuals who are involved. Some business managers have better relationships with other business managers and can make things happen more easily and smoothly. The situation can sometimes vary.

**Susan Deacon:** It is clear from the discussion that those who have been involved in the bureau are equipped to take part in the discussion in a way in which those of us who have not been involved in it are not.

**The Convener:** That is why the bureau's meetings should be held in public.

**Susan Deacon:** That takes us back to the lack of understanding of the bureau. I have opinions on most things, but I do not feel equipped to jump one way or another on the recommendation on the bureau because I do not know enough about its operation. It would be irresponsible of me as a member of the committee to make recommendations about a substantive part of the operation of a major parliamentary body without knowing enough about it. We have heard evidence about what people perceive to be the bureau's shortcomings but, as we acknowledged earlier, that was born of ignorance that resulted from a lack of transparency, understanding and knowledge about how the bureau functions. The arguments are terribly circular.

Some members of the committee—such as Fiona Hyslop, who is a business manager, and the convener, who is a Deputy Presiding Officer—are in positions to make formal comments in the discussion, but the committee does not have enough insight or enough detailed information to reach a view.

We could perhaps identify what we have heard are, or perceive to be, problems in the operation of the bureau. Again, we might venture to suggest some likely solutions, but committee members are not in a position either to agree or disagree the recommendation.

**Paul Martin:** The way in which the convener set out the one-member, one-vote idea makes it sound attractive; however, sometimes it might be better to go for a more confined or compact group of individuals, especially when we are discussing parliamentary business. If the process is very involved it will require more time. However, I am attracted to what the convener suggested and the way in which he set it out.

We have to continue going back to the real world. The Executive of the day will obviously want a significant say in parliamentary business. We would be naive to believe that a majority Executive would not want to have that weighted score. In some ways, it might be a way of moving the agenda on.

I appreciate what Fiona Hyslop said about getting together and having a consensus. Sometimes that happens but—let us face the fact—even in the existing structure, it does not always happen. Even if the world was objective, I do not think that the consideration of Executive business would quite work out that way. We have discussed the matter already, and it is an area in which there will be political boundaries. I do not have any difficulty with a majority Executive having such a weighted score. It is fundamental to the way in which the Parliament is set up that the majority has every reason to expect that the development of business should be weighted towards its opinion.

Susan Deacon's point was well made. Perhaps I do not understand the bureau as well as other members do, but I do not see what the difficulty is. The Executive of the day should have that weight of opinion behind its voting opportunities. Sometimes we are just going to have to deal with that. However, I am attracted to the one member, one vote idea as set out by the convener.

**The Convener:** The purpose of that is to make it clear that, if there were a seven member bureau in the current Parliament it would consist of three Labour members and one Liberal Democrat against two nationalists and one Conservative. That is the balance on the Procedures Committee.

The reality of most bureau votes is that there would be a 5:2 unionist majority because that is the way that it tends to go. I can say that whereas Fiona Hyslop would be too mannerly to say it.

**Paul Martin:** I qualify that view by saying that there would be difficulties with consensus if there were a larger group. I said I was attracted to the idea, but that I do not see it working.

**Fiona Hyslop:** There is a spectrum and the bureau operates at all points on that spectrum. I have seen the bureau achieve complete consensus. If the bureau were always operated like that and people were open to debate and persuasion, we would not need to go down the route that has been suggested by the convener.

I have also seen the bureau operate at the other end of the spectrum and that is when concerns are raised. What happens if the Executive is not prepared to embrace and engage and be open to persuasion from either back-benchers or other parties? Business then becomes completely what the Executive wants and it would be contrary to the balance of power between the Parliament, the Executive and the people if the Executive refused to change, move or engage. The Executive would be determining all the business of Parliament all the time, which would not be healthy.

We have to find an insurance policy that ensures that an Executive will get its programme through without too much interference and that will assure the Parliament that the Executive will never dominate business to the extent that opposition parties and others have no influence.

**The Convener:** I have some cultural difficulty with saying that a system in which, for example, Fiona Hyslop casts 35 votes and I cast none because, although I have a vote, Alex Johnstone casts it, is democratic. How do you reconcile that with any form of democracy? I think that that is just management and domination and I would far rather that the parties appointed their proportion of people to the bureau and that the people on the committee voted as they saw fit, which is what happens with other committees. At the end of the day, members in committee may vote along party lines, but they are open to argument. If one were to come in and, in effect, slap a great big sheaf of votes on the table before the debate had even begun, that would close down argument.

**Paul Martin:** I have a democratic mandate to represent 56,000 people and I cast a vote on their behalf when I vote in the chamber. I appreciate that that is not the best analogy, but the issue is the same. The business managers in the bureau have been given a mandate. It is a modern system and the weighted system is widely used in Europe. The system is not beyond consideration and, although I appreciate that there might be better ways, I have not heard of any that are more effective.

**The Convener:** The idea that Paul Martin represents the 56,000 people in Springburn is fair enough, because we work in a representative democracy, but whether the bureau should work in the same way is a different matter. The point is that we are capable of creating a form of representation on the bureau that would be

analogous to the form that operates in committees, which we all accept.

**Donald Gorrie:** I agree. Your proposal that there be a seven member bureau that has a 3:2:1:1 split between the main parties would provide the Executive with its majority, as long as its representatives on the bureau were happy. However, if the bureau had a committee atmosphere rather than a club atmosphere and the opposition members put forward a good argument for doing things in a way that the Executive had not suggested, there would be a greater chance that some of the members of the Executive parties might say to the Executive business manager that they thought that the Opposition had a point. That is less likely to happen in a meeting in which four people sit there with a pile of votes in their pockets, which is a much more dirigiste system. What is proposed is helpful and is a reasonable compromise between anarchistic democracy and Stalinism.

**The Convener:** That is maybe a bit heavy. I have an image of Paul Martin as the commissar from Springburn, marching out with snow on his boots to consign Donald Gorrie to the gulag.

We have gone over the issues and we will have to make a decision. However, we will do that next time rather than today. I do not think that there will be any way to resolve the issue other than through a vote, but it may be that, given a week to think about it, we will come up with a better way. It might be that we need simply to build up the second paragraph to ensure that the bureau identifies problems and comes up with solutions.

**Fiona Hyslop:** Do you mean using a weighted system?

**The Convener:** I do not know.

I see that the committee is split on the matter, but I would rather avoid the need to have a vote on it if possible. It would be better if we could agree on a position. I appreciate that some committee members have another meeting to attend soon. I shall quickly identify the other recommendations that I want to make in this section of the report.

12:30

In paragraph 133, I want to add:

"We recommend that a Bureau agenda is published in the Business Bulletin two working days prior to the meeting, with any late items posted on the Parliament's web site."

I want to include that as a basis for discussion. If members do not like it, we can argue about it and take it out later if it is not generally agreed. However, I do not think that that is hugely difficult.

I recommend adding the following sentence to paragraph 134:

"If our recommendations dispensing with the "block vote" (paragraphs x-y above) are implemented, the Presiding Officer's casting vote could be essential, and we recommend that provision for it should be retained in the Standing Orders."

That lives or dies with the substantive decision. We will park it with the others.

I want to replace paragraph 137 with the following:

"We have no proposal for an alternative name for the Parliamentary Bureau, and we recommend that the Bureau itself should consult, and recommend a proposal to our successors in the next Parliament with proposals to rename the Bureau, with appropriate changes to the Standing Orders (Rule 5)."

That reflects the nomenclature debate that we had earlier. Donald Gorrie will appreciate the use of the word nomenclature, in the context of Stalinism. I suggest that we also insert an additional paragraph:

"Finally, we recommend that the Parliamentary Bureau should either produce a brief annual report covering such matters as attendance, number of meetings, and such other statistical material as might be thought helpful, or, at the very least, that a separate section in "Scottish Parliament Statistics" should be created for the Bureau. This would bring it into line with the practice of other Parliamentary bodies, and aid the process of 'demystifying' its procedure and operations."

If we can agree to those changes—excepting the change to paragraph 134, which we will park with the others—we can finish this section and move forward. We will not be able to finalise the report next week. At the current rate of progress, we will be lucky if we manage to complete our first run through the power sharing paper. That will raise issues concerning the timetabling of the rest of the committee's work, but I shall leave that to stick to the wall. We will return to that later to talk about how we might handle that.

**Fiona Hyslop:** We must ensure that we have completed our report by the end of the parliamentary session. We have identified the issues and areas of concern and I would like us to consider whether to hold an additional meeting next week or the week after. We can ask the clerks to check the diaries and find out when we could do that.

**The Convener:** Yes. We will not do that now, however. The clerks will be in touch with members.

**Mr Macintosh:** I agree with all the recommendations and accept that we are going to return to the issue of renaming the bureau. For some people, the word bureau has connotations of a politburo—to continue the references to Stalinism—and the document also discusses the term Scottish Executive. I wonder whether we just need to get used to some terms. I am concerned that we are saying that we do not like the name

Parliamentary Bureau but that we do not have an alternative. That is a bit of a cop-out.

**The Convener:** It is the same cop-out that the legislation produced when it prescribed the terms Executive, bureau, corporate body and Presiding Officer. Those are all descriptions rather than titles, and nobody has ever grasped any of those particular thistles.

I remember a consultation exercise that took place some years ago for the rebranding of the Scottish Office, which came up with the idea that the Scottish Office should be known as "The Scottish Office". It might be that we conclude, at the end of the report, that there is no alternative to the word "bureau". However, it sounds sinister and its meaning is not transparent to people outside the Parliament. There might not be a better term, but I am arguing simply that we should consider whether there is. Do you have a specific proposal?

**Mr Macintosh:** No—my problem is not with the name; rather, I think that we need to demystify the bureau. The name is not sinister, but the problem is that it is not transparent. I have problems with the terminology. Susan Deacon mentioned the use of terms such as "evidence" and "witness", which are court terms rather than parliamentary terms. The Parliamentary Bureau is a functional body, and the fact that people might not be familiar with its name does not bother me. I do not think that the name gets in the way of what it does.

**The Convener:** I will adjourn the meeting at that point. I thank members for their attendance and contributions. We will pick up where we left off next week.

*Meeting closed at 12:34.*

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