# PROCEDURES COMMITTEE

Tuesday 10 December 2002
(*Morning*)

Session 1

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## Tuesday 10 December 2002



## PROCEDURES COMMITTEE
**18th 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 10 December 2002*

(*Morning*)

[THE CONVENER *opened the meeting at 09:02*]

## Consultative Steering Group Inquiry Report

**The Convener (Mr Murray Tosh):** Richard Lochhead, who is the substitute for Gil Paterson—from whom I have received apologies—has arrived so we are quorate. We have a lot of ground to cover, so we will get under way.

Welcome to the 18th meeting of the Procedures Committee, which is our penultimate meeting in 2002. We resume our consideration of the consultative steering group inquiry draft report. We have reached paragraph 138 of annexe A, which is the section on the Scottish Parliamentary Corporate Body. As on previous occasions, we will go through the clerk's draft report and add my tentative recommendations, which are subject to final ratification by the committee.

The first section on the SPCB is largely descriptive of its work and track record. I do not plan to make changes until after paragraph 149, at which point I propose that we insert four paragraphs, as follows:

"Firstly, we note that the SPCB publishes its minutes regularly, and we recommend that it should publish its agendas."

That was something that came up during the course of evidence taking. It was felt that that recommendation would give members a better track on what was happening. The second paragraph would be as follows:

"Secondly, we accept that the internal resourcing of the Parliament does not attract much attention, with notable exceptions, from the media or the public. However, we do think that it is important that the public is given the opportunity to understand the issues dealt with routinely by the SPCB, and which affect every aspect of the daily life of the Parliament. The development of such an interest is arguably as much an indication of taking a 'stake' in the Parliament as interest in Scotland's political business. We consider that openness on the SPCB's part, and an effort to raise the profile of its work, will strengthen the outreach effort of the Parliament generally. We therefore recommend that the SPCB should ordinarily hold its meetings in public."

Although that is the key paragraph, I will go over the other two paragraphs at this point. They state:

"Thirdly, we agree that, where discussions centre on individual MSPs and staff, or genuinely commercially confidential matters (where serious commercial damage would result to a person or company from publication) these should remain private. However, we have concerns that the criterion 'where an issue is ongoing' - which we interpreted to mean policy development - could be overly restrictive, and could exclude from debates on policy and resource issues people who have an interest in the outcomes. We recommend that this criterion should not be applied routinely, but only in cases where ongoing issues merit being debated in private under other criteria.

Fourthly, we recommend the maximum degree of publication of SPCB papers - consistent with the criteria immediately above - in order to be consistent with the Parliament's principles."

The cumulative effect of those recommendations would be to broaden public access to the SPCB beyond publication of SPCB minutes. The recommendations include publication of papers for meetings and that meetings should be held in public, unless the SPCB is to discuss commercially confidential matters. I throw the matter open to discussion. Richard Lochhead is free to contribute, although I appreciate that he does not have the background to the item under discussion.

**Richard Lochhead (North-East Scotland) (SNP):** I have no objection to the recommendations. The additions seem to be fair enough.

**Paul Martin (Glasgow Springburn) (Lab):** As I have said previously, I have some difficulties with SPCB meetings' being held in public. It is important for the Parliament to be open to the public in respect of its legislative work and policy development, but I do not see any evidence to support the SPCB's role as a legislative or policy development body, which would require it to meet in public. On that ground, I do not believe that we should ensure that SPCB meetings are held in public. There is an issue about public awareness of the SPCB, but I do not believe that holding its meetings in public would meet that requirement. If the Parliament was to set the precedent of holding SPCB meetings in public, that could lead to a number of other areas of the Parliament's work being held in public. I am thinking of meetings between the Executive and civil servants to discuss parliamentary business.

I repeat that I have difficulties with the recommendation because of the precedent that it would set. I appreciate that the SPCB plays an important part in making decisions about business in the Parliament, but I do not see that there is a requirement for public access to those meetings.

**The Convener:** Okay. Because we will not today reach an agreed position on the issue, we will hold over that recommendation until our last meeting.

The next change that I propose is to add a paragraph after paragraph 150. I suggest that we add:

"We recommend therefore that the SPCB should consider whether the broad extent of SPCB responsibilities and the current number of SPCB posts is in the correct balance. We suggest that a modest increase in the size of the SPCB might allow the members to exercise a stronger role in the development of SPCB policy and the monitoring of the work of the SPCB's Directorates."

The thinking is not that the role of SPCB members should necessarily be reorganised—although there has been public discussion about that—but that, if the body was slightly larger, it would be possible to give members a range of specific responsibilities, including carrying various portfolios, if that is the way in which the SPCB decides to go. Do members have any thoughts on that?

**Mr Kenneth Macintosh (Eastwood) (Lab):** I apologise for my late arrival.

I am not sure that the SPCB appealed for an expansion so, in the absence of such an appeal, why should we recommend an expansion? Although we sometimes say that there are no domestic committees, the SPCB has established a number of advisory committees, including the Holyrood progress group, the art group for the new Parliament building and a broadcasting group. The SPCB establishes sub-committees, although they tend to have a short life, to be fairly specific and to make recommendations to the SPCB. The facility exists for it to establish committees. I am not against the suggestion, which seems eminently sensible, but I am not sure why we should make it when the SPCB did not ask us to do so.

**The Convener:** I have no recollection of where the suggestion came from. I do not recall whether the SPCB raised the matter.

**Fiona Hyslop (Lothians) (SNP):** I apologise for the train from Glasgow's being late.

**The Convener:** You do not need to apologise for the train service.

**Fiona Hyslop:** I apologise for my being late, in that case.

**The Convener:** Ken Macintosh mentioned the art group. Does the SPCB staff that group or are other members involved, as with the Holyrood progress group?

**Mr Macintosh:** The art group involves other MSPs—Jamie Stone, Mike Russell and me—but the majority of members of the group are non-MSPs. I should know this, but I am not sure whether the Holyrood progress group or the SPCB set up the art group. However, that group recommends ultimately to the SPCB, which has the authority. The group considers, and makes recommendations on, artwork for the new Parliament building.

We have agreed on the section up to paragraph 150 and I do not want to go over old ground, but my approach to that section was to be not overly prescriptive and, given that the SPCB is undergoing a review of governance, to urge the SPCB to accept in principle our approach—which is based on openness, transparency and accountability—and to report to the Parliament on the recommendations of the review. A similar approach might be in order in relation to the expansion of the SPCB. If the SPCB needs more help and more members, I am not against that, but the proposal should come from the SPCB.

**The Convener:** It is helpful to put the issue into the context of the overall approach. Mr Macintosh's suggestion will allow us to produce an amended text that might command more general—possibly unanimous—support. If members agree, we will leave everything in that section and consider the matter further in the light of the final outcome.

The next section of the report is on the conveners group. I have three suggestions, the first of which is to amend paragraph 157 to read:

"We recommend that the CG should publish its agendas in advance of meetings; CG papers should normally be publicly available, unless dealing with matters which are genuinely confidential; and that meetings should ordinarily be open to the public, the media and MSPs. We suggest further that MSPs should, with the agreement of the chairman, be able to participate (but not vote); that no Official Report of any public meeting is necessary, but that a clerk's note should continue to be drawn up of CG decisions taken and published. Finally, we suggest that the CG should publish an Annual Report."

I suggest that we add to the existing text of paragraph 158:

"As noted elsewhere, the Prime Minister has agreed to appear twice yearly before the Liaison Committee to answer questions on the Government's programme and policies. The first session was held on 16 July 2002 and was well received inside and outside Parliament as an extension to Parliamentary scrutiny of the Government."

09:15

That feeds into a suggested new paragraph after 158, which would read:

"We suggest that the occasion of the CG being constituted in the Standing Orders provides an opportunity to reconsider whether similar arrangements might be made in Scotland, with the First Minister meeting the CG periodically in public to answer questions on the Executive programme and other matters of public interest on the lines adopted already between the Prime Minister and the Liaison Committee at Westminster. We recommend that the Scottish Executive should review the position it took when this committee raised this matter with the then Minister for the Parliament on 30 October 2001, and should bring forward proposals for regular question sessions between the CG and the First Minister."

The committee will remember that we discussed that idea with Mr McCabe. At the time, he was not immediately inclined to accept it, but the world has moved on and we have had the example of the exercise at Westminster. The suggestion is that

we should raise again the question of whether it would be appropriate for us to proceed in that way. I throw those suggestions out for discussion.

**Mr Macintosh:** I concur with the principle behind the recommendations of openness in publishing agendas and minutes of meetings. I am not, however, sure how that fits with what we have just agreed in formally constituting the conveners group. I might be wrong, but I thought that many of the measures would already be in place. Again, as with some of the other suggestions in the report, I am slightly concerned that we are taking a prescriptive line in saying how the conveners group should be organised and that it should publicise its meetings, which represents a fair amount of specific detail. I am not sure whether some of those recommendations are how things are currently done. If they are not, I would like to discuss with the conveners group why not, in order to involve the group in any changes to how it functions and to discuss the arguments for and against the recommendations.

**The Convener:** I do not think that any of the suggestions are included in the recommendations for changes to standing orders.

**Mr Macintosh:** The conveners group did not previously have formal status. As the committee knows, I had some concerns about the conveners group and how it was formalised. It is now a part of Scottish parliamentary institutions, so I agree that it should follow the principle of being open about its business. As I said, I am slightly concerned about being so specific in the report about how the conveners group should go about following those principles. I have other concerns about the Liaison Committee.

**The Convener:** We should perhaps first discuss the conveners group and speak about its parallel with the Liaison Committee as a separate item.

The conveners group has been an informal body and informal bodies can discuss their business formally if they want to, but they have an informal role in the workings of the Parliament. At the conveners group's request, we have agreed that the group should be written into the formal processes and procedures of the Parliament, which will change the level of expectation about its work.

The conveners group's decisions impact on Parliamentary Bureau business and it seems to be consistent and logical that all parliamentary bodies should function in a similar way. To that extent, what we say about the conveners group might well be contingent on what we say about the workings of the bureau and the SPCB. However, we have to expect that the conveners group will be reported, accounted for and accountable in a way that it is not and has not hitherto been.

**Fiona Hyslop:** The conveners group now exists under standing orders—the committee agreed the proposals. I do not think that what we are suggesting is particularly earth shattering. The conveners group has more power so it must have more responsibility. It will have power because it will exist in standing orders and the quid pro quo for that is that it must be more accountable.

The report says that meetings should be open to the public, but there might be occasions when the group does not want that. The suggested wording protects the group should it want to continue to meet in private.

That the new wording says that there is to be no *Official Report* but only agendas and a clerk's note at the end of meetings is overly prescriptive. Also, if the conveners group is to have the power to question the First Minister, it will have to be more open in conducting its general business. That is the quid pro quo for having power and responsibility.

It is right that the text that is to be inserted after paragraph 158 says that the Scottish Executive should "review the position". We cannot say to the First Minister "You must do this", but any First Minister might be quite willing in light of the Prime Minister's experience. We should leave the ball in the Executive's court so that future First Ministers can decide for themselves whether to meet the conveners group in public. The new wording would allow the Executive that freedom to decide.

**The Convener:** As you have broadened out the discussion to include questioning of the First Minister, I have a word to say about that.

In raising that matter with Tom McCabe in the first place, I was thinking that I do not regard the current arrangements for questioning the First Minister to be satisfactory, because First Minister's question time is very ritualistic and stylised, as it is in the House of Commons. It represents an opportunity for people to trot out party-political points and to display mutual aggression. There is often more heat than light generated in the exchanges.

The Liaison Committee's experience was that the Prime Minister was subjected to—perhaps "subjected to" is not quite the right expression—sustained questioning in an entirely thoughtful and constructive manner. All the media coverage, including by television, suggested that the Prime Minister responded similarly. That committee experienced at its meetings with the Prime Minister a much more meaningful exchange of views, even if it lacked the theatre and entertainment value of some of the more colourful exchanges in the House of Commons. It therefore created a qualitatively different way of holding the Government to account, which seems to have

added value to the process. To give that responsibility to our conveners group might result in a similar improvement in the quality of scrutiny in the Scottish Parliament.

Since that has happened at Westminster and has worked so well, I am faintly surprised that the First Minister has not raised the issue with us. It is entirely appropriate that we should raise the issue with the Executive.

**Paul Martin:** I agree with the convener's assessment of the Prime Minister's meetings with the Liaison Committee. That approach would deal with many of the issues that have been mentioned and it would add value to the Parliament. The First Minister's role would not focus on that 20-minute session on a Thursday afternoon; rather, it would focus on the Parliament's business, which would be welcome. I suggest that there should be four such meetings a year rather than two.

I have to be consistent on the issue of the conveners group being open to the public. I could change my views slightly. If the First Minister appeared before the conveners group, that would be a matter of public scrutiny. The public would want such a meeting to be held in open session. There is an argument for the conveners group's being open for that purpose, but there is still an issue of public accountability as regards the public's view of that group, because the conveners group does not actually legislate or scrutinise policy; it is merely an administration committee. However, I understand that the Administration Committee at Westminster is open to public scrutiny. Perhaps there are some parallels there, but rather than the Scottish Parliament moving ahead of Westminster, Westminster has moved ahead of us. The Convener also made that point.

**The Convener:** It really quite annoyed me at the time that Westminster had moved ahead of us. We should always be setting the trend.

**Paul Martin:** We should develop the issue about what will be open to the public if we decide that the conveners group, the corporate body and the bureau will be open to the public. If we decide that, we must also consider what other terms of parliamentary business should be open. If we extend that policy, we start to get into areas such as non-elected members of committees and civil servant forums. Would such meetings be held in public?

I appreciate that there are issues about democratic accountability, but there are some quite significant decisions on policy developments that will take place at civil-servant level. The public could also say that they should be in a position to scrutinise. We must decide where we draw the line in respect of parliamentary business being open to the public.

**The Convener:** I was trying to draw the line at formal parliamentary business. There are official meetings and management meetings that take place in the Parliament that bring decisions to the corporate body or the bureau, and on which members take formal decisions. It is at the formal decision-making level that we need to consider the level of transparency and accountability. I would not have thought that collegiate meetings of parliamentary directors, for example, would be challengeable as meetings that should take place in public any more than would party political group meetings. I do not regard those meetings as part of the formal business of the Parliament, although decisions that are taken there can have a bearing on decisions that are taken further down the line. Quite a firm line can be drawn there, but I will reflect on that point.

**Mr Macintosh:** This has been a very interesting discussion, because it centres on a crucial theme and on several decisions that will have to be taken—in respect of the report—about the difference between being open to the public and being open and transparent. Having meetings that are open to the public is a very good way of publicising them and getting the message out. However, openness and transparency can be achieved through other methods.

I support the establishment of the CG under standing orders because that committee grew out of practical necessity, but it is probably the parliamentary committee in which the public has least interest. It is a functional committee that exists to help us, as MSPs, and committees in particular to carry out business as straightforwardly as possible. The purpose of the conveners group is not so much to resolve disputes as to prevent them from arising.

I welcome the existence of the conveners group and the fact that it has been enshrined in standing orders because I was concerned, as the group evolved over the last three years, that its operation was not transparent and that it was unaccountable. I still feel that it is unaccountable. Without reference to our convener, in many committees members never get feedback from the convener about the work of the conveners group. I therefore question the group's accountability.

I have concerns about the way in which the conveners group will function and those concerns need to be addressed. The recommendations that the convener has made embody the principles that lie behind my concerns, but they are not recommendations that I agree with. For example, I do not necessarily agree that

"meetings should ordinarily be open to the public".

I agree that meetings should be transparent and that the public should understand what is being

discussed. A note, not necessarily an *Official Report*, should be kept. I agree that MSPs should

"be able to participate (but not vote)",

but there is nothing in the recommendation about accountability. How would the conveners group report back? It is a good idea that it should produce an annual report, but there should be more; for example, there should be a mechanism through which the conveners group reports back to members generally. I am not against any of the recommendations per se, but I think that we should ask the conveners group to go away and think about the matter and come back with suggestions about how it could be made more accountable and transparent.

09:30

I take the same approach to the question whether the CG should be the body to put questions to the First Minister. I agree with the convener that there are serious and fundamental problems with First Minister's question time, which is totally copied from Westminster and fails for the same reasons as Prime Minister's question time at Westminster fails. In fact, First Minister's question time is worse, because it is a pale imitation. I find that doubly embarrassing as a reflection on our Parliament. It does not reflect properly the work that we do and is a piece of political theatre; it is a copy of somebody else's theatre, so it is not even original theatre.

We need to explore new ways of holding the First Minister and the Executive to account, but I am not sure why we should give the conveners group that role. Is it in order to preserve the dignity of the First Minister, who does not want to lower himself to talk to normal back benchers, or is it in order to elevate the status of the conveners group? I am not suggesting that either of those reasons is the convener's motivation.

The Liaison Committee at Westminster was given a similar role, but that is a Westminster solution to a Westminster problem and I do not think that we should copy Westminster on this. There is difficulty in relation to the role of the Prime Minister and his relationship with the House of Commons. We have no such difficulty; the First Minister is far more accessible and I do not think for one second that we should suggest that only conveners should be allowed to question the First Minister. I value my right to question the First Minister on any occasion, but as matters stand, every week members are concerned that the leaders of the main parties dominate First Minister's questions.

To go down the route of giving the conveners group the role of putting questions to the First Minister would almost enshrine the principle that the First Minister is open to questioning only from members who have a certain status. I do not feel that the conveners group is accountable to members in any way; it is accountable only to the members who are on it. Therefore the idea that we should give the group the job of questioning the First Minister is totally against my understanding of how questioning the First Minister should work.

Although I have said all that, I am not totally against the idea; I am just not ready for it now. The conveners group has recently been enshrined in the standing orders. We should wait to see how it becomes established and more accountable in time. We need to reform the system of questioning the First Minister; having the conveners group put questions to the First Minister might be the solution, but I have my doubts. It is certainly not my preferred solution.

**Fiona Hyslop:** The wording of the recommendation is that the conveners group should meet in public "ordinarily", but it does not have to meet in public. We are allowing the group to decide what it does. That should satisfy Ken Macintosh's concerns on that score.

I can see where Ken Macintosh is coming from in his comments on the conveners group. Perhaps we should add that it is incumbent on the conveners to build accountability to their committees and processes that involve them. Conveners would question the First Minister, but I would expect them to have a session with the committee beforehand to discuss what members would like them to ask and what the burning issues were for the committee.

Committees—rather than individuals from individual parties—should question the First Minister. Conveners would ask questions on behalf of their committees. That would help to build in the accountability that Ken Macintosh is looking for. He is right about the problem, which is an internal housekeeping matter. From what he says, it appears that some conveners do not report back to their committees. That might change, but the point is that the First Minister is accountable to Parliament and the conveners are an important part of the process.

Conveners would ask questions on behalf of their committees and canvass views from their committees about the burning issues that need to be taken up with the First Minister. If concerns are being expressed, we should pilot that system and see how it goes. That might go some way towards providing comfort that the system is not set in stone.

**The Convener:** On Ken Macintosh's other point, I do not know whether the First Minister is more liable to be held to account by back benchers than the Prime Minister is at Westminster. The exception is that, as we have 129 members, back

benchers here might on average have a chance to ask a supplementary question slightly more often than back benchers at the House of Commons, which has 650 members. However, essentially, the time slot and the formula are the same.

We should not necessarily say that because Westminster does something, it is automatically wrong. The view there was that the format of Prime Minister's question time allowed no sustained questioning and that it is prone to theatricality—the showboating and the drama queens of Westminster, if that is not a sexist and politically incorrect expression to use.

The attraction of the Liaison Committee at Westminster was that it gave every committee a representative, so broadly every topic on which Parliament organised its business would be part of the questioning. Rather than automatically selecting the convener, a substitute might be sent. Ken Macintosh could go in my place for the questioning, if he really wanted to. The proposal is a way of gathering a representative body of people who will ask questions across the broad range of relevant matters and will construct a continuing dialogue with the First Minister in a way that no existing procedure permits.

The proposal is not an attempt to exclude back benchers from having status or involvement in questioning the First Minister and it does not seek to preserve the question time formula in aspic. I would like to reform question time, but I see no way to do that. If people have ideas about that, we will consider them while we do our other piece of work, for which I hope that we will have some time after the Christmas recess.

The idea stands on its own and affects no other aspect of scrutiny or accountability. It would be a significant improvement on the present system. It would make the First Minister broadly answerable to a representative group of people. In the Parliament's life, many people have been committee conveners. I do not know whether that will happen more or less in future. There is nothing inherently elitist in being a committee convener, of which there have been many.

**Paul Martin:** I disagree slightly with Ken Macintosh, who said that he had not ruled the proposal out or in. I would rule it in, because the conveners group would be representative of committee structures and would provide an opportunity to focus on discussions with the First Minister. However, the Parliament would have difficulty in corresponding with the First Minister. If someone writes to the First Minister, the letter is referred to the relevant minister nine times out of 10. Sometimes, people want a response from the First Minister.

The question time issue is about the real world. What do we want? Whatever question time format is developed, the leaders of the main Opposition parties will want to question the First Minister, so that show time will never leave the Parliament. Back benchers will also have the opportunity to ask questions.

We can criticise the current system and say that it is far too much like Westminster, but can we provide an alternative? That is the dilemma that the Presiding Officer faces when people criticise the system and say that it is far too much like Westminster. I cannot think of a model in which the Opposition parties would say, "We will just leave our contribution to First Minister's question time. We are not really bothered about it and we will leave back benchers such as Paul Martin, Ken Macintosh and Richard Lochhead to go ahead and question the First Minister." That will not happen. There will be a show time. Parliament will have First Minister's show time. The issue is the other ways in which we can scrutinise the First Minister. The conveners group is one of them, but there may be other opportunities. There could be put-it-to-the-First-Minister sessions, which would be an Americanised opportunity to ask questions, along the lines of what happens in Congress. Such an opportunity to ask the First Minister questions would be welcomed. Members should ask questions in a non-party-political manner.

We are sometimes accused of being party political at First Minister's question time, but I think that we should give most back benchers credit as they do not always give the First Minister a particularly easy time. Practice has developed over the past couple of years. I hear very few questions at First Minister's questions time that are of a party-political nature. Back benchers raise issues that exist in their constituencies. Some exchanges have been robust, even those involving members of the same party as the First Minister, and the First Minister has welcomed that.

We are critical of the current system, but the question is what alternative we could provide. We will always face that challenge. Whatever system we develop for question time will be criticised. That is part of the game that we are involved in.

**The Convener:** Those are wise words from Paul Martin.

The other point that I will make about the accessibility of the First Minister is that, like the Prime Minister at Westminster, he does not appear in front of committees. I do not think that that is written down formally, but it is not done. That is understandable, because if the First Minister was expected to appear in front of committees, every committee would want to talk to the First Minister. The First Minister would be run ragged, essentially doing the job of the other Cabinet ministers. That would be an unrealistic

demand. The idea that he appears in front of a group that is representative of committees is a perfectly sound one. Logic says that that group should comprise the conveners of the committees, but I do not know that I want to be prescriptive. We might want to discuss how we would constitute the group. So long as the group is representative, it is not essential that it has to be the conveners.

**Mr Macintosh:** I am not hostile to the idea. In fact, I share most of the concerns that the convener, Fiona Hyslop and Paul Martin have expressed. I agree with almost everything that they are saying, apart from the way in which their ideas are translated into recommendations. My concern is not so much about asking conveners, as representatives of the Parliament, to put questions to the First Minister. I have no difficulty with that. I have a difficulty with the conveners group carrying out that function, because although it has been going for some time it has been operating in a manner with which I have not been happy. We should wait to see how it works before asking it to perform this function as well.

If the reporting mechanism that Fiona Hyslop suggested might happen were to happen, I would be quite relaxed about that. It is a good idea. Paragraph 163 states that we will consider First Minister's question time and will report back on the issue. We should defer a decision on whether the recommendation that the First Minister should appear before the conveners group is the solution to the issue. We should have an in-depth look at First Minister's question time and consider in the round how the First Minister is accountable. We might then agree that questioning by the conveners group will be a useful addition to, or variation on, First Minister's questions. I am not ruling the idea out, but I have concerns about it because the conveners group is not up and running. That might be a way of capturing the essence of what we agree, rather than addressing detail on which we might not agree.

09:45

**The Convener:** I am at risk of being shown to be wrong, but I think that our report made a recommendation on the constitution of the conveners group in standing orders that has not fully been put before the Parliament. Only one of the five sets of proposals was put before the Parliament. The recommendation is part of an omnibus motion that I hope will be slotted into business fairly soon to tidy up the many loose ends that exist in respect of changes to the standing orders. I do not think that the conveners group is formally constituted yet and therefore its minutes are not part of the formal business of the Parliament even at this stage, albeit that the essential decisions have been taken. Therefore, perhaps being critical of how the conveners group operates is premature. I would have thought that it might be reasonable to ask for proper and structured reporting back to committees once the minutes have a validity that I do not think that they have yet.

In the light of what Ken Macintosh said about questioning the First Minister, the suggested new paragraph after paragraph 158 could stand with a minor amendment. It states:

"We suggest that the occasion of the CG being constituted in the Standing Orders provides an opportunity … We recommend that the Scottish Executive should review the position".

I think that the only prescriptive words in the paragraph are

"and should bring forward proposals".

We could amend those words to read "and should consider proposals for regular question sessions as part of the broad review of question time and First Minister's question time referred to in paragraph 163 below." If we cross-relate the paragraph in that way, take out the firm conclusion and leave the idea firmly on the agenda, that would satisfy what Ken Macintosh wants.

That would leave us concerned only about what might be called the hard-line message that

"meetings should ordinarily be open to the public, the media and MSPs."

I suggest that we put that paragraph in the draft, but I will undertake to reconsider the wording of that phrase.

Earlier, I said that I am aiming for a consistent approach that will cover all the parliamentary institutions and that will try to bring us to agreement about increasing accountability and openness. I do not think that a majority of members of the committee are in favour of opening up all meetings to the public, so I would be happy to look at the bureau, the SPCB and the conveners group in a consistent way that will try to get us what we want, which is more openness and genuine accountability. I will not push for something that the committee will clearly not agree on.

**Mr Macintosh:** I agree with that approach. The only recommendation to which I would not agree is that

"meetings should ordinarily be open to the public, the media and MSPs."

That should be taken out now and perhaps something should be added.

**The Convener:** I am happy for those words to be taken out. Although the committee might not agree to the form of words that I suggest, I will suggest a form of words in the final session that

will try to address how the bodies might be more open and accountable. I will take a similar approach to the SPCB and the bureau and try to reach a form of words that will satisfy everyone.

**Mr Macintosh:** I am not against the recommendations. The general difficulty that I have lies in the level of detail. There should be consistency. The bodies might want to do such things, but we should want them to consider matters and report back. I do not think that we should tell the CG, the SPCB or the bureau or the other bodies exactly how they should go about their business—that is the difficulty that I have.

We make recommendations, but it sounds as if we are telling those bodies exactly how they should go about their business. They might follow those suggestions, or they might have other suggestions on going about their business. If our report does that for every group, it will give us difficulties. An easier approach—it would also be easier for the committee to agree—might be to recommend that those bodies do more to enshrine in their practice the principles of transparency, openness and accountability, which underpin the recommendations.

**The Convener:** I am not unhappy about placing on the various parliamentary bodies the responsibility to develop better practice on the transparency of their activities and their outcomes. However, we must make suggestions on some matters. For example, it is reasonable to suggest that everybody should publish agendas so that people know what is to be discussed; that minutes are produced to tell people what has been discussed, although they might not include commercially sensitive matters; and that papers that do not deal with commercial or other sensitive issues should be available.

We have discussed the local government analogy before. That is imprecise, but a local authority committee identifies all the matters that are to be discussed, although a personnel committee does not identify individuals who are being discussed. It is made clear which papers are confidential and the culture is generally of openness, unless exempt material is being dealt with, and exemptions are clear.

Our perspective must be similar. We are encouraging maximum openness. In recommending to those parliamentary bodies that they should decide on the level of public access and subsequent reporting, we should expect them to achieve a minimum standard.

**Mr Macintosh:** I am sympathetic to the idea that you want to enshrine. I do not imagine that the conveners group discusses any papers that would be difficult to publish.

**The Convener:** Perhaps some financial details could not be published.

**Mr Macintosh:** I suppose that some confidential matters might be dealt with. However, the recommendation about publishing papers gives undue prominence to the process over the outcome. What matters with the conveners group and most parliamentary committees is what they agree on and decide consensually or non-consensually and how that affects the people of Scotland. I agree that we should aid people's understanding of that, but we often focus unduly on the process and on any difficulties that we have in agreeing about subjects.

If the proposed recommendation were made, groups' disagreements rather than their agreements would be examined. We should enshrine principles that get away from that. We can have transparency and openness without necessarily encouraging undue publicity about dispute. The level of detail into which we go errs on the wrong side. If we are to be genuine and consistent across all the committees, we should return to principles rather than dealing with practice.

**The Convener:** If the key element is making transparent the reasons for decisions, the proposed text lacks that. We do not specify that. I am happy to remove and reconsider the phrase about ordinarily meeting in public, but nothing that surrounds it is particularly prescriptive, detailed or significant.

**Fiona Hyslop:** I suggest that it is not very important and there are other things that we should move on to.

**The Convener:** Indeed.

**Mr Macintosh:** I agree but we are trying to agree on an approach that we can take to the whole report. A fundamental problem with the report at the moment is the level of detail that we go into compared with the principles that we are considering. It is a difficult balance. We have an enormously detailed report although in fact we are considering principles. I am not sure that we are always getting the balance right. This is a good example of that. It might not be the best example, but there are several such examples.

As I said at the beginning, I do not have much of a problem with the conveners group following the recommendations through. However, it is not our job at this stage to be making hard-and-fast recommendations. We should be asking the conveners group to adopt the principles of transparency, openness and accountability and to come back with suggestions as to how it is going to do that.

We should also be flagging up the difficulties that we have had with our current approach in the past rather than being so specific and having a huge debate. We have not even spoken to the

conveners group about the matter, so I think that we are taking a rather unfair approach.

**The Convener:** We had a fairly full paper from the conveners group on committee privacy, so there has been an exchange of views.

**Paul Martin:** As a new member of the Procedures Committee I have come to this late. Can you clarify that what we recommend will have to be adopted by the Parliament?

**The Convener:** Yes. If the report is debated in Parliament—and at the moment it is not likely that it will be debated before the election—it would be on a take-note basis. It would then be a matter for the committee to make further specific recommendations for appropriate changes to standing orders. It would also be a matter for the committee to discuss working practices with various bodies within the Parliament and to influence rather than prescribe.

**Paul Martin:** Would there be an opportunity for the conveners group to interrogate us on some of the issues that we have raised?

**The Convener:** Sure.

**Mr Macintosh:** But the point is that the committee wants to make unanimous recommendations. The committee's report will carry far greater weight if we all agree. Given that we agree on the principles, it is just the detail that is left. I do not see the difficulty. It is not so much to the conveners group as to the other groups that we might want to apply the recommended practices. Let us take the line

"CG papers should normally be publicly available, unless dealing with matters which are genuinely confidential".

Why "genuinely" confidential? What is the difference? It should just say "confidential". Of course, then you have to decide what matters are confidential. What criteria do you use? It is not clear.

Everything to do with the Parliament should be open and understandable to the public. However, the conveners group is not a policy committee. It impacts on the way in which we go about our business in Parliament, but it has very little direct impact on policy formation. I do not think that the level of detail in the report is necessary for the conveners group. The group has evolved out of practical necessity and I think that the rules and processes should reflect that.

**The Convener:** Okay. We will not put the paragraph in the report at this stage. I will consider amended texts for the final session and we will try to agree on it. If we cannot agree, the committee will break with all precedent and have a vote.

The next section of the report is on the Presiding Officer. Is there a heading missing?

**Mr Macintosh:** There is a heading at paragraph 159.

**The Convener:** Yes, but the report goes straight on to discuss the name of the Executive. I am advised that that issue has arisen from the Presiding Officer's observations. The Presiding Officer's evidence took us over the issue of First Minister's question time. We discussed that when we discussed paragraph 162.

In paragraph 164 we say that the Presiding Officer raised the concept of the Scottish Executive being the Scottish Government. The following paragraphs developed that point. I was going to suggest a change after paragraph 176, which states:

"Any changes to the names of institutions would require a change to the Scotland Act 1998."

I propose to add:

"This need not however prevent the Parliament itself from taking a view, and we recommend that the Scottish Executive should research this matter carefully, and report to the Parliament on how to re-name itself in a manner which will clarify the differences between it and the Parliament, the Scottish Administration—

by which I mean the civil service—

and the UK Government."

I got a bit lost there, but that point arose in relation to the Presiding Officer's evidence. I have not been prescriptive and I have not made any suggestions, but I have flagged the matter up as an issue that arose consistently throughout our evidence-taking sessions.

10:00

**Richard Lochhead:** I have to race off to the Public Petitions Committee for 15 minutes, but I will be back. Before I go, I want to say that I welcome the recommendation and I welcome the comments that have been made. It is ludicrous that, although the Parliament deals with the bread-and-butter issues that affect people's lives, the Executive is not called a Government. The issue is raised time and again by constituents of members of all the parties. It is a matter of credibility, because if the Scottish Executive is not a Government, what is it?

The question why the Executive is called that is merely semantics, to which ordinary people cannot relate. It would be in the interests of the new Parliament, our new Government and the new democracy for the Executive to have a credible name. People in the street see the term Executive as some sort of meaningless bureaucratic term to which they cannot relate. The Parliament is an institution that is elected by the people of Scotland and which deals with bread-and-butter, day-to-day issues. That is an important issue to raise in the

report, and for that reason the recommendation is sensible.

**The Convener:** We are not recommending that the Scottish Executive be called the Government; we are not recommending anything specific. The recommendation is that the Executive should research the matter and make proposals.

**Richard Lochhead:** I acknowledge that that is in the interests of consensus, which is why I think that it is a good recommendation. I will be back in 15 minutes.

**The Convener:** Tear him to bits now that he is away.

**Mr Macintosh:** You might think that I got out of the wrong side of bed this morning, convener, because my normal consensual manner has departed in the approach that I am taking, but I am discussing this in a constructive spirit.

I start from paragraph 159 onwards. I agree with the paragraphs, but they are what I would describe as a bit sooky. When I read them, I thought that they were a bit cloying. Much as I think that Sir David's contribution was one of the better contributions that we had and that it was very thoughtful, I thought that we had perhaps overelaborated. I agree whole-heartedly with the points in the paragraphs up to paragraph 162. Is the clerk looking for a new job?

**John Patterson (Clerk):** No comment.

**Mr Macintosh:** I disagree with the wording of paragraph 165. Members of the committee take different views on the subject that it covers. Richard Lochhead said that constituents raise the matter, but I am absolutely amazed to hear that. I have never had anybody come to me and say, "I think you should be called the Scottish Government." That is so not a matter raised by constituents. I agree that there are issues of misunderstanding, which were raised in evidence to the committee, but the idea that constituents are concerned about the matter is totally outwith my experience.

Paragraph 165 is worded:

"It is a matter of record that, of the issues … amongst the most common was confusion".

I totally disagree. That was not the most common issue. Many issues were raised in the inquiry, but that one was not the most common, and to say so as a matter of record—

**The Convener:** It does not say that it was the most common; it says that it was "amongst the most common".

**Mr Macintosh:** We should amend the wording to reflect the importance of the issue and the people who raised it. We should say that the matter was raised with the committee, and we could even say that it was raised by a number of people, but it is not "a matter of record" that the issue was "amongst the most common", because that gives the matter a status that is out of proportion to its importance.

**The Convener:** But it was.

**Mr Macintosh:** I disagree. I do not think that it was among the most common issues that were raised. I would like to see exactly how many times it was raised compared with other issues, because I do not recollect that it was the most common issue.

**The Convener:** It was raised every week.

**Mr Macintosh:** It was raised by some people a lot. The way that paragraph 165 is worded makes it sound like it is beyond dispute that the matter is one that everybody wants to be addressed. That is not true. I do not necessarily feel that the matter is that important.

The paragraph continues:

"Few of those who wrote in … felt the distinction was understood, either on the part of the respondent themselves or, in their view, on the part of others".

That is a strange thing to say. I do not see why we mention that the people who gave evidence reported the views of others, because their own views are sufficient.

The paragraph also states that "MORI Scotland confirmed". Opinion polls do not confirm things. They might support them or make suggestions, but they do not confirm things, because they are just opinion polls. That is a semantic point, but I do not like the use of language. I just do not like the use of language in paragraph 165 all together.

Paragraph 167 states:

"we consider that titles are in fact important".

Titles can aid or hinder understanding, but the paragraph is written as if their importance is a matter of fact. I do not think that that is a matter of fact; it is a matter of argument and of people's point of view.

Paragraph 173 states:

"The evidence suggests … that clarifying titles is rather important".

Clarifying function may be important, as is creating understanding. The paragraph continues:

"It is essential that any block to basic understanding … is overcome as a matter of priority".

I do not think that titles are necessarily a block to understanding. The paragraph also uses the term "real barrier". All the language is far too strong compared with the importance of the issue.

Having said all that, I think that the recommendation that Murray Tosh has come up with is sensible. The only dispute I have is with the suggested addition to paragraph 176, and specifically with the use of the word "how", which I would change to "whether". In other words, I would rewrite the paragraph to state, "This need not prevent the Parliament from taking a view. We recommend that the Scottish Executive should research this matter carefully, and report to the Parliament on whether it would be helpful to clarify differences by renaming itself."

**The Convener:** Can we say "whether or how"?

**Fiona Hyslop:** Yes.

**Mr Macintosh:** Yes, that would be fine.

**The Convener:** We can agree the recommendation. If Ken Macintosh feels that paragraphs 165, 167 and 173 are a bit loaded, he might want to come up with draft alternatives for us to consider. If we agree to the recommendation, let us not get too exercised about the build-up. I am bound to say that I think that the matter came up a lot. I am conscious of people constantly confusing the roles of the Parliament and the Executive. The press do it all the time. The people who write to us do it all the time. We read letters in the papers that do it all the time. People who speak to us do it all the time. I think that there is a lot of confusion. I dare say that constituents have not raised their concerns with you, but I bet that there are constituents who have raised something with you thinking that you are the Scottish Executive or who do not relate your title to your function. I find that endemic. I do not see any easy answers. I am not even sure that sorting out the labels will resolve the matter, but there is considerable confusion, and it is in everyone's interest to try to sort it out.

**Paul Martin:** If I had been asked the question two years ago, I would have said that it was a serious issue, but I am picking up the fact that local people are starting to identify the Scottish Executive more now than they ever have, although there are still difficulties. Perhaps I got out of the other side of bed from Ken, but I disagree with what he said.

When people on the street are asked now what the Scottish Executive is, they might say that it has something to do with the Scottish Parliament, but they would not identify it with the Scottish Government. Any attempt at rebranding—if I may put it that way—could face problems and might simply add to the confusion. The Parliament must be allowed the same opportunity to evolve as the Westminster Parliament has had over hundreds of years. We have been born under the Westminster Parliament, but there will now be generations who will not be born into that sort of constitution. Like any other brand, the Scottish Executive will take time to develop.

We have been far too caught up in wanting people to identify immediately with the Scottish Parliament and with the Scottish Executive, although I must admit that the term "Scottish Executive" is unfortunate. Someone—I cannot remember who—said that it sounds like a British Airways airport lounge for executives. People out there do not identify with the term. I do not know whether it is perhaps too late to consider rebranding, because then we would face further difficulties with identity, but I would like to see the Executive rebranded. Certainly, when we talk to people in our constituencies, we must talk about the Scottish Parliament if we are to be sure that people identify with what we are talking about.

Things have improved. Recently, I have found organisations and local groups referring to the Scottish Executive more often. We will need to have patience until people eventually catch up with the difference between the role of the Scottish Parliament and the role of the Scottish Executive. Understanding will build up over time. For example, the education curriculum will help young people to develop an understanding and, over time, that will catch on. For future generations, this will be an issue of the past. If we were to rebrand, that would mean starting all over again, so I think that we will simply need to be realistic.

**The Convener:** The committee is very patient.

**Fiona Hyslop:** I declare an interest: I was a brand development manager before being elected.

We perhaps need to remind ourselves why we are considering the matter. It is difficult for people to have a sense of power sharing if they do not know who they are sharing power with. People need to know who the Executive is, who the Parliament is and how they are represented. How can people hold bodies to account if they do not know whom they are holding to account?

At a previous meeting that Ken Macintosh was unable to attend, I volunteered to draft a paragraph—which I must remember to do—to highlight the fact that one problem is the confusion between the civil service and the Scottish Executive. I certainly agreed that the name theme came up regularly.

One thing that came across quite strongly at our Ullapool meeting was that such experience as people had of the Scottish Executive tended to be of the civil servants rather than of the politicians. We must consider how we include that issue in our recommendations because it is common sense that people need to be able to differentiate not only between the Parliament and the Government but between the Government and the civil service. At the meeting, I agreed to word something to say

that, although the name for the civil service was not a prime focus at the outset of our consideration, it became apparent during the course of our inquiry that people were confused about the ways in which politicians and civil servants are accountable.

I think that the wise recommendation that Murray Tosh has put together will encompass everyone's perspective. Paul Martin may be right about our perhaps not having the time or opportunity to move things forward, but my former experience of branding tells me that, where there is a will, there is a way.

**The Convener:** I propose to do nothing about the sooky paragraphs at the beginning—they can be a little memorial to the clerks—although I am sure that the committee would be receptive to any suggestions on how we might reword them to make them less sooky. That would allow us to move on to the next substantive issue, which is the frustration that the Presiding Officer expressed about the aspects of our rules and procedures that are covered by the Scotland Act 1998, such as whether anyone other than members can take part in committees—an issue to which we must still return—and the election of four members to the Scottish Parliamentary Corporate Body.

10:15

I propose to delete paragraphs 180 and 181 and to insert two new paragraphs. The first would read:

"At present, it is only possible to change the Scotland Act by approaching the Westminster Parliament on each separate occasion some small change appears to the Parliament to be required. We suggest that this approach is not an efficient way to proceed, and that there may be reluctance at Westminster to find time to promote amendments to the Scotland Act 1998 on such a piecemeal basis."

The substantive recommendation would be:

"We believe that the time is ripe for the Parliament to take full control of its own proceedings, and we recommend that the Scottish Executive should invite the U.K. Government to promote amendments to the Scotland Act 1998 to ensure that objective."

I make it absolutely clear that I am not suggesting that the Scotland Act 1998 should be devolved to the Parliament. It is a piece of United Kingdom legislation that defines our basic institutions, our powers, responsibilities and electoral system. The recommendation is intended to allow the Parliament to make procedural amendments. That would bring within our sphere the ability to make the type of minor changes that crop up regularly. I refer to areas in which we find the Scotland Act 1998 to be inflexible and in which we cannot make changes but can proceed only by means of primary legislation at Westminster, which Westminster might be reluctant to embrace, for a variety of reasons.

Rather than run to the Westminster Parliament and ask it to amend piecemeal the Scotland Act 1998 every time we have a little difficulty—we have not done that so far; we have just lived with the rigidities—we would try to promote a general principle that we invite the Executive to consider how we might make minor procedural amendments to free up the Parliament's rules and procedures and bring them under our control. How that would be done would be a matter for the Executive.

I throw that open to discussion. What side of the bed did Ken Macintosh get out of on the matter?

**Mr Macintosh:** The right one—as I did for other contributions.

I agree with the suggested amendments. I also welcome the clarification that you have just offered. I am sure that those who drafted the Scotland Act 1998 intended to put in place a system that assured the efficient administration of the Parliament, but a couple of sections of the act have proved to be obstacles rather than to be helpful, as they were originally intended to be. We must emphasise that we are not trying to extend the Parliament's powers under the Scotland Act 1998 but are trying to take control of our procedures. That is a good idea. I cannot imagine that Westminster would wish to try to tell us how to go about our business.

**The Convener:** I am sure that it does not.

Do we agree to put those paragraphs into the report?

**Members** *indicated agreement*.

**The Convener:** That takes us on to the section on back benchers. I have suggested quite a few changes to that section.

Paragraph 188 states:

"The importance of recognising and defending the interests of backbenchers institutionally has been recognised earlier."

I had suggested that we replace that with:

"The importance of recognising and defending the interests of backbenchers institutionally has been recognised earlier by our proposal that the Bureau's membership should include backbench representation, to allow backbench perspectives to be given directly on all aspects of Bureau business."

We did not agree to do that, so I will not pursue the suggested amendment in its present form—at least not today. I have not thought about what action I will take. At the previous meeting, I raised the issue of back-bench representation on the bureau for the purposes of debate and discussion and I would like to consider the *Official Report* of that meeting, which was in members' mail this morning. I am not clear whether I will pursue

anything or whether I will produce an amended version of the original recommendations. I do not propose the amendment at the moment, but I might produce another one that is in the same line of country as the present amendment.

The difficulty is that my decision impacts on some of the later proposed texts. After making the point that back-bench concerns and views should be articulated more clearly, I intended to propose the following addition to paragraph 189:

"We suggest that a structure could be created to facilitate the articulation of backbench concerns and views in the Parliament."

I intended that to feed into a new paragraph, which states:

"We consider that there could be benefits to the Parliament as a whole in the creation of a Backbenchers' Group analogous to the Conveners' Group, to provide a forum in which matters of common concern and interest to backbenchers could be expressed, and views crystallised and conveyed onwards. We recommend that the Standing Orders should be amended to provide for the creation of a Backbenchers' Group."

I ask members to discuss the principle behind that idea. Last week, we discussed back-bench representation on the bureau, which did not generally find favour, although there was some support for it. I invite members to consider back-bench representation more broadly and to consider the proposal that such representation should be achieved in a formal and constituted sense. It would also be possible to encourage the creation of an informal back-benchers group that was not covered in the standing orders, or we could consider the idea, decide that we do not like it and say that we do not recommend anything of the kind. We should try to discover whether we have any common ground on the matter.

**Fiona Hyslop:** In our discussion about back-bench representation on the bureau, the committee was split down the middle. The issue is whether we seek a consensus or whether we simply admit that there are obvious differences and then proceed to a vote, although I think that the convener is reluctant for that to happen.

If we do not intend to give back benchers status in the bureau, we must decide whether there is a functional need for a group that does not reflect the conveners group, the bureau or the corporate body. The issue is about housekeeping, not fundamental principles, and I do not think that we should get too carried away. The issue might be a hot potato on the back benches, but for the world outside, it is not the most important and burning issue. We should be careful that we do not over-egg the pudding.

There are instances in which it might be useful to have a back-benchers group of some description. A good example is in relation to the operation of the non-Executive bills unit. At present, issues about how the unit operates and about priorities are split between the corporate body and the bureau. Given that we do not intend the weighting in the bureau to change, it would be crazy to allow the bureau—which has a majority of Executive members—to influence non-Executive business and to decide which bills should proceed and the timing for them. The corporate body is responsible for the allocation of resources for non-Executive bills. Which back-bench members' bills proceed and the priorities might be areas on which back benchers could usefully agree. Similarly, I am reasonably relaxed about who should have influence over members' business debates. I do not think that it is the most dangerous thing to give power to back benchers on that issue. We should not formalise a back-benchers group too much, but there are issues on which it would be useful to have such a group's perspective.

I tend to think that it should be the role of the Presiding Officers to champion the interests of back benchers, but I am not sure whether they can, because they have to sit on other bodies. I am not sure to what extent they can be neutral and hold the jackets at the same time as championing the interests of back benchers. Non-Executive bills and members' business debates are two areas where the common interest across parties is stronger than the party interest. That is where I think that a back-benchers group might have a role.

**The Convener:** If we are looking to give a back-benchers group a formal role, for example in prioritising bills and working out which type of bill should be given the nod, the group would have to be constituted formally, because it would be given an important decision-making role, especially in the particularly constrained period when we get towards the end of a parliamentary session.

There is currently a lot of discussion among members of the parliamentary management—senior civil servants and officers—about how they allocate resources, what advice they give to the corporate body and how the corporate body and the Parliamentary Bureau resolve which bills get priority. One of the suggestions that has been made internally—I probably should not tell the committee this, but I will since Fiona Hyslop has virtually done so anyway—is the possibility that a back-benchers group might be asked to act as a judge or referee. That suggestion is entirely independent of the work that the committee has been doing. If that role would seem to be useful, the back-benchers group would have to be formal. I am not sure that we want to go that far.

We discussed the general issue last week. Susan Deacon had quite strong views about the idea of back-bench representation on the bureau.

We are stepping back from that today and considering whether there needs to be a back-bench organisation, cross-party group or representative body.

The idea of the Presiding Officers looking after back benchers is attractive, but the difficulty that the Presiding Officers would have in looking after back benchers any more than they do already is that the areas in which back benchers are squeezed or have decisions made for them are the selection of business and the allocation of time by the bureau. The Presiding Officers' ability to champion anybody's interests effectively in those areas is limited.

**Mr Macintosh:** I agree with much of what Fiona Hyslop said. There are splits within the committee. We can decide whether we want to reflect that split or try to find a consensus. Back-bench issues come up in the Parliament quite often. We need to move forward on some of them. They include the amount of time for back benchers to speak and who decides on members' business debates. There are some issues to do with the non-Executive bills unit, although I do not think that they affect only back benchers. The question is whether a back-bench group is the route to solving the problems. I am not sure that it is, for various reasons.

I do not think that the convener has come on to paragraph 190.

**The Convener:** We started with the new paragraph that I proposed after 189. It might be appropriate to develop the matter. The paragraphs I propose after 190 are an attempt not to be over-specific. The first reads:

"We do not think it is appropriate to propose any detailed arrangements for such a body in this Report. If it is agreed in principle, the detailed arrangements will be consulted on and the Committee will bring forward firm proposals in due course."

I go on to give examples:

"consideration could be given to such a Group acting as the selection forum for the backbench Bureau representative".

That suggestion dies if we do not recommend it. I also suggest that such a group could be

"a means of gathering and conveying backbench views on the arrangement of parliamentary business in the Chamber; a focus for any representations about backbench roles throughout the Parliament; a sounding board for the SPCB, the Bureau and the Presiding Officer in considering all matters of relevance to backbenchers; and a source of subjects for Members' Business debates, and plenary debates - including the 'new look' subject debates proposed earlier."

We might put in a paragraph reference to make clear what that is.

I continue:

"We consider that the existence of such a Group would indicate to the world at large backbenchers' importance within the formal structure of the Parliament."

I go on to state:

"The proposed rules for any such Group could be set out in the Standing Orders of the Parliament."

That could be done depending on the rules and functions that the group was given. The paragraph continues:

"A firm definition of who constitutes a backbencher in the Scottish Parliament would need to be established, but we envisage a Group comprising *all* backbench MSPs, perhaps with a small elected steering body. The provision of any administrative support would require to be discussed with the SPCB."

I then go on to suggest that we add to the text in paragraph 191, which recommends that

"the Presiding Officer take steps to ascertain the views of backbenchers."

I propose to tighten that up and make it a firm recommendation, so that it reads:

"As a first step we recommend that the Presiding Officer should take steps to ascertain the views of backbenchers, and we recommend that this should be done quickly."

The next paragraph is about the job description, which is a separate issue.

I submit those proposals for discussion. I would like to separate the two arguments. The first one is about back-bench representation on the bureau, which we debated last week, and the second is about whether, if such representation is not part of the bureau's function, there is still sufficient demand and a role for a back-bench group. If there is, is such a group the way to take the matter forward?

10:30

**Mr Macintosh:** I am glad that you read those pieces out, so that we can refer to them. My difficulties are with the definition of a back bencher and the need for a group. If such a group was needed, it would have evolved, as the conveners liaison group evolved as a practical way of resolving difficulties. Most back benchers have found a way of expressing their views, and several members are known for being back benchers. My difficulty with defining a back bencher echoes the point that I raised last week about Opposition spokespeople being members of committees. I do not want to go too far into this, but there cannot be that many Conservative and SNP members who do not have some sort of title or function.

**Fiona Hyslop:** There are about five in the SNP group.

**Mr Macintosh:** Exactly. This may be a matter of dispute, but I would argue that that means that there are only five real back benchers in the SNP

group. I do not know how many there are in the Conservative group. I do not think that an Opposition spokesperson could ever qualify as a back bencher, so I doubt that a back-bench group could work. I also do not think that there is a need for such a group, because all the issues that I mentioned earlier, including speaking time for back benchers and members' business debates, can be addressed through other channels, such as the party groups, or through different procedures.

We could address different procedures in the committee or in the report, but that would not necessarily mean a back-benchers group. I am not against the idea of such a group, and I know that many members, especially Donald Gorrie, who is not here today, would be disappointed not to take it further; neither am I against amending paragraph 191 to recommend that the Presiding Officer does further work to ascertain views on the matter. However, I do not think that we will find a common view. As Susan Deacon said at a previous meeting, I have more in common with a minister in the Executive than with a back bencher in a different group.

**The Convener:** She named a particular back bencher. Someone in his group might agree with what she said.

**Mr Macintosh:** I did not want to pick on Mr Gallie.

**Fiona Hyslop:** Stewart Stevenson is the only genuine back bencher in the SNP.

**The Convener:** I cannot say why, but I tend to think of back benchers as members who generally get four-minute speeches and front benchers as those who generally get opening and closing slots. That is not a hard and fast rule, because some members fall into both categories, but as a workable model, it might not be too bad. I do not think that we should get hung up on the definition, because we will never resolve that. It is more appropriate to examine whether we think that it would be worth having such a group and whether we should pursue the matter or lay it to rest.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** Please accept my grovelling apologies for coming in so late in the discussion.

**The Convener:** You arrived at the start of this part of the discussion.

**Susan Deacon:** It is helpful to know that.

I have wondered about this issue ever since we got the draft report. I see it as an area in which recommendations have developed, but the approach that has been taken has not always been the most effective or appropriate, nor has it addressed the concerns that it aspired to address. I gave my views last week in relation to back-bench representation on the bureau, and my concerns about this proposal are similar. I will not repeat the main points that I made last week about the fault lines that would be established and the fact that I did not consider such a group to be appropriate.

We cannot sweep aside the definitional issue. If a proposal is not practical or is beyond implementation, it is quite seriously called into question.

**The Convener:** If you agreed the principle, you could find a definition that would operate, so I think that the principle is more important.

**Susan Deacon:** In that case, I will say for the record that I do not agree the principle, for all those different reasons. I think that we are in danger of creating a hugely over-engineered arrangement for managing our own affairs. I have been concerned about some of the discussions that we have had as we have gone through the report. Discussions have started out being quite outward looking with regard to the evidence that we received and, although it is right and proper that we seek to convert that evidence into practical changes in the Parliament, we could go too far in looking into our internal operations. I fear that this is one area in which that could happen.

In your additions to this section of the report, you have sought to embellish on the first principles. As I understand it, those principles really come back to the sense that there is an overly strong party discipline in operation within the Parliament, across all the parties. We could be here for a fortnight discussing the merits or demerits of that and how it might change over time. It was interesting, for example, that when the Presiding Officer was on television just last night, that was one of the things that he spoke about. He said that he thought that, over time, the Parliament and parliamentarians themselves would mature more and have greater confidence to speak out independently from their parties. We cannot legislate for that, but I certainly do not think that creating a back-bench group would be the best way to develop the maturity, confidence and independence of thought and action that this section of the report aspires to support. That is what this section of the report is rooted in, but I do not think that such a group would be the solution.

For my own part, I still do not support the principles, although I share the sense that we need to address the perceived, or arguably actual, problem. However, I do not think that what is proposed is the way to do it.

**The Convener:** Unfortunately, the members who are most likely to want to push that argument are Donald Gorrie and Gil Paterson, who, for different reasons, are not here. We may have to discuss this issue further at the final wrap-up

session. On that basis, it might be better for us just to leave it all on the table and return to it. If Donald and Gil want to persuade us, they will have to read today's discussion and think of a form of words that would be acceptable. I do not think that there is a particularly strong view among those members who are present that it is a very useful avenue to pursue.

**Fiona Hyslop:** If there is a need or function for a back-bench group, I will back it. I can see two specific areas in which there is such a need, and the only reason that I back the proposal is that I do not think that the existing arrangements, with a weighted bureau, can represent adequately the needs of members who want to pursue non-Executive bills, for example.

**The Convener:** My difficulty with that is that I cannot see the resolution at the end of the parliamentary session of competing claims for time. Nor can I see the weekly determination of subjects for members' business being a sufficiently rich diet to sustain the group and any interest in its workings.

Someone—it might have been Ken Macintosh—made the point that if such a group were necessary, it would have evolved by now. Although that represents a conservative way of looking at organic change in our political institutions, I feel comfortable with it.

**Fiona Hyslop:** You are right to say that we should listen to Gil Paterson and Donald Gorrie. You say that we should consider the issue. We acknowledge that there might be a need for a back-bench group, but we will not give a firm recommendation that such a group must be established.

**The Convener:** Donald Gorrie and Gil Paterson would argue that we should press ahead and form such a group. The furthest that I would be willing to go would be to suggest that someone—the Presiding Officer, I presume—should test the water and find out whether there is an appetite for such a group. It would probably not be wise—or necessary—to go beyond that at this stage.

**Fiona Hyslop:** I would be happy with that.

**Mr Macintosh:** I have a suggestion. Paragraph 188 does not make much sense now, because it refers back—

**The Convener:** It does not make much sense. When we mentioned that, I said that I would not move—

**Mr Macintosh:** Neither the existing wording nor your replacement makes sense. The existing wording refers to recognising institutionally something that has been recognised earlier. No such earlier recognition was made.

**The Convener:** As I said at the outset, I will examine the discussion that we had about back-bench representation on the bureau. I suspect that I will not want to produce any amended text to pursue that issue, although if Gil Paterson or Donald Gorrie thinks that that issue should be pursued, I might assist them in developing some alternative text. If I decide not to pursue that, I will have to re-examine this section. I will suggest a variety of changes. I might excise some parts or include parts as a report of our discussion. I might remove the bold type from paragraphs that lose their importance. I will consider the issue in the round.

We will try to produce two sets of text for the committee to make a final decision on. One will adopt a quiet approach; in other words, it will recommend that we do not pursue vigorously the back-bench issue much further. The other will recommend pursuing the issue. If absent colleagues wish to pursue the issue, we will consider that. If we cannot agree, we will have a vote. We have to have a vote sometimes.

**Mr Macintosh:** You are spoiling for a vote.

**The Convener:** We have had two votes over the past three and a half years. It is not inappropriate that we should have a third before we finish. I blame Ken Macintosh for one of them.

The next point relates to paragraph 192. Someone raised with us the issue of a job description for MSPs. The proposed addition was that the back-bench group might be consulted about that. That suggestion will fade away if the back-bench group does not meet. We will leave that at the moment.

**Mr Macintosh:** I believe that Canon Kenyon Wright made that recommendation on behalf of the Scottish Civic Forum.

**The Convener:** You are right—Canon Kenyon Wright made the suggestion, although he did so for a different group.

**Mr Macintosh:** Paragraph 194 mentions guidance. Although I have no difficulty with guidance, I am not entirely convinced of the need for a job description. That would be another prescriptive measure that would have to be met. As far as I am concerned, there is no confusion. Members of the public come to us and ask for our help. We explain whether we can help them and, if we can, we help them as best we can. A job description would not aid that process in any way. There is a need for guidance for the public about contacting MSPs, but I am not convinced about the need for a job description.

**The Convener:** The suggestion made greater sense when we could say, "Let's punt that to the back benchers group". The proposal now has little

sense unless we wrap it up with the next issue, which concerns the development of a way to resolve the confusion between constituency and list members. I have recommended a new paragraph to follow paragraph 194, which states:

"We recommend that this guidance should be reviewed by the Parliamentary authorities and that consideration should be given to how any guidance agreed could be disseminated widely outside the Parliament."

Perhaps, within that guidance, we could give sufficient guidance on what the public are entitled to expect of their MSPs. That might offer a way to kill two birds with one recommendation.

10:45

**Paul Martin:** Once again, I am on the other side of the argument from Ken Macintosh. I believe strongly in having a job description or a description of the role of an MSP and a description of what the public should expect from MSPs in the way of responses to correspondence and the following through of cases. We demand such standards of the organisations with which we deal. I do not know how many times I have criticised police officers, housing officers or whomever for the time that it takes them to respond to correspondence. I like to think that I give the public a good service as an MSP, but we have to be reflective about the service that we provide if we are to be critical of other services.

Since I worked in local government, I have been an advocate of job descriptions being made widely available for all those who serve the public. I am sure that members of the public would get a much better service if they were more proactive in making themselves aware of the role of public servants, whether those public servants are housing officers, police officers or those who provide concierge services. I have come across many examples to illustrate that. I do not think that MSPs should be excluded from that principle.

I agree with Canon Kenyon Wright on the suggestion that a code of practice for MSPs should be available in every constituency office. MSPs could actually work to that code, which would deal with some of the issues that have come before the Standards Committee. Members of the public sometimes make unreasonable demands on their MSPs. They might ask their MSP to deal with a complex case and then phone up three days later asking, for example, whether the MSP has had a response from the relevant social work department or whomever. We need to be more consistent. This is an important issue.

"Job description" might not be the best term to use. A member of the public might want to look at the Parliament's website to find out what the role of their MSP is. Perhaps we are not proactive enough in promoting what an MSP actually does and what they should do.

If we are fiercely critical—I often am—of various agencies that are accountable to the Parliament, for example in the health service, we should consider ourselves in the same way. To reiterate, I would welcome some kind of code of conduct or practice charter—I would probably not choose the phrase "job description"—under which someone can walk into a constituency office and can find out what their MSP will do on their behalf and how long it will take. Now that we have a grip on the resourcing of the allowances scheme, there is no excuse about our being unable to support the public.

**The Convener:** There were some good points there. Would you like to comment, Susan? Your mouth is moving but no sound is coming out.

**Susan Deacon:** That is an unusual and, some would say, welcome development. Whichever way we go on this matter, I do not think that "job description" would be the right expression, or indeed that having job descriptions would be the right mechanism. If that view is shared, we should nip that proposal in the bud early on.

Without wanting to get into heavy-duty management-speak, the existence of a job description implies that some precision can be drawn around the specific tasks of the job. There are limitations on the extent to which a job description could be applied to any elected politician. That applies especially to MSPs, who include regional list members and constituency members. We would open up all sorts of difficult issues, let us say, without adding value, to return to the aspirations of those who raised the idea. I think that going down that road would cause problems.

I think that Paul Martin is talking about having performance standards, which is not the same thing as having a job description. Again, while I share Paul's concern that we should not ask others to do what we are not prepared to do ourselves, there would be some practical difficulties in setting out performance standards for MSPs. That said, I am attracted to the notion that there should be something resembling a charter—although that is not the right word—that makes a clear statement of principle that MSPs would sign up to and which would be publicised. However, as I am also a member of the Standards Committee, I remind myself that we have tonnes of codes of conduct and standards. The problem is that those codes and standards are not transparent or widely accessible to, or understood by, the public. Yes, the public can find them on the website, but that is not the same as them being accessible in the sense that people know what they mean in practice.

Work needs to be done on decoding the codes, rather than on inventing another set of rules, regulations and standards or reducing the aims and principles of parliamentary democracy into 10 points that can be hung on the wall of our constituency offices. We have to take what the Parliament has developed and find ways of making it more easily understood by the public. That would allow people to interact more effectively with the Parliament should they wish to make a complaint or whatever. The issues that Paul Martin mentioned—lack of response to correspondence and so on—come before the Standards Committee and it falls to that committee, as the technical experts, to assess whether the performance in question lives up to the code. However, if we could decode the code, we could push out the boundaries of the way in which we work in that area and allow the public to make an assessment in that regard.

I am beginning to sound like a scratched record—or perhaps I am just being consistent—but I am sympathetic to the aspirations behind the idea. However, I am wary that we might add two and two together and get six. However, within the proposal is an idea that could be quite powerful if we deal with it in the right way

**The Convener:** We do not want to go too far down that road at present, as we have not taken a large amount of evidence on the matter. However, Paul Martin raised a number of interesting issues about what we should be saying to people about what they are entitled to expect us to do. Susan Deacon developed that in relation to decoding all the heavy stuff that can be found if people know where to look for it. The issue that has been raised merits further work, but I do not know whether that would be a matter for this committee or the Standards Committee. Without getting too much further into the issue, we could flag it up. The text that we have before us would have to be developed, but I do not mind kicking that around and trying to come up with something. The issue would be whether we would want that to encompass the points relating to lists and constituencies or whether that should be dealt with separately.

**Fiona Hyslop:** We are considering power sharing, and what we are talking about should be seen in that context. Paul Martin's points are well made, but we should deal with them in relation to representative democracy and what people expect from an MSP as a public servant. The best place to deal with the role and responsibilities of MSPs as public servants would be in the section on accountability. Matters relating to participative democracy and to what access to the parliamentary decision-making process our constituents can expect to get from MSPs are different.

The issue of how we represent people's views in the Parliament is different from the issue of how we deal with our case load. It would be useful to include in the accountability section matters relating to the responsibilities of MSPs as public servants, especially as a lot of issues concern the difference between what MSPs do and what councillors do—quite often, we have to tell people that their concern is a council issue, for example. In this section, however, we should set out the means by which people can access the power-sharing aspect of the Parliament with their views and opinions about debates and legislation. That is probably what we are trying to get at in this section of the report.

**The Convener:** There is a relationship between the two sections and it might be sensible to add text to both of them. I think that what was envisaged was a description of the role of the MSP rather than their responsibility to represent the power-sharing aspect of the Parliament, although we might want to develop that.

**Paul Martin:** I do not agree with the term "job description", but we need a term that would help MSPs to deal with the standards issue. Susan Deacon referred to the code of conduct, but that describes what is expected of MSPs in terms of public accountability, not the role of the MSP. I appreciate that it will be difficult to define the precise role of the MSP. I make no apologies for being fiercely critical of other organisations and I do not see why MSPs should be considered any differently.

Most modern organisations, particularly local authorities, state how long it takes them to deal with correspondence. I am aware that we are moving to a different subject, but the principle that I want to set out is that MSPs should not expect to be treated differently from those whom they scrutinise. Canon Kenyon Wright raised the subject of job descriptions. The terminology is up for debate, but we should be clear about the role of an MSP. If we were to clarify that role, we would also deal with some of the list and constituency issues that will come up for discussion.

The role of the MSP, as it has evolved in the working of the Parliament, is open to different interpretations. One example is whether it is the role of an MSP to set up a fund for a local crisis, which I would say is up for discussion. It says a lot about an MSP if they do that, but is it their role to take such action? I appreciate what Fiona Hyslop said, but I raised the issue because of the need for clarity and accountability.

**The Convener:** It is easy to slip down the road into detail when specifics are introduced into the debate. I hear what Paul Martin and Fiona Hyslop are saying about accountability, but we are also talking about power sharing. Individuals should

know which MSP they should speak to and that an MSP can pursue cases on their behalf. People also need to know what they are entitled to expect of an MSP. We need to set out what it might or might not be reasonable to expect an MSP to do. At the moment, people do not know what levers they are entitled to pull.

**Mr Macintosh:** We are not a million miles apart on the subject.

**The Convener:** I do not think that we are.

**Mr Macintosh:** Paul Martin said that he did not like the term "job description", and neither do I.

**Fiona Hyslop:** Nobody does.

**Mr Macintosh:** We are all happy about having further detail, which I am calling guidance, on the standard of service that an MSP is expected to provide. Without elaborating further at this stage, I think that it would be possible to produce a document, which could be based on the existing code of conduct. We could ask the Standards Committee clerks to produce a discussion paper on the subject. Members of the public should have a better understanding of what to expect when they contact their MSP.

**Fiona Hyslop:** Kick it to the Standards Committee.

**Mr Macintosh:** I referred to the Standards Committee because I think that its clerks produce information for the public, but perhaps another parliamentary service does that.

11:00

**The Convener:** I am not sure, but it does not matter hugely just now. Early in the draft report, it is observed that the principles cross-relate all the way through. I do not think that we need to excise the issue of the MSP's role from the power-sharing section and put it in the accountability section. We can keep the issue where it is, because it fits with the context. However, perhaps we can devise text that points up both the power-sharing and the accountability aspects of the MSP's role. We can recommend that further work be done in the area of informing the public more clearly about the level of accountability that they are entitled to expect of their MSP, including the actions that they can expect their MSP to undertake on their behalf. If we can come up with something that broadly meets both objectives, I suspect that we will get agreement on it.

**Susan Deacon:** I have no problem with anything that you just said, but I have a point that follows on from that. I am struck by the fact that, as we move through this section—we are at nearly our 200th paragraph—we have still not discussed the four CSG principles. I made that point at the beginning of our discussion on the draft report and we agreed then that we would return later to the big principles. I do not suggest that we go down that road just now, because that is not how we are handling the report. However, we must return at some stage to a more fundamental discussion about what we will say in common about the relevance, salience or appropriateness of the four big principles.

When taking part in various discussions, events, seminars and conferences with a range of individuals and organisations that were involved in the CSG process, I have been struck by how many people express their surprise at the extent to which we have carved the four principles into tablets of stone, which was not the original intention. The principle that people have struggled with most is power sharing. That is not because any of us are instinctively opposed to it, but because when we try to express it in practical terms it becomes a difficult beast to deal with.

That is why, when we start to put meat on the bones in this process, we find that many matters have probably more to do with accountability than with bona fide power sharing. I say that while the discussion is still live because I think that we must return to the big question at the end of this process. Of the four principles, power sharing is the most attractive aspiration for all who were involved in the development and implementation of the Parliament, but the power-sharing principle is the most difficult to translate into practice. For example, we build that principle into all sorts of notions that sometimes compete, such as parliamentary, representative and participative democracy, party loyalties and disciplines, personal stances, and questions about the extent to which it is our job as MSPs to reflect opinion rather than to lead and shape opinion. Those are big questions, but they are at the heart of the matters with which we are dealing. We have agreed generally about mechanisms and pieces of work that have arisen from our discussion of power sharing, but at some stage the committee must return to a discussion of something bigger and chunkier.

**The Convener:** The hook to hang a lot on is my final recommendation, which I do not want to get into in detail at this stage. However, I suggest in that recommendation that the Parliament needs to evolve beyond the CSG principles and consider its future direction. I have no difficulty at all with the suggestion that, when we get to that stage, we should expand my recommendation.

I agree that the four principles are potentially restricting in what they cover and what they do not cover. The next time that this review is undertaken, we should be talking not about the CSG principles, but about the Parliament's

principles, and we should be embracing the probability that the principles need to change. They should either become different principles or at least evolve in different directions, perhaps assuming a practical dimension. I am not unsympathetic to that general thrust.

What about the list and constituency stuff? Can such issues be covered under the heading of setting standards, or are we doomed to go round in a cycle of mutual resentment? Or have those issues largely smoothed themselves away in most places, to arise in future only where there are difficult individuals on either side of the balance? Sometimes, a constituency member complains about a list member and sometimes a list member can find a constituency member a bit precious. However, easy-going individuals do not seem to have too many difficulties. Perhaps that is a sweeping generalisation. I am not conscious that committee members have any difficulties.

**Mr Macintosh:** No. However, I suspect that we are doomed as you say, convener. Not only do MSPs talk about the issue, but organisations and members of the public have raised it with me. Unlike the issue that we addressed earlier, concerning terminology, the subject is brought to my attention regularly and I cannot believe that we are trying to cover it in one sentence in what is a voluminous report. It is an issue of real contention and has posed a practical difficulty. How do we address it?

Like you, convener, I do not think that the difficulties arising out of the differences between list and constituency MSPs have been as bad as they could have been—and I feared the worst at one point. Nevertheless, there have been difficulties. The Standards Committee has investigated at least three cases, which have gone to an inquiry and have not just been chucked out, and numerous letters have been sent to the Presiding Officer. A tension exists and there is still some misunderstanding among MSPs and members of the public about the differences between constituency MSPs and list MSPs.

The protocols that George Reid drew up were helpful in giving us something to work from and, indeed, they have worked up to a point. However, there are continuing difficulties. The problem often comes down to personalities. Many members make the system work and keep to the spirit of the protocols on the way in which we should collaborate, but many do not. It is difficult to know whether the situation will get better or worse as the Parliament evolves. Will we get more hard nosed or will we continue to try to get on with each other? The report must reflect the fact that the issue is serious and a real concern for many MSPs. Whether or not we arrive at a conclusion, we should reflect that. The report does not get across one of the fundamental problems with the way in which the Parliament works, which is to do with the differences in the work loads of list MSPs and constituency MSPs.

When we discussed the matter before, Gil Paterson rightly said that list MSPs are very hard-working individuals who do not need any more work to do, because their time is as occupied as that of constituency MSPs is. I have no doubt that that is the case. I am not trying to say that constituency MSPs work harder. Nevertheless, it is a different kind of work.

Speaking as a constituency MSP, I am in no doubt that constituency MSPs have an enormous constituency case load, which list MSPs do not have. Therefore, constituency MSPs are severely constrained in the amount of time that they can devote to parliamentary issues and policy development. That causes me concern. Labour back benchers are already under pressure because we sit on parliamentary committees and because of our constituency case work. Unfortunately, therefore, there is also a party aspect to the problem, which is difficult to get away from. Because of all those difficulties, the difference between list and constituency MSPs continues to be an issue of contention.

I am not sure whether the committee will be able to resolve the matter, or whether even the Parliament will be able to resolve it. I certainly would be alarmed if we did not refer to it and elaborate at some length on the difficulties that exist and will continue to exist, particularly given that we have elaborated at length on difficulties or issues that are of absolutely no consequence or of very little consequence. The on-going practical difficulty that all members will have to continue to work on and work round is ignored and sidelined. I do not know the way forward, but I would like the recommendation to be beefed up.

**The Convener:** I do not know the way forward either. We are talking about not one paragraph but three paragraphs. Those would be paragraphs 193 and 194 and a new one after 194 recommending that the parliamentary authorities do more work on issues around the differences between list and constituency MSPs. Bearing in mind your earlier observations about prescription and detail, I wonder whether that is enough for you. If it is not, I am quite happy for you to suggest what else you might want to put in the report. If I could see ways of resolving something that I suspect is incapable of being resolved, I would be quite happy to be reasonably prescriptive about it, but I honestly do not see what we could do.

I find it difficult to deal with the issue, because I have a perfectly equable relationship with nine constituency members in the region that I cover. I agree that I am perfectly happy for them to have

the vast bulk of constituency case load. I am sure that I have much less case load than do any of the nine constituency members in my region. I tend to hear from people who do not want to go to their constituency member—wisely or otherwise; that is their choice—or people who have been to their constituency member, have not got what they want and are pressing every button that they can in the hope that somebody can do something for them.

I do not know how you would wish to arrange things to regulate that. I suspect that the only practical thing that you could do would be to insist that you had even more work to do and that certain members did less. I am not sure that that is all that wise. Ultimately, if Joe Public or Mrs Joe Public decides that they do not want to speak to a member because that member represents a different party from the one that they support, we have to go with that. We have to think, "Well, good luck to you." I do not see answers. If there were answers, people would have had them by now.

**Fiona Hyslop:** I want to make a suggestion about the power-sharing aspect. The Parliament is different in that it shares power and reflects the different political opinions throughout Scotland by dint of the fact that it has proportional representation. The consequence of that is that there are list MSPs and constituency MSPs. It might be right to reflect in the report the fact that that brings tensions. However, that tension is a consequence of the fact that the Parliament was established with proportional representation, which is the whole point of trying to embody some kind of power sharing. I do not know that we can make any firm recommendations, but I believe that that point should be acknowledged in the report. Perhaps we should go back to basics about why the tension exists. A recommendation might be that we have to keep the matter under review.

**The Convener:** In that context, we could easily develop paragraph 193 so that it mentioned the tensions and referred to the complaints to the Standards Committee and the Presiding Officer. I am quite happy about that.

**Susan Deacon:** I agree with the essential point that Fiona Hyslop made about going back to basics or first principles. We should remember that one of the reasons why we face these issues is that we have a proportional representation system, which was a radical departure from the past. That is absolutely part of the aim of having a more balanced Parliament, which is part of power sharing.

It is important to make the distinction between the general principle of proportional representation and the impact of the specific system. It is interesting that, now that the system is in operation, members from each party have, publicly and privately, expressed reservations about its effectiveness. The committee took a lot of evidence from individuals and organisations such as local authorities and we heard their concerns about the system's operation in practice. We would be failing in our duty if we did not reflect the scale and strength of that feeling

11:15

As Ken Macintosh suggested, the fact that there might be 23 paragraphs on one topic and only a few paragraphs on another topic does not necessarily mean that the latter topic is less important. However, there is a danger that people, including those who gave evidence to the committee, will read the report and think that the committee has not taken seriously enough or reflected accurately enough the extent of the concerns expressed. The report must reflect more strongly the evidence that we heard.

Like other members, I have wrestled with the question of where the committee should go from here. We know the implications of delving deeply into the issue. It might be constructive to recommend that, at the very least, independent research be commissioned. There is a parallel situation. The Standards Committee has been considering the operation of cross-party groups. At its meeting last week, members realised that, through questioning MSPs and the groups, the committee has got only so far with its investigation. Members realised that the committee is too close to the cross-party groups and that therefore a more objective analysis of what is happening is necessary.

Some would argue that such an approach would open a hornets' nest that they do not want to open. However, would a sensible next stage be to commission some independent external research on the practice of constituency and regional representation? That research might put structure around the evidence that the committee heard about the practical experience of individuals in external bodies. The research could also include some formal evaluation of the work load disparity—the committee heard anecdotal evidence about that, but no one has assessed it.

Although I am holding back because I know how jaggy the issue is on all sorts of levels, I believe that, if the committee is to take its responsibilities seriously, we should be willing to recommend that further structured work on the issue be commissioned. We cannot take things further than that. However, we could rightly be accused of copping out if we are not prepared to go that far. That is a candid view. I am expressing some of my anxieties, which may be shared by others.

**Fiona Hyslop:** I agree that the issue must be included in the report, but the committee will not come up with any solutions on its own.

**Paul Martin:** To reflect the issues that have been raised, the committee must add to some of the paragraphs. I have mentioned this before, but a concern raised by constituency members is that they can be involved in a local campaign for months or years and, when the campaign is nearing its end, a regional member comes in and tries to take ownership of it. Although that is frustrating for the constituency MSP, it is not against the rules.

Such issues are raised in the Standards Committee. However, although it may go against the ethos of elections, it is within the rules for a list member to say that he or she has been approached by several people and would like to be involved in the campaign. Those are the difficulties.

The issue that we are discussing is the formation of a regional approach. Members may think that constituency members would be territorial, but I do not. Such an approach would formalise some joint working in regional operations. I am not talking about a second layer of the Parliament, but I believe that a regional approach would be an opportunity for constituency and list members to formulate regional views on a cross-party basis. That already happens informally—in Glasgow, there was a joint approach to discussing issues relating to acute services. The problem is that, when an issue becomes a political hot potato, members are not as willing to get involved on a cross-party basis. Formalising such an approach might create such difficulties.

This is a fiercely controversial view, but should a list MSP take up constituency cases? I am not saying that that should happen; I am saying that we should refer to the matter. The body language of Fiona Hyslop and Richard Lochhead suggests that they disagree, but my point is that, where a list MSP and a constituency MSP deal with constituency cases, there could be territorial disputes. The approach could be adopted only if there were no arguments.

The issue is difficult. The Standards Committee should monitor the rules about list MSPs referring correspondence to constituency MSPs when they take up a constituency case. I believe that the issue should be referred to in the report, because it causes concern to constituency members. Some list MSPs in my region have not sent me any correspondence, which means that they cannot have taken up any cases. Some issues will be the subject of discussions. We need to be realistic about the challenge that we face.

**Richard Lochhead:** This is clearly not the forum for a lengthy debate on the subject. In a democracy, I do not think that there is specific ownership of any issues. As for members taking credit for other people's projects or campaigns, I know of many examples of regional campaigns where constituency members have done exactly that. It is a fact that there are regions and regional identities in Scotland. That is why the issue is particularly relevant.

**Fiona Hyslop:** We must be careful not to get too deeply involved in resolving personal issues. It is right for the report to reflect the fact that there are tensions, which have arisen as a result of power sharing and PR. As Susan Deacon said, some of the issues are practical. We cannot necessarily recommend practical solutions in the report, but we can recommend that Parliament keep the issue under review. Whether that involves external research or the Standards Committee examining the matter, we should recognise that tensions exist and that we received some evidence to that effect. However, we should not get into a shopping list of everything that would be involved. That will be the result of the next piece of work.

**The Convener:** We could boost paragraph 193 by referring to the tensions and the reasons for them. We could mention the complaints that have been made to the Standards Committee and the Presiding Officer and refer to some of the evidence about the issue, which mostly came from councils of one dimension arguing against the political involvement of MSPs of another dimension. However, we can omit that detail. Within the party politicking, there were also points about how councils did not know with whom they should liaise. It is fair to suggest that that point should also be included in the equation.

We could throw in the suggestion that there might be scope for some independent research. That could all be referred to the Standards Committee, with the recommendation that it continue to review that work. We could also recommend that the Standards Committee revisit the Reid protocols and try to devise long-term solutions that will satisfy the competing claims of both types of MSP and of constituents and representative bodies that have to deal with political representatives. If we can work all that in, we will have reflected the issue fairly without pretending to know all the answers.

**Fiona Hyslop:** Have we agreed to finish the paper today?

**The Convener:** I have every intention of trying to do so. We are about to reach the section on petitions, which I do not think will excite huge controversy. We can make great progress until we come to examine the points that we want to add in at the end.

Paul Martin referred to regional meetings, an issue that is the basis of the last four or five paragraphs of the section. I propose to add two paragraphs. The first one reads:

"We consider there could be value in holding regionally-based meetings of the relevant constituency and regional MSPs to respond to issues which have arisen at that level. This would not compromise the independence of individual MSPs, and the 'regions' in this context need not be the same regions as are used for electing List members."

In that, I am thinking of greater Glasgow, for example, which would include more than just the Glasgow region.

"These meetings could be presented as local public meetings, or they might be local scrutiny meetings where MSPs can discuss matters of local concern with non-elected public bodies, such as Health Boards, Enterprise companies and other public sector bodies. We consider that such meetings would be appreciated by constituents as an indication of the desire of MSPs to work co-operatively in responding to any such issues."

The second paragraph reads:

"We do not make definitive proposals for the frequency, purpose and composition of regional meetings, but we do recommend the principle of local meetings. We also recommend that the SPCB should consider how it could facilitate and resource such meetings, in order that MSPs are able to develop the principle into practice where a local demand exists."

In proposing that, I was thinking about the Glasgow health issue. If the regional list and constituency members wanted to have a meeting or series of meetings with the public, who would organise, advertise and fund that? Would any kind of note be kept of the meetings? Who should be included? Those questions are beyond our remit to discuss in detail, but it is pertinent to flag them up as issues for the SPCB to examine for the future.

**Fiona Hyslop:** In the sections of my paper that dealt with access and participation, I was more concerned about agenda setting. The points that you have just made concern a situation in which the list and constituency members in a region have a common interest and want to have a public meeting. However, we should also think about how we ensure that the public can set the agenda. I had specific proposals based on our experiences from the Ullapool meeting. The kind of meeting of which I am thinking would not have to concern the vested interests of members from a certain region. We would not then have the party politicking that we have from SNP and Labour members when the Parliament goes to Glasgow, for example. I had a practical suggestion that is different from what you proposed.

**The Convener:** I have not got my head round any of the points that Fiona Hyslop, Donald Gorrie, Ken Macintosh or Gil Paterson have suggested. I was going to suggest that we might examine the papers next week. We could instruct the clerks to contextualise in the appropriate place in the report all the areas on which we agree.

**Fiona Hyslop:** My suggestion does not preclude what you proposed, but the SPCB might want to consider it, given that you are saying that it should make proposals. My suggestion was more about shared agenda setting by the public as opposed to common regional interests among MSPs.

**The Convener:** That sounds like something that we can discuss separately and, if we agree to it, build into the report or, if we do not agree to it, carry forward into the final wrap-up session. We will try to find consensus in that session but, if we cannot, we will use the four-letter word that begins with a "v". I thank Fiona Hyslop for flagging up that issue, which I will consider in particular.

The next section is on public petitions. Much of it outlines the process and summarises the evidence, before talking about the concerns that were raised in the evidence. Those concerns are grouped first into John McAllion's points—he made a lot of points in his two sessions with us—and secondly into concerns that petitioners raised. That takes us all the way through to paragraph 234, which is the first point at which I wanted to make any addition to the existing text. That paragraph concludes that a high degree of appreciation of the petitioning process was expressed in the evidence that outside parties submitted. I simply want to add to that a tentative principle:

"We believe that the Parliament should consider how it can strengthen and develop the present arrangements for petitions."

In other words, I come at the matter from the viewpoint of the witnesses, who said that the petitioning process is a good mechanism that works, that they are broadly satisfied with it, that they have specific suggestions and criticisms and that they want it to be improved and developed. I simply want to put an opinion into a document that had been stripped of many of its opinions and judgments.

11:30

The next couple of paragraphs go on about how we might develop the petitioning process. Paragraph 236, which I have suggested be in bold, says that improving and developing the petitioning process means a quantitative expansion—bringing in more petitions and allowing more people to participate in the process—and a qualitative expansion, by which I mean making the process work better. We clearly cannot bring more people in if the system is clogged up and we cannot find ways to work petitions through the Parliament.

I also suggest that we put paragraph 237 in bold because, when we are talking about petitions, it is important to bear in mind the buts, of which there are many. The system cannot deliver everything that people will want from it. It is important that we continue to say that sitting in judgment on local authorities, whose councillors enjoy the same mandate as MSPs do, is not the Public Petitions Committee's function. One or two petitions have come close to doing that and have gone further than they might have done.

I suggest that we replace paragraph 238 with stronger text:

"We believe that the work of the PPC, and the subject committees who deal with the substance of many petitions, should be encouraged and that a higher profile should be given to the petitions system than exists at present."

I also suggest adding a new paragraph:

"We recommend that the Public Petitions Committee—as the lead body in the Parliament for developing and processing petitions—should publish a development plan to extend the use of the petitions system in a measured, realistic and effective way. Access to such a plan should be made available to the public and comments sought on a continuing basis. The plan should be updated as 'milestones' are passed."

That would run into the stuff on new technology, which follows immediately. I suggest that we add after paragraph 241:

"We recommend that high priority should be attached to ensuring that all electronic arrangements for petitions are housed on the Parliament's own website; and that targets for the numbers of petitions submitted electronically should be agreed."

The reason for that is that, at the moment, electronic petitions come through the mechanism of Napier University. The Public Petitions Committee representatives expressed a strong desire that the Parliament should ultimately take ownership of that function.

**Mr Macintosh:** On the suggestion for the new paragraph after paragraph 241, I have a difficulty with the word "targets". I am not sure that we should necessarily encourage petitioners to move from paper to electronic forms of communication. That is up to them. The benefit of a more convenient electronic system is ease of access. I agree with the first part of the paragraph, but I am uncomfortable with the word "targets".

**The Convener:** You are right. It would be better to say something such as "and that the use of electronic petitioning should be quantified and monitored so that we are aware of how it develops". I agree that how the petition comes in does not matter as long as the electronic mechanism exists and facilitates access.

A difficult issue that has sometimes engaged the Public Petitions Committee with subject committees is where the ownership of petitions lies. I tried to highlight that issue by putting paragraph 242 in bold. The report discusses how petitions are tracked, who has responsibility for commissioning work, the circumstances in which the Public Petitions Committee can do work, who should feed back to the petitioners and how people outside should be kept informed. I do not wish to caricature or misrepresent anyone, but subject committees have thought that they should control matters because of their work load and subject expertise, whereas the Public Petitions Committee has sometimes thought that subject committees have not undertaken work quickly enough or have not kept petitioners well enough informed about the progress of petitions. The public interface aspect of the work has also coloured discussion about where essential responsibilities lie.

Susan Deacon may want to chip in before I proceed.

**Susan Deacon:** I would like to comment at some point, but I do not want to stop your flow.

**The Convener:** It is suggested that paragraph 245, which is brief, should be replaced with a fuller paragraph, as follows:

"We consider that it is very important for the subject committees to continue to deploy their specialist expertise in considering petitions, and to allocate sufficient time in their programmes to do so. If their role were to diminish or disappear, the key link between petitions and other work of subject committees would be broken, to the probable detriment of both committees and petitioners. We therefore recommend strongly that the 'mainstreaming' of petitions in the Parliament should be maintained."

Every committee is responsible for petitions on subjects that are within its remit. The committee might be happy to recommend the suggested paragraph.

Paragraph 246 points out something that is fairly obvious. I think that the subject committees would agree that, if there are pressures on them, it would sometimes be helpful if the Public Petitions Committee undertook some of their work. Protocols would have to be established about information that should be exchanged and whether a member of the subject committee should be given the duty of being a rapporteur with the Public Petitions Committee.

The paper suggests that paragraph 248 be replaced by the following paragraph:

"We recommend that the PPC and the subject committees, through the Conveners' Group, should discuss proposals"—

perhaps we will need to tighten that a wee bit—

"for the PPC to undertake more inquiries itself, and bring forward proposals for any changes to the Standing Orders (Rule 6.10 and Rules 15.4, 5, 6) which may be required."

That suggestion aims to give the Public Petitions Committee more direct work within the framework

of an approach that recognises that the subject committees would have ultimate responsibility, and that work that is done by the Public Petitions Committee should be monitored and done with the subject committees' agreement, full co-operation and participation.

The question of ownership arises again in paragraph 250. I suggest that we replace the text of paragraph 250 with the following paragraph:

"We consider that the 'ownership' of a petition referred on from the PPC to another committee should be shared between the PPC and the subject committee concerned. We heard that the PPC's liaison with petitioners had been excellent, and we are reluctant to see the PPC's interest in petitions stop at the point of referral to a subject committee."

That builds towards the suggestion that the Public Petitions Committee should continue to take responsibility and engage with petitions so that it will have responsibility for dealing with the petitioner.

**Mr Macintosh:** Did you deal with paragraph 248?

**The Convener:** Yes.

**Mr Macintosh:** I was listening, but I missed that and I have a query. I wondered about the conveners group. The consideration is purely practical. If there are difficulties between the Public Petitions Committee and the subject committees, we should find ways of resolving them. The question is what is the easiest and best method of doing that. Why did you suggest the conveners group?

**The Convener:** I was not suggesting for the conveners group a troubleshooting role to resolve specific difficulties, but the evolution of a concordat. The appropriate body to agree that with the Public Petitions Committee would be the conveners group, which could take an approach that was common to all the subject committees. The two could agree the terms on which the subject committees and the Public Petitions Committee would be willing to share functions and transfer work backwards and forwards. It is not inappropriate that we should consider the matter, although I do not want us to talk about an arbitration role in the event of specific difficulties, which must be resolved at another level.

**Susan Deacon:** I support that point strongly. It is important because one of the strands that comes through in our considerations is that the petitions system has been—dare I say it—one of the Parliament's success stories. Since we took evidence on the matter, I have interacted fairly closely with the Public Petitions Committee in relation to a petition from my constituency and I have become more persuaded of the process's practical value. It enables people to engage with the Parliament and—crucially—to make real progress on issues.

The Public Petitions Committee has been a success story, but the time is right to consider how to take it further. We should not try to go too far in saying how the system might be improved, but it is right to look to the conveners group to take some ownership of that process. From what we have heard and from our deliberations, we can make some big observations, but I am concerned that some of those big observations are getting a little lost in the midst of what is a lengthy section of the report.

One of the big observations is on feedback processes. One side of the coin is the issue of who takes ownership of petitions; the other side is communication with petitioners. In a sense, deciding who does what is less important than informing the petitioner about what is happening with the petition and why it is happening. At present, the Public Petitions Committee is a wee bit better at that than the subject committees are, which is to be expected because the Public Petitions Committee is expert on petitioning. Now is the time to develop systems, practices, protocols, procedures and skills so that when a petition is in the parliamentary system, the petitioners hear and understand more about the process. I support the convener's points, but I am concerned that it is difficult to see the wood for the trees in the report as it stands. Perhaps we can deal with that later.

I have two more concerns about matters that are either not explicit, or are buried, in the report. The first is about the people dimension. We have said a lot about technology, systems and practices and the convener mentioned that there has been excellent liaison with petitioners. This will sound obsequious, but it is fair to say that much of that is down to the personality of the convener and the clerk of the Public Petitions Committee. The issue is about making people feel at ease and engaging them in the process. I cite the clerk and the convener based on direct experience and on what I have heard from other people. I do not make that point to crawl to or to praise John McAllion or Steve Farrell—albeit that credit is due to them—but because we must recognise that people skills are involved in interaction with the public. We have heard criticisms about people being interrogated or MSPs being too aggressive with witnesses who have come before committees to share information.

Perhaps the report could recognise that people skills are necessary to make the process work. Again, some members might regard that as a touchy-feely suggestion; however, I think that it is essential. It might be a development issue for MSPs. I know that the parliamentary authorities

are considering induction training, development and so on for new MSPs.

11:45

We must be bold about the issue of resources. The report seems to suggest that the petitions process is good practice that is consistent with the Parliament's principles and that it is something that people have spoken positively about. As a result, we must bite the bullet and recommend that more resources be put into the process. I do not demur from any of the changes that have been proposed; I just think that the two or three other strands that I have mentioned could be drawn out.

**The Convener:** We might have picked up your first point with the suggested replacement of paragraph 251, which tightens the point instead of changing the meaning significantly. It says:

"We suggest that it would simplify matters greatly for petitioners if the PPC, and its clerks, were to be made the single point of Parliamentary contact for petitioners at all stages of the petition process: and if they were responsible for effective liaison with the subject committee clerks, correspondence with the petitioner, monitoring the progress of petitions, and issuing the final decisions. In normal circumstances, this would be a letter enclosing a detailed memorandum from relevant subject committees."

That establishes the Public Petitions Committee as the gateway.

In response to the third point, we must recognise that such an approach would require resources. We established that the Public Petitions Committee had 0.8 of a clerk; it does not have the personnel to carry out the kind of work that has been suggested. The evidence that we took highlighted the fact that subject committee clerks find petitions work to be very burdensome on top of all their other heavy duties. As a result, we recommend that the staff of the Public Petitions Committee should be beefed up to allow that committee to carry out that work.

I am not sure how we can build in the point about people skills. Susan Deacon suggested that such skills do not simply relate to petitioning but apply more generally. I am happy to think about whether we can include something in the paragraph that could be applied more generally across the workings of the institution. I do not want to suggest that subject committee clerks and conveners lack people skills; however, it is perfectly fair to point out that the Public Petitions Committee deals with the public far more than any other committee does. Such a role requires certain attributes, which the committee has developed. Perhaps that has lessons for us all.

Because the change would involve a change to standing orders, I suggest that after paragraph 251 we insert another new paragraph, which would read:

"We recommend, in the interests of transparency, that Rule 15.6 should be amended to make explicit the 'joint ownership' of petitions, between the PPC and subject committees."

**Susan Deacon:** I have some anxiety about trying to convert some of our big thinking and conclusions into specific rule changes. Apart from anything else, we are in danger of denying other bodies in the Parliament the opportunity to shape and take ownership of matters. I know that those bodies will have the opportunity to consider the report; however, I would like some process to sit between our report and any changes to standing orders. For example, the conveners group could have the opportunity to delve into some of the detail and take ownership of some issues.

I am not saying that we should not make the suggestions. However, some nuancing of the text would ensure that we make it clear that they are suggestions for others to consider and finesse. If we are overly prescriptive about detail, we will get an adverse reaction because people will simply feel that we are not equipped to go that far in our recommendations.

**The Convener:** I have not suggested what changes should be made to standing orders. I am happy to amend the new paragraph after 251 to include the comment that we encourage the conveners group to discuss the suggestions with the Public Petitions Committee and that they should in due course evolve changed patterns of working including, where appropriate, necessary changes to standing orders.

**Fiona Hyslop:** We can be quite specific. From our experience of sitting in committees—most certainly from the evidence that we have received, not once but twice, from the Public Petitions Committee and from petitioners—the direction in which we can go is clear. I think that it is wrong for the committee to sit on the fence on some matters. It is our job to consider how procedures are working. On this issue it is expected—not least by those who gave evidence—that we should produce firmer proposals than a mere suggestion that it would be nice for the conveners group to consider the matter.

**The Convener:** I might have agreed with that but for the fact that I am on the conveners group and have seen how the matter has evolved. There was initially tension between the Public Petitions Committee and the subject committees. The Public Petitions Committee had to bomb many petitions on to the subject committees and the subject committees were aggrieved about the work load that was being piled on to them. The matter has come down to the people skills issue; people have negotiated ways of handling the matter. The flow of petitions through to the committees has eased considerably and, in some

instances, subject committees and the Public Petitions Committee have agreed to work on a petition among them or between them.

If this was a case in which I thought a battering ram was needed, the recommendation as it stands might be the way to go. However, I think that a lot of progress has been made and that kicking the issue back to the committees in this way will encourage them to work the matter through further. Susan Deacon's point is pertinent; if we hand the recommendation down as a judgment, members are likely to be antagonised by what we tell them to do, but if we ask them to consider the matter, they will come up with something that is not a million miles away from what is being suggested.

**Fiona Hyslop:** I do not disagree with that, but I do not think that what we are suggesting will be a surprise. I would be reluctant to pull back from the suggestion.

**The Convener:** I do not see it as pulling back. I see it as—although nuance is not really a verb—nuancing what is already in the report. Susan Deacon worked with civil servants for so long that some of their way of speaking has rubbed off on her. That is not a dig at Susan Deacon; it is a dig at John Patterson.

**John Patterson:** Again.

**The Convener:** I will have a look at different wording that will try to bridge those points. I do not think that we have a difficulty there.

Paragraph 255 states that we are looking for "Relatively minor changes". A lot of the ground has been covered already. I suggest new paragraphs after paragraph 255. The first one states:

"We recommend that, where a subject committee is discussing a petition, the petitioner should invariably be notified and invited to all of the relevant sessions, and should be invited to make a brief oral contribution on the record as a witness, if they wish, at an appropriate stage in the consideration of the petition. We suggest that this would add only a little to the length of subject committees' proceedings."

That is not necessarily generally done, although it might be done sometimes. I am not suggesting that if an issue goes through 10 committee meetings the petitioners should expect to hold the floor for 20 minutes at every meeting, but it is appropriate to hear from petitioners at some stage. We should make that recommendation.

The second new paragraph states:

"Petitions can on occasion take a considerable time to bring to conclusion. We recommend that petitioners whose petitions are likely to take a greater than average time to deal with should be kept periodically in touch by the PPC on progress."

In other words, it should not be the responsibility of the petitioner to track what happens. I would not specify what the process should be, but a more properly and adequately resourced Public Petitions Committee clerking team should have triggers that, for example, tell it that a petition has not gone anywhere for three months and that they should tell the petitioner what the current state of play is.

I suggested putting paragraph 256 in bold, because I suspect that what it describes could be done more than is the case at the moment: petitioners could try to mediate their petitions through their MSPs more often, because MSPs might be able to guide them on when petitions are appropriate, on their wording and on the tactics to employ if the petitioners come before the Public Petitions Committee or subject committees.

I put paragraph 259 in bold, because I think that it is quite important. The evidence that we took—quite apart from any other evidence of which members might be aware—is that people who get to speak at committees think that being allowed to do so is significant and they value it. I therefore thought it pertinent to add to paragraph 259, which states:

"We encourage the PPC to offer petitioners opportunities to address it as generously as possible."

That must be for the Public Petitions Committee to determine. How many people does that committee listen to? Could it listen to more people? I suggest that that committee should err on the side of generosity.

My next suggested change applies to paragraph 262, which relates to petitioners' feeling that their petition has been misunderstood and not properly addressed. If the same thing happens to us with our correspondence, we simply write another letter or ask another question. I suggest that we toughen up paragraph 262 to make it clear to petitioners that they may come back to us. The wording that I have suggested is:

"As there seemed to be confusion on the part of some petitioners, we recommend that the PPC should amend its guidance leaflet to ensure that potential petitioners are aware of their freedom to submit a second petition; and to expand it to explain the process of referring a petition on to another Parliamentary committee, and what that might entail. We recommend that the guidance leaflet should be translated and made available in the languages used by significant ethnic groups in Scotland."

We have previously discussed that matter.

My next suggestion is on paragraph 264. I suggest that we include the words:

"We recognise that the PPC does not have the power to enforce its decisions or those of any other committee. We do believe, however, that the reports and recommendations of a committee of the Parliament can carry considerable moral authority, and we recommend that the PPC should follow up the outcome of such recommendations as it might

make, as this action may encourage the recipient of the petition to act on its recommendations."

I can think of only one example where that applied: I recall a Mr Guild from Edinburgh, who had sent in a petition about Cramond. I think that he lodged a second petition that said that nobody had done anything about it. It might have been appropriate for the Education, Culture and Sport Committee—which dealt with the petition—to have contacted the recipient of its recommendation to say, "See that petition we sent on? What did you do about it?" If nothing was done about a committee's recommendation, the committee could ask why not, and could ask what the thinking was of the recipient of the recommendation. Therefore, petitioners could see that we were taking a proactive role in resolving the issues in question. In some cases, that might encourage those who have it within their power to act on petitions to be seen to be doing something or if, for whatever reason, they think that they cannot do something, to explain their position. It is the wall of silence or lack of reaction that can disillusion the petitioner and which can adversely impact on how the petitioner sees the Parliament's role.

**Susan Deacon:** I endorse that suggestion. The matter came up in lights, as it were, during evidence. I think that the Procedures Committee must be prescriptive on the general standards or priority areas for improvement that we think should apply—feedback is one such area. We should stop short of being prescriptive in saying who should provide feedback, when they should provide it and how they should provide it. Nevertheless, there should be standards that apply, irrespective of which committee happens to get a petition, and there should be a given period of time after which a petitioner can routinely expect feed back.

To pick up on Fiona Hyslop's point, we are all in a roughly similar position in that we want to ensure that we add some hard edges to what we are saying. The area that Fiona has identified must not get lost in our report. Others could contribute and put meat on the bones.

**The Convener:** My next proposed change is that after paragraph 271 we insert a new paragraph that states:

"We recommend that each subject committee should report on its petitions activity in its Annual Report, and that Rule 12.9 of the Standing Orders should be amended to place this requirement on all subject committees."

At the moment, the standing orders do not require that. We are saying that committees should report on their petitions activities. We are not specifying what that would involve, but it would have to cover the work that they were doing, which would require a change to standing orders.

12:00

I recommend replacing paragraph 273 with the following:

"We recommend that the PPC should publish annually a report on progress on petitions, to be followed by a short debate in committee time in the Chamber; and that a proposal for changes to Standing orders to give effect to this recommendation be brought forward in due course."

Members might feel that we should not insist on holding an annual debate on petitions, but rather that it would be sufficient for that work to be considered annually. However, if we reduced to a suggestion the requirement that there be such consideration, it might not take place. Do we feel that a debate on the progress of petitions would be a useful way in which to allocate parliamentary time?

**Mr Macintosh:** I am not sure. I appreciate fully the thinking behind the recommendation, but I think that petitioners would rather have the meat of their petitions debated, rather than the process. The suggestion that an annual debate should be considered, rather than required, would be adequate.

**The Convener:** Are there any other views?

**Fiona Hyslop:** On having an annual debate?

**The Convener:** The recommendation is that we allocate perhaps half an hour to debate the annual report of the Public Petitions Committee. That could end up being a debate about not much in particular, and people might feel that it would be better if we debated one of the petitions.

**Fiona Hyslop:** In my paper, I recommended that we use the facility of parliamentary debates more often to address petitions. If the Parliament had more business time in which it was able to do that, my suggestion would be a possibility. We have had only a couple of debates on petitions, but they have been very effective. Such debates do not have to be long and can make a good contribution to parliamentary business.

**The Convener:** So, in the text that is proposed to replace paragraph 273, we will take out

"to be followed by a short debate in committee time in the Chamber"

and insert

"and that consideration should be given annually to whether there are issues that have been raised by the PPC which should be debated in the Chamber".

That is not over-specific.

**Mr Macintosh:** The point that Fiona Hyslop makes is emphasised in paragraph 269. We could beef it up a bit.

**The Convener:** In paragraph 269, I was not looking to specify where time would be found to debate petitions. You will remember that we talked about experimental subject debates and suggested that the subjects might come from the petitioning process. Some members' business slots could also be taken up with petitions issues, and there also is committee time to consider.

The difficulty at the moment is that all debates on petitions come from committee time, which is rationed. The Public Petitions Committee is one of 17 committees, all of which want their reports to be debated if possible, and it has managed to secure a committee slot only once or twice. I feel that that is not enough. However, I am not sure that I want any more time to be taken out of committee time. It would be reasonable to try to fit petitions debates into members' business slots or into some of the experimental debates.

I think that we have covered the issue adequately in the report. We will note the point about debates and, if we have not given sufficient emphasis to the plenary option for dealing with petitions, we should consider introducing another paragraph.

The next change relates to paragraph 277. I have devised an expanded paragraph, which states:

"We recommend that a range of techniques could be considered, such as more PPC meetings outside Edinburgh, media publicity, using former petitioners as a resource to publicise the system, and informal meetings convened by PPC members around Scotland."

If a committee goes to take part in a civic participation event, a member of that committee who is also a member of the Public Petitions Committee or an additional member who is a member of the Public Petitions Committee could be invited to be part of that event. They could do something to highlight the work of the Public Petitions Committee.

One of the strands of our evidence was that although many people thought that the Public Petitions Committee was great, there were concerns that it does not have a sufficiently high profile. It was felt that many people would use the Public Petitions Committee if they knew that it existed. The new paragraph is intended to address that issue.

The next suggestion would fit in after paragraph 279. It relates to all the preceding recommendations on the Public Petitions Committee. It states:

"We recommend that the PPC should conduct a review of the way these new arrangements have worked at an appropriate point, perhaps 3 years after the creation of any Petitions Development Plan."

The paragraph suggests simply that the Public Petitions Committee should monitor any changes in working practice.

My next suggestion relates to consultation. Before I move on to that, do members wish to raise any other points about petitions?

**Susan Deacon:** I will make a comment that is as much for John Patterson's benefit as for anyone else's. I feel that we would be comfortable if, in addition to the changes that the convener has proposed, John were to firm up some of the wording. For example, in his initial drafting of paragraphs 276 and 279, I detect that he was treading carefully to find out how far we wanted to go on promoting and extending the petitions system and commenting on resources—he is nodding to confirm that. Everyone around the table has said that they are up for promoting and extending the petitions system, so we should nail our colours to the mast. If everyone feels that way, John should feel empowered to beef up the relevant paragraphs beyond the proposed changes.

**Fiona Hyslop:** Yes, that would be a good idea.

**The Convener:** We could look at making a more explicit recommendation, particularly in paragraph 279. I think that we have covered the resource issue, but we could introduce the observation that was made in evidence about the relatively thin staffing resource that the PPC has. We could recommend that, whatever increased work load is agreed as a result of the discussions in the conveners liaison group, the PPC should be adequately resourced to carry out those functions. We will not specify what resources should be made available, but we will say that there has to be a response to change.

The next section is about consultation. We have included some material about the Executive's good practice and conduct and the role of its central research unit. At present, paragraph 289 observes,"This approach appears commendable," whereas, the new, strengthened paragraph states:

"We consider the Executive's approach to consultation, research and development of practice to be commendable, and we wish to draw attention to this work."

We think the Parliament can learn lessons about setting out time scales and co-ordinating the consultation work that the Executive and the Parliament carry out.

The next change that I was going to suggest was to insert two new paragraphs after paragraph 292 to cover parliamentary consultation:

"We recommend that no initial consultation by any Parliamentary committee of"—

that word should be "or"—

"body on any non-legislative matter should normally contain a deadline for responses of fewer than eight weeks. Where

it proves impossible to meet this target, the committee or body should provide a clear explanation for this in the consultation document."

We are trying to align the Parliament with the time scale that is mentioned earlier in the section.

The next paragraph would be:

"We recommend that, where a second or subsequent consultation on substantially the same subject is issued, the deadline for this should normally be four weeks."

We are trying to respond to the comments and criticisms that many participants made in our evidence-taking sessions about the fact that insufficient time was allocated to consultations.

**Fiona Hyslop:** Do we mention in the report people's concerns that when the Executive launches consultations or bills immediately before a recess or before Christmas, there is a period when they cannot contact the Executive? That should be in the report as it ties in with the planning process. Committees do not know when bills are coming, and sometimes bills are delayed. That can restrict the time that is available for stage 1 consultation, if the bill is to be passed when the Executive wants it to be passed.

**The Convener:** We address the second point, but I do not think that we have commented on the first. I do not mind putting in a reference to issuing consultation documents for more than the specified minimum period. We are really talking about Christmas.

**Susan Deacon:** I agree broadly with Fiona Hyslop's point, but I look at it slightly differently. I do not think that it matters that a consultation is launched just before a recess. The Parliament may be in recess and the politicians may not be around so much, but it is not true that nobody is there for people to contact. That is certainly not the case with Executive consultations and the summer recess, for example. I go back to a point that registered with me: simply because Parliament is in recess for a couple of months, that does not mean that everybody—including the politicians, the civil servants and Parliament officials—goes on holiday. It is not the lack of contact; it is the fact that the people on the receiving end have holidays, too. I agree with the general point: we should recognise that the time that people have is affected by holiday periods, but I would prefer to express that point by reference to the recipients, rather than to imply that the parliamentary process is shut down for the summer—others have implied that too often.

**The Convener:** We have to tread gingerly around that issue. When I was on a local authority planning committee, a standard criticism of planning applications was that they were lodged just before Christmas when we were not thinking of objecting. Members know that the way in which councils process applications means that there are aeons of time for objections to be registered and that all objections are addressed in the relevant reports, but that all added to the heat and indignation. It would be pertinent to ensure that minimum consultation times should respect the ability of people to respond effectively.

**Paul Martin:** The issue is not only the amount of time available for responses but the way in which consultation documents are set out. I welcome the reference to the internet, but a lot of people do not have access to it. The Executive tends to think that providing a consultation document in portable document format is the end of all the problems, but people should be able to use the internet to respond to consultations. There is no reason why a page that is interactive and which can allow people to answer some of the consultation questions could not be set up on the web. People want to answer questions in consultation documents and there should be more innovation. Some consultation documents ask specific questions and are helpful, and some are not. Some focus more on presenting nice photographs of a toothbrush or whatever.

**The Convener:** Paul Martin is getting at a health minister.

**Susan Deacon:** Toothbrushes are important.

12:15

**Paul Martin:** I agree, but the problem is that we are good at printing photographs of them but not at distributing them. To be frank, we seem to play the game of seeing who can produce the glossiest, best-presented consultation document, but we do not follow that through by asking what we get out of consultation documents. The paper contains an example of the Executive taking that point on board. However, I have concerns about non-departmental public bodies, which I will not go into.

We should not play the game of producing a nice, glossy document. We should ensure that we set out the principles and that we get something from such documents. Community groups have produced more effective documents without the gloss and got more out of them. We spend a fortune on glossy documents. It is not only the Scottish Parliament that does that; constituency offices receive an immense volume of consultation documents and I sometimes wonder what we get out of them. The key issue is the turnaround periods allowed in consultations, but the big question is what we get out of such documents. I had better stop mentioning Springburn—

**The Convener:** You had not mentioned Springburn before now—we have all been waiting for it.

**Paul Martin:** I am not convinced that people in Barrhead queue up at the library to get hold of consultation documents. Ken Macintosh's constituents did not have access to the consultation document on the Title Conditions (Scotland) Bill, which will affect them; he probably had to facilitate access to it. We need to be more creative. People will not go out of their way to find consultation documents and we must find ways of getting the documents to them.

**The Convener:** Although paragraph 289 will say that we commend the work that is being done, your point is that we should say that there are ways in which such work could be developed, including using a more interactive facility and perhaps considering the amount of feedback and consultation, particularly before the publication of bills.

**Paul Martin:** Outreach, which the Scottish Parliament misses out on, should also be considered. Civil servants could ask, "What do people think of the Title Conditions (Scotland) Bill?" They could take evidence locally, spend time in communities and request community groups' views directly, instead of expecting tenants associations to take the trouble to access documents on the internet.

**The Convener:** If anyone can suggest an example of good practice, we could commend that for use throughout the Executive.

**Susan Deacon:** Does scope exist for concertina-ing? You will tell me that that is not a verb, too.

**The Convener:** It is not.

**Susan Deacon:** The aim of communication is to be understood—I am sure that you know what I mean.

**The Convener:** I do—the word "compressing" would do.

**Susan Deacon:** That is not quite what I meant. Does scope exist for rolling together some of this section with some of what we discussed under the accountability section? We are into terrain on which those of us around the table and our witnesses do not fundamentally disagree. There is a clear desire to move on from paper-based—whether glossy or otherwise—and fairly formulaic, mechanistic consultation processes to different types of dialogue and engagement, as befit the task. We have heard of various examples of that. We are discussing a big section on consultation, but we also discussed it in an earlier, big section—I do not have all the papers with me. That could be condensed—or was it compressed?

**The Convener:** Or encapsulated.

**Susan Deacon:** If that could be encapsulated—as you did a moment ago—that would greatly increase the impact of our message. It is encouraging that this is an area of significant consensus, about which much has been learned over the past three or four years, so there is an opportunity to kick it on. Am I right to say that we covered an awful lot of the same ground under accountability, transparency or something?

**The Convener:** Yes. It goes back to the point about some of the headings slotting into several of the principles. When you start to disaggregate the principles, you find that you can put them under more than one heading. We could try to develop those points more. A good example of what we have been talking about is the Executive's approach to strategic planning. The week before last, the chief planner did a presentation for MSPs, and I know that he has been round planning committees and various stakeholder groups. I do not imagine that he has spoken to people at the grass roots too often, but a phenomenal amount of time has been spent on explaining the approaches to people who have a professional interest. A lot of consultation has taken place and the Executive is trying hard to get responses to that consultation. There may be other excellent examples that could be highlighted to demonstrate the value of real consultation.

**Mr Macintosh:** I endorse the comments of Paul Martin and other committee members. I thought that the same issue would arise in relation to paragraph 296. I know that we referred to it earlier in the report. Paragraph 296 begins:

"We have already recommended above".

Does that "above" refer to the paragraphs immediately preceding paragraph 296, or does it refer to some point further back in the report? The point that I would like to emphasise most strongly is the importance of engaging with members of the public with whom we have not otherwise engaged.

**The Convener:** That paragraph refers back to the section in the introduction that is headed "Perspectives". One of the four perspectives was people's desire to participate. One of the observations that we made was about the importance of getting beyond professional bodies and interest groups. That idea has run right through the report and has recurred regularly, but it is perfectly reasonable for us to look for a useful cross-reference by finding the strongest statement, so that it is clear what is meant. I do not think that that "above" referred simply to the preceding paragraphs.

**Mr Macintosh:** The point is not lost, but it is in danger of being slightly submerged. It provides us with the opportunity to beef up the point and focus on what works, rather than on the process.

**The Convener:** That is a useful comment.

**Donald Gorrie (Central Scotland) (LD):** I apologise for being late. I was waiting to move my amendment on sectarianism at the Justice 2 Committee, but rain stopped play. That committee wants another day to consider the amendment, so I shall miss part of tomorrow morning as well. The Solicitor General for Scotland was absolutely brilliant, if I am allowed to say that on the record.

**The Convener:** "He played a blinder", I think is the expression. [MEMBERS: "She!"] She played a blinder.

**Donald Gorrie:** I have one problem. I am enthusiastic about consultation and because as a ward councillor I tried to let people know what was going on and consulted them, I survived for many years when the Liberal party was very unpopular. I am keen on letting people know and consulting them. Letting people know is okay, but getting a view back from them is very difficult. As with most clichés, what they say about the silent majority is true. Most people are silent about most things most of the time. There is a huge problem about getting people involved. I am in favour of all the things that we try, but we must accept that we might not have as much success as we would like.

**The Convener:** We recognise that, but we are trying to improve our approach to consultation in order to facilitate the participation of as many people as possible; however, we recognise the limitations.

The next change that I recommend is that, after paragraph 297, a new paragraph be inserted, which states:

"The earlier the consultees are drawn into the process, the more they will be able to influence the policy proposed. The later they are consulted, and the more specific the proposals, the less chance they have to initiate significant alterations. We consider that such exercises are not genuine consultations and are likely to be largely futile."

That would strengthen the previous paragraph, which talks about involving people in consultation as early as possible.

**Mr Macintosh:** Is the proposed new paragraph directed at anything in particular?

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

**Mr Macintosh:** Consultations that are not genuine consultations annoy everybody. People's views should either be taken into account or not; we should not pretend that they are taken into account. I am not sure, but the paragraph sounds as if it is aimed at something in particular, but I cannot work out what.

**The Convener:** We will try to do some textual analysis to find the source for that. If members are not happy with the paragraph, we will leave it out just now.

**Mr Macintosh:** I am not sure what it adds.

**Susan Deacon:** I understand the point that Ken Macintosh is making. The language in the proposed paragraph feels very charged, but perhaps that is intended.

In this land of widespread consultation, we perhaps need to be careful because consultation can often falsely raise people's expectations about what they can influence. The paragraph perhaps means to say something about the need for things such as directness, honesty and boldness. It is not illegitimate for the Executive/Government or non-departmental public bodies to use the form of a consultation document to state things about which the room for influence by the public might be limited; rather the point is that the reason why the scope of a consultation is limited ought to be made clear. In other words, the paragraph should say something about not only the process of consultation but the message and the substance of what is conveyed in that process. To embrace that, I think that we need a bit of nuancing again—I will continue to use that word to annoy the convener.

**The Convener:** The word does not annoy me at all; I would say that the required word is "finessing". However, that is probably not a real verb either but an adjective—no, it is a noun.

**Donald Gorrie:** The problem is that people need to be given something that they can disagree with, because that is the best way of getting them to engage. If we were to ask MSPs what sort of curtains they would like, we would get a pretty wishy-washy response. However, if we were to say that we must have bright green curtains, then—without being sectarian about it—they would say "God, no. We cannot have that." There must be a genuine choice. However, if a proposal is inchoate, it will be hard to get a response. We need to be some way down the track and have some reasonably serious alternative proposals so that people can say, "I like this, but I hate that."

**The Convener:** The discussion has proved to be useful, because we have sourced the comments back to the CSG report itself. We want to make the point that consultations should be real consultations and that things should not be dressed up as consultations when they are not. We also want to reflect the reality that some thinking and preparatory work, such as manifesto commitments, might have preceded the consultation process. The consultation should therefore focus on areas on which there is genuine debate and in which there is a real opportunity to influence the debate. We can perhaps finesse the paragraph so that it provides a better overall approach—if that is sufficiently nuanced for Susan Deacon.

**Mr Macintosh:** The headline could be, "Curtains for Gorrie".

**The Convener:** We have relatively little left to do, so I propose that, as long as we stay quorate, we continue the meeting. I emphasise that we will not vote on any of the proposals, because we want to try to agree on what should go into the text. I would like us to have a completed draft report that we can start considering next week, when we can pick over it again to isolate the areas of real difficulty.

My next proposed change is to insert a new paragraph after paragraph 303. The previous paragraphs refer to the homelessness task force as having laid out a lot of good practice about how to develop consultation. The new suggested paragraph would read:

"We recommend that the Executive should go further in developing the Task Force concept, encouraging them, where appropriate, to invite participation by MSPs, including members of non-Executive parties. We consider that developing participation along these lines would build cross-party support for the recommendations of Task Forces, and develop means of co-operation in policy development which do not compromise MSPs' essential political identities."

The proposal arose from research, which suggested that the task force connected to the Housing (Scotland) Bill had worked well.

**Susan Deacon:** Have we captured somewhere the issue of encouraging more joint work between the Executive and committees rather than our conducting the same inquiries in parallel? For example, early in the life of the Parliament, the Health and Community Care Committee undertook a big inquiry into community care at the same time as the Executive was involved in a large number of task forces and so on. I would hope that that would not happen now.

12:30

**The Convener:** In a sense, that is addressed in paragraphs 307, 308 and 309, in which we talk about trying to work in partnership with the Government and to make consultation parallel.

**Mr Macintosh:** You also have a relevant recommended addition, convener.

**The Convener:** Yes. I recommend that we add in bold after paragraph 307 the words:

"There may be scope for the Executive and Parliament to discuss co-operative working here. If there were to be a system of pre-notification by the Executive to the Parliament of consultations on legislative proposals, and an earlier identification of lead committees (all assisted, perhaps, by the earlier suggestion of an annual Parliamentary outline business programme), it may be possible to devise a single consultation exercise, to the benefit of consultees, by enabling a longer response deadline, and to those consulting, by stream-lining existing practices. We recommend that the Executive and the Parliament should consider the possibilities for so streamlining their consultation processes."

We discussed the issue of a parliamentary outline business programme last week, but without saying that it would be annual.

**Susan Deacon:** I apologise, convener. I had not seen that paragraph. It captures exactly the point that I was making. However, the point goes beyond simply consultation on legislative proposals; it is more to do with dovetailing work programmes. That ties in with a suggestion in Donald Gorrie's paper that we discussed last week, which related to shared civil servants. When I left St Andrew's House, such practice was just beginning to be put in place in relation to the health department, but I do not know how much progress has been made. If a civil servant in the department can act as a liaison point with the relevant committee clerk, they can work to draw their work programmes together. Clearly, there will be times when the Scottish Executive and the committees will agree to part company—for example, when the committee is playing its scrutiny role—but there are many times when they could sit at the same table.

I am comfortable with the new text, but I would like it to be broadened to include mention of work programmes, rather than only consultations on legislation.

**The Convener:** I am sure that that would be possible in principle. Although we did not specifically discuss the issue last week, I think that there was support for Donald Gorrie's idea of there being an identified civil servant who would work with a committee. On the assumption that we would discuss and approve the matter next week, this might be the best place at which reference to that could be made and the point about joint working on work programmes could be developed further.

Perhaps Susan Deacon could use her perspective as a former minister to put a bit more flesh on the point that she made. Taken together, the new paragraph, Donald Gorrie's point and the text that she would be able to add will result in quite a strong set of recommendations about pulling the parliamentary and the Executive side together with regard to consultation and the planning of work programmes.

That point pushed me past two other changes that I was going to suggest. I suggest that paragraph 305, which refers to the previous paragraph about innovative consultation processes, be replaced with:

"We applaud the introduction of such innovative consultation practices, and recognise that it might be used to cast the net of participants in policy creation more widely. We recommend that the Executive, and non-Executive

parties, should develop this co-operative means of policy creation as a priority."

Again, that would encourage joint working and new ways of approaching what we do. I also suggest that we add to paragraph 306, which refers to the problems of consultation, the following linking text:

"We consider that some of these problems could be addressed by joint Executive-Parliament work in this area."

That is the springboard for the next paragraph and the paragraph that is to be added after paragraph 307.

**Richard Lochhead:** It is suggested that we add a new paragraph about the task forces after paragraph 303. Is there a danger that that would muddy the waters between Opposition and Government on Executive task forces, especially if non-Executive MSPs are to sit on them?

**The Convener:** That suggestion was made in the context of the Housing (Scotland) Bill. There was some controversy on that, but there were many areas of commonality. Task forces did a huge amount of the development work. Their solutions were presented to us not as faits accomplis, but as work that once done could hardly be unscrambled without completely undoing and reinventing it.

We were trying to say that if stakeholders and experts were drawn in and codes of practice and the detailed implementation of bills were worked out, and that was to be the way to work, it would be appropriate to draw parliamentarians into that. It would give them a say in shaping matters at an earlier stage, rather than presenting them with work from which they had been excluded. It was not that they disagreed with the work; rather it was that they had not been involved.

That would not work where there were sharp party divisions, but there are many areas—as we have demonstrated in three and a half years—where, within an overall approach that might not command total unanimity, there can nevertheless be substantial areas of consensual working. That is where a task force can operate.

**Richard Lochhead:** There might be a danger in promoting the idea of bringing non-Executive MSPs onto task forces that the Government sets up for a purpose, usually in response to an issue. To do so might compromise Opposition parties.

**The Convener:** A member might feel compromised by that, in which case he or she would not participate. On the other hand, it would be an opportunity to get involved in something that might otherwise be slapped down in front of you, and about which you would not have the opportunity to do anything other than criticise it. It would be a matter of judgment whether you felt that the issue was oppositionist, whether you felt that there was a point of high principle, or whether you felt comfortable as part of the process and wanted to be involved in detailed thinking and planning.

**Susan Deacon:** There is a more fundamental point that might merit reiteration. Surely, especially as far as the legislative process is concerned, the objective must be to frame the best possible legislation; to say so does not deny the fact that people will often break off into different camps, either on party-political lines or on the basis of opinion and points of substance within the debate.

My point for explicit comment is to note that we operate a unicameral system, which has a major bearing on how we approach the legislative process. It is something that members of all parties, the Executive and back benchers have often been concerned about over the past few years, although few have been willing to articulate it openly. Given that we have a unicameral system, we must be careful that we are doing our absolute damnedest to frame good legislation. Therefore, in a Parliament with limited resources, it follows that we must draw on the best possible range of expertise. I am a great believer in horses for courses as a way of working, but there are times when that will not be the appropriate mechanism. I want to us to be explicit on the unicameral point, because it underpins much of the direction of travel. I am sure that that is on all our minds to a greater or lesser extent.

**The Convener:** That matter recurs in all sorts of other areas, such as allowing sufficient time to debate amendments and allowing people the opportunity to frame amendments and speak in debates.

**Donald Gorrie:** There are some interesting points that could be developed. Richard Lochhead is quite right to raise his point because one of the great issues in politics is who gets the credit for what is done. If the Executive makes a proposition but uses other people to develop it, we will get a minister standing up and saying, "We have this marvellous scheme thanks to the excellent Executive". That is to be avoided.

Would it be possible for the proposed task forces to be Parliamentary task forces? The Executive might say that we need a lot more consultation about curtains, for example. It would set up a consultation, but it would become a Parliamentary consultation. In effect, the task forces could be a way of involving people who are not MSPs in committees. For example, the Procedures Committee would become the procedures task force, other people could be signed up and the task force could develop whatever procedures the Parliament wants to develop. There is a lot of good stuff here, but we could develop it.

**The Convener:** I think that that would be a further development. At the moment, the balance of resources between the Executive and the Parliament is such that most of the drive for legislation comes from the Executive, with a few honourable exceptions. A lot of the detailed work of formulating specific proposals and resourcing task forces and so on has evolved naturally in the Executive—it is but a tender plant and one that needs to be nurtured; I think that we should nurture it.

I have no difficulty with raising the prospect that the Parliament might at some stage seek to evolve similar practices and take ownership of similar processes in relation to areas where a committee, rather than ministers, perhaps wanted to drive forward an idea.

**Richard Lochhead:** The debate is interesting, but there is a world of difference between a Parliamentary task force and an Executive task force. The fact that we are a unicameral Parliament puts emphasis on committees rather than on task forces. The committees' role is to ensure that we make good legislation, which is why they have more powers than committees in other Parliaments.

**The Convener:** That is not something that bothers me. Again, it is standard practice in local government—at least it was when I was in local government—for all local councils to be unicameral, although the regional councils formed a kind of second chamber. Officer and member working groups were set up to evolve policy and to bring proposals to committees. That always struck me as a useful way to try and evolve consensus and move agendas on.

**Susan Deacon:** Richard Lochhead said that there is a world of difference between an Executive task force and a Parliamentary task force. I am not sure that there is—certainly the same players would be involved in both.

**Richard Lochhead:** There is a danger of muddying the lines of accountability. If non-Executive MSPs were part of an Executive task force, that would constrain the Opposition's ability to hold the Government to account because the Government's first line would always be that Parliamentary representatives were on such-and-such a task force from which they took their advice.

**Susan Deacon:** Conversely, you could say that that would constrain the Executive's ability to use its in-built majority to railroad policies through. We are at the crux of the matter, which is whether or not we are willing to engage in a new style of politics. If we are serious about identifying common ground and drawing together expertise where possible—I stress "where possible"—those points are important.

The convener made a good point. Perhaps rather than presenting the Executive as the only body that should always use such mechanisms, we might say that those mechanisms ought to be explored by—

**The Convener:** "Governance partners" is the jargon that we have been using.

**Susan Deacon:** Thank you. For example, if committees were to initiate more legislation in the future, we would expect them to go to a minister or civil servants to ask them whether they would like to be involved in the process if to do so would add value and inform the process. Ultimately, that would enable Parliament to put something better and stronger on the statute books.

**The Convener:** Part of the skill of politics is to sense when that is a good thing and we would want to take part in it and when it might be a political trap, in which case we would not take part in it. There are masses of areas in which consensual work is perfectly possible and what is being suggested is a useful way in which to proceed.

12:45

**Richard Lochhead:** I have concerns because I think that the line of accountability has to be clear cut. I am all in favour of the new politics, but that could come from strengthening Parliament to ensure that it has more of a role. Task forces are not really part of Parliament; they are set up by the Executive, usually to bring in external expertise. That means that MSPs have their own clear role in the process. They would not necessarily have a clear role in the process if they were part of an Executive task force that was designed primarily to bring in external expertise on an issue.

**Donald Gorrie:** The conversation has been about legislation. Task forces can do a lot of good things, but how can we crack the problem of ensuring more community use of schools, for example, or how do we help the voluntary sector, which cuts across a number of different departments? There should be issue-based task forces as well as legislation-based task forces.

**The Convener:** We will set paragraph 309 in bold to highlight the need for a lot of effort to go into finding more imaginative ways of engaging the public in the process to ensure that consultation is effective, although Donald Gorrie's point about the limitations is pertinent. I propose that we add a new paragraph, although we might want to change its first sentence, which reads a bit like we are firing a gun at somebody. It says:

> "We consider that it is simply no longer credible to issue a press release with a consultation and hope for the best."

We should not be accusing anybody of doing that; I am sure that nobody does it. The new paragraph continues:

"We suggest that a collective effort must be made to engage directly with the widest possible spread of interested parties, with press coverage being seen as only one technique to engage with the public. The 'process of consultation' needs to involve a much less tokenistic, 'add-on' approach, and must become an integral part, at an earlier stage, of all policy-making in government."

I suppose that members of the Government would say that they already do that. Perhaps we should try to find a way of reformulating the paragraph to recommend that good practice be used across the board. The tone of the paragraph might be a bit blunt and abrasive. We will not include the paragraph just now; we will do a rewrite.

**Susan Deacon:** In the next draft, can we get rid of paragraph 310? It states:

"The problem appears to be one of formidable proportions."

The report is about how we improve and develop. We should not couch things in terms of monumental problems to be overcome, as that sets the wrong tone. We discussed the issue at an earlier stage and I do not want to take up time revisiting it, but there is also an implication that everyone out there can and should become involved in the decision-making process. We acknowledge that the vast majority of people, even if given the opportunity, will choose not to get involved, which they have a right to do. I feel that some lines jar with the substance and direction of the report and that we could comfortably lose them.

**The Convener:** The clerk just loves those one-sentence paragraphs. They appeared all through the report and one by one they have been whittled away.

**John Patterson:** That was the first one.

**The Convener:** No, we merged a few earlier. We will do something to tidy that line up.

**Susan Deacon:** I can just picture the clerk sitting surrounded by the reams of paper and evidence when he came up with the sentence:

"The problem appears to be one of formidable proportions."

**The Convener:** It is just a clerkly foible.

**Susan Deacon:** One can relate to that and sympathise.

**The Convener:** After the first 50,000 words he began to—

**John Patterson:** Crack.

**The Convener:** The last change that I suggest in this section is to insert after paragraph 311:

"We consider that, if adequate engagement is to be achieved with civic society and the public on specific policy issues within the challenging terms set by the CSG, and if we are to approach a perceptible level of 'power sharing' through consultation, both the Scottish Executive and Parliamentary Committees must work at drawing civic society and individuals into the policy-making process earlier than has been thought appropriate in the past."

Perhaps that last phrase should read, "earlier than has always been thought appropriate in the past", as the rate of progress is probably differential and varied. That makes the same point as we made earlier.

That takes us to the final page, where I suggest four changes. After paragraph 317, in which we address what we have been doing, I propose that we insert a new paragraph:

"We therefore recommend that our successors on this committee should not attempt a full annual review of the application of the CSG principles."

This review has taken us two years. The paragraph continues:

"Instead, they should consider whether the principles remain valid, or require refinement, and they should review particular aspects of their application, with a view to producing a shorter report, perhaps annually. Any such reports should be debated in the Parliament."

The last sentence should perhaps end with the words, "considered for debate in the Parliament", so that we do not pre-empt the functions of the conveners liaison group and the bureau.

**Susan Deacon:** That paragraph should be put in double-plus super-bold, if such a thing is possible. Joking apart, it is important that such things be considered in the future. We have learned some lessons from the process, which could be drawn on.

Ken Macintosh left me a note outlining a couple of points that he wanted to be raised. He queries whether we should suggest that the review be annual. None of us thinks that the review should be annual, so perhaps we should drop that requirement.

**The Convener:** If we did that, the paragraph would read, "with a view to producing shorter and more focused reports", or something like that.

**Donald Gorrie:** We could add "from time to time".

**Susan Deacon:** We should not read too much into the note that Ken Macintosh left with me. He was just making that point.

**The Convener:** We could use the phrase "as considered necessary" or something like that.

**Donald Gorrie:** I think that the reports should be debated in the Parliament.

**The Convener:** The difficulty is that we cannot specify that. Unless we put the whole process into the standing orders, all that we can do is recommend.

**Donald Gorrie:** Yes, but we can recommend that the reports should be debated rather than just considered for debate.

**The Convener:** I am easy about that. However, we could spend some time considering an aspect of the application of the principles and conclude that everything is ticking over beautifully. Would you want a debate in the Parliament to consider such a report, given the pressure for petitions and members' business to be debated in Parliament?

**Donald Gorrie:** I take the more cynical view that it is much more likely that efforts will be made in certain quarters to prevent things from being debated that might cause the peasants to become restless.

**Susan Deacon:** You are a conspiracy theorist.

**Donald Gorrie:** Well, I have spent 30-odd years either fighting or co-operating with your party.

**The Convener:** We will add the option and we can resolve the issue when we finalise our report, rather than getting hung up on it just now. After all, it is a small point that we will resolve quickly.

After paragraph 319, I suggest that we add a new paragraph:

"We have considered suggestions that the review of the application of the CSG principles should be undertaken by an outside body, such as the Scottish Civic Forum. While we would welcome any work by outside bodies to contribute to the Committee's regular reviews of the application of the principles, we recommend that the process of reviewing the application and development of the key principles should remain the business of the Parliament, and should be considered the responsibility of this Committee."

That is what we decided to do this time, and our work has demonstrated that that is the correct way of doing it.

**Donald Gorrie:** On a previous occasion, we agreed that the CSG stuff was not written in tablets of stone and that we could move on from it. We could perhaps climb up a second mountain and get a few more tablets in the light of experience.

**The Convener:** That is in the last recommendation.

**Donald Gorrie:** Right.

**The Convener:** My next set of changes, which is the penultimate set, at least in terms of this exercise, is to add two new paragraphs after paragraph 320. The first paragraph states:

"In addition, therefore, to the valuable, traditional methods of gathering evidence through written memoranda, witness sessions and public meetings, we recommend that our successors on this Committee should establish a regular convention or Chamber event, along the lines of those held by some other committees. Such events should be open principally to participants from outside the Parliament, but should include MSPs and Parliamentary staff, and the proceedings of such civic participation events should inform the reports of the Committee."

In other words, the Procedures Committee should continue to review the application of the CSG principles. Part of the work of that review should include regular discussion with people outside the Parliament about how things are going, what changes people might like to see in how the Parliament engages widely with civic society.

The second paragraph states:

"Such a civic participation event could itself make a significant contribution to the Parliament's drive to reach out to politically disengaged sectors of society, a drive which we see as the key outcome of this present inquiry."

I should check whether "disengaged sectors of society" is the proper professorial phrase.

**John Patterson:** I am not sure that it is, but we will check.

**The Convener:** David McCrone suggested a specific terminology and I am not sure whether that change was made.

**John Patterson:** I do not think that we made that change.

**The Convener:** We may return with a slight change to the wording of the second paragraph. However the principle is clear: we are trying to tell people who have not engaged in the process that we want to give them an opportunity to do so. We cannot make them engage in the process, but we can give them the opportunity to do so.

**Donald Gorrie:** Does the term "Parliamentary staff" include the staff who work for MSPs or does it refer to Parliament staff such as committee clerks and Scottish Parliament information centre staff?

**The Convener:** We probably mean the staff who are employed by the Parliament. I do not think that we considered the role of researchers, personal assistants and so on, but I do not see why not. We could expand the phrase to read

"MSPs and their staff and Parliamentary staff".

If I think of a reason why I do not like that I may change my mind on it next week. Given that we are talking about participation, I do not see why those staff should not be included.

**Richard Lochhead:** We are all desperate to finish. I have to say that I cannot see any justification for the inclusion of the word "significant" in the phrase

"significant contribution to the Parliament's drive to reach out".

Most of the people who turn up to such events are extremely interested people who represent

organisations that pay them to be there. I do not see how any such event engages the public in any way other than by making an ever-so-slight contribution.

**The Convener:** What we are saying is that the very act of holding the event and thinking through the approaches to it concentrates the committee's attention on the issues. A wide swathe of civic society from outside the Parliament has contributed heavily towards this exercise. Those events are perceived to be significant exercises and people are always keen to take part in them. I would prefer to retain the word "significant".

**Donald Gorrie:** We could cover Richard Lochhead's point by saying that such events "could make a significant contribution".

**Susan Deacon:** To pick up on the discussion about disengaged sectors of society, I have to say that I am uncomfortable with the use of the singular. It implies that it is possible to have one open day on which to bring Scottish civic society into the Parliament before we close the doors and pull up the drawbridge again. I know that that is not what was meant, but an event in the singular is implied.

**The Convener:** We could insert

"Such an approach to civic participation"—

**Donald Gorrie:** Or "events" in the plural.

**The Convener:** Surely what we are talking about is the mechanism. Rather than setting out that we will hold an event in the chamber for people, we should be trying to set out our commitment to a continuing form of contact.

**Susan Deacon:** It is worth noting that such events are valuable in their own right and that if they are handled properly, they can form part of a wider strategy to tackle social exclusion. Such events allow the Parliament to reach out to individuals and organisations that have traditionally been excluded from the process.

13:00

**The Convener:** We will include the suggested wording now, but agree to come back with a form of words that might more precisely capture the nuances.

After paragraph 322, I suggest that we add two new paragraphs, which will read:

"Finally, we concluded that it was no longer necessary or helpful to allude to the CSG principles, or to try and recapture the CSG's thinking in applying them to the Parliament's procedures and practices. The Parliament, and future Procedures Committees, should not regard themselves as restricted by principles which they may wish to broaden and deepen in the future.

The CSG principles have already been adopted, and adapted, by the Parliament, and we are certain that they will evolve significantly in the future. We therefore recommend that the four principles:

- the Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation
- the Scottish Parliament in its operations and its appointments should recognise the need to promote equal opportunities for all
- the Scottish Executive should be accountable to the Scottish Parliament and the Parliament and the Executive should be accountable to the people of Scotland
- the Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive.

should be known and understood as the Parliament's principles, and that our successors on this Committee should review them on that basis."

With the new paragraphs, I am stating that, for this exercise, it was legitimate to consider the CSG's comments. Next time, the committee that undertakes the exercise should refer to our report. It should not regard itself as bound by the wording of the four principles, but should be prepared to consider the spirit that informs them and to range as widely and as deeply across the issues as it feels appropriate.

For the record, I came up with that form of wording all on my own.

**Donald Gorrie:** Hear, hear. A vote of thanks for the convener.

**The Convener:** I thank members for their patience; this has been a very long session. We are now in a position to produce a full draft document. Next week, we will discuss the papers that members have compiled. Between now and then, a paper drawn principally from Professor McCrone's submissions will be circulated, and at the beginning of next week's meeting we will agree the minor points that arose in the first two committee sessions. They are mostly minor textual amendments. There are some more substantive changes, which were suggested in the early stages of the committee's discussions, to the introduction and the sections on access, participation, equal opportunities and accountability. Addressing those issues will be an objective next week.

It is unlikely that the committee will be given time to debate the report in Parliament in February. Therefore, there is no reason to kill ourselves next week by trying to cover the whole report. I propose that we hold another meeting—or, if necessary, meetings—in January, to review difficult issues such as power sharing. It might be best to have a

meeting to discuss power sharing and another to discuss the remaining big-picture issues, with a view to publishing the report in January.

**Donald Gorrie:** I missed the beginning of the session. Is there a meeting tomorrow?

**The Convener:** No.

**Donald Gorrie:** Is there a meeting next Tuesday?

**The Convener:** Yes. The next scheduled meeting is on Tuesday. The afternoon session appears as though it could be difficult. We could be forced to hold a vote, and it is not my intention to hold a meeting when people cannot attend, as the result of the vote would be unrepresentative. If possible, I will keep votes until a final meeting that all members can attend.

**Donald Gorrie:** Okay. The committee's only meeting before Christmas is on Tuesday 17 December.

**Susan Deacon:** It was agreed in your absence earlier, Donald, that you would buy the mince pies.

**Donald Gorrie:** Okay.

**The Convener:** Particular thanks go to Richard Lochhead, who gave up four hours this morning to act as a substitute. It is much appreciated.

*Meeting closed at 13:02.*

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