PROCEDURES COMMITTEE

Tuesday 14 January 2003
(*Morning*)

Session 1

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CONTENTS

Tuesday 14 January 2003

	Col.
CONSULTATIVE STEERING GROUP INQUIRY	2137

PROCEDURES COMMITTEE
2nd Meeting 2003, 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 14 January 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:31*]

Consultative Steering Group Inquiry

The Deputy Presiding Officer (Mr Murray Tosh): Good morning and welcome to this meeting of the Procedures Committee. It is just past 9.30 and we are quorate, so we will make a start.

Today's agenda is concerned principally with the on-going work of refining our report on the consultative steering group principles. I have added to the agenda two items that I considered to be germane to that process: the first concerns a letter from the Presiding Officer, which has been circulated to members, and the second concerns the results of two questionnaires. The second item is included in the hope that we might have time to consider it today—members will recall that we did not have time to do so on the previous occasion on which the questionnaires were on the agenda.

We ended our previous meeting in the middle of dealing with the report's section on power sharing. As before, the text that members have before them is the original text, except where I have suggested changes, which are underlined. As I take you through the changes, I will go from changed paragraph to changed paragraph, but that should not preclude anyone from raising other issues that they want to discuss.

As I was reading the introductory section on power sharing, I decided that I needed to improve our explanation of what power sharing is and is meant to be. Also, following our discussion of representative and participative democracy, I have suggested some new text in that regard. Several paragraphs are, accordingly, totally underlined.

The changes in the first couple of paragraphs are minor textual changes. In paragraph 572, the underlined clause is a comment on material that we have taken out but will include in a footnote. That material is a load of numbers about MSPs' responses to the MORI survey. Only the phrasing has been changed.

Paragraph 573 is an attempt to respond to the matter of representative as opposed to participative democracy. It is Ken Macintosh's suggestion, so I will expand at length to allow Ken time to pour his coffee and come to the table so that we can find out whether he is happy with the wording.

When we dealt at our previous meeting with power sharing, I included paragraph 575 in order to explain power sharing. However, on considering it later, I thought that the paragraph was inadequate and too condensed. The paragraphs that I have inserted before paragraph 575 attempt to define power sharing further.

Paragraph 573 reads:

"In the conventional model of representative democracy, the people have the power to elect their representatives to Parliament. Parliament has the power to scrutinise the Executive/Government, control budgets and pass legislation. The Government's power is to propose budgets and legislation, and to govern within the parameters laid down by Parliament. People, Parliament and Government have distinct roles, and any element of power-sharing in this model has derived from the dynamics which always operate among them in a Parliamentary democracy, rather than from any deliberate intention."

Paragraph 574 reads:

"What the CSG set out to establish was a different model, in which traditional representative democracy was combined with a more participative model. Neither the CSG nor the Scotland Act suggested that the distinct roles of Parliament and Executive/Government would be removed: what they set out to achieve was a political culture in which the 'governance partners' would retain their distinct roles, but would work together. In particular, the CSG considered that the nature of Scottish society was such that a General Election every four or five years gave the general public, and Scotland's highly developed 'civic' society, an insufficient role in the country's governance. Power-sharing was intended to redress this imbalance."

My view is that those paragraphs explain much more clearly what is contained in paragraph 575. Power sharing is not about abolishing or usurping any roles; rather, it is about ensuring that people who are involved in the process get more closely connected with each other, exchange ideas, influence each other and—in a simple phrase—share the power.

Mr Kenneth Macintosh (Eastwood) (Lab): I welcome the new paragraphs, which contain a good description of the two different models. However, I am not sure that they contain a good description of the behaviour of the public and of MSPs in Parliament. The model of representative democracy that we have grown up with and grown used to is the one that tends to influence our behaviour, perhaps to a greater extent than was reflected in some of the evidence that we received.

When members vote along party lines, behave in a partisan manner and try to implement party manifestos, that is a reflection of a representative democracy. However, it does not emerge fully in the report that that is a legitimate way in which to

reflect people's views and the expectations of politicians. The document describes the models, but I am not sure that there is enough explanation of how those models might influence our behaviour as MSPs who represent constituents.

The Convener: We have touched on that matter in discussion of the introduction to the report. I wrote a lot of new text for the introduction in order to try to build up the sense that what the CSG recommended was a synthesis of the traditional roles and the new ones. Traditional roles are obviously respected and given their place.

In the paragraphs that follow paragraph 575, which was the key paragraph in the original text, I have offered much new material. I take the representative model as a given; that is how things work, how they have always worked, and—it is understood—how they will continue to work. I am not resisting the idea that we may want to underscore that, but I want to show what was intended to be different and what is different in practice.

In paragraph 576, I have itemised many of the ways in which the Scotland Act 1998 deliberately tried to introduce power sharing: in the electoral system; in the committees' ability to amend the budget, which is done within tightly defined parameters, but which happens to a much greater degree than at Westminster; in the strong role that was created for the committees; and in the role of petitions. Those are worth pointing out as specific examples of what was meant to be achieved. Paragraph 577 simply states that in order properly to consider power sharing, we need to study it.

Paragraph 578 contains much new material that I thought was important about what the Executive has done. It is not just the Parliament that is acting in a power-sharing way. The Executive has, for example, in relation to this committee, invoked the striking—if underused—agreement that allows committees to contact civil servants. That is a novel and significant gesture. The deliberate strategy of consulting committees on Executive bills and the on-going work to develop and refine that strategy is a distinct political cum administrative commitment and a good example of power sharing in practice.

The Executive has given resources to the Scottish Civic Forum and what is important is not whether people are delighted with the outcome of that, but that a gateway organisation has been established to give groups greater accessibility. In boosting these innovations in my amendments to the report, I take the traditional model almost for granted. We have grown up with that system and we understand it, so I felt that it was more important to explain the power sharing stuff because it is novel. It is an area in which there has been innovation and where there is scope to develop practice. As I have said many times before, I have no difficulty with members suggesting additional text to highlight aspects that they think are important.

Mr Macintosh: My comments were just an explanation of the fact that all of us are signed up to the idea of encouraging greater participation and developing the system by which we share a Parliament. Such developments are welcome.

We operate a system of representative democracy, which places an obligation on the Executive and all MSPs to deliver on their promises, such as are made in manifestos. In many ways, politicians are judged on that delivery by individuals and by the media. That is the context of the debate and, although we are trying to go down the route of establishing better methods of participation and different methods of power sharing, it would be wrong not to recognise the everyday reality of political life, which is very much a macho system. We referred to that earlier when we spoke about having a year long or 4-year long agenda. Our macho system is based on a set of 20 or so manifesto commitments on which we have to deliver and on which we are assessed. That is the background against which all politicians in the Parliament operate and it contrasts slightly with some of the more aspirational aspects of the participative politics that we are trying to encourage.

09:45

The Convener: Okay. I think that I covered that point in the first 50 or so introductory paragraphs of the report. If Ken Macintosh is unhappy with the balance of the section, he could re-examine those introductory paragraphs. The text needs to be seen in the round. When we come to the final cut of the report, if you feel that something needs to be strengthened, we will find time to talk about it.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I have no problem with what is in front of us, but I am concerned about something that I feel is still missing from this section and which would merit perhaps a paragraph about it. My concern is that recognition needs to be given to the fact that, of the four principles, power sharing is the principle about which the public especially—but also more informed third parties—demonstrated by far the least understanding of its meaning and how it operates in practice. Although that does not negate any of what is before us in the report, the point came through fairly strongly in evidence sessions, in the MORI survey and in other work that has been undertaken by the committee.

The Convener: We cover that point fully in paragraph 571 and we referred to it through the

MORI focus, but members might feel that we need to add something about evidence that we have heard bearing out the public perception. Susan Deacon makes a valid point. It might be that the comment about that perception—which is attractive, if elusive—is expressed rather economically in this section, so we could add that the people who gave evidence to the committee agreed with that perception. Some people reflected on the lack of awareness and understanding of the power-sharing principle among the wider public. We could strengthen paragraph 571—indeed, the spacing between 571 and 572 seems almost to be inviting us to do so. I thank members for that.

The other new paragraph in the section is paragraph 579. I thought that I needed to link this introductory section to what comes later. I have set out that, if we examine power sharing, we have to consider how the manifest examples of power sharing operate. We need to ask how well the petitioning system and the consultation system work. Are the committees finding time to do the work that was envisaged and are they scrutinising bills thoroughly? Are they doing post-legislative scrutiny? We need to look at all such stuff, which requires us also to examine the Executive. In the rest of the section, we deal with how the Executive and the Parliament interrelate, in particular with how the Parliamentary Bureau manages business time.

Fiona Hyslop (Lothians) (SNP): I want to support the convener's assessment of how we should deal with this section. We need to steer a steady course that reflects our discussions. I agree absolutely with Ken Macintosh, but the point of what we are trying to do is not to produce an essay on democracy, but to examine what the Parliament is doing that differs from what would traditionally have been expected of a Parliament.

It is taken as read that Ken Macintosh's points are valid, but they are covered elsewhere in the introduction and in this section. The convener has steered a steady course and I have no changes to the first few paragraphs to suggest. The convener has done extremely well in steering the course that he has taken.

The Convener: Thank you for that. I am lost for words.

Donald Gorrie (Central Scotland) (LD): I would give the convener's PhD thesis on government an alpha minus, which is quite a good mark.

I have no desire to delete anything. However, there are two issues that might be mentioned briefly, partly because I do not have an answer, although I think that I see a problem.

Paragraph 579 mentions petitions, which is good. We should accept that there needs to be improvement in the way in which the public—the fourth arm of the Government, as it were—interacts with the other three arms. At the moment, there are cross-party groups that do good work in bringing up certain issues, but there seems in some quarters to be concern that some of those groups are dominated by particular interest groups or lobbying groups and are therefore potentially harmful. That issue has to be considered. Whether through cross-party groups or through other legitimate and honourable lobbying, individuals or groups can interest MSPs in their concerns and get something going, perhaps through a member's bill or a debate.

Secondly, we should have a better system if we are trying to engage everyone in the system. If good ideas that are not wickedly party political come from opposition groups, perhaps they could be better incorporated into the Parliament's programme and the Executive's way of operating. At the moment, there is still too much feeling that the Executive has to oppose opposition party ideas, which is a pity because we all have good ideas and bad ideas.

Those two points, in particular the first, could rate a mention in the report. How will we engage the gears that will get the public interest to drive our engine?

The Convener: I will deal first with the second point. I am conscious that Donald Gorrie is interested in certain themes, such as the dynamics between the Parliament and ministers in scrutinising legislation. John Patterson and I have identified some of the points about which we still need to formulate some text; in fact, John spent some time on Monday writing some of it, but he thinks he has deleted it so it still has to be done. I am conscious of that outstanding task and we will consider Donald Gorrie's second point in that context.

I acknowledge that I had not thought to say anything very much about the cross-party groups and I am wee bit leery of so doing—if that is a Scots-ism that I can use, Gil.

Mr Gil Paterson (Central Scotland) (SNP): Definitely. You are perfectly entitled.

The Convener: I know that the issue comes under the Standards Committee's remit and that it is examining some similar areas of work, although I am not entirely sure what, because I am not a member of the Standards Committee. If we were to include anything about cross-party groups, it would have to be pretty well hedged and it would have to nod respectfully in the direction of the work of the Standards Committee. Perhaps someone who is on that committee could make a suggestion about that and we could include it later.

We did not get a lot of evidence about cross-party groups, which is, perhaps, a statement that

is worth recording. The groups have maybe been more effective in lobbying in some areas than in others, although I do not mean that disrespectfully because there is nothing underhand about their work. I am on the Scottish Parliament renewable energy group and a lot of external interest groups have seized the opportunity to use that group as a platform for getting their views into the Parliament; it is legitimate for them to do so. I am talking about civic society and commercial interests rather than about the public at large. I suspect that that might be the way that many of those groups operate. It means they are kind of power-sharing organisations, but I do not know how much general influence they have had and how much input they have had into the evolution of policy. I find it difficult to judge their effectiveness as a means through which power is shared. They have provided a useful way of getting more people to participate in some matters.

Donald Gorrie: Paragraph 579 focuses on public petitions. Should we include a sentence that says that Parliament should clarify and explore other ways in which interest groups could become part of the parliamentary system? The sentence could be put in more elegant prose.

The Convener: You mean that you want me to write it.

Donald Gorrie: Your authors' collective could write it, but I would be happy to try. I will agree to steer clear of mentioning cross-party groups, but if we say that anyone with a problem should submit a petition, we risk blocking the system.

Susan Deacon: As a member of the Standards Committee, I will take up the challenge of suggesting how we might deal with the cross-party group issue. It could be dealt with simply by including a sentence that acknowledges that cross-party groups are another mechanism through which external individuals and organisations can seek to influence MSPs. "Influence" is perhaps a loaded term—the words "develop understanding with" might be better. Essentially, cross-party groups exist to build understanding and to allow issues to be explored.

It is true that there are concerns in several quarters about how some of the cross-party groups have operated, but because the Standards Committee has commissioned research on the matter, the convener is right to say that there is a limit to how far this committee's report should go. It will be a good link to acknowledge in our report that the Standards Committee has commissioned work to determine how cross-party groups can be further developed as an effective mechanism to enhance the Parliament's operation. That work will be available to the new Parliament.

Cross-party groups impact on power sharing, albeit that they do so at the margins, to an extent. Therefore, it is legitimate to raise the subject, but using a light touch. That said, I remain concerned that we talk continually about interest groups. Interest groups have an important role to play, and we have developed leading-edge practice in Parliament to enable interest groups to influence and inform decision making. Equally, if we focus our energies too much on engaging interest groups, we are in danger of becoming more exclusive when our aspiration is to be inclusive. That takes us back to "usual suspects" terrain. A careful balance must be struck between the emphasis that we put on some of the mechanisms through which, by definition, organised interest groups can interact, and the means by which we connect with the wider public.

The Convener: Thank you for suggesting how we could include cross-party groups in the report. We should mention them, but I am happy to consider Donald Gorrie's point about investigating other ways to develop power sharing.

Mr Macintosh: My first point is on cross-party groups. Parliament's near obsession with lobbying reflects most members' concerns about the way in which we engage with people outside Parliament. We are, in order to ensure that lobbying is done fairly and equally, always wary of anybody's gaining undue influence and access. The committee has not taken evidence on that, but it might be worth noting that the Standards Committee has spent an enormous amount of time on the subject.

I take a different attitude to cross-party groups than some of my colleagues because I see them as a good avenue of access that we should promote rather than discourage. However, my concern is not about the points that are made in paragraph 579 but about the wording. The paragraph uses the words:

"and we will test … We will consider … We will of course consider".

That is like writing an essay but saying at the beginning what you are going to do. What the paragraph says is what the report will do, but at first sight the wording implies that those were the questions that we set at the beginning of our inquiry, rather than the points that have emerged from the inquiry. I hope that that makes sense. It is a small point, but I feel that we should reword that paragraph.

10:00

Rather than say,

"and we will test the quality of power-sharing … We will consider closely the way in which"

committees work, we should perhaps say, "Some of the points that have emerged are", or "Some of

the points on which evidence has been given touch on" the matters that the report mentions. Otherwise, the paragraph will imply that we have focused on those points and that we asked specific questions about them, rather than the evidence having given rise to them. I might have a better suggestion later, but that is the first thing that occurred to me when I read that paragraph.

The Convener: We have never suggested that the report would be entirely reactive, although we looked for reactions to certain things without necessarily having a detailed prospectus at the beginning. I am quite relaxed if you want to reword that paragraph in some way to make it more acceptable.

Mr Paterson: Could I say a quick word about cross-party groups? I am a wee bit reluctant to leave a question mark over the matters of cross-party groups and of things' not being quite right in respect of the over-influence of people who make a living by promoting themselves through the Parliament, because my experience of cross-party groups is exactly the opposite. Perhaps that is because the groups with which I am involved are not stuffed full of people from corporate Scotland; rather, they are stuffed full of people from the voluntary sector. Based on my experience, I would like to see more voluntary sector involvement, rather than less. I would hate the wording to suggest that there is a question mark over cross-party groups because the Standards Committee feels that outside bodies acting in a professional capacity have too much influence over certain groups. I simply sound that as a note of caution. I support Donald Gorrie's comments, but I would just be a wee bit canny—to use another Scottish word—about the debate that has followed his comments.

The Convener: Indeed. Mind you, Scots has become more mainstream; you could argue that "canny" is also an English word now.

We all accept that the cross-party groups exist for a purpose and are very useful. They have provided a way for all sorts of people to participate and there is nothing inherently wrong with the involvement of people who have a commercial stake in an issue. How could there be a cross-party group on railways, for example, without involving representatives of the various railway industries and businesses? There is nothing wrong with that. A framework is required that ensures that the business of cross-party groups is conducted properly and transparently. If that is being done, there will not be too much concern. We shall try to reflect that in the text.

Susan Deacon: I would like to make two brief points in response to Gil Paterson's comments: the first may reassure him, but the second will probably provoke him further.

By way of reassurance, the great variation that exists runs right through the Standards Committee's discussion. I concur with Gil Paterson's concern that there ought to be nothing in our report that suggests that cross-party groups are somehow under threat or in question. The Standards Committee has observed cross-party groups, gathered together various views and commissioned formal research into the enormous variation in how they operate. Part of that variation can been seen in the extent to which they are truly parliamentary in nature, with MSPs taking a lead role. The existing rules on cross-party groups cover that, but there is great variation in whether parliamentarians or outside groups are in the driving seat.

Thus far, the Standards Committee has been neutral about where any further examination should end up. The Standards Committee is taking stock responsibly of our experience to date and is saying that we should look for best practice and try to develop it. I share Gil Paterson's concern that there should not be anything in the report that leaves a question mark.

However, I feel bound to make a comment that has also been picked up by other members. We ought to guard against the suggestion that commercial influence is bad per se and that voluntary or other influence is good per se. I do not think that either is inherently good or bad, but we sometimes make that distinction. It would not be healthy for any part of the Parliament to be a wholly owned subsidiary of a campaigning voluntary organisation, just as it would not be healthy for any part of the Parliament to be in the pockets of a commercial organisation. We ought to guard against that false distinction.

The issue is germane to the somewhat delicate discussion in the Standards Committee about the Scottish Parliament business exchange scheme. I paraphrase the Standards Committee but, in essence, it concluded that we want to ensure that good, constructive opportunities exist for the Parliament and business to interact effectively, but that we also want to improve the existing framework. I would hate the message to go out from the Procedures Committee that we see certain external influences as good, bad or indifferent, or as better or worse than one another. The issue is about horses for courses, although the same robust framework ought to apply to all organisations.

Mr Paterson: Ah'm gaun tae haud ma wheesht, because I agree.

Paul Martin (Glasgow Springburn) (Lab): Susan Deacon covered a couple of the points that I wanted to raise. I welcome the Standards Committee's review of the effectiveness of cross-party groups. Many members—including Ken

Macintosh and Gil Paterson—say that they are satisfied with the way in which the cross-party groups operate and that they are great fans of them. That is their experience, but other members have different experiences.

Another issue is whether the cross-party groups are at the heart of Scotland or whether they are simply special-interest groups that are well informed and have the resources to be effective. There should be external involvement in cross-party groups to ensure that they represent people in Scotland. I wonder whether Springburn central community council has the same opportunities to take part in cross-party groups as other interest groups. We must consider the resources that are available to organisations to take part in cross-party groups. I know that the Standards Committee is focusing on that issue, which is worth considering. I hope that the review will consider independently how effective the cross-party groups are and ensure that we learn from and share positive experiences.

The Convener: I suggest that we add a slight reference to cross-party groups. After we have read our discussion in the *Official Report*, we might be able to work up two or three brief paragraphs that summarise the discussion. We could include that text as a section in its own right.

As my suggestion seems to command agreement, we will bash on to the next section. There are a couple of minor textual changes in paragraphs 580 and 581. Paragraph 584 is intended to underscore a point that is made in the introductory section, where we explain that, although we have separated out the four principles, they inform one another all the way through. That is very much the case in the text that follows paragraph 584, which is about the operation of the committees. That section considers more than just the power-sharing aspect of committees; much of it relates to accountability and participation, which is why I thought that it was appropriate to add the paragraph near the beginning of the section.

Under the heading "Concerns expressed", paragraph 586 is new, although only to the extent that it is new to the report. We touched on all the points that it covers when we talked about earlier sections on the dynamics of legislation and the pace of parliamentary work. Given the rest of the section, I felt it appropriate again to summarise here some of those points. The comments about committees' being pressured are drawn from information given in earlier sections by committees such as the justice committees, the Equal Opportunities Committee and the Transport and the Environment Committee—a range of committees gave us evidence on that.

Mr Macintosh: The last sentence of paragraph 586 says:

"No further recommendations are necessary at this stage."

The Convener: That is because we made recommendations earlier, or will make them later, in the report. When I read the entire section, I felt that all the ingredients were there, but somehow the bits had not been stitched together and there was a need to link an awful lot of it up and to point to other directions. That is really all that the paragraph does. If there is something that we have not addressed, give us a shout.

Mr Macintosh: Does "at this stage" refer to this stage in the report?

The Convener: Yes.

Fiona Hyslop: Perhaps we should say that.

The Convener: That is helpful, thank you.

The next section is on third parties in the committees. We have had two substantial discussions on that and last week, when we considered the matter in relation to papers from other committee members, we reached agreement that we would note the issue and the evidence that was given. Paragraph 587 explains the role that the CSG envisaged for co-option and its argument for co-option, ending with the point that the Scotland Act 1998 does not provide the right of co-option.

Paragraph 588 summarises some of the background to co-option, the way in which the conveners liaison group raised it early in the life of the Parliament specifically in relation to ethnic minority representation, the legal ruling that was given and the practical difficulties. Members will be aware that we have obtained definitions from the Parliament's legal office, which concludes that the same restrictions would apply to sub-committees. As we discussed last week, sub-committees are part of parliamentary proceedings and the ability to co-opt to a sub-committee cannot be adduced from anything in the Scotland Act 1998, or from any omission from the act.

In paragraph 589 I have set out what I think we agreed last week, which is that we would reflect the point that was made. The issue is not whether we have a power of co-option, unless members want to make a strong pitch on that. The issue is that it is not a matter that we can resolve, because it is a question of the procedures that are laid down in the Scotland Act 1998. Unless we have the ability to vary the aspects of our procedures that are defined in the act, we cannot do anything about co-option at all. Therefore, the principal substantive point is the procedural one.

Later in the report, we return to the question whether the Parliament should have control over its own housekeeping. If we had that power, we would be in a position to determine whether we should co-opt. I have tried to get us out of the debate on whether we should have co-option, on which we were split, and on to firm ground: we should be able to make the decision, rather than go either one way or the other at this stage.

Susan Deacon: I appreciate that there was a discussion at last week's meeting, at which I was not present, and your summary of the discussions that have taken place is helpful. I have one remaining concern. Given the way in which the section is constructed, it still reads as if we think that co-option on to committees would be a good idea if only we had the powers to provide for it. The report is the relevant place in which to address the issue of powers, and if this is an appropriate point at which to bring it in I will not go to the wall over it. However, I put it on record that, for me, the issue is not one of powers; it is about whether we agree in principle that to co-opt on to committees is the right thing to do. The section still reads as if we are saying that we would co-opt if only we had the powers to do so, but the rules are stopping us. I would like the text to be adjusted.

The Convener: I tried to make the wording neutral. If members feel that it is not neutral, the only answer is that we write a paragraph that acknowledges that members of the committee had different views and that states explicitly that some people supported the idea of co-option but that others did not. Last week, Paul Martin gave us quite a lot of good text on the flaws he sees with the co-option model. It would be perfectly reasonable to incorporate some of that wording into our report to make the report completely balanced—you pays your money, you takes your choice.

10:15

Donald Gorrie: I reluctantly concede to the lawyers over the issue of co-option.

Later on, paragraph 697 states:

"We recommend that the Conveners' group and individual committees should consider establishing 'citizens forums' or 'expert panels' as appropriate, and on a case-by-case basis."

Perhaps a similar suggestion could figure after paragraph 589. Committees that were keen to pursue the issues underlying co-option might be able to achieve the improved advice and discussion that they desire by using such a device, which would not count as a parliamentary committee.

The Convener: We could add that suggestion as a final point in the paragraph that we will add to represent the two points of view on co-option. We could say that such fora could be set up in the interim, and that one would clearly want them to be broadly representative. Committees that are determined to move ahead in this area could set up such fora, as they would not be proceedings of the Parliament.

I think that the committee is happy with how that issue has been resolved, so let us move on to consider meetings in private. It will come as a great relief that no new text has been added to the section on meetings in private for quite some time. After the first two or three pages, a couple of minor points arise in paragraph 612.

The next substantive issue is whipping—this is my second go at it. Paragraphs 617 and 619 have two objectives: to acknowledge that whipping is an important part of the political process and to try to put it into a framework. Rather than write it off as an ugly and unacceptable part of public life that cannot be avoided, we want to give it its proper place. We need to understand what whipping is for and the purposes that it serves. That harks back to Ken Macintosh's first point, which was about the legitimate role of implementing a programme for government.

I tried to deal with the issue in our first run through the report, but I have heavily rewritten my wording because not everybody was happy with it. It will take just a couple of minutes to go through the text, so let me explain what I am trying to say.

Paragraph 617 states:

"Party whipping is an acknowledged and accepted part of Parliamentary life, but the CSG did not take it into account when it recommended that Power-sharing should be one of the four principles. We considered whether and when party whipping had a role and we concluded that it was legitimate when the Parliament is voting on motions related to the core political messages of the political parties, as outlined in their manifestos, and supported by voters in elections."

The paragraph simply says that whipping is done not necessarily out of a desire to dominate and control but because the parties need to establish that they will do in the Parliament what they said they would.

The recommendation in paragraph 618 remains and is expanded on a little by paragraph 619, which is all new text—paragraph 617 was rewritten. The code to which paragraphs 618 and 619 refer is a code that the parties would produce to define when and where they whip.

Paragraph 619 states:

"We consider that the adoption of such a code would make clear that there is little scope or need for party whipping at the point where committees finalise the reports on their own investigations, although we would expect a 'whip' to be issued where an agreed code suggested that a whipped vote was appropriate. In general, we consider that committee members will be robust in deciding the

recommendations of committee inquiries, on the basis of the evidence taken, and their own individual judgements. Experience suggests that committees have taken strong lines in public at Stage 2 in the legislative process, often resisting proposals by the Executive, and we see no reason why the same committees should not reach decisions on non-legislative inquiries in an equally public and transparent way."

In paragraph 619, I am trying to assert that whipping exists, that all parties do it, that we all understand it and that, by and large, we all accept it. I do not want us to say that that makes us automatons who are controlled by the whips and the manifestos and are incapable of taking decisions. There is plenty of experience from the past three to four years of committees taking quite a robust line by bombing out things that have come from the Executive and saying, "No, the committee is not going to accept that." The committees have been quite tough in areas where whipping has not been appropriate. I think that it is right to reflect in the report the fact that there are lots of areas where whipping is not applied or appropriate, and that members have a fair degree of flexibility and influence over what emerges from committee work. I offer members that section for comment, to see whether they are happy with it or whether they want to make textual changes.

Mr Macintosh: I am quite happy with the section, except that the example you give is

"resisting proposals by the Executive".

Perhaps I am being over-sensitive, but putting in one example that is anti-Executive implies—despite the fact that you are quite clearly trying to state that all parties whip—that whipping is an Executive practice and that it is anti-parliamentary because the Executive does it. Could you remove the reference to the Executive, or state, "For example, resisting proposals by the Executive or members defying their own party whip or contradicting their own manifesto commitments"?

The Convener: I do not think that we are trying to demonstrate that members vote against the party line. Realistically, the example has to refer to the Executive, because the point is that the Executive has the majority, largely determines the business programme and drives the agenda. If we are trying to show that committees are robust, we have to say, "If you look, in practice you'll find that the Transport and the Environment Committee bombed out workplace parking charges and that the Justice 2 Committee bombed out the smacking ban. Moreover, although the Justice 1 Committee was influential, the Parliament as a whole derailed some of the policies on prisons."

I did not want to put in those examples, because that would have read like a litany of parliamentary victories over the Executive, which is not the point that I am trying to make. I am trying to say that MSPs are quite powerful in committees in influencing outcomes. That is the dynamic. The committees in the Parliament overturn the SNP and Conservative whips every week because, apart from on tiny matters now and again, those parties never win any votes. Is there any point in saying that?

I am absolutely not trying to get at the Executive. I am saying that it is an inescapable fact that most legislation will be whipped through by the Executive. One would expect a whip on the motion to approve a bill in principle at stage 1, on the stage 3 debate and on some of the critical, central details of the legislation at stage 2 if there are challenging amendments. I am trying to say that, within those parameters, people should not get the impression that MSPs are just a bunch of dummies sitting in a committee doing what the whips tell them to do, because the demonstrative fact is that MSPs have changed things quite a lot. However, we can only really say that they have changed what the Executive was going to do, as the Opposition parties are not in a position to do what the Executive can do. If you can find a way of adding something to balance what I have suggested, as ever I will be receptive to it.

Fiona Hyslop: People will see the issue from different perspectives. If anything, I take from some of the witnesses' evidence and from my experience the view that Executive party committee members are becoming more loyal and rarely break against anything that the Executive has proposed. If anything, we are probably being over-enthusiastic about the ability of members to resist the Executive at stage 2.

The last sentence of paragraph 619 states:

"Experience suggests that committees have taken strong lines".

We should say "on occasion", because that does not happen regularly; it happens on occasion. I take on board Ken Macintosh's point that the paragraph does not need to read as if it were anti-Executive. The paragraph refers to "often resisting proposals". Why do we not say, "often amending proposals"? That may be the tone that Ken Macintosh is looking for. It would reflect the fact that what is described in the paragraph does not happen all the time and that, when it does happen, it is not necessarily about resisting and being anti-Executive—sometimes it is about improving something at stage 3 that the Executive may not have changed.

Paragraph 618 is almost wishful thinking. I understand what it is trying to do, but part of the problem is whether the recommendation can be practically applied. For example, what form would any agreed code on whipping take?

We could try to get across the message that, as the Parliament is unicameral, stage 2 consideration of bills is when committees should act as committees. Obviously, if there is very strict party policy on an issue or if a subject is a manifesto commitment, members will realise that they have to advocate the party line. However, we should make it clear that stage 2 gives members the opportunity to do their own thing. I am concerned that, in many committees, members vote along party lines with no evidence that they are thinking for themselves. If they were thinking for themselves, that would be clear, as members of the same party would be split on a vote.

Paragraph 618 also implies that all parties whip at stage 2. However, I do not recall—I am aware that one of the SNP whips is present this morning—ever issuing a list that detailed how members should vote. We should realise that, much of the time, the way in which members vote is not dictated by a whip who is standing over them with a list of do's and don'ts. That might happen in other parties—I do not know. However, we cannot give the impression that it happens across the board. Members take positions voluntarily because they genuinely believe in them. We should encourage more constructive stage 2 amendments to Executive proposals in order to improve legislation. Paragraph 618 should reflect that point.

The Convener: I was partly thinking of the stage 2 procedure when I drafted paragraph 618. Amendments should survive or sink on the merits of the argument. I have never seen Conservative party whips whipping during stage 2 consideration, but I deliberately phrased the paragraph as I did in case parties have whipped—I do not know whether any party whips at stage 2. After a bill has passed its stage 1 consideration, members cannot really challenge its central purposes with amendments at stage 2, because such amendments would be ruled inadmissible. As a result, I do not see any scope for whipping at stage 2.

Moreover, I see no role for whipping when committee reports are being concluded. Indeed, I do not think that there is or can be any whipping at that stage, given that those discussions are held in private. The Conveners Group has argued that the conclusion of reports should be held in private because those discussions escape the whips' scrutiny. In encouraging committees to come out and hold such discussions in the open, I would be interested in establishing that there should be no whipping, except where the political parties' central messages or manifesto commitments are at stake.

I was mindful of some of our other discussions in which members warned against being overly prescriptive. In fact, my first draft of the paragraph contained a checklist of where people should and should not whip. John Patterson and I decided not to include that list because it would be too detailed and prescriptive. I did not really want to get into all that. However, you are taking me back in that direction by focusing on stage 2 of the legislative process. That said, the matter is up to the committee.

Susan Deacon: It is difficult to address such an issue in the report. Convener, I respect and appreciate the work that you have done in trying to translate some of our thinking into black and white—the rest of us have only aspired to do that. However, I regret to say that I am not sure whether we are addressing the issue in the right way. We are drilling deeper into details instead of stepping back and thinking about the bigger messages that the committee wants to convey.

We are broadly agreed that the report should embrace an appropriate comment about the role of political parties that recognises the realities of the party-political system while expressing the concerns that have been raised with us. We, too, have expressed some self-criticism that controls in the various parties have been too tight and have limited the Parliament's ability to live up to some of its principles as effectively as we might like it to.

We have a problem. We should be honest about the fact that the CSG ducked the issue. At best, the CSG's report was naive on the point. At worst, it avoided what was too difficult for it to deal with. Either way, the CSG is not a helpful starting point, because it singularly failed to deal with one of the most important elements of the democratic process—the role, operation and organisation of political parties. I do not mind putting on record that criticism, because anybody who reads the CSG's report will see that that element is conspicuous by its absence.

10:30

We cannot take the CSG report as a helpful starting point, because it is silent on the matter. Paragraph 617 says only that the CSG did not take party whipping into account, but the CSG did not deal with the role and operation of political parties, either. The omission was bigger than what is described. Party whipping is a manifestation of the party-political system and the CSG was silent on that, too, because it did not deal with the system.

In this section or in the introduction to our report, we should be explicit about not only party whipping, but political parties in general. The CSG report—worthy, valuable and helpful as it was—was silent on the issue, but we are trying to live in the real world a wee bit more in our deliberations.

A specific matter such as party whipping would flow more naturally from that.

I will go from the general to the specific and suggest changes. Paragraph 617 refers to "core political messages". I do not think that we should talk about them in a world where politics is all too often criticised for being cosmetic and superficial and for being about message rather than substance. We would reinforce that view by using those words. We should talk about commitments.

I wonder whether we should put a full stop after the words "political parties" and remove the words

"as outlined in their manifestos, and supported by voters in elections."

I suggest that for two reasons. First, it is implicit that manifestos are a key way of making commitments. Secondly, coalition government has been an outcome in the Parliament and could be a future outcome, in whatever permutation, so partnership agreements or programmes for government—call them what you will—might be as relevant as single-party manifestos. Ending paragraph 617 after the words "political parties" would be sufficient.

The Convener: The reference to manifestos would flow from changing the word "messages" to "commitments". With the words

"supported by voters in elections",

I tried to build in the representative democracy argument and the power-sharing argument, because it is almost as if there is a contract between the electorate and the Executive as a result of the election. That validates the process and might legitimise the use of the whip. For those who buy fully into the theory, that has legitimacy because it translates into reality what the public voted for in the election. I am not wildly bothered about removing those words, but that is the explanation.

Susan Deacon: I share the concern about the practicality of the proposal in paragraph 618, although I remain comfortable with the idea of our making a robust statement that we have heard—and I would be happy to say that we think—that too much whipping goes on throughout the parties. However, I share Fiona Hyslop's concern about the practicalities of translating that into a code.

I would like to suggest a couple more changes to paragraph 619. I share some reservations about the final sentence, but for slightly different reasons from the ones that Ken Macintosh has given. I am uncomfortable about our referring to committees as homogeneous groups. The point is about whether individual MSPs are operating with a degree of independence of mind and spirit.

The early part of the paragraph jumps from referring to "committee members" to referring to "committees". It might make more sense to refer to "committee members" throughout. The paragraph is intended to point out that, when it comes to legislation, committee members have been able to demonstrate a degree of independence of thought, so there is no reason why members should not be comfortable about doing the same thing in other situations. That is not quite how the paragraph reads, however. Perhaps restricting its references to individuals, rather than to the committee as a collective body, might help to clarify the issue.

Mr Paterson: I—

The Convener: Are we going to hear a confession from the SNP whips now?

Mr Paterson: Well, I am a wee bit worried: I have to look two ways at the same time. I wonder whether John Swinney will sack me if I say too much.

I agree with the direction suggested by Susan Deacon. I think that the CSG was a bit naive, and that, for the purposes of our report, we should point out that it is not possible to take the politics out of a political situation. In no way can we all expect to walk into the Parliament hand in hand every morning. The system does not work like that and it never will. It is as well that we spell that out to people. Paragraph 617 effectively points out that we are elected on manifestos and expect to follow their lines. We should retain those words as they are currently expressed.

I do not have any problems with paragraph 618, which says that political parties should not whip all the time. I think that it is necessary to whip some of the time, however. I have been a whip for most of the duration of this session of Parliament, although I cannot speak about the early stages. This is where I might get into trouble with John Swinney for not doing my job—perhaps I should be calling for whipping. As far as I can remember, at no time has our whip's office been involved in committee work.

Mr Macintosh: There is no whipping at committees, by any party.

Mr Paterson: There you are.

Paul Martin: There is a principle that the initial stages of any scrutiny should be objective—that is clearly what you are trying to achieve, convener. There are several ways of contaminating that objective. Whipping aside, there are party briefings. I would defy any party to say that they do not have party briefings.

The Convener: I promise that I never read them.

Paul Martin: We need to be objective about this. Parties have discussions within their own groups in relation to committee proceedings. When senior party members make statements,

that can also contaminate debates and can represent an informal mechanism of whipping a committee. A party leader might make a statement that will discourage members from pursuing a particular point of view.

We must stay in the real world. There are several ways of contaminating a committee debate. It would be naive on our part to discuss only whipping in that context. Any reference to whipping in a code of conduct would have to be wider. We talk about wanting to be objective, but I defy any party to say that there is no political grandstanding during scrutiny of any piece of legislation. All parties make political points during those stages. We must be clear about that.

Gil Paterson mentioned the joining of hands for the fierce and objective scrutiny of a bill, but political points will be made during that process. The politics cannot be taken out of committee proceedings. Therefore, we will have some difficulty in being so prescriptive as to say that parties cannot have a whipping system.

The whipping system is a private arrangement between the member and the party. A recommendation is made to the member advising them of the party position. I have never been pressured to vote in any particular direction in the Justice 1 Committee or in any other committee of which I have been a member. I have been advised of the Executive's position, but that can be done in many forms. There can be party briefings or discussions can take place between senior party members.

It will be very difficult for us to be prescriptive. Do we have the right to tell political parties that they cannot advise a member of their recommendation on a matter? I do not see what is wrong with the parties doing that, as long as members are willing to remain objective as regards their own point of view. That has always been my position. I oppose the withdrawal of the whipping system because it would be difficult to implement. I do not see any difficulty with a member being made aware of the party position on an issue.

If the whipping system is to be removed at stages 1 and 2, we must also consider removing it at stage 3. I appreciate the convener's point that members must be objective during those first two stages of the legislative scrutiny process. However, is there any reason why members should not also be objective at stage 3 and why the whipping system should not be removed at that stage as well?

The principle that we should be objective is clear. However, in reality, is it so terrible for members to be made aware of their party's position and recommendation on how to vote? My difficulty with what has been suggested relates to the reality, not the principle.

The Convener: I was not suggesting withdrawing the whipping system. In paragraph 618, I was resisting the temptation to be overly prescriptive about where the whipping system was and was not appropriate. I remain of the view that we should say something much more general than that.

The question whether we are entitled to make a recommendation on the issue is an interesting one. All our other recommendations concern the Presiding Officer, the Parliamentary Bureau or the Scottish Parliamentary Corporate Body. The recommendations are all focused on parts of the institution. Whether we are entitled to make recommendations to political parties is an interesting topic and one that I hope will keep the committee busy from now until the elections.

However, the committee is entitled to take a view on the whipping system. Paul Martin might feel that we should not be making a recommendation, but it would be worth while to place the whipping system in context and to make a gesture of respect and support for the degree of objective work that takes place within the whipping system.

I think that Ken Macintosh is due to speak next, followed by Susan Deacon.

Mr Macintosh: It was Donald Gorrie, actually.

Donald Gorrie: I apologise for having to leave the room. I had to phone the minister responsible for—[*Laughter.*]

Mr Paterson: Self-imposed whipping.

Donald Gorrie: My call concerned a committee meeting this afternoon. Maureen Macmillan and I have lodged similar amendments to a bill. The amendments have been provoked by the fact that the Church of Scotland cannot, under current law, sell some manses that it would like to sell. The Executive sympathises with the Church of Scotland's position, but there are arguments against it.

That situation seems to typify many issues that arise. Organisations will send members briefs highlighting bad set-ups or situations that need to be improved, with suggestions on how to do that. The Executive receives a brief from a civil servant saying that the organisation's suggestions are against human rights or whatever. We must be able to make up our own minds on such matters. It is not a case of whether one is Liberal, Labour, nationalist or a Tory—it is a matter of one's commonsense view of the issue.

There is often independence in committees. I agree with much of what Paul Martin said and with

Susan Deacon on specifics. Paragraph 617 would be better if it simply said that party whipping was legitimate "when the Parliament is voting on motions related to the core political commitments of the political parties".

It is a mistake to emphasise manifestos, which, in my experience, are among the less brilliant human documents. Nobody reads them, other than one's political opponents, and they are therefore as vague and defensive as possible so that one cannot be hung out to dry on some alleged commitment. They are a sort of lowest common denominator.

10:45

Mr Paterson: So that is how the Liberals do it.

Donald Gorrie: We were much more robust in the early 1970s, when I used to write such documents.

More seriously, many issues that arise are nothing to do with manifestos. Many people in Britain are exercised over whether we should attack Iraq, but that issue did not figure in any party's manifesto. Tony Blair did not say, "By the way, we want to attack Iraq." The issue arose. Many issues that have arisen in committee or plenary debates in the Scottish Parliament have just arisen—we then have to develop an attitude towards them.

I think that the McIntosh committee said that, in councils, a group should have to announce in advance the items on which a whip would apply. I was booted off the Local Government Committee a couple of years ago and am not clear what the present position is, but it would be worth finding out. I would strongly disapprove if we said that councils should do something that we are not prepared to do.

A question that should be considered is the degree of pressure that is applied. In this country, every vote is a free vote. In other countries, things might be different—a person might have a gun to their back. We are all free agents in the chamber and in committees, although there might be repercussions if we vote in a way that annoys some people. Those repercussions and how rigidly parties try to enforce things are an issue. Although there are slight differences of opinion, I think that we all seek a middle ground. We do not want Stalinism or anarchy. Somewhere between those, there can be a competent democracy that involves parties in a system that is not too rigid. People should be able to display a healthy independence on issues while working collectively within their parties.

I would not be fussy if paragraph 618 were reworded, if members find it difficult. Certainly, I accept the line that Susan Deacon has taken that there is too much whipping and I agree that we should address ways of reducing it.

Fiona Hyslop: What we mean by whipping is a problem. Members have said that the way in which a member votes is voluntary rather than the result of something from on high and we need to ensure that that is reflected in whatever we say.

The Convener: The joint convenership established that Susan Deacon and then Ken Macintosh would speak.

Susan Deacon: I have listened carefully to what colleagues have said and want to draw a conclusion. It would be a pity if we failed to grasp the strong general agreement.

One mistake that we are making is trying to adopt a rules-based approach. We should not imply that the matter is sufficiently controllable that there can be a code, framework and set of rules. In fact—to be Machiavellian about it—those who are into control and who are used to playing by rules would probably just become even better at playing by rules were a rules-based approach to be adopted. They would find ways of formulating things so that they could point to their having ticked all the boxes, but there would still be a culture in the Parliament running counter to the one to which we aspire and to which the people who have given us evidence aspire. Although it might feel weaker were we to make a general exhortation rather than something that would result in a new set of rules, it might be a stronger thing to do if we—as a cross-party committee—were to make quite a strong statement about the culture and behaviours that we think would be appropriate to our Parliament, rather than suggest that we could build those into a set of rules.

Paul Martin said, persuasively, that there are all sorts of ways in which controls can be exerted. However, as Donald Gorrie implied, we are talking about the character and behaviour of individual members and the extent to which they are prepared to display the characteristics that might be necessary to withstand those attempts to control and influence. That is not to suggest that it is inherently good always to resist attempts at discipline. There is a time and a place for discipline, and we are all realistic enough to accept whipping as part of that.

My conclusion—this is where all members' comments lead—is that we should avoid trying to translate this into rules. We should probably even avoid talking about whipping because of all the problems that have been described. If, between us, we could come up with four or five lines that spoke about the character of the Parliament that we want—which is grounded in reality, but reflects the concerns about current practice—that is where

we would have to rest on the issue. Even that would be quite a radical thing to do.

The Convener: A recommendation to members about what we want them to be, rather than a recommendation to parties about how we want them to behave, would be constitutionally more appropriate. That is helpful. Thank you.

Mr Macintosh: I am not sure that I have much to add, as I agree with the points that have been made. I am not sure whether it reflects well on Paul Martin and Donald Gorrie, but they recently supported an amendment of mine against the Executive at the Justice 1 Committee. I would just like them to know that I shall be moving another amendment this afternoon.

The Convener: Was that a contamination?

Mr Macintosh: Well, it resulted in a defeat of the Executive, which resisted the amendment. No whip was brought to bear, but there was almost certainly a strong obligation on members—as there always is—to have an awareness of the party line. On issues such as that which Donald Gorrie mentioned earlier—the closure or selling of manses—there are often party lines, although such issues are not political. In paragraph 619, I understood "whipping" to be a shorthand reference to the party line. I do not think that there has ever been an official whip in any committee. However, as Paul Martin said, that does not mean that there is no party-political behaviour in committees. It is usually self-defeating, though.

When I was a member of the Enterprise and Lifelong Learning Committee, it was difficult to get agreement and there was strong party-political behaviour. When members start to act on party lines, that provokes a response from the other members and the committee fragments. Such behaviour is counterproductive, as most members realise. The paragraph reflects party-political behaviour in the committees rather than whipping. Party-political behaviour and whipping is not an Executive problem, but a problem that we all face. The Executive has to push through legislation, so members often have to take a stance for or against the Executive line. I do not pretend that that is not the case. Whipping was always going to affect the Executive more than anyone else. However, party-political behaviour affects us all as individual members.

I did not question the code earlier because I could not remember when we had agreed to it; I assumed that I had not been at that meeting. I did not want to reopen the debate.

The Convener: I said that everything was up for grabs again. You are not whipped on that.

Mr Macintosh: I wanted this section to be included because I want something in the document about the way we behave as individuals, which has not come out in much of the evidence. We should reflect the reality of the way in which MSPs behave in committees. Sometimes, we are overly party political and we should include a comment that states that we disapprove of that. We are all independent-minded people who are free to make up our minds on any issue regardless of whether the party whip exists, but we must recognise that we are in political parties and that our behaviour is legitimately influenced by party lines. We are here to represent our parties as well as our constituents and the nation.

The Convener: I think that we will have to rewrite this section. We need a paragraph that deals with the role of the political parties and puts the whipping system into that context. We need to produce something in which we recognise the ways in which party views on committee subjects might become known. I do not think that we should use the word "contaminate"—I was rather surprised that Ken Macintosh allowed that tone to be used, but I am sure that he has marked it down for future reference. We need to define whipping and state that it is a legitimate practice, but we should also insert some words about the kind of creatures that we expect MSPs to be and the kind of bodies that we expect committees to be. We will try to work up something along those lines for approval at the final stage.

Donald Gorrie: I want to support one of Ken Macintosh's points. I have not personally experienced this, but colleagues in other committees have said that if there is an MSP in a committee who is persistently, stridently and obnoxiously political, it can have a counterproductive effect. Whether it is possible, without sounding nannyish, to include advice to MSPs along the lines of, "For God's sake, behave yourselves", I do not know.

The Convener: Do you want to name names?

Donald Gorrie: No.

The Convener: I am sure that we all understand what you are saying and share your view.

I have nothing to add on this section or the next. Does anyone have anything to raise before we move to paragraph 652?

Fiona Hyslop: Paragraph 651 makes a general point about dealing with certain draft committee reports in public. I support that point, but I would like to check that the committee has agreed that point.

The Convener: We went into all the differences between legislative reports and committee inquiries and came up with a general principle that, towards the end of the consideration of draft reports, committees should meet in public to agree

them. We did not recommend that a change be made to standing orders in relation to committee inquires; instead we put the emphasis on good practice. On draft committee reports on bills, we considered the argument that a stage 1 report should be seen as part of the legislative process. The existing standing orders incline to the view that any business that is part of the legislative process has to be conducted in public. We felt that that was the direction in which we wanted to go in relation to such reports.

Mr Macintosh: I have the same query in relation to paragraphs 628 and 629. I agree with the wording of paragraph 628, the second sentence of which states:

"We accept that Parliamentary opinion may not be ready to support all such meetings taking place in public".

I suspect that that is the reality and I wonder whether we have done justice to that argument in the preceding paragraphs, as we have put a very strong case for meeting in public. The Conveners Group presented arguments against all meetings taking place in public and I do not want to go back over the issue. When we reread the report as a whole, that opposition might emerge more clearly.

I would welcome a reminder of why, in paragraph 629, we separated non-legislative and legislative draft reports. I am not suggesting that we reopen consideration of the issue if we have already reached agreement.

11:00

The Convener: We did that because the issue was raised specifically in evidence. We looked at standing orders and found that they require that legislative work be done in public. There had been a ruling that a stage 1 report was not an intrinsic part of the legislative process and we had to sort out whether we thought that that was the case.

Mr Macintosh: So we want to say that legislative matters should be agreed in public.

The Convener: Yes.

Mr Macintosh: In paragraph 629, we are saying that non-legislative matters should also be agreed in public. I am not quite clear about the distinction.

The Convener: We took a different view in relation to non-legislative reports. Although we concluded that they, too, ought to be dealt with in public, we did not have support within the parliamentary community for recommending a change to standing orders. We want committees to do what we have done—to discuss their reports in public. We agreed that we would include in our report a non-binding recommendation

"that, over time, this should become the normal practice of the Parliament."

Although our view was that non-legislative draft reports should be considered in public, we recognised that there are other arguments and views on the matter. It is about carrying people with us, rather than about trying to change standing orders. I think that we would find that there would not be majority support for changing standing orders.

Mr Paterson: It is quite right that more committees should deal with reports in public.

Mr Macintosh: I agree. I was not sure that I understood paragraph 629, because I felt that it was slightly contradictory.

I have a reservation about paragraph 630, even though the intention behind it is to be commended. Although I hope that the listing in a committee's annual report of all the times that it has met in private will have the desired effect of reducing the number of times that the committee meets in private, I suspect that it will simply highlight the issue of committees meeting in private. Let us say that a committee meets 30 times in a year and that it meets in private on four of those occasions. The meetings that took place in private will be the only ones that will be mentioned, as there will be an explanation of why they met in private. That will have the effect of exaggerating the tendency to meet in private.

The Convener: The proposal in paragraph 630 is intended to have the opposite effect.

Mr Macintosh: I can see what the intention is. I will give an example of what I mean, from party experience. Our party whip reports mention the times that members do not support the party line. They can make it sound as if one votes against the Executive constantly, because they always refer to the times when one has not voted for the Executive. They miss out the fact that most of the time one has voted for the Executive. I hope that that makes sense. Documents that focus on something that one wants to condemn can end up unintentionally promoting it.

The Convener: Perhaps your party whip reports should be published and made widely available.

It is important to consider the recommendation in context. The committees' annual reports identify every committee meeting at which an item has been taken in private. Members of the press or people writing articles suggest that 97 per cent of committee meetings take place wholly or partly in private. That is an exaggeration, but it is the line that is taken.

By identifying the reasons for privacy, we are trying to show that less than substantive or non-contentious matters—housekeeping stuff or the appointment of advisers—tend to be taken in private. There is not an awful lot of substance to

items that are taken in private, other than—it has to be said—the finalisation of reports, which is a substantive part of committee work. The writing up of committee reports is described in such a way outside the Parliament that it sounds as if we are exercising some kind of Stalinist regime in which everything is dealt with in private. In fact, the reverse is the case. Nearly all the committee work—and most of the important stuff—is dealt with in public. We are trying to highlight that fact by explaining the reasons for privacy.

Fiona Hyslop: I am sorry for opening up that matter. I am happy to move on.

Mr Paterson: Ken Macintosh makes an important point. Publication of members' expenses is a similar situation; people forget to mention that the figures include the cost of every telephone call that a member makes from a surgery and the cost of getting to a surgery. The discussion is very emotive.

I tend towards Ken Macintosh's view about publishing a list. Members know my track record; I am in favour of having every committee meeting in public unless there is a commercial restraint or unless having it in public would affect someone personally. We must show how many meetings were held in private and what part of the meeting was held in private. I like the idea that we should list the reasons for the meetings being held in private, but we should also state the number of times that committees met in public. That would guard against the media focusing on the number of private meetings. We could expose that one element of a committee's work.

The Convener: That could probably be done. We are saying that rule 12.9 of the standing orders is misdirected because it simply states that the number of times a committee met in private must be published. We are suggesting that the rule should be changed to require that the reason for the meeting being held in private must also be published, so that the justification is self-evident. There is no reason why committees should not highlight the frequency with which they meet in public. A change to the standing orders would not be needed for committees to do that, although we might want to recommend that there should be such a change.

Mr Paterson: That should be included in the report.

Paul Martin: I have sympathy with Ken Macintosh's comments. The number of reports could be an issue for committees. For example, the Justice 2 Committee and Justice 1 Committee consider more reports than some other committees. The fact that the justice committees have met so often in private will be compared with other committees. Gil Paterson's point is whether, when the media report those figures, they will say, for example, "The Justice 2 Committee has met more times than the Enterprise and Lifelong Learning Committee". The media will not say that; they will just ask why the Justice 2 Committee has held 18 private meetings and the Enterprise and Lifelong Learning Committee has held two private meetings. The matter will be left at that and people will be left with the perception that the Justice 2 Committee is terrible. That is an issue. Whether we can stop those statistics being collected is another issue.

We appear to be suggesting that committees are not being open and transparent because they are meeting in private. I do not agree with Gil Paterson. I have said before that I think that committees sometimes have to meet in private. For example, draft reports have to be considered in private or else the report would be all over the media before the final report had been released. Think of the difficulties that we experience with reports being leaked prior to the final version being released. If committees consider reports in public, the final report will, in effect, be released while consideration is on-going, so committees will not have an opportunity to release the information once they have produced their final report.

In addition, committee members should have the opportunity to discuss in private the evidence that has been gathered. For example, I noted at a private meeting that committees sometimes receive poor evidence from civil servants. I was able to state that in a private meeting, whereas I might not have been able to be as flippant in public. I think that that assisted in the process of considering that report.

I do not think that it is completely wrong for committees to meet in private when that is required. I appreciate that our report refers to that, but the overall tone of our report seems to be that committee meetings in private are a terrible thing. There are occasions when committees must meet in private to interrogate a report and to consider every aspect of it. Members may need to be able to be frank with one another in a way that, given the legalities, might be difficult if the meeting were held in public.

The Convener: Legal issues may influence some committee judgments, but the evidence from our committee is that, if a report is put on the website and discussed in public, the whole world will ignore it. Paul Martin's concerns about media scrutiny are perhaps overstated. Many of the juiciest committee reports get leaked anyway before they are ready for publication.

It has been argued that members behave differently in public from how they behave in private, but my response to that is that members should be prepared to be as robust and honest on

the record as they are when they are off the record. That is the kind of Parliament that we set out to be. Our aim is not simply to give people places to meet and discuss things in comfort. Reaching judgments and conclusions is sometimes uncomfortable. If a meeting attracts media attention so that people will read back over the record of what was said, one must be prepared to stand by one's words and the judgments that one made. I see no real reason for protecting members from discomfort or embarrassment.

I agree that legal stuff is a different matter. Committees would need to judge for themselves whether their conclusions were likely to raise legal sensitivities. We may not have considered that category, but that is perhaps an argument for committee discretion—with an emphasis on transparency—rather than a strict rule.

Paul Martin: It is important that committees should have the opportunity properly to release the reports that they have been considering. I appreciate the convener's argument about reports not being leaked, but as a member of the Standards Committee I am aware of the regular number of complaints that we receive on that issue.

People would have no need to leak reports that were discussed in public, but what would happen to the parts of the report that were released? Instead of such things being released in the form of a leak about the stage 1 committee report, people would pick up on the nice bits and pieces and the flippant remarks that members may have made, which used to be said only in private. We would not get the opportunity to release stage 1 reports properly, despite the great deal of work that goes into them.

I do not want committees to meet in private, but sometimes there is a need for them to do so. The tone of our report should reflect that.

The Convener: I would agree with Paul Martin if he had said that there was an argument, rather than a need, for committees to be able to meet in private. It should be a matter of choice. Committees should be able to meet in private if they want to do so, but they do not need to meet in private.

Susan Deacon: In a bid to move on in a way that everyone can be content with, I want to make a suggestion. From the comments that colleagues have made, I am unclear whether folk are uncomfortable with any specific recommendation in this section of our report. It is important to know that because, if that is not the case, I suggest that the section should be more explicit about the range of views that exists, even within the committee, on how to manage the issue and where to position the balance between public and private business. If we were to do that, we would in effect be leaving the issue for the next Procedures Committee, which could pick up where we left off. We perhaps simply need an explicit acknowledgement that there are many complex issues involved.

However, I feel that we cannot back away from making a general exhortation that business should be considered in public. I do not hear anyone opposing that. The evidence shows that more and more business is being considered in private and we have to make it explicit that we are seeking to turn the tide. We should not go any further than we have gone on the detail of how that might be ensured, as incomers not only to the Procedures Committee, but to the Conveners Group and other groups, will all have views on that. I ask colleagues whether they have a problem with the specific recommendations in the report, as it is an area where there is, undoubtedly, a range of views on how we might put the principle into practice.

11:15

The Convener: The question arose not so much from a challenge to the recommendations as from a sense that some of the supporting text might be changed to mount a more vigorous explanation of existing practice. Ken Macintosh raised that point. The Conveners Group's paper will be part of the evidence to be published, and we could draw more from that into the text if members wished to do that. However, I sensed that it was the build-up that was the concern, rather than the conclusions or recommendations.

Donald Gorrie: Paragraph 630 could be expanded slightly to take account of the points that have been made. Committee reports could refer to the number of meetings and the length of those meetings, as well as the reasons for any bits that had been conducted in private and the length of those bits.

One committee of which I am a member misguidedly—but it is the tradition of that committee—spends time in private on divvying up the questions that are to be asked of witnesses, to ensure that all the important issues are covered. I think that that is misguided, although it is not wicked. Rather, five minutes could be spent sorting out the questions at the beginning of the meeting and 10 minutes at the end of the meeting could be spent in discussing who should be an adviser. Most members would accept that those items should be discussed in private, with an hour and a half of public meeting in the middle. That would be asking for a little bit more work from the committee clerks, but if the committee report could state that 89 per cent of its meeting time was spent in public, that would help to persuade the

press that we were not incessantly meeting in private.

Paragraph 630 could be expanded in that way and if the reports dealt with the issue in that way, that would address the points that have been made.

The Convener: I do not think that that would require a change to the standing orders. However, we could recommend, as good practice, that committees should define what proportion of their business is conducted in public. If someone produced a league table that showed that committee X was meeting in public for 31 per cent of the time while the percentages for all the other committees were in the high 80s and 90s, questions would be asked and there would be a point to the complaint about lack of transparency rather than it being just a general bad-mouthing of the Parliament.

The next section concerns committee scrutiny of bills and I have nothing to add to it.

The following section is about Executive majorities on committees. I suggest a minor textual change to paragraph 652. In quite a lot of the sections, I have inserted a phrase at the beginning that points to the relevance of the issue to power sharing, as power sharing was tending to slip away in consideration of all the aspects of committee work. The underlined text in paragraph 653 is a reworking of what was there, or it may be an addition—I do not really remember—but it is not all that significant.

The substantive reworking is in paragraph 654. It addresses the argument that, because the committees that are identified in paragraph 653—the Public Petitions Committee, the Procedures Committee, the Standards Committee, the Equal Opportunities Committee and the Audit Committee—are non-partisan, there should not be an Executive majority on them. Rather than avoid that argument, I wanted to confront it. The question is this: if those committees are non-partisan and are working well, why should there be an artificial majority on them? As they operate, there is an Executive majority on them, but does that mean that they have operated in a partisan way? They have not; they have operated non-politically.

There is no evidence to suggest that the present arrangements for allocating members to committees have undermined the work of the committees. As far as I am aware, conveners and members have generally operated in a consensual and non–party way. If that is the case, what is the argument for saying that we should take a Labour member off this or that committee and put a nationalist on to it to create a majority against the Executive? Would that change the way in which the committee operated?

My view is that the proposal is pretty tokenistic. It is as if we are saying, "Hey, let's put a few committees into the hands of the Opposition parties and see what difference that makes." It would not make a difference. The rule that sets out the party balance in the Parliament ought to prevail. I have added that conclusion to the end of paragraph 654, although I am aware that everybody might not share my point of view.

Fiona Hyslop: You are not making a recommendation on the point.

The Convener: No. The recommendation at the end of paragraph 657 says that we should continue to apply the party-balance rule. I included a note that the rule was set up according to the d'Hondt system—I hope that "d'Hondt" is spelt properly. If the Parliament uses that system, or another system, it should be applied consistently to all positions so that there is a clear, transparent and equal ruling on the subject.

I do not see any point in getting excited about putting opposition majorities on specific committees. That said, if such a rule were applied to some of the subject committees, it might make life more interesting. Given that there is an opposition minority in the Parliament, what does the proposal amount to? It is ultimately the Parliament that makes the decisions.

The next section covers committee meetings outside Edinburgh. Members will see that I have added some new stuff to paragraph 659, which I think records a point that the committee wanted to have highlighted. The point was that, although formal committee meetings do not take place outside Edinburgh, that does not mean that committee work is not happening outside Edinburgh. The work of committee rapporteurs and informal committee groupings often takes place outside Edinburgh.

The new wording of paragraph 665 is stronger than the original text. We felt that the case was not made for any committee to be based permanently outside Edinburgh, although members will remember that the CSG report included a suggestion that the Enterprise and Lifelong Learning Committee—I think that it was that committee—ought to be based in Glasgow. When we considered that proposal, we thought that it would disrupt the work of the Parliament. I hope that members are happy with the new wording.

The next section is about changes to committees' membership. Paragraph 668 has been amended to include a development of the explanation for why we favour stability in committee membership. Paragraph 675 is new text, which was added to try to accommodate the discussion about reducing the size of committees. I will take a minute to go through that paragraph.

I have set out that we were

"unconvinced by criticisms of the reduction in committee size"—

members might want to discuss that point—and that

"we did discuss the inconsistencies which had emerged in committee memberships, which range from 7 to 11, and the absence of any clear indication of which committees should be larger. It was impossible to say that smaller committees were more focussed on specific tasks, while larger committees were intended to involve more people in a variety of tasks.

I have then added a bit of my own:

"Had that been the case, there would surely have been larger memberships on the Social Justice and Local Government committees. Decisions on the size of individual committees appeared to have been made on the basis of negotiations among the parties, or with conveners. We concluded that there was a case for the Bureau to go back to first principles for the next Parliament, to consult on the optimum size of committees, and to set out clear criteria for establishing some committees with larger memberships.

I hope that that text reflects our discussions on the subject.

For the committee's information, the Conveners Group is considering a paper on the size of committees. I have not read the paper yet, but the matter is being considered and work is being done on it. That work will, I presume, influence any changes to current practice when the committees are re-formed at the start of the next Parliament.

I have tried not to get involved in arguments over who did what deal with whom and for what purposes, which would inevitably be self-defeating. Let us agree on whether we think seven, nine or 11 members is the correct size of committee membership and, if we think that the membership of some committees ought to be changed, let us say why.

Donald Gorrie: Paragraph 675 begins with the words:

"While we were unconvinced by criticisms of the reduction in committee size".

However, I think that the reduction in committee size was a bad thing. Perhaps the wording should mention "mixed views" or something like that. I am perhaps less hostile to the reduction in the size of committees than I was at the time, but I am still hostile to it.

The Convener: We could change the wording.

Fiona Hyslop: Ditto—I share Donald Gorrie's view. I do not think that we should say, "We were unconvinced", because I have been convinced by the criticisms of reducing the size of committees. It is not the biggest issue that we are addressing, but it will be one of the first things that the new Parliamentary Bureau will deal with when the Parliament returns after the elections. A view should be taken on a reasonable size for committees.

We should bear in mind the facts that the current Conveners Group is considering the matter and that the new bureau will not have much time to go back to first principles and consult on the matter. I think that consideration of the issue should be informed by the work of the Conveners Group. The bureau will have to move fairly quickly to set up the new committees.

The Convener: When I suggested that we say that

"we were unconvinced by criticisms of the reduction in committee size",

I was not trying to suggest that everybody had agreed with the reduction in the sizes of committees; rather, I was suggesting that the committee found that some of the apocalyptic analyses of what the change in committee sizes meant were a wee bit misplaced. The evidence that we received on the matter suggested that the whole system has been blown to smithereens by reducing the sizes of committees.

Fiona Hyslop: Why not say that the committee did not take a strong view on the criticisms that were made, although we recognised that we must do something about the matter in time for the new Parliament? Let us be informed by common sense and practicalities, rather than by backroom deals.

The Convener: The discussion will certainly be informed by the Conveners Group's discussion.

Susan Deacon: If we could go back to paragraph 668, I would like to change the underlined part of it, which currently says that if the committees

"are not given time to develop their expertise, their ability to scrutinise the Executive effectively will be diminished".

I think that the paragraph should say, "their ability to perform effectively will be diminished".

The Convener: Okay—although it is the job of committees to scrutinise the Executive; that is quite explicit.

Susan Deacon: Factually, that is the position, but I think that the wording in the current construction of the paragraph is quite negative. If a committee's membership is significantly changed during an inquiry, that sets back the committee's capacity to carry out that inquiry. That illustrates one of the main areas of criticism that there has been; it is not just about Executive scrutiny.

I will make a much wider point: I worry about certain sections of our report because I feel that we have become terribly introspective. We have got into some technical, operational and mechanical points and have lost sight of some of

the bigger questions. We are dealing with the business of power sharing, but nowhere do I see a statement that contextualises why the detailed points of operation of committees and stability in committee membership are important.

I will put that differently. The business of committees will always expand to fit the space available. It is arguable that it is like the law governing women's handbags: no matter what size the bag is, there is always 10 per cent more to put in it than will fit in the space available. I am sorry—that was a sexist example. I should have just said bags—non-gender-specific bags.

Donald Gorrie: If I had said that, I would have been gutted.

Susan Deacon: I corrected myself.

Mr Paterson: It is an absolute lie anyway.

Susan Deacon: No, it is true.

Mr Paterson: The figure is 20 per cent, not 10 per cent.

Susan Deacon: Fair enough—members will take the point and see what I am driving at. The point is that committees can undertake a massive amount of activities and business, which impacts on the size of committees, on the way in which they are organised and so on.

I would hate us to ask the bureau or whomever in the new session to consider the size of committees without our making a broader statement about how we think that they should operate. We discussed earlier the need for the Parliament to get better at identifying the priorities that are shared by the committees and the Executive.

11:30

Forgive me for repeating an example that I have used before now, but in the first year of the Parliament, a huge amount of resources were spent. The lion's share of resources was spent by the Health and Community Care Committee during its consideration of community care and a huge amount of Executive resources were spent on considering exactly the same issues, during which exactly the same external individuals and organisations informed the deliberations. That might not happen now, because things have moved on and the Parliament has matured, but we should seek to encourage the committees and the Executive to identify shared priorities in their areas of work. It might have a bearing on issues such as the size and number of committees if there was a genuine attempt to shape a shared work programme in some areas. Of course, there is still the scrutiny role to consider and there are areas in which the committees and the Executive would want to function entirely separately.

I have not made my point as clearly as I ought to have done, but I feel that there is an awful lot of technical detail in the section and that we should reflect some of the bigger aspirations that we have discussed in committee and that people have put to us.

The Convener: A lot of the evidence turned up points about the change to the size of committees. As Fiona Hyslop said, it is not the biggest issue that we face, but it has to be responded to. I think that Susan Deacon is suggesting that we should focus less on agreeing the size of committee membership and more on agreeing the criteria for establishing membership. If it is shown that a committee's work load will be greater because of what it is attempting to do, larger membership will be required. Could we contextualise what we are saying along those lines?

Susan Deacon: My concern is that we should not see those points as an end in themselves. We want an effective committee system because we want to develop good law and to act on issues that are important to the Scottish people. We do not want it simply because we are preoccupied with our own mechanics. The paragraph reads at the moment as if the latter is the case.

The Convener: I sat on a committee that had 11 members and then nine members, but I did not notice a huge difference when the change came in. Other committees went from having 11 members to having seven members. It is very difficult if we have not been in that situation to know how such a change affects what the committee is able to do, so I do not know whether we can determine that. I referred to the Conveners Group because I did not know about its report when I wrote the paragraph. Now that I know about it, I think that it would be better to concentrate more on what the conveners are doing and to ask them to review practice, to consider committee remits and their ambitions for the committees in the next session, and to take an informed view on why they want seven, nine, 11 or 13 members on committees. If that were done, the paragraph could encapsulate the argument that Susan Deacon is making.

Mr Macintosh: I endorse the points that Susan Deacon made about the overall way in which committees operate, although I am not sure that they should go in paragraph 668. We should perhaps at this point insert a paragraph that says that many of our recommendations are about the practice of committees, but we would like to comment in passing on the effectiveness of their operation and their outcomes.

We could use the example of the Health and Community Care Committee's working almost in opposition to the Executive during the first year of the Parliament. A direct contrast would be the

Enterprise and Lifelong Learning Committee. In its inquiry into lifelong learning, the minister deliberately held back on and postponed the development of an Executive strategy because she wanted the committee to inform the Executive's strategy. On the other hand, the Education, Culture and Sport Committee's work and the national debate on education were perhaps complementary, although it is difficult to know. There are lessons to be learned about the way in which committees work in relation to the Executive. We talked about future planning and work load, but I cannot remember where that came in the report.

The Convener: I am not sure that anyone knows, but we will find it.

Donald Gorrie: The part that refers to having a liaison civil servant could be elaborated upon and could prevent such duplication of effort.

The Convener: Ken Macintosh also had the idea of referring to the minutiae and of establishing that important points should be made that go beyond simply responding to evidence. That suggestion could be fed into a new paragraph. Perhaps we could then make a better recommendation.

We have been over the next few paragraphs a couple of times. They are my attempt to respond to previous discussions. We discussed whether members were "contaminated"—if I can borrow that term—by performing other roles and duties in committees. We talked about ministerial aides and we worked out that the Executive parties—really just the Labour party, because I do not think that the Liberal Democrats have ministerial aides—have taken their members off committees to which their ministers were answering. We agreed that that was good practice and I have tried to summarise that discussion in paragraph 679. I have recommended that

"aides to Ministers ought not to be members of committees to which 'their' Ministers are routinely answerable."

I then tried to make something of our discussion on party spokesmen. I have not identified Opposition party spokesmen, because it is the Labour party that has a lead party spokesman in a committee or, at least, it used to. I do not know whether that still happens.

Mr Macintosh: That reflects the fact that a member has been appointed to a committee; it does not refer to the member's role in the party. A member is not made a party spokesman and then appointed to a committee. In a committee, one person becomes the lead spokesman, purely for ease of access to information. He does not have a party role, but a committee role.

The Convener: It might be helpful to include that in the amendments because I have implied that in my comments about what the SNP does.

Mr Macintosh: The point is that there is no conflict. The spokesman speaks only as lead Labour spokesman in that committee, but not as the Labour spokesman on the subject.

The Convener: I understand.

I go on to state in paragraph 680:

"We concluded that all committee members were party spokesmen of one kind or another"—

which reflects some of our earlier discussion about MSPs on bill committees—

"and that every MSP's contribution to committee work was likely to be devalued if other members felt that their 'party' roles were in conflict with their 'committee' roles. We have commented elsewhere that MSPs have become used to juggling several Parliamentary roles in their day-to-day lives. We consider that it is important that MSPs who necessarily have more than one role on committees should continue to keep these roles separate, in order to preserve the integrity of the contributions they make in different capacities."

I could not see a way to say anything stronger than that. Some Opposition spokesmen on committees may take a very political approach, which might be contrary to the general injunction that committee members should reach judgments based on evidence and should not bring along party-political baggage. However, all of us as political appointees or representatives are subject to behaving in that way to some degree. I do not know how we could possibly recommend that Opposition parties should not put their spokesmen on relevant committees. It would be difficult for committees to function if the relevant people were not on them.

I summed up the discussion as best as I could. I throw out that paragraph for further discussion and comment.

Mr Paterson: I agree with the convener. It is difficult for parties, particularly the smaller ones, to absent themselves from committees. I accept Ken Macintosh's original point, which I think was aimed at the SNP.

Mr Macintosh: It was not.

Mr Paterson: Okay. It is counterproductive for any MSP who is a spokesperson to abuse that position and to spout the party line rather than to work within the committee. That is almost a self-regulating factor. We cannot legislate to deal with that.

Fiona Hyslop: I have an issue with paragraph 684. Are we on that?

The Convener: I would rather nail down the stuff in paragraphs 679 and 680 before we deal with paragraph 684.

Fiona Hyslop: I think that you have reflected the position correctly.

Mr Macintosh: We should say that the subject of paragraph 679 is in the ministerial code of conduct, which says that ministerial aides cannot be members of committees with which their ministers are linked. That is because ministerial aides are privy to ministerial information, so if they were members of relevant committees, they would be put in an impossible position, because they would have access to information that they might want to ask questions about. We should say something like, "We agree, and—" to reflect the fact that the Executive already imposes such a restriction.

The next point is difficult, because several of my colleagues feel strongly about it. I agree that the size of some parties causes a practical difficulty with their fulfilling their commitments and trying to get the balance right; I am sympathetic to that, but the committee might not be able to agree about the matter. I am not sure whether we have argued that point clearly in the report, because I think that we agree that the situation is undesirable. The desirable outcome would be to avoid a party front-bench spokesperson's being a member of the relevant committee, because that could cause a conflict of interest between the member's duties, responsibilities or attitude to the committee and their responsibilities to their party. It is true that all of us face that situation, but that is a given.

Much of the problem can be caused by individual personalities, but the Procedures Committee cannot deal with that. Some people make the situation work and some people do not. However, the practice remains undesirable and I would like the report to echo that. Perhaps the situation is easier for the Executive parties, because they are bound to have more MSPs. However, I would still like us to say that the principle is that members should not belong to committees that deal with subjects on which they have access to the minister or on which they are or could be spokespersons. However, we have not argued the case and it seems that we do not accept that point.

At worst, the committee's report should reflect the fact that we disagree. Paragraph 680 does not show that some members feel strongly about the issue and want their view to be reflected. I am not sure whether we have got there. From what members have said, it does not look like we will agree that such committee membership should be forbidden.

The Convener: We could say, "We recognise that such membership can cause difficulties and ideally it should not happen, but in practice, de-dah, de-dah." I am sure that we could give Ken Macintosh the comfort of showing that the matter had been raised.

Mr Macintosh: It is not so much for me. I am sanguine about the matter, but some of my colleagues feel strongly about it and will almost certainly want to take it further. I am just trying to reflect the committee's view.

The Convener: I agree that the matter is down to individuals. I was a transport spokesman for two years and was a member of the Transport and the Environment Committee during that time, but I do not think that that caused me or the rest of the committee any difficulty. That is probably true of most Opposition party lead spokesmen, except the odd one here or there.

I suspect that Gil Paterson's point is a strong one. If a committee member is essentially on a committee to have a political platform and does not contribute to the committee's work, that member's influence is likely to be close to zero. The sanction is that committees will not take members seriously if they exploit their position for raw party politics rather than contribute to the committee's overall work. That should be the discipline rather than us saying, "No, you will not do it." If we said that, we might find—as Westminster has found in the past—that it is difficult to get members to sit on committees.

11:45

If I had been forced to choose between joining the Transport and the Environment Committee and being the transport spokesman, I would have chosen being the transport spokesman. If that had happened, I do not know who would have been on the Transport and the Environment Committee, because every spokesman would have been in the same position. It would have been nonsensical for me to sit on the Health and Community Care Committee and to be the transport spokesman because of the work load of commanding two massive briefs. That would have been the same for everyone in my party and, I think, the Liberal Democrat party.

Mr Paterson: The point would also apply in some respects to the SNP.

The Convener: Yes. The point has been made to me—perhaps in private conversation—that members such as Nicola Sturgeon might find it difficult to keep up with developments. It is hard for members to know how an issue is developing unless they are on the relevant committee. If a spokesperson is a committee member, they hear what people say, read the papers and are part of the discussions, including the informal discussions and chitchat among committee members. Although the SNP has more personnel than my party, I am sure that most of the SNP spokesmen would agree with that point.

In the previous discussion, Fiona Hyslop pointed out that, now and again, parties withdraw members from committees for tactical reasons and to avoid particular difficulties. However, she thought that the spokesperson should ideally be on the relevant committee. Maybe that was where I heard the point about Nicola Sturgeon.

Donald Gorrie: Ken Macintosh is right to raise the issue if some of his colleagues are steamed up about it; we should include wording that responds to that. The Liberal Democrats have one member on each committee and it is beneficial if that member is also the party spokesperson because they hear the evidence and discussion in the committee and are therefore more likely to give well-informed advice to their colleagues. For example, they might say, "We should go for sparkling water and not still water, because the evidence led in that direction."

The Convener: Yes. The member to whom I referred earlier should not have been Nicola Sturgeon, but Margaret Smith. I recall that Donald Gorrie made a point about Keith Raffan having been the Liberal Democrat health spokesman for a while.

Donald Gorrie: If it were forbidden to have the spokesperson on the committee, the member on the committee might merely be a puppet whose strings were pulled by the spokesperson. The suggestion would not necessarily cure the problem. Ken Macintosh is right to raise the issue and we should mention it in the report, but we should go with the gist of the convener's suggestion.

Mr Macintosh: I suggest that we reword the paragraph to emphasise that some members are unhappy with the situation. We should mention Gil Paterson's point that, when committee members are too partisan—whether or not they are party spokespeople—that does not reflect well on that committee's work.

Fiona Hyslop: That is already included in the report.

Mr Macintosh: Yes, but we should emphasise the specific point.

The Convener: We will consider the issue and, I hope, come up with wording that is strong enough for Ken Macintosh.

The suggested change to paragraph 681 is minor and brings in a reference to power sharing.

I think that Fiona Hyslop has a comment on paragraph 684.

Fiona Hyslop: I wonder whether we need paragraph 684. There are far more important points in the report. The rationale behind the arrangements for committee membership is a combination of politics—which was mentioned in the previous discussion—and practicalities. Only so many members can sit on the committees. There are also personal issues. Sometimes, decisions are based on personnel management, which we would not necessarily want to disclose publicly. For example, a decision might be made because it is thought that one member would work harder and be more diligent on a committee than would another. I would not want such information to be published. A decision might be based on members' personal life; health or other reasons might mean that a member could not sit on a number of committees. I am not sure that the suggestion adds anything. There are genuine personal reasons why such information should not be published.

The Convener: I do not know that paragraph 684 adds a huge amount. I may want to look at rules 6.3 and 2.1 before I come back to the committee on that point. We will reflect on that and either give you a justification for putting in that paragraph or consider dropping it. Perhaps we could end that section on the previous point, which is a good-practice point rather than a recommendation.

I said earlier that we had tacked on all sorts of extra points about committees. The next section contains all the other bits and pieces about committee business. Paragraph 685 is just a nod at power sharing, to remind us that that informs our approach to the whole area. Paragraph 691 attempts to address the complaint that people do not get to give oral evidence; they get to give written evidence only. I have put a point in that paragraph to explain why people want to give oral evidence.

Paragraphs 692 and 693 contain new text, but not in the sense that we have not considered the issues before. They were in the introductory section, but I took them out as I felt that they were misplaced and put them in this part of the report, where committee advisers come up. We took quite a lot of evidence on committee advisers. I have tried not to make this an exercise in beating academics about the head, because I happen to think that academics are often good people to have as committee advisers.

I do not think that too many of the people who complained about academics were really complaining about the use of academics; they were saying that too many academics are used and that committees are not looking at a wide enough range of possibilities. I have tried to reflect that point. I think that the argument—the underlined text in paragraph 693—is

"that the Parliament may not be making sufficient effort to hear the voices of a wider Scottish public beyond the well-organised and well-connected civic Scotland, but we see

no reason why efforts to engage with a wider public should preclude the engagement of academics as advisers, as they do generally have the breadth of knowledge and understanding of issues which the committees require."

In paragraph 694 we make the point that

"Committees should seek breadth and variety of expertise when engaging advisers".

That is not saying, "Don't appoint academics." It is saying, "When you're appointing advisers, just look at the broad range of talent and at all the different people who could give you good advice." That paragraph sets out the core message—if I can use that expression again—but not in a negative way.

The subject caused some discomfort when we discussed it before, so I would be grateful if members could indicate whether they are happy with the text.

Fiona Hyslop: We are happy.

The Convener: Paragraph 696 tries to point out that the idea behind forums is power sharing. Paragraph 703 is about trying to get people involved in committee discussions. It attempts to respond to points that Ken Macintosh and Paul Martin in particular brought up about the over-formality of committees defeating and frustrating attempts to involve more people. I hope that committee members are happy with that paragraph.

Susan Deacon: I wish to suggest some changes to the tone and wording of the paragraph without demurring from its substance. As I have said previously in relation to similar text, the paragraph could be read as patronising. We could make it more positive.

Incidentally, there are two points to be made. The first point is about making committees as accessible as possible and open to people of all different backgrounds so that they can be involved. A separate point was made about questioning style. Some of the people who complained about the style of questioning at committee meetings were not shrinking violets—they were people who could cope easily with a confrontational, aggressive questioning style. However, they did not think that it was appropriate for them to be dealt with in an aggressive way when they had taken time to attend committee meetings to share information.

At the moment, the two points are confused. We should say something like, "We suggest that committees should be sensitive to the nature of formal committee sessions and should seek to make them as readily accessible as possible." We could then move straight to the end of the paragraph, which should state, "We recommend therefore that committees should be as flexible as possible in identifying a range of mechanisms, including less formal mechanisms, and venues for exchanges with the public. We commend several examples of good practice that we heard about in that respect." That is enough. We do not need to talk about intimidation, over-formality and so on. We should also make the point that committees should avoid taking an inappropriately confrontational approach to witnesses, especially when the main aim is to elicit information.

The Convener: That is a very constructive suggestion.

Susan Deacon: You sound surprised.

The Convener: You are too thin skinned.

Donald Gorrie: The emphasis should be on the benefit to committees of acting in the way that we suggest, rather than on the alleged inadequacy of witnesses. We should say that committees would benefit more from informal exchanges, drawing out information and so on. The point is valid, but it can be made tactfully.

The Convener: Subject to the changes that have been suggested, are members happy with those paragraphs?

Members *indicated agreement*.

The Convener: The next section deals with the Parliamentary Bureau. The first few paragraphs are largely descriptive. I have highlighted the importance of the bureau by adding a clause to paragraph 720. I have included a reference to power sharing in paragraph 722. The bureau is dealt with in this part of the report because the issues that have been raised about it relate to power sharing.

There has been a great deal of negative criticism of the bureau and the way in which it works. To balance that criticism, we must develop paragraph 723, in which we note that we also received more positive evidence about the bureau. In paragraph 724, I point out what we did not hear. When people criticised the bureau, they did not complain that it was failing to allocate sufficient time for the business of non-Executive parties or time for non-Executive bills. In the current session, we have had no problem securing time for non-Executive bills, but I have flagged up the fact that that may be a problem in the future.

Paragraph 724 continues:

"We deal elsewhere in this report with proposed changes to Ministerial statements and announcements, but we note that there was no general criticism that the Executive failed to find time to submit to questioning on important policy areas. Evidence was given that the Executive had agreed to representations from opposition business managers to allocate more time for debates where there was evidence that time would be needed. We were also advised that votes at the Bureau were rare, and that most business was resolved consensually."

I am trying to achieve a balanced analysis of the work that is under way by setting those points against the complaints that have been made against the bureau. Fiona Hyslop has asserted strongly in our discussions that although people wrap up the bureau in great mystery and imagine that its business is characterised by terrific political clashes, much of the time it is doing a perfectly efficient, constructive job of sorting out how the Parliament's business should be arranged.

Fiona Hyslop: Paragraph 724 is a reasonable representation of the evidence that we heard. On the final point about the Executive agreeing to representations from Opposition business managers, I should say that the Executive would have to do that only once for that to be a valid statement. I try to get some changes made every week, but obviously some are more significant and important than others. Perhaps we should say that the Executive agrees on occasion—it does not do so always, but it happens.

12:00

The Convener: I do not want to get into whether the Executive agrees a lot or only sometimes. However, if you feel that that paragraph reads as if the Executive agrees all the time and you do not want that said, we can change it.

Fiona Hyslop: No. It is not earth shattering.

Mr Macintosh: The last sentence in paragraph 722 reads:

"These are essentially criticisms that the Bureau needs to do more to share power in practice."

I felt that a lot of the issues were to do with transparency and access, rather than with sharing power.

The Convener: Yes, but you have to take everything as one. We started by saying that a lot of the issues that came up were about the other principles. I agree with your point, but I still think that the criticisms were about power sharing. If you are not comfortable with that wording, I am quite happy to add something about access and transparency as well, although it might sound more critical if we were to say that every principle is being infringed.

Mr Macintosh: Yes.

Fiona Hyslop: I suggest that we say that we started thinking about power sharing and then realised that a lot of the issues were to do with access and transparency. That might be a better way to put it.

Mr Macintosh: I feel that it is a question of people not knowing how the bureau operates and not seeing what goes on, rather than a question of the bureau not reflecting the balance of power in the Parliament or the needs of the wider public. It is more to do with access than with power sharing, but that is not the most important point.

Susan Deacon: I would not lose sleep over the matter, either. It is about both power sharing and access, but there are points at issue about process and outcome. The process point is about accountability and transparency, but the outcome—the decisions of the bureau—is absolutely about how power is shared and exercised. I would not like us to lose the latter point.

The Convener: Can we say that the matter raises issues of access and transparency but that the criticisms are essentially about the bureau's approach to power sharing?

Members *indicated agreement*.

The Convener: There are more changes to paragraphs 728 to 731, arising principally from the discussion that we had at the previous meeting about whether we should require the bureau to meet in private or in public. We agreed that, rather than lay down standing order recommendations, we want to put the onus on the bureau to manage that process and to consider whether and when it should ever do any business in public

In paragraph 728, I have developed some of the reservations that were expressed about the bureau meeting in public. One concern was that more business would be done "off-meeting" if meetings were held in public. Other concerns were that there would be "an element of grandstanding", that meetings might be prolonged unnecessarily and that the bureau might cease to be businesslike in its approach. All those points were made during the committee's previous discussion.

I thought that I needed to put in some explanation, again drawn from the committee's discussion, about why the bureau meeting in public ought not to be seen as a particularly big deal. Paragraph 729 says that

"most Bureau decisions were non-controversial management decisions. The Bureau routinely agrees and presents to the Parliament for its approval weekly business motions and motions designating lead committees, setting out timetables for committee stages of Bills, and approving Scottish Statutory Instruments. These motions are rarely opposed. Most of the business therefore appears to be non-contentious, and, while it might be of very little general interest, we see no substantial reason why the Standing Orders require such business to be taken in private."

It is not a question of saying to the bureau, "You will meet in public," or, "You should meet in private." It is a question of challenging why the standing orders require that the bureau must meet in private, which is the case at the moment. That is the way to skin the bureau cat—that is politically unacceptable these days, of course, but it is a figure of speech.

Paragraph 730 says:

"We accept that some Bureau discussion might be sensitive, that it might be commercially or personally confidential, and that legitimate reasons might exist for taking such discussions in private."

We could even replace the third "might" with "do".

The paragraph continues:

"However, for the reasons given above, we do not consider it justifiable that the Bureau should meet invariably in private, and we recommend that Standing Order 5.2.2 should be amended to give the Bureau itself the right to determine whether and when it should meet in private."

The second recommendation is:

"We recommend further that the Bureau should consider, and report to the Parliament, how it could make its operation more transparent, including publishing agendas and more detailed records of decisions taken, opening up meetings to MSPs and meeting in part in public, in certain circumstances."

We are not telling the Parliamentary Bureau what to do, but we think that the requirement for everything to be in private should be lifted. Our recommendation encourages the Parliamentary Bureau to report to the Parliament on how it can make its business more transparent.

Paul Martin: Convener, I have some difficulties with this area, which I set out in a previous discussion.

The Convener: I changed the recommendations to take your difficulties into account.

Paul Martin: I am sorry but there is a question about whether the bureau is similar to a parliamentary committee. I would like to know why the bureau decided to meet in private in the first place. I guess that one reason was that it is not a statutory committee of the Parliament. It considers parliamentary business—it does not interrogate witnesses or scrutinise legislation, which should not be dealt with in private.

It would be helpful to have details about why the bureau decided to meet in private in the first place and why we have ended up in this position. I appreciate that you have gone to a lot of bother to set out the background to the situation but you are asking me to agree to the principle that the bureau should really meet in public when I do not agree to that. I do not think that the bureau should be required to meet in public.

Public interest should be in the main committees of the Parliament and the bureau is not a committee. The bureau discusses parliamentary business and therefore I do not believe it should be subject to the same scrutiny as other committees. I do not see any purpose in having an *Official Report* of the Parliamentary Bureau.

The Convener: We have not recommended that.

Paul Martin: I appreciate that, but we will end up going down that road. If we decide to hold bureau meetings in public, I guess that we will decide to have an *Official Report* of those meetings.

The Convener: I am trying to say—

Paul Martin: You have not said yes and you have not said no.

The Convener: We are not deciding that the bureau must meet in public. Incidentally, the bureau never decided that it would meet in private because it never had the option. Standing orders require that the bureau meet in private—that has been the position from the beginning. Whoever framed the statutory instrument that contained the interim standing orders decided that the bureau would meet in private.

In a sense, in publishing some of its decisions, the bureau has accepted that what it discusses is a matter of legitimate public interest and that the outcomes of those decisions ought to be transparent. I will be quite open and say that I believe that the bureau should be much more open. I would prefer the bureau to meet in public. If it did, all the nonsense that was spoken about the bureau would evaporate overnight—or within a fortnight, anyway. Most of the business is transactional, boring and not particularly impressive. It is just matter-of-fact stuff.

People are mystified by the bureau and promote it out of all proportion. I would resolve that by having the bureau meet in public. However, I am not saying that with this recommendation. I am saying that we should take away the standing order that requires privacy and say to the bureau that it needs to make itself more transparent.

If the bureau decides never to meet in public, it can found that decision on a reasoned discussion of our recommendation. It will have a right that it might choose not to exercise, but it will be able to say why. The fact that the bureau already publishes decisions tells us that it is part of the process. There is some legitimate interest in the process, although the amount of interest might be pretty small. However, if the bureau is not encouraged and given the mechanism to make itself more transparent, it will remain the object of criticism and suspicion, which would be unnecessary and self-defeating.

Paul Martin: I make it clear that I am not concerned about the principle of being open and transparent. When I was in local government, we were not allowed to tape proceedings at all. When we opened up our proceedings to the public, we thought that there would be a demand to see what happened in local government, but there was not.

The issue at stake is the principle behind our decision that the Parliamentary Bureau should be open and transparent. The committee knows that I have raised the matter before. My point is that we should consider making public certain other parliamentary proceedings besides committee meetings. We have decided that the bureau should be subject to public scrutiny. Although I am not sure whether such a step is necessarily in the public interest, I think that many other housekeeping activities in the Parliament could be considered for similar scrutiny. I am not against openness and transparency, but deciding to open up the bureau to scrutiny just because we have received some criticism about it seems a rather tokenistic response.

The Convener: The bureau's proceedings should be opened up not because it has been criticised, but because it deals with matters of legitimate interest that we should know more about. The same is true of the SPCB and, indeed, of the Conveners Group, which has not been part of the Parliament's formal mechanisms until now. In fact, I will make the same recommendation when we come to talk about the SPCB and the Conveners Group.

We should ask those bodies to think about how transparent they are, whether they should provide more information and whether it would be appropriate to put some of their papers into the public arena. I am not saying to any of them "You must, you will, you shall do such and such", and recommending that standing orders be changed to ensure that that happens; I am saying to all of them merely that the Parliament is built on transparency, accountability, participation and power sharing, which is why—when they hold meetings in private—those bodies should always interrogate themselves about why they are doing so, whether it is the right thing to do and whether people should know certain information and see certain processes. If the bureau, the SPCB and the Conveners Group are persuaded that the public should know about those things, their proceedings should be made public. As far as the bureau is concerned, that would require a change to standing orders, because the bureau has no discretion in that respect at the moment.

Fiona Hyslop: I support the convener's position. In response to Paul Martin's concerns, I think that we are picking on the bureau for three main reasons. First, it is a powerful body within the Parliament; secondly, we received specific and wide-ranging evidence about it; and, thirdly, it is probably the only body about which we have concerns and which the standing orders stipulate must always meet in private. I assume that the same does not apply to other parliamentary bodies or even to the Parliament's internal workings. We are not saying that the bureau must meet in public; instead, we simply do not agree that it must always meet in private.

The Convener: When it comes down to it, we are obviously trying to find as much common ground as possible. As I have said, I have changed the paragraph a lot. I put forward an absolutist point of view in the first draft in order to stimulate discussion and to find out members' views. I had hoped that the current wording might have been sufficient to command general support. If Paul Martin does not agree with the wording, he should suggest textual changes that might command such support at a later meeting. Ultimately, if we disagree profoundly on the matter, we will have to take things further. I have joked about votes throughout our discussions and hoped that we might minimise or even eliminate the need for any votes at the end of the process. However, if we cannot agree, we will simply need to test the matter and put it to the vote.

I had hoped that Gil Paterson would be here for discussion of the next section.

Fiona Hyslop: He is going to try and come back to the meeting, but I am not sure that he will be able to.

The Convener: The next four paragraphs present alternatives—an option A and an option B—that should be measured against the four paragraphs that follow them. I have written two pieces of text to encompass the prospect of having or not having a back-benchers group, because I felt that we would be unlikely to reach consensus on that.

Paragraph 732 is common to both pieces of text and makes the pitch that back benchers are very important. Paragraph 733 is new text that attempts to sum up concerns about the status of back benchers in the Parliament. There are those who argue that back-bench members do not have enough status and are not given enough time to speak in debates.

12:15

There is also an argument that back-bench members are represented properly and appropriately through the party business managers, but another view is that that is not enough and there should be back-bench representation on the bureau. The committee has discussed that issue and I have a note that states that we were unable to agree, in practice or in principle, on how we would define back-bench members.

Paragraph 734 states that, despite misgivings on the detail, the committee recommends that the bureau should respond to back-bench concerns by opening a new means of dialogue. The paragraph

also suggests that the bureau should hold such meetings as might be useful with back-bench members who wish to meet the bureau. A meeting should take place early in the life of the new Parliament and thereafter when a desire for such a meeting is expressed.

We have fallen short of recommending that a back-benchers group be created. Paragraph 735 states:

"if such a body were needed and wanted, it would have emerged by now"

and suggests that

"if there are genuine back-bench concerns, which are not properly heeded by the Bureau, either under the present arrangements or through the mechanism suggested immediately above, pressure to form such a group may well emerge in future. In such circumstances, we would expect a future Procedures Committee to consider carefully whether and how such a body might be formulated".

Appendix B builds the case. The reworded text of paragraph 739 recommends that there should be back-bench representation on the bureau, that back-bench members should be able to elect representatives and that implementation proposals should be drawn up in due course. That relates to the optional paper, which is flagged up in appendix B. It would fit in after paragraph 812, which deals with the constitution of a back-benchers group. If it is decided that back-bench members will be represented in the bureau, it must also be considered whether there should also be a back-bench members group.

Some of the optional paper was formed from existing text. However, some of it has been built on and developed. Paragraph 3 recommends the creation of a back-bench group. Paragraph 6 outlines the role of such a group and paragraph 7 states how the definitional issues should be embraced. Paragraph 8 retains the previous recommendation that the Presiding Officer should canvass views to determine whether there is an appetite for such a group.

It is a matter for the committee to resolve. At our previous meeting, the balance of opinion was possibly against there being such a group. Not everyone was present at that meeting and I had hoped that everyone would have been present for today's discussion so that we could identify where the balance of opinion lies, because that is the basis on which I would introduce any proposed text for finalisation. We might find that we are unable to agree and we might therefore need to proceed to a vote. I have tried to assist the process by outlining both sides of the argument. It may be that members will not be happy with either of my proposals and would prefer to suggest alternative options during the final stage. That approach is appropriate if members so wish.

Donald Gorrie: In the absence of Gil Paterson, who is pushing the matter, I remind members that I suggested the formation of a back-benchers trade union a few years ago. I support appendix B strongly. To some extent, the back-benchers group is a separate issue from the bureau. There could conceivably be a back-benchers group, without there being back-bench representation on the bureau, but the two are reasonably linked in the convener's suggestion.

If there is back-bench representation on the bureau, it should be two or more members, rather than one person. For one person to carry the burden of the expectations of all back-bench members would be unfortunate and it would be difficult for him or her to distinguish between back-bench views and his or her personal prejudices. However, if there were two back-bench representatives on the bureau, they could bounce ideas off each other. There being two representatives would also enable—depending on the electoral system—the inclusion of a member from a coalition party and one from an opposition party, which would give greater breadth.

It would be helpful to have back benchers on the bureau and to have a back-benchers forum where issues could be discussed. I am sure that the party whips do a good job—our one does—in trying to find out members' views and feed them into the system, but as back benchers we have common interests outwith our parties as well as political interests within our parties. That should be represented in the system. It would be helpful to have a back-benchers group.

Susan Deacon: I will express the alternative position. I support option A. I have expressed some of my views before, so I shall attempt to summarise them.

It is important to recognise that there has been no clamour for a back-benchers group. I was not sure from where the suggestion had come when it worked its way into the report. It was not a great issue among committee members or for the people who gave evidence to us, so I am intrigued as to how it has gained such prominence in the report.

We should be wary of comparison with Westminster, notably in terms of the opening statement—the quote from the SPCB—in both options, because this Parliament is much smaller, which bears on matters in all sorts of ways. There is considerably less scope for members on the back benches to feel that they are neglected and that they have no job to do—there are far more jobs for members to do in this Parliament. The size of the Parliament also means that relationships are closer within parties and between back benchers and the leadership than is the case at Westminster. Another issue is how much

internal machinery a Parliament can sustain and maintain purely to deal with its internal processes.

Another reason why I have a concern about the proposal—I return to a point that has been made previously—is that I would like to know what is the shared interest among back benchers. Many of you laughed at my earlier flippant reference to Mr Gallie, but I make the point again that I struggle to see what are the shared interests that we as back benchers would want to come together to progress. Donald Gorrie made the point that the role of the group could be to find out the views of back benchers. On what would we want to find out their views? If we want to hear members' views on issues, those can be expressed through party channels or in the chamber. If we want their views on parliamentary processes, that is precisely what our committee structure—notably this committee—and other mechanisms, including the bureau, exist to deal with.

I do not see the need for a back-benchers group, nor can I see what its purpose would be. I struggle to see how many of us would relate to it and what value it would add. Last, but not least, the point that had it been wanted or needed it would have happened before now is an important one. This debate is a bit like debates about decentralisation and devolution of power and influence in organisations. When such decentralisation comes from the top and it is said, "Thou shalt take more responsibility elsewhere", that is almost always less effective than when decentralisation has happened organically. Were something that grows organically within the Parliament to take on a similar shape or form to the proposed back-benchers group, I would not set my face against it, but there is currently no such thing happening. We are trying to engineer something that is not necessary or appropriate. It could get in the way and create more work and arguably even more fault lines where we do not need them.

Fiona Hyslop: On power sharing, the crux is the question of where the power lies. We do not currently have a power-sharing Parliamentary Bureau because its decision-making abilities are weighted according to the number of seats that parties have in the Parliament. That fact is responsible for some of the frustrations of back benchers such as Gil Paterson and also for those of the Opposition front benchers. We have to address the issue of power sharing in the bureau. I believe that we will deal with voting in the bureau later in the document.

In that context, I prefer option A. I do not think that having back-bench representation on the bureau will change the situation one bit, unless it is possible to open up the bureau by having a different form of voting. As I have said, the bureau should operate as this committee and others do and—rather than have block votes—it should have seven members divided among the parties using the proportion of parliamentary seats as its basis.

There is probably a need for a back-bench forum, not to express the views and opinions of back benchers, but to do a job of work. There are certain jobs that would be done best by a back bench group. One of the most obvious areas in which it could do useful work is in relation to the non-Executive bills unit. It is ridiculous that we have a situation in which the Executive majority on the Parliamentary Bureau makes decisions about non-Executive bills. Similarly, such a forum could do good work in relation to members' business debates. On the basis that there are specific jobs that would be best done by non-front-bench spokespersons, I would support a variation of the proposal that would set up a back-bench forum.

Mr Macintosh: There are issues to do with the input that back benchers have in relation to decisions such as the length of speaking times, the control of members' business debates and so on. However, I do not think that the solution is either to have a back-bench forum or to have back-bench representation on the Parliamentary Bureau.

The wording of option A is stronger than I would have liked, but Donald Gorrie and Gil Paterson have made strong representations. I agree with option A because there are members of this committee who feel strongly about the matter and I am interested in maintaining consensus and unanimity in the committee.

The Convener: My view has changed. Being the sort of easy-going, democratic and participative chap that I am, I would have agreed loosely that having a body to express the views of back benchers would be a good thing. To an extent, that remains my position, but every time we have discussed the issue, the difficulties have loomed larger. I am conscious of the opinions that other members of the committee have expressed and I find that I am less convinced about the detail and the operation of back-bencher representation and a back-bench group than I am about the fundamental concept. I subscribe to the fundamental concept, which is that people who are irritated by problems such as short speaking times and so on should have a clearer way to focus those views. I am generally reluctant to close the door in that regard, which is why, in framing the alternatives, I wrote what is included in paragraph 735.

Nothing else has grown organically in the Parliament. For example, at the outset, the Presiding Officer recognised the need for a conveners liaison group and summoned all the conveners to an informal meeting that he

convened. It may be that, if somebody took the same initiative in relation to back benchers, something similar might develop, although I doubt it.

12:30

I think that we should go so far as to say that, if it were detected by the people who perform the role of this committee in the next Parliament that there is a desire for a back-bench forum, it would be reasonable to reconsider the issue. However, it is clear from our discussion that there is nothing like unanimity on the principle behind a forum and that there is little consensus on the operational issues that would have to be resolved. I therefore do not think that we could recommend that there should be such a forum or that there should be back-bench representation on the Parliamentary Bureau. However, the bureau must listen to some of the expressions of concern that we have heard. The issues might be narrow and fairly introverted, but they surface regularly and sometimes vociferously in the chamber and the bureau should have regard for the status of back benchers in the Parliament.

The means of dialogue that is suggested in paragraph 734 is good enough—it is neither prescriptive nor is it resource intensive. If that means is tried and does not work, it will die quickly. However, if it proves to be useful, people will keep it going. It stops a long way short of the formalities that would be involved in a back-bench forum, so if it is a roaring success and opens up meaningful dialogue, it could be a stepping stone towards something more elaborate.

On that basis, I tend in the direction of option A. I believe that Gil Paterson would also favour option A and agree that a majority of the committee would prefer that option.

We must conclude because a number of members must leave in the next couple of minutes. A useful discussion for us to have next week would be to determine whether, having decided to accept option A, we should have a slightly different appendix B. We will resolve that issue at the start of the next meeting, if anyone would like to argue that case. We have to be democratic and allow people to reconsider their position in the light of argument. I stress that no decision has been made yet. If necessary, we will push the matter to a vote, so that no one will be expected to accept something that they disagree with.

Donald Gorrie: It is clear that the people who agree with me will not win any vote on the issue. If paragraph 735 could say that a majority of the committee does not at this stage recommend the formation of a back-benchers group, we could live with that.

The Convener: We must stop at this point because some of our members have to leave. We have important issues to deal with, so I do not think that we could continue with only a few members.

Meeting closed at 12:33.

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