

# **SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER BILL COMMITTEE**

Tuesday 14 May 2002  
*(Morning)*

Session 1

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## **SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER BILL COMMITTEE** **2<sup>nd</sup> Meeting 2002, Session 1**

### **CONVENER**

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

### **DEPUTY CONVENER**

\*Mr Kenneth Macintosh (Eastwood) (Lab)

### **COMMITTEE MEMBERS**

\*Sarah Boyack (Edinburgh Central) (Lab)

\*Lord James Douglas-Hamilton (Lothians) (Con)

\*Donald Gorrie (Central Scotland) (LD)

\*Mr Kenny MacAskill (Lothians) (SNP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*attended

### **THE FOLLOWING ALSO ATTENDED :**

Euan Robson (Deputy Minister for Parliamentary Business)

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

### **CLERK TO THE COMMITTEE**

Sam Jones

### **SENIOR ASSISTANT CLERK**

Sarah Robertson

### **LOCATION**

Committee Room 4



## Scottish Parliament

### Scottish Parliamentary Standards Commissioner Bill Committee

*Tuesday 14 May 2002*

*(Morning)*

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

### Scottish Parliamentary Standards Commissioner Bill: Stage 2

**The Convener (Bruce Crawford):** Good morning. Welcome to the second meeting of the Scottish Parliamentary Standards Commissioner Bill Committee. The Scottish Parliamentary Standards Commissioner Bill is the only item on today's agenda. This is only the second time that a committee bill has come before a parliamentary committee and it is the first time that a committee has been established solely to scrutinise a bill at stage 2.

We welcome Mike Rumbles, who is the convener of the Standards Committee, and Euan Robson, who is the Deputy Minister for Parliament. Euan Robson may want to speak to amendments on behalf of the Executive as we deal with them.

Members should have a copy of the bill, the marshalled list of amendments, which was published yesterday, and the groupings of amendments. If members do not have those, I am sure that the clerks have spare copies.

As usual, the amendments have been grouped together to facilitate debate. The order in which they will be called will be dictated by the marshalled list. There will be one debate on each group of amendments. After we have debated the amendments to each section, the committee will decide whether to agree to the section. We intend to complete consideration of all the amendments this morning. Only members of the committee may vote in a division, if there are any divisions.

We will bash on with the business. No amendments have been lodged to section 1, the schedule or section 2, but we are required to agree those sections formally.

*Section 1 agreed to.*

*Schedule agreed to.*

*Section 2 agreed to.*

### Section 3—Functions of the Commissioner

**The Convener:** Amendment 1 is in a group on its own.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** It is worth saying for the *Official Report* that the bill was sent out to all the original inquiry consultees after its introduction, but no one had any comments or suggestions for amendments to the bill. I am sure that the committee would like to know that.

Section 3 of the bill sets out the functions of the standards commissioner. In keeping with the policy of the Standards Committee, as set out in its fourth report of 2000, the commissioner will be prevented from giving advice to an MSP or a member of the public on whether conduct is or would constitute a breach of one of the relevant provisions. That will prevent the commissioner from having to investigate conduct on which he or she might previously have expressed an opinion.

Section 3(6)(b), with which amendment 1 is concerned, also prevents the commissioner from commenting on the effectiveness of any of the relevant provisions, except within the context of a report into an investigation. The purpose behind subsection (6) is to prevent the commissioner from making comments generally on the relevant provisions, except where there has been an investigation involving those provisions.

In discussions with Executive officials, it has become clear that an unintended consequence of section 3(6)(b), as drafted, is that it could, during an investigation, prevent the commissioner from discussing with MSPs who might be the subject of the complaint, or with witnesses, matters such as the interpretation of the relevant provisions. The amendment is designed to permit such discussion during an investigation.

In addition, the amendment takes the opportunity to allow the Parliament—in practice, the Standards Committee—to seek the views of the standards commissioner in such circumstances as may be specified. That could, for example, include seeking comments on any changes that are being considered to a relevant provision.

The amendment would not alter the position whereby the standards commissioner cannot comment generally on the relevant provisions. He or she can do so only during an investigation or report into the particular provision or following a specific request from the Standards Committee.

I move amendment 1.

**Donald Gorrie (Central Scotland) (LD):** If the commissioner thinks that, in the light of experience, the system should be changed in some way, does he or she have the facility for putting that idea before the Parliament?

**Mr Rumbles:** Of course. The commissioner may do so in the report that he or she lays before the Parliament through the Standards Committee.

**The Deputy Minister for Parliamentary Business (Euan Robson):** Mr Rumbles mentioned discussions with the Executive. The Executive is entirely content with the reasoning behind amendment 1 and thinks that it would improve the commissioner's ability to conduct investigations. As was said, the amendment would maintain the Standards Committee's policy of preventing the commissioner from taking the initiative and commenting on the interpretation of provisions that are outwith the investigatory process.

The Executive thinks that it is sensible to incorporate into the bill provision for the Parliament to direct the commissioner as to the circumstances in which he or she may express a view. That will enable the Parliament to seek specialist input from the commissioner as and when that is required. The Executive is content with the amendment.

*Amendment 1 agreed to.*

**The Convener:** Amendment 13 is grouped with amendments 14, 18 and 19.

**Mr Rumbles:** Amendment 13 is a minor technical amendment to make it clear that the commissioner can have functions imposed on him or her by directions that can be given to him or her under the bill by the Standards Committee. Amendments 14, 18 and 19 are consequential amendments. I would be happy to provide members with further information about how the amendments would clarify matters, if that would be helpful, but they are technical.

I move amendment 13.

**Euan Robson:** The Executive supports the amendments.

*Amendment 13 agreed to.*

*Amendment 14 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 3, as amended, agreed to.*

*Sections 4 and 5 agreed to.*

### **Section 6—Stage 1: Admissibility of complaints**

**The Convener:** Amendment 15 is in a group on its own.

**Mr Rumbles:** Amendment 15 replaces the third test that must be met at stage 1 before the commissioner can proceed to stage 2 and a full investigation. The amendment is important and I hope that it reflects comments that were made by

the committee during its initial informal briefing prior to consideration of the bill. I am grateful for the constructive comments that were made and I hope that the amendment, which I will explain in full, does justice to those points.

Section 6 of the bill is concerned with the admissibility of complaints. Section 6(2) states that three tests must be met if a complaint is to be admissible and can move on to stage 2 and be fully investigated.

The Standards Committee set out its approach to admissibility in paragraph 37 of its fourth report of 2000. Following a preliminary or initial investigation, a complaint should not be taken further if the commissioner can decide that the matters that are alleged did not amount to a breach of any rule governing the conduct of MSPs, which is the first test, or that there was no foundation to the complaint, which is the third test.

The committee was clear that there should be a way of filtering out ill-founded and unsubstantiated complaints without the need for a full investigation and without the need for any public report on the matter. That was to be achieved in the two ways that I have mentioned and is set out in the bill in section 6.

The third test in section 6, with which the amendment is concerned, provoked a great deal of discussion within the Standards Committee. The committee was particularly concerned to avoid being over-prescriptive. The bill does not detail what the commissioner is meant to do in an initial investigation or what matters he or she is to take into account in determining whether the third test has been met. That is the purpose of having an independent commissioner—to make those decisions and to come to a conclusion. It was never intended that the third test should be restricted to requiring the commissioner to determine whether the facts set out in the complaint, if established, were sufficient to conclude that the conduct complained about took place. It was always intended that the commissioner should, for example, be able to take into account at the first stage any comments made by the MSP in response to the complaint.

Amendment 15 makes clear the intention that the commissioner should consider and assess any evidence provided during the initial investigation. That will normally be the evidence submitted by the complainer, the MSP's response and any further response obtained from the complainer. I hope that the committee will be pleased to note that the amendment is drafted in a positive way. The decision to proceed may be taken when there is enough evidence to suggest that the conduct "may have taken place". The use of the word "may" also seeks to avoid giving the erroneous impression that a complaint that goes to stage 2

must have some merit. That was another concern of the Standards Committee.

The intention is to ensure that unwarranted and unjustified complaints can be filtered out at stage 1. However, that will not always be clear cut. For example, if, following the initial investigation, the commissioner is presented with conflicting evidence that would require further investigation before a decision can be made on whether the conduct complained about had been committed, the complaint should be subject to a full stage 2 investigation.

I hope that the committee will agree that amendment 15 would improve the drafting and make it clear that the commissioner could weed out certain complaints—for example, complaints that state that the MSP has breached a particular provision but that provides no evidence and gives no indication of where any evidence can be found to support the complaint.

I move amendment 15.

**The Convener:** Thank you—that was a useful explanation of how we have reached this point. At previous meetings, there has been a fair bit of discussion of the issue.

**Mr Kenny MacAskill (Lothians) (SNP):** I assume that the test for the commissioner will be the balance of probabilities.

**Mr Rumbles:** Yes, it will be. We will come to that in our discussion on amendment 2.

**Sarah Boyack (Edinburgh Central) (Lab):** The wording suggested by amendment 15 is an improvement on the wording in the bill. Mike Rumbles is right to say that we have explored the issue in great depth. Amendment 15 meets the committee's concerns and I think that it meets the Standards Committee's original intention for section 6. It would make the wording clearer and give the commissioner scope. If an issue went to stage 2, that would not mean that there had been a breach; it would mean simply that there was something that the commissioner felt should be looked into.

**Lord James Douglas-Hamilton (Lothians) (Con):** Amendment 15 meets the concerns that we expressed. The officials and special advisers are to be thanked for the enormous amount of work that they have put in to get the wording right.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I, too, commend the work that has gone into the bill and the amendments. However, I am slightly concerned that the wording of amendment 15 may lead the commissioner to prejudge the outcome of the investigation. The amendment would mean that the commissioner had to come to an early conclusion on whether the conduct complained about "may have taken place". That could create a

mindset with which he would pursue the rest of the investigation. I would welcome Mike Rumbles's thoughts on that point.

**Donald Gorrie:** I have a more general point. We discussed these issues at a previous meeting—a meeting that was not confrontational and was very good. The outcome has been satisfactory, so perhaps such a procedure could be copied by other committees when they consider bills.

**The Convener:** Before I ask Mr Rumbles to respond, would the minister like to comment?

**Euan Robson:** Mr Rumbles has explained the background perfectly clearly and the Executive supports amendment 15. We are quite content with it.

**Mr Rumbles:** I thank members of the committee for their positive comments. I would like to deal with the point that Kenneth Macintosh raised. It is clear that the wording of amendment 15 would not prejudice the complaint. Rather than having a double negative as we had before, we have a positive. Everything hinges on the word "may". The phrase

"that the conduct complained about may have taken place"

is not prejudicial. It simply suggests that something may have happened and that the matter should be taken to stage 2.

09:45

**Mr Macintosh:** I am not an expert on legal drafting, but would it not be possible to insert words along the lines of "without prejudice to the findings of the investigation", or would that be over-egging the pudding?

**Mr Rumbles:** I have been given legal advice that that would not be necessary.

**Mr Macintosh:** The issue is the interpretation of an explicit statement that the commissioner will approach each issue neutrally and will simply make a judgment that there is something to investigate. I have made my point.

*Amendment 15 agreed to.*

*Section 6, as amended, agreed to.*

*Section 7 agreed to.*

### **Section 8—Stage 2: Investigation of an admissible complaint**

**The Convener:** Amendment 2 is in a group on its own. Mike Rumbles will speak to the amendment on behalf of the Standards Committee, and not, as he did previously, simply as its convener.

**Mr Rumbles:** Amendment 2 relates to the point about which Kenny MacAskill asked. It would

make the bill specify the standard of proof that the investigation by the standards commissioner at stage 2 must meet. It would not alter the existing position in the bill or change the standard that has been applied to date by the standards adviser.

In Scots law, there are only two standards of proof. In criminal proceedings, the standard is “beyond reasonable doubt”; in civil proceedings, proof is required on a balance of probabilities. It might be helpful to members if I briefly describe each in a little more detail.

In criminal cases, it is necessary for the jury to entertain no reasonable doubt about an accused person’s guilt. That does not mean that there must be no doubt; it means that there must be no reasonable doubt. That is a higher standard than a balance of probabilities. It is perfectly possible for a jury to be satisfied that it is probable that an accused is guilty but to acquit him or her because it retains a reasonable doubt.

In civil cases, the test has been described as being that it is more probable than not that the facts exist or occurred. The Court of Session has held that

“the weight of evidence required to tip the scales may vary with the gravity of the allegation to be proved. For example, the weight of evidence required to prove fraud in a civil case may be greater than that required to prove breach of contract but the standard is fixed as ‘the balance of probabilities’.”

In other words, in serious cases there may be a need for a higher quality of evidence in order to be satisfied that the balance of probabilities standard is reached. However, the standard itself remains constant for all cases.

Investigation proceedings under the bill are civil in nature and the commissioner would be required to apply a balance of probabilities test in relation to any investigation. However, in order to avoid any difficulty arising in the future, amendment 2 would make that position absolutely clear in the bill.

I move amendment 2.

**Donald Gorrie:** This question, on what happens in a 50:50 decision, may illustrate my ignorance of the law. The action would not really be a civil action, because the MSP is in the dock. In a 50:50 decision, would the commissioner give the MSP, or the accusation, the benefit of the doubt? I am not opposing amendment 2, but I would like some clarification.

**Euan Robson:** It is useful to have clarity on and in the bill. We are content with amendment 2—it is a useful addition to the bill.

**Mr Rumbles:** In response to Donald Gorrie’s comment, I should point out that any criminal proceedings will be handled by the procurator fiscal. In civil proceedings, the real test is the

balance of probabilities. In other words—if I can put it this way—the test depends on the charge. If the charge is serious, the quality of evidence that the commissioner uses will obviously be important.

*Amendment 2 agreed to.*

*Section 8, as amended, agreed to.*

*Section 9 agreed to.*

## **Section 10—Action on receipt of a report**

**The Convener:** Amendment 3 is grouped with amendments 4, 5, 8, 9, 11 and 12.

**Mr Rumbles:** These amendments are directed at bringing consistency to the bill’s provisions and at making minor clarifications. As such, they are purely technical and are directed at the drafting of the bill. In particular, amendments 4, 8 and 11 would ensure that any directions under the bill would also apply to certain investigations that the commissioner undertook at the direction of the Standards Committee. I am happy to provide greater detail on amendments 4, 8 and 11 and the other amendments if members so wish.

I move amendment 3.

**Euan Robson:** I signal the Executive’s support for the amendments.

*Amendment 3 agreed to.*

*Amendments 4 and 5 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 10, as amended, agreed to.*

## **Section 11—Withdrawal of a complaint**

**The Convener:** Amendment 16 is grouped with amendment 17.

**Mr Rumbles:** Amendments 16 and 17 replace amendments 6 and 7, which I lodged and then withdrew. Their purpose, which is the same as that of the earlier amendments, is to enable the standards commissioner to pass on reasons given to him or her for the withdrawal of a complaint to the member concerned and to the Parliament.

Section 11 allows a complainer to withdraw a complaint at any time before the commissioner submits his or her report. The discretion to withdraw is entirely in the hands of the complainer and is intended to cover situations where, for example, an informal resolution of a complaint is reached. The complainer is not required to give any reasons for the withdrawal.

During the stage 1 debate on the bill, Des McNulty expressed the view that, on a withdrawal, the member should be explicitly exonerated. The bill does not suggest that and, in my view, it is not appropriate to include such a provision. Many complaints will attract no publicity whatever and



such exoneration could have the opposite effect to what Des McNulty intended, as it could draw attention to the original complaint. Furthermore, it is not appropriate to exonerate a member without a finalised inquiry into the facts. However, I think that it is right that the member and the Parliament should know the reasons for withdrawal if any are given.

As drafted, the bill could prevent the commissioner from providing the member and the Parliament with any reason given for withdrawal. That information could be considered as information that was provided in the course of a complaint and section 14 restricts disclosure of such information except in certain circumstances

Amendments 16 and 17 would require that, as well as advising that a complaint had been withdrawn, the commissioner should inform the MSP and the Parliament of any reasons given for withdrawal. They would not require the complainer to give those reasons.

The amendments get around the restriction in section 14 by making the bill require the commissioner to provide any reasons that have been given. Under section 14, information may be disclosed for the purposes of enabling the commissioner to discharge his or her functions.

I move amendment 16.

**Mr MacAskill:** What would happen if the reasons given for withdrawing a complaint were spurious or insulting? For example, the complainer might say, "I'm only withdrawing the complaint because I've been bullied into it," or, "I'm only withdrawing the complaint because it's all a big con and the whole thing is loaded and fixed against me." The grounds for any withdrawal could be quite damaging to a member. Would the amendments enable us to address such a situation?

**Sarah Boyack:** I have a similar question. I understand that, even if a complainer withdraws a complaint, that does not mean that a member has been exonerated, because a full investigation has not been undertaken. Like Kenny MacAskill, I was wondering what would happen if a complainer left a sting in the tail. He or she might pull out for a specific reason, but then give a different reason for withdrawal and take the matter to all the members of the Standards Committee. Presumably if that happened, it would be left on the record—although the matter had not been made public, committee members would still be left with a comment about a member that had not been tested because the complaint had been withdrawn.

**The Convener:** My question is on a slightly separate matter. When a complainer withdraws a complaint and makes it obvious that the complaint was ill founded, mistaken or built on sandy ground,

might there be a process of exoneration for that MSP?

**Maureen Macmillan (Highlands and Islands) (Lab):** I am slightly worried by Mike Rumbles's comment that the complainer could raise their complaint again. Surely we cannot allow a cat-and-mouse situation to arise in which the complainer constantly makes and withdraws their complaint.

**Donald Gorrie:** Maureen Macmillan has raised an interesting point. The complainer might withdraw their complaint if they lack ammunition; however, they might resume it if certain relevant material comes into their hands. That said, I do not think that we can prevent someone from raising a complaint again.

**Mr Rumbles:** If an individual wishes to raise a complaint again, we certainly cannot prevent them from doing so. I remind the committee that the standards commissioner will take stages 1 and 2 of an investigation in private. However, I acknowledge members' comments about exonerating an MSP who has been the subject of a complaint. The fact is that, where the complaint is withdrawn, there will not have been a full investigation. Members will be left to draw their own conclusion from the very fact that the complaint was withdrawn. It would not be right for anyone to exonerate an individual if a full investigation into a complaint had not been carried out. That is not the process with which we are involved.

**Mr MacAskill:** My fears might be satisfied if we ensured that, instead of simply stating verbatim the grounds for withdrawal—which might be something like "It's all a big stitch-up; you can never beat these politicians"—the commissioner could indicate the reasons for withdrawal under some fairly broad categories. Perhaps that is the intention behind the amendments.

**Mr Rumbles:** Amendments 16 and 17 reflect the feeling that it is only natural justice for an MSP—and the Parliament, through the Standards Committee—to be made aware of the reasons why a complaint about that MSP has been withdrawn. Members should bear in mind the fact that, throughout the commissioner's investigation, the whole matter is taken in private. In other words, there is no publicity. As a result, the whole issue would simply fall. I hope that members understand what I am trying to get at. I sense from their questions that they think that the matter is in the public arena.

**The Convener:** What would happen if a complainer, in a vexatious way, wanted to leave a sting in the tail and made the whole thing public?

**Mr Rumbles:** The MSP would then be able to say that the commissioner had examined the

matter and that the complaint had been withdrawn. There would be no complaint to answer.

10:00

**Sarah Boyack:** The point that I was making was not about a complainer going public with their complaint; it was about a complainer withdrawing their complaint and the manner of that withdrawal leaving the substance of the complaint on the table for other MSPs. The issue is not just about a complaint being made public; it is about a member being damaged in front of their peers without having a right of reply. If a complaint is not taken further because it is withdrawn, the last word will go to the complainant, which may or may not be fair. An MSP could have a complaint before them, which could damage them in the eyes of their peers, but they would not be able to engage in a discussion. That is the fear that we are trying to tease out.

**Mr Macintosh:** My question relates to the points that Maureen Macmillan and Donald Gorrie made. Was a double jeopardy rule considered, whereby the standards commissioner would not be allowed to investigate the same complaint more than once?

**Mr Rumbles:** If a complaint is lodged and withdrawn, there is nothing to prevent anyone, even the original complainer, from relodging it. The standards commissioner would then take it up, because it is a complaint. I will tie in my comments to what Sarah Boyack said. She identified a worry, which I understand, that the MSP's peers will be aware of the complaint. Just because one person has withdrawn a complaint, there is nothing to prevent anyone else from lodging it again. Indeed, a member of the Standards Committee could do so. That would make sure that the complaint was investigated.

**The Convener:** I am not sure that we are quite there yet.

**Donald Gorrie:** I wish to address the points that Sarah Boyack and Kenny MacAskill raised. Would it be possible to lay it down—not in the bill, but in the instructions—that the standards commissioner does not have to give a verbatim report on a person's alleged reasons for giving up a complaint, so that if the remarks are vexatious they can be blandified in some way? Is that a way round the issue? The instructions could address the issue of the sting in the tail.

**The Convener:** Sarah, do you want to come back on that point?

**Sarah Boyack:** I will wait until I hear Mike Rumbles's response. Will you allow that kind of exchange, convener?

**The Convener:** I will allow one more round of responses.

**Sarah Boyack:** In that case, I have a follow-up question. Mike Rumbles said that if a Standards Committee member felt that an issue was worth following up, they could submit the complaint. I wonder about that, because the committee member would not have the evidence in front of them that the complainer had initially. How would a Standards Committee member go about that? Would the length of the standards commissioner's report give a member grounds to take a complaint forward if it was withdrawn?

**The Convener:** Ken, do you have a supplementary point?

**Mr Macintosh:** Yes. On a complaint being submitted twice, I get Mike Rumbles's point that someone else could submit the complaint. Did he think about introducing a rule to prevent a complainer from submitting a complaint, withdrawing it and submitting it again? Are such rules commonplace in other complaints systems?

I can see that there is no satisfactory conclusion to a complaint that is withdrawn. When a complaint is withdrawn, is there a mechanism for the standards commissioner to express in his or her report to the Standards Committee an opinion on the extent of his or her investigations so far? In other words, if the commissioner conducts a partial, or even full, investigation before the complaint is withdrawn and has points of note that could be of benefit to the Standards Committee, is there a mechanism by which those points can be made to the Standards Committee when the complaint is withdrawn, or will the committee just be notified that the complaint has been withdrawn and that will be the end of the matter?

**Mr MacAskill:** The issue of vexatious litigants has not been addressed. I understand that someone could withdraw a complaint then resubmit it, but we are all aware of people who submit round-robin letters and circulars. Even within the parameters of civil justice, we have methods of dealing with vexatious litigants on the basis of cost and due process. If we have a situation in which a person, having sent a round-robin letter to all 129 MSPs, submits a complaint, withdraws it and resubmits it, at some stage the standards commissioner should be able to impose a requirement, as would happen in civil justice, for a form of guarantee with regard to cost and expediency. We all receive such letters. It would be particularly easy to submit a complaint, following a round-robin letter, saying that all 129 MSPs feel in a particular way. At some stage, the commissioner must be able to say, "This person is just a damn nuisance and, unless they can satisfy me that there is clearly something here, I'm not going to entertain it."

**Euan Robson:** We are prepared to support amendments 16 and 17—I see no difficulty with

them—but I would like to reflect further on Miss Boyack's point about complaints hanging in mid-air. We are all aware that some people are minded to make vexatious complaints, so we need to pause and think about whether the standards commissioner's powers are adequate to deal with them. However, I have no difficulty with amendments 16 and 17.

**The Convener:** Minister, could you tease out what you mean by that? Do you mean that the Executive would consider lodging an amendment at stage 3 to address that issue, following discussion with Mike Rumbles?

**Euan Robson:** No. We may have discussions, but it is not for the Executive to introduce amendments; it is for the Standards Committee to do that.

**Mr Rumbles:** The comments have been constructive. I want to make sure that everyone is clear about what the bill is trying to do.

I will deal with Kenny MacAskill's points first. Evidence is needed at stage 1 of an investigation. The movement of a complaint from stage 1 to stage 2 is dependent on evidence. There must be evidence. The process is not simply a matter of the standards commissioner launching an investigation having received a vexatious complaint from someone who has written to all 129 MSPs, the complaint being withdrawn and then another investigation being launched. It would not happen like that. The standards commissioner will require evidence at stage 1 before proceeding, otherwise he will not proceed—the process is as simple as that.

Sarah Boyack and Kenny Macintosh made comments about reporting back. There will not be a verbatim report. Amendment 16 would make it clear that the commissioner must inform the member of the

"reasons given by the complainer for withdrawing the complaint".

It will be for the standards commissioner to decide on that. It would be wrong for us to impose more directions on the commissioner. The issue is up to the good sense of the commissioner.

Section 4(2) states:

"Any direction to the Commissioner by the Parliament under this section may, in particular ... require the Commissioner to make a report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction."

It is clear that the commissioner is required to give the reasons for the withdrawal of a complaint simply and straightforwardly.

**The Convener:** What about vexatious complaints?

**Mr Rumbles:** They would be dealt with in the same way. One never knows when a complaint comes in whether it is vexatious. The only measure that can be used to determine whether to proceed with a complaint is evidence. A complaint could not proceed beyond stage 1 without evidence. The issue is as simple and straightforward as that. If a person was submitting and withdrawing a vexatious complaint, it could not proceed without the standards commissioner looking for evidence. If there is no evidence, it will not proceed.

*Amendment 16 agreed to.*

*Amendment 17 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 11, as amended, agreed to.*

### **Section 12—Investigation into excluded complaints**

*Amendments 8 and 9 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 12, as amended, agreed to.*

*Section 13 agreed to.*

### **Section 14—Restriction upon disclosure of information**

**The Convener:** Amendment 10 is in a group on its own.

**Mr Rumbles:** Amendment 10 is a minor amendment to insert a missing word in section 14(1). The amendment would make it clear that any person who is appointed by the commissioner under paragraph 3 of the schedule, in whatever capacity, is subject to the restriction on disclosing information.

I move amendment 10.

*Amendment 10 agreed to.*

*Amendments 18 and 19 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 14, as amended, agreed to.*

*Sections 15 and 16 agreed to.*

### **Section 17—Transitional provision**

*Amendments 11 and 12 moved—[Mr Mike Rumbles]—and agreed to.*

*Section 17, as amended, agreed to.*

*Sections 18 and 19 agreed to.*

*Long title agreed to.*

**The Convener:** That ends the consideration of the bill at stage 2. I am grateful for everyone's input. I thank the minister and Mike Rumbles for coming.

*Meeting closed at 10:12.*



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