

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 31 May 2005

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

4th Meeting 2005, Session 2

CONVENER

*Brian Adam (Aberdeen North) (SNP)

DEPUTY CONVENER

Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Linda Fabiani (Central Scotland) (SNP)

*Alex Fergusson (Galloway and Upper Nithsdale) (Con)

*Donald Gorrie (Central Scotland) (LD)

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE SUBSTITUTES

Lord James Douglas-Hamilton (Lothians) (Con)

Marilyn Livingstone (Kirkcaldy) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Chris Ballance (South of Scotland) (Green)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 2

Scottish Parliament

Standards and Public Appointments Committee

Tuesday 31 May 2005

[THE CONVENER *opened the meeting at 11:02*]

Items in Private

The Convener (Brian Adam): Welcome to the committee's fourth meeting in 2005. I remind members to switch off their mobile phones.

Linda Fabiani (Central Scotland) (SNP): I apologise, but I will have to leave the meeting before it is finished.

The Convener: Okay. Thank you. We have also received apologies from Ken Macintosh.

Item 1 is to consider whether to take items 6 and 7 in private. I remind members that the matter is not really at our discretion; that is how we must deal with such items. Is that agreed?

Members *indicated agreement.*

Cross-party Groups

11:03

The Convener: Item 2 is consideration of an application for the proposed cross-party group on Scottish writing and publishing. Members have copies of the application, and I am pleased to say that Chris Ballance is here to talk to us about it.

I begin by abusing my position as convener and drawing to the committee's attention the fact that we now have 56 cross-party groups. In the previous session, when the number of groups reached 38, the Standards Committee expressed concern about whether it was possible to maintain the parliamentary character of cross-party groups and whether we ought to be encouraging, if not directing, cross-party groups to have broader remits, to enable the bulk of applications for new groups to be accommodated within existing groups. In 2001, the Standards Committee turned down an application for a group on pluralism in education, and I am happy to make available to the committee the background papers on that.

The committee must consider the matter. Currently, we do nothing other than to decide whether groups qualify, and that might well be what we do with the applications that are before us. Having vented my feelings, I think that it is only right and proper to consider each application on its merits, rather than in a biased way. However, we should return to the issue and consider whether we need to seek authority to refuse applications on the basis that existing groups could cover matters.

As I knew that I was likely to make those comments, I spoke to Chris Ballance and invited him to talk to the cross-party group on culture and the media, which seemed to be the closest fit with his proposed group. Now, having made my comments and having been grossly unfair to Mr Ballance, I give him the opportunity to make his pitch. I acknowledge that his proposed group meets the criteria set down by Parliament, as interpreted by the committee.

Chris Ballance (South of Scotland) (Green): I will be brief, in case members would prefer to ask questions. I have met Cathy Peattie of the cross-party group on culture and the media. Like me, she feels that a separate group is appropriate, partly because of how excluded Scottish writers have felt from the cultural strategy—the proposed group would redress the balance—and because the cross-party group on culture and the media should retain its overall remit of addressing culture issues. As the Cultural Commission is to report fairly soon, the group has quite a lot on its hands. In addition, on the media front, the group has been very involved in recent discussions about the BBC.

The proposed cross-party group has received much interest from MSPs and the public. I sent one solitary round-robin e-mail, as a result of which 14 members expressed a desire to join the group. The details are in the application form.

The initial meeting that we had to agree a purpose and to consider group officers was attended by, among other people, the chief librarian of the National Library of Scotland, the chief executives of the Scottish Book Trust and the Playwrights Studio Scotland, representatives of the Scottish Language Dictionaries and the Association for Scottish Literary Studies and the Scottish Arts Council's literary officer. We had support from other chief executives, such as Donald Smith of the Scottish Storytelling Centre and Robyn Marsack of the Scottish Poetry Library.

The cross-party group has attracted big interest. Many people feel that the work that the group could do is not being addressed by existing cross-party groups. Furthermore, although some cross-party groups might not be as parliamentary in character as we would want them to be, I have every confidence that the proposed group would be well attended by members of the Scottish Parliament.

I am happy to answer members' questions.

Donald Gorrie (Central Scotland) (LD): I am one of the people who signed up to the proposed group, which puts me in a weaker position. A slightly similar group might be that on the Scots language. Will you talk me through why that is separate?

Chris Ballance: Scottish writing and publishing by no means relate just to the Scottish language. The biggest Scottish writers, such as J K Rowling, are distinctly not writing in Scots. The biggest Scottish publishers, such as Canongate Books, see themselves as international publishers and not as Scots language publishers. Scottish writing is a different beast from Scottish language and interest in it.

Linda Fabiani: I do not have a question but I want to comment on something that Chris Ballance said. It is certainly true that Scottish writers and publishers felt that the interim Cultural Commission report did nothing to address the issues in which they had a particular interest. I know from speaking to many of the people involved that they still feel that there is no particular remit for them in the Parliament and that they would like to redress the balance through a cross-party group, which I would certainly support.

The Convener: That goes to the nub of the issue. My understanding is that cross-party groups are there to inform and edify members of the Parliament and are not primarily to satisfy external interest groups. Edifying MSPs should be their

primary function, rather than providing a parliamentary platform for interest groups.

Linda Fabiani: Yes, but special interest groups also inform MSPs who attend their meetings. If MSPs then want to do something with that information that is perfectly valid.

The Convener: Would we, as a general principle, want to have control of the number of groups?

Karen Whitefield (Airdrie and Shotts) (Lab): The committee has an obligation to revisit that issue. I have thought for some time that we perhaps have too many cross-party groups. I am slightly concerned that members sometimes sign up to cross-party groups but never attend their meetings. That means that that they are not cross-party groups but groups that operate in the Parliament, bear the Parliament's name and, quite often, have only one MSP and lots of representatives of interest groups in attendance. That goes against the principles on which cross-party groups were established. We have an obligation to revisit the matter to ensure that the groups are functioning as they should and that the work that they do is truly of a cross-party nature.

The Convener: Any cross-party group that meets with only one member present is not operating as a cross-party group; a minimum of two members have to be present for the meeting to be valid.

Linda Fabiani: Karen Whitefield has a point, but the issue that she raises is a separate one. It would be valid for the committee to consider it, but we would have to work out ways of measuring whether the groups were properly cross party and operating as such. Perhaps we could consider that further down the line.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): Further to Karen Whitefield's point, it is important to remember that cross-party groups have the function of informing MSPs. They can do that on a totally cross-party basis despite the fact that only two or three MSPs manage to attend their meetings. I speak from experience as convener of the cross-party group on ME. We have managed to keep the issue before the Parliament, despite the fact that we often do not have more than three MSPs present at meetings. This is taking us away from Chris Ballance's point, but it is important if we are to revisit the matter. I accept that there are concerns. Given that all cross-party groups meet on a Wednesday lunch time, Wednesday evening or Thursday lunch time, it is impossible to get members who have signed up to 56 groups—possibly 58 groups after today—to attend in numbers; that is just not going to happen.

The form says that the purpose of the group would be

“To celebrate, encourage and promote Scottish writing and publishing”.

Although I welcome that and I totally take on board Chris Ballance’s point that Scots writing must be kept separate from Scots language—I say that in the light of a constituent’s experience—I would have liked to have seen in the proposal an intention to inform members of the Parliament of the problems associated with the subject of the cross-party group. However, as far as approving the group is concerned, it meets all the required criteria and we should not stand in its way.

11:15

The Convener: Perhaps Mr Ballance might like to take that last point on board on behalf of the group. Indeed, in any future applications to form cross-party groups, I wonder whether the clerks would care to encourage those applying to include the same phrase or something similar as a reminder of the group’s function.

It was important to discuss the principle, but having thrashed the issue around and probably having been unfair on this group and on Mr Ballance in particular, are members content to approve the group?

Members *indicated agreement.*

The Convener: We will write to say that formally to Mr Ballance. I thank him for coming along today.

Chris Ballance: Thank you. I have noted Mr Fergusson’s comments. I suspect that the first annual general meeting will be the first opportunity to incorporate his comments officially, but I will take advice from the clerk about that.

The Convener: The next item under this heading concerns the cross-party group on crossrail. I do not think that Bill Butler has to move from his seat to speak about the group.

Linda Fabiani: I think that he should.

The Convener: The rebukes that I gave to Mr Ballance apply equally to Bill Butler, to whom I also spoke about the principle of whether we require a separate group on Glasgow crossrail.

Bill Butler (Glasgow Anniesland) (Lab): You informed me of your concerns. I did not take that as a rebuke because you were, as always, polite and I took on board your concern.

The proposed cross-party group on Glasgow crossrail, whose nomenclature was changed to “Glasgow crossrail” at the convener’s suggestion, has a specific purpose. That purpose is to press for the creation of a crossrail scheme for Glasgow

and to highlight the benefits that such a scheme would bring to Glasgow and the west of Scotland. I see it as a short to medium-term cross-party group that seeks to inform and edify members about the benefits that would accrue if such transport infrastructure were implemented.

Members will note that the conclusion of the helpful briefing provided by Strathclyde Passenger Transport says that the project would be cost effective, that the cost would be minimal compared with other rail projects, that the project could be in place by 2009, which is one year after the proposed and agreed Glasgow airport rail link, and that it would provide benefits not only for Glasgow but for the west of Scotland, in particular Ayrshire. It can also be argued that the project would provide benefits for the transport infrastructure of the whole of central Scotland and possibly up towards Aberdeen and would ensure a connection between Prestwick and Glasgow airports and other parts of Scotland.

The Convener: To be fair, Mr Butler, that is the purpose behind the proposal. We are concerned about whether it meets the criteria of a cross-party group rather than about the overall aim.

Bill Butler: Absolutely. I was simply providing a brief—but perhaps not too brief—background, which the committee knows already.

I looked at the list of cross-party groups and noted that one group, which existed to promote the idea of Borders rail, has been successful in the short to medium term, so I hope that my proposal will be equally successful.

The Executive has been helpful in providing moneys for a feasibility study. At this point, the group would provide a parliamentary focus and a forum in which members could consider the proposal and press for its implementation in discussions with the Executive. According to the briefing paper, the proposed group meets the criteria that are set down by the Standards and Public Appointments Committee regarding the representation that is required. It also seems to meet all the other criteria that we, quite rightly, set.

The Convener: You are correct to say that the group meets the criteria. I am just jealous that I never thought of establishing such a group for the Aberdeen crossrail project. Are there any other questions that members would like to ask?

Linda Fabiani: I have a general question. Perhaps Bill Butler explained this—I might have missed a wee bit of what he said. Why could not the issue be considered by the cross-party group on sustainable transport?

Bill Butler: There is a specific infrastructure aim for this particular project. It will be a short to medium-term cross-party group, in line with the

cross-party group on Borders rail. The cross-party group on sustainable transport talks more about the overall strategy; this is a very project-specific cross-party group, although I would argue that its benefits would accrue to west central Scotland and, possibly, all of Scotland.

Donald Gorrie: I think that the group qualifies. In fact, I will sign up for it myself if it is successful.

I agree that we should have a general discussion about cross-party groups, although I do not want to take sides in the argument. This group is specific and is lobbying for a visible bit of progress; the previous group just wanted to encourage a certain type of activity. Cross-party groups fall into both categories. Perhaps we should revisit what the purpose of cross-party groups is, but at the moment, the proposed group clearly qualifies and we should allow it to go ahead.

Karen Whitefield: Although, as I have said, I have reservations about the number of cross-party groups, as the convener of the cross-party group on sustainable transport I do not think that it would be appropriate for this group to try to come on board with that group. We meet only four to five times a year and crossrail would be only one of many subjects that we would hope to consider, collect information on and advise MSPs on the benefits of. As Mr Butler has pointed out, the purpose of the proposed group is very different, with specific needs and objectives. For that reason, it deserves to be approved. It also meets all the appropriate criteria.

Alex Fergusson: Karen Whitefield says that the intention of the cross-party group on sustainable transport is to bring under its wing some of the issues that the proposed group would discuss in more detail. That is quite a strong argument for not allowing the proposed cross-party group. If we had been discussing the matter six years ago, I could have argued strongly that the proposed group is more a lobby group than a cross-party group; however, the fact that we have the cross-party group on Borders rail—which has been extremely successful in raising issues of relevance to it—ties our hands entirely and means that we must accept that the proposed group would be a genuine cross-party group. If it fulfils all the criteria so, despite the fact that we all agree that we need to discuss the purpose and relevance of cross-party groups in general, I would not want to stand in the way of this one.

The Convener: There being only 129 MSPs, it is almost inevitable that members of the committee will be involved, as back benchers, in cross-party groups. Inevitably, we will have our own groups that we support. Currently, there is no reason why the committee should turn down the application, but we should hold a wider debate

about what we should be doing in terms of guiding, approving or otherwise dealing with cross-party groups in future.

I remind members that last year we had the report that we commissioned from the Robert Gordon University on cross-party group arrangements in the Parliament. Of course, at that point, we were not at 56 or—as might be the case in a moment or two—58 groups. We will put the item into our work programme and get to it in due course. Are members of a mind to approve the cross-party group on Glasgow crossrail?

Members indicated agreement.

The Convener: In that case, we will write formally to the proposed convener.

Bill Butler: I am grateful to the committee.

Annual Report

11:26

The Convener: Item 4 concerns our annual report. I remind members that we agreed to approve the text of the report by e-mail. No member sent in any comments. We need to formally endorse the report. Are members happy to do so?

Members *indicated agreement.*

Complaints

11:26

The Convener: Item 5 is a continuation of our consideration of the complaints process. The Scottish parliamentary standards commissioner published his first annual report in June last year. In it he raised, among other things, the issue of certain actions on the part of some complainers, which he felt could be deemed to be undesirable.

We heard evidence from Dr Dyer at our last meeting, in addition to which he provided us with a written submission. I think that we should reach a conclusion on this item today. Having seen the papers, does any member have a comment or a suggestion to make on the action that we should take?

Linda Fabiani: I am fairly new to the committee, so perhaps I can give a fresh view of the matter. The status quo is where we should be at; I see no reason for change.

Karen Whitefield: I understand the commissioner's concerns about repeat, vexatious and, occasionally, abusive complaints and complainers. Such behaviour should not be accepted. However, I have reservations about the introduction of a prescriptive code that could be used by people to argue that their complaint was not considered properly. We could be very detailed about how a complaint of this nature should be handled, only to discover that all that that does is to rule out some people. If someone is really determined, they will get round the rules.

Each case should be dealt with on its merits. By their very nature, people who go to the commissioner do so because they feel frustrated or because, as often happens, they feel that no one has listened to them in the past. All their complaints might well have been investigated thoroughly; nonetheless, the commissioner is the last point of complaint. It is right that those complainers' complaints are dealt with.

People need to feel that they are being dealt with appropriately. There should be no reason why the commissioner cannot advise somebody who is complaining repeatedly with exactly the same complaint that he is not prepared to consider their complaint again because he has investigated it once already. That will quickly close the matter down, unless the complainer comes back with something new.

Likewise, I do not think that anybody would object to his reminding people that if they are abusive, either verbally or in writing, he will not engage with them other than in writing. Everybody would understand that that is sensible, and it is

probably the way in which most of us, as MSPs, engage with our constituents on those rare occasions when they become abusive. I stress that most people do not become abusive.

When people are angry, they often come across as being a bit more aggressive, but if one engages with them one can usually calm them down. If not, one can say, "I will only engage with you in writing," and consider their complaint. I have serious reservations about our giving the impression, wrongly, that a complaint will not be taken seriously just because the person has complained more than once or is considered to be a vexatious complainant.

11:30

The Convener: For my sake, and for the sake of the clerks and the *Official Report*, will you tell us whether the draft policy, which is included as annex A to paper ST/S2/05/4/5, meets with your approval? It goes into some detail, but it clarifies the position for the public and it gives the standards commissioner guidance on how he might deal with unacceptable actions by complainers. It also parallels the policies of some of the other commissioners. I do not believe that it is overly prescriptive.

I understand and accept your point that the more detail we go into the more difficult it becomes to do anything outwith the policy using sensible discretion, but the draft policy gives people a fair idea of the conduct that is unacceptable and the actions that the commissioner might take. It does not say that the complaint will not be pursued; it just says how it will be pursued. For example, it suggests that the complaint is dealt with through correspondence and that no more phone calls are accepted. I take it that you do not object to anything in the draft policy.

Karen Whitefield: I do not object to anything in annex A, which is the draft policy on unacceptable actions by complainers. It gives a degree of detail and certainty about the way in which repeated and vexatious complaints will be dealt with and it does so without tying the hands of those who are involved. I would have reservations if it went into further detail or became more prescriptive.

The Convener: You will note that annex A does not refer to vexatious and repeated complaints. In the past, the committee has expressed sympathy with the standards commissioner about such complaints, but they are not mentioned in the draft policy. As I understand it, the commissioner has seen the draft policy and he is content with it.

Linda Fabiani: As I see it, annex A puts in writing something that should have been happening anyway. It describes the way in which we all expect things to work. It is useful to have it,

but, like Karen Whitefield, I would not want it to go any further. I was interested to hear you say that it is in line with the policies of other commissioners. I imagine that the Scottish public services ombudsman works in that way too. I would not like the perception to be that there are different rules for MSPs or that we are being afforded better protection from annoyance or vexatious complainers than a member of the general public would be.

Donald Gorrie: The statements in the report on the policy of the Scottish public services ombudsman and the Scottish legal services ombudsman seem to be reasonable. The public services ombudsman aims to manage the conduct of complainers rather than to exclude complaints from the process. That is an important distinction. Of the Scottish legal services ombudsman, it says that it is vital never to judge the complainant, because the only thing that matters is whether the complaint is justified. Many of the people who have made improvements throughout history have been real pains in the backside but have kept on and on about the point that they were making. It is in the nature of complainants that they go on in what other people regard as an unreasonable fashion. We simply have to live with that.

It is quite fair to have rules whereby, if the person is rude and keeps on phoning, writing to or harassing the commissioner, the commissioner makes it clear that he is pursuing the complaint but does not have to put up with the complainer's approach or speak to them on the telephone. There is a distinction between trying to have reasonable control over the unacceptable behaviour and exploring the complaint while having as little as possible to do with the person who is complaining. If lots of people submit identical cases to the commissioner, I would think that the commissioner can say that he is pursuing the complaint already and that the people who have submitted identical complaints will get a copy of the report in due course. That will ensure that he does not have to have extensive correspondence with every complainant.

The Convener: I have heard nothing from any member to suggest that they are opposed to the draft policy that is set out in annex A. However, I would rather that members of the committee would make a statement one way or the other. Do we support annex A and believe that it is a step in the direction that the commissioner should want to go in and that it should be our policy, or do we not?

Bill Butler: I agree that annex A seems to be a reasonable way forward. Like other members, I would not want to be too prescriptive. I think that annex A goes as far as we should go and is eminently sensible.

Alex Fergusson: I have often said in this committee that flexibility is the watchword and I entirely agree with comments that other members have made. Allowance must be made for flexibility to come into play.

I get slightly worried when I see phrases such as:

"It is recognised that some people use bad language when they are in a panic or are frustrated. It is important for the Commissioner to determine whether this is the case or not."

I do not think that that sentence is necessary. Surely part of the subjective role of the commissioner is to decide the circumstances and the context of the unreasonable behaviour. However, I am not against proceeding with annex A.

The Convener: Are you suggesting an amendment to it?

Alex Fergusson: I do not think that it would be a worse document if that sentence were removed but I am not going to go to the wall on it.

The Convener: In that case, is everyone agreed that we adopt annex A as a policy and advise the commissioner of that decision?

Members indicated agreement.

The Convener: I was under the impression that, while annex A is now our policy and the commissioner can work to it, it would have to be incorporated into the code of conduct and agreed by the Parliament at some point, but our legal adviser informs me that, once it is our policy, it does not need to be endorsed by anybody else, which is even better.

11:40

Meeting continued in private until 12:36.

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