

# **STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE**

Wednesday 14 September 2005

Session 2

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## STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

### 9<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Brian Adam (Aberdeen North) (SNP)

#### COMMITTEE MEMBERS

\*Bill Butler (Glasgow Anniesland) (Lab)  
\*Linda Fabiani (Central Scotland) (SNP)  
\*Alex Fergusson (Galloway and Upper Nithsdale) (Con)  
\*Donald Gorrie (Central Scotland) (LD)  
\*Christine May (Central Fife) (Lab)  
\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### COMMITTEE SUBSTITUTES

Lord James Douglas-Hamilton (Lothians) (Con)  
Paul Martin (Glasgow Springburn) (Lab)  
Alasdair Morgan (South of Scotland) (SNP)

\*attended

#### CLERK TO THE COMMITTEE

Andrew Mylne

#### SENIOR ASSISTANT CLERK

Sarah Robertson

#### LOCATION

Committee Room 6



## Scottish Parliament

### Standards and Public Appointments committee

*Wednesday 14 September 2005*

[THE CONVENER *opened the meeting at 09:45*]

#### Items in Private

**The Convener (Brian Adam):** Welcome to the ninth meeting of the Standards and Public Appointments Committee in 2005. I remind members to switch off their mobile phones. There are no apologies.

Item 1 is for the committee to consider whether to take in private items 4 and 5, which are consideration of draft committee reports. I suggest that the items are taken in private in order to agree the final wording and to protect confidentiality. Is that agreed?

**Members** *indicated agreement.*

## Complaints

09:46

**The Convener:** Item 2 concerns a complaint against Karen Gillon MSP. The complaint was made by a constituent who wrote to her in June 2004 seeking her assistance in a particular matter. In March 2005—some nine months later—the case was still lodged with Mrs Gillon and the constituent felt that it was not moving towards a conclusion. The stagnation in the case appeared to be attributable to a series of administrative failures or omissions, which are detailed in the standards commissioner's report.

In addition to the lack of progress over the nine-month period the constituent felt that, during a meeting with her in November 2004, Mrs Gillon had not treated his concerns in a serious manner. The complaint received by the standards commissioner was that Mrs Gillon had not been conscientious in pursuing the constituent's concerns and had breached a paragraph in section 2 of the code of conduct for members of the Scottish Parliament, which concerns the key principles of the code of conduct. The paragraph reads:

"Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously."

In relation to Mrs Gillon's conduct during a meeting with the constituent, the standards commissioner also considered whether Mrs Gillon had breached paragraph 9.1.1 of the code of conduct, which says:

"Members of the Scottish Parliament are accountable to the Scottish electorate who will expect them to carry out their Parliamentary duties in an appropriate manner consistent with the standing of the Parliament and not to engage in any activity as a member that would bring the Parliament into disrepute."

The standards commissioner concludes that Mrs Gillon is in breach of paragraph 2.4 of the code but that there has not been a breach of paragraph 9.1.1 of the code.

Having carefully reviewed the facts of the case, the committee recognises that the service that was provided to the constituent fell below the standard that he had a right reasonably to expect. On that basis, the committee has decided to accept the commissioner's conclusion that Mrs Gillon's conduct on this occasion did not fully meet the standard expected under paragraph 2.4 of the code. However, the committee believes that it is important to keep a sense of perspective in relation to the case. Most of the problems seem to have arisen from an unfortunate sequence of administrative failures within Mrs Gillon's office and she has taken steps to change procedures to

prevent any recurrence. There is no evidence that Mrs Gillon approached the constituent's case in a spirit of hostility or indifference. She has been commendably frank in accepting where errors occurred and in apologising unreservedly for the fact that the service provided to her constituent was not as it should have been.

One of the reasons why the committee has found this a difficult case to assess is that the paragraph in the code of conduct that the commissioner has found Mrs Gillon to have breached is one of the initial "key principles". The key principles are important since, as paragraph 2.1 states, they

"set the tone for the relationship between members and those they represent".

However, they are inevitably subjective, which creates room for legitimate differences of view about what conduct in any instance falls below the threshold expected.

The committee agrees with the commissioner's conclusion that Mrs Gillon did not breach paragraph 9.1.1 of the code of conduct. We appreciate how the constituent might have gained the impression that Mrs Gillon was not treating his concerns with appropriate seriousness, but the committee is convinced that this was a simple but unfortunate misunderstanding of the sort that can arise in many business and social interactions.

On the basis of the commissioner's report, the committee finds that Mrs Gillon's conduct failed to comply fully with paragraph 2.4 of the code of conduct in the specific instance of her handling of the case but did not breach paragraph 9.1.1 of the code. However, taking into account the overall circumstances of the case, the committee sees no need to recommend any sanctions against Mrs Gillon.

The committee will consider a draft report later in the meeting and that, together with the commissioner's report, will be published in due course. The committee's report will expand on the statement that I have just read out. A copy of the statement and the commissioner's report will be available after the meeting.

Item 3 concerns a complaint against David McLetchie MSP. The complaint received by the Scottish Parliament's standards commissioner was that Mr McLetchie undertook paid advocacy, in that he advocated a position that was directly beneficial to a client of the firm of solicitors in which Mr McLetchie was a partner. Paid advocacy is prohibited by the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and that prohibition is expanded on in the code of conduct for MSPs.

On 9 December 2004, Margaret Smith MSP lodged a motion on the subject of the proposed

expansion at Edinburgh airport, which would have an effect on—among others—the Royal Highland and Agricultural Society of Scotland. Mr McLetchie signed his name in support of Margaret Smith's motion. RHASS are long-standing clients of Tods Murray LLP Solicitors. At the time that Mr McLetchie supported the motion, he was a partner in Tods Murray, receiving a fixed remuneration for work on behalf of private—but not corporate—clients in the field of trusts, estates and tax.

Paragraph 6.2.3 of the code of conduct makes it clear that the purpose of the paid advocacy rule

"is to prevent a member advocating any cause in consideration of any remuneration. ... It is the member's reason for undertaking any action in the Parliament following, or in anticipation of, receipt of remuneration which is fundamental in applying this rule."

For paid advocacy to be established, a direct link would have to be made between the member's actions in Parliament and the remuneration provided by someone whose affairs or interests might be influenced by those actions. Although there is a connection between Tods Murray—and hence Mr McLetchie—and the RHASS, the commissioner has found that Mr McLetchie did not stand to gain financially from his actions in supporting the motion referring to RHASS.

Mr McLetchie's remuneration from Tods Murray was fixed in relation to his work for the private client department and would not have changed in any way whether or not he supported the motion. In the commissioner's view, Mr McLetchie's actions could not reasonably be supposed to have been carried out in consideration of or in return for remuneration. For those reasons, the standards commissioner has concluded that Mr McLetchie is not in breach of article 6 of the members' interests order, taken together with section 6 of the code of conduct. The Standards and Public Appointments Committee agrees that there was no breach.

The committee will consider a draft report later in the meeting and that, together with the commissioner's report, will be published in due course. The committee's report will expand on the statement read out today. A copy of the statement and the commissioner's report will be available after the meeting.

09:54

*Meeting continued in private until 10:00.*

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**Wednesday 21 September 2005**

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