

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 29 November 2005

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE 11th Meeting 2005, Session 2

CONVENER

*Brian Adam (Aberdeen North) (SNP)

DEPUTY CONVENER

Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

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

THE FOLLOWING ALSO ATTENDED:

Mary Scanlon (Highlands and Islands) (Con)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 5

Scottish Parliament

Standards and Public Appointments Committee

Tuesday 29 November 2005

[THE CONVENER *opened the meeting at 11:01*]

Cross-party Groups

The Convener (Brian Adam): I welcome everyone to the 11th meeting in 2005 of the Standards and Public Appointments Committee. I invite members and others to switch off their mobile phones. We have received apologies from Linda Fabiani and an indication from Bill Butler that he may not make the meeting. Although he is endeavouring to get here, the difficulties with train transport today mean that he may not be able to make it.

Under agenda item 1, we have a proposal for a cross-party group on rural policy. The application was submitted by Maureen Macmillan, as the convener of the proposed group. Unfortunately, she is unable to attend today, but we are lucky enough to have here two members of the proposed group: Mr Alex Fergusson and Ms Mary Scanlon. Does either member want to say something in support of the material that we have before us?

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I am happy to make a brief contribution in my capacity as a vice-convener of the proposed group.

In the first session of the Parliament, we had a cross-party group on agriculture and horticulture. I make it clear that the proposed cross-party group on rural policy is not a replacement for that group. As section 2 of the registration form points out, the group seeks

"To act as a forum for discussion on rural policy".

We say that on the clear understanding that rural and urban policy are not always the same thing and that rural problems do not always need the same answer as their urban counterparts do.

We have held one informal meeting, in which we agreed to set up the group, but I can say that there is considerable scope for debate and discussion. As set out in our application, we also want to exchange information and expertise.

The secretariat for the group will be provided by the University of the Highlands and Islands, which plays an active part in the field. I welcome its offer. However, my desire to be involved in the group was driven by the fact that quite a lot of lowland

Scotland comprises rural areas, one of which I represent. I do not want the Highlands and Islands to run away with everything, as often seems to be the case.

I think that we have conformed to all the requirements for a cross-party group. I hope that our application will be granted.

The Convener: Do you want to add anything to that, Ms Scanlon?

Mary Scanlon (Highlands and Islands) (Con): No. My colleague put forward the case thoroughly and comprehensively.

The Convener: Does any committee member want to comment on the application?

Christine May (Central Fife) (Lab): I welcome the application. I recognise that all the Standards and Public Appointments Committee has to do is to ensure that the application conforms to the rules that are laid down for cross-party groups. Nonetheless, in common with many other members who represent urban constituencies, I also represent a considerable number of people who work in the rural economy in the periphery of my constituency. The proposal for a cross-party group on rural policy is excellent.

The Convener: Is the committee content to approve the application?

Members indicated agreement.

The Convener: I note that that is cross-party group number 62. Our next step will be to write to it to grant it approval.

Agenda item 2 is consideration of an application for recognition of a cross-party group on fertility services. The application is a little different from other applications that have been made, as it is for recognition of a short-term cross-party group. The application was submitted by Mary Scanlon, whom I welcome to the meeting and invite to make further comments on it.

Mary Scanlon: Setting up cross-party group number 63 is a dubious honour that I did not want to have. The difficulty is that many members, including me, sign up for cross-party groups and then find that they cannot give them the commitment in the long run that they want to give them. In the first parliamentary session, I asked oral questions and submitted written questions about fertility services. In this session, I secured a members' business debate on the issue in which the minister promised me that there would be a consultation, which is now taking place. I have taken a long-term interest in the matter and so have got to know many people who work in the field. It has been suggested that we should get together simply to find out whether we can reach a

consensus view, and forming a cross-party short-life working group seemed to be the best idea.

We are optimistic that the Executive will listen to the concerns of patients and many others. The consultation will close on 8 December and we hope that the proposals and recommendations that come out of it will be totally satisfactory and that we will have done our job. I hope that the group will last until around June next year.

Members of the Scottish Parliament need to be involved with the issue. Men and women who have fertility problems are embarrassed by them and do not want to speak about them. I asked some of my colleagues whether they would support my members' business debate and whether they would speak in it. Nearly all the members who spoke in it were women. One of my colleagues said that they would rather discuss their bank balance than talk about fertility.

Alex Fergusson: That was not me.

Mary Scanlon: That was not Alex Fergusson.

MSPs need to be involved, as patient groups can be embarrassed. The consultation is a once-in-a-lifetime chance to get things right and I hope that the committee will consider my proposal sympathetically.

The Convener: Members do not have any questions for Mary Scanlon.

Yesterday, I attended an interesting conference on drugs. Apparently, one side effect of methadone treatment for opiate addiction is increased fertility. Quite a lot of drugs that are used for a certain purpose can stimulate other things. I am not suggesting for one minute that we should take methadone, but it might be useful if we could identify the part of it that has positive effects and get rid of some of its other effects. It has been discovered that an interesting side effect of some transplant drugs is the stimulation of hair growth. Drugs can have many beneficial effects and many inadvertent discoveries have been made about them—serendipity is the word. You might be able to come up with something interesting from that; you never know.

I wish your group well. The fact that you are setting it up as a short-life working group is to be commended. Perhaps others could follow that example.

Is the committee minded to approve the application?

Members indicated agreement.

Donald Gorrie (Central Scotland) (LD): In the light of your remarks, convener, do I have to declare any interest in relation to hair growth?

The Convener: No, my point went back to my days of doing an MSc.

That is enough of that. As the committee is content, I will write to Mary Scanlon in due course.

Mary Scanlon: If everything goes according to plan, I would like to come back to the committee in June to tell you that the group is no longer ongoing. At the beginning of the second session of the Parliament, I did not enrol for the cross-party groups of which I was a member in the first term, but it was assumed that I was still a member. I find that, once you have joined a group, you seem to be there forever. Will you explain to me the process by which I can advise you that the group no longer exists so that it can be taken off all the parliamentary websites and so on?

The Convener: Send me an e-mail. More important, send the clerks an e-mail—they maintain the list of cross-party groups and the membership lists. If any member no longer wishes to be a member of a cross-party group, they are duty bound to notify the secretary of that group and the clerks of the Standards and Public Appointments Committee, so that we may maintain appropriate records.

Any cross-party group that reconstituted itself after an election would have had no right to automatically assume that you wished to continue to be a member; it would have needed your agreement to do that. Like the committees, the cross-party groups do not continue beyond the end of a parliamentary session.

Mary Scanlon: I am grateful for that clarification.

The Convener: It will now be in the *Official Report* for the benefit of any other member who chooses to look it up.

Code of Conduct

11:12

The Convener: Under agenda item 3, we need to plan out in detail what we are going to do in relation to our review of the code of conduct for members, particularly the mechanics of the consultation.

At our previous meeting, we agreed to consult people and bodies who have the closest interest in the requirements of the code of conduct and discussed the possibility of having a wider consultation. However, based on previous experience of a low number of responses to consultations on standards issues, members acknowledged that an open and public consultation was perhaps not the best route to take. For example, we extended our consultation on the replacement for the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and wrote directly to people whom we thought might have had a significant interest, but we managed, over a long period of time, to get only 23 people to participate and 31 responses. At the same time, the Executive succeeded in getting 64,000 responses to its consultation on the smoking ban. That, perhaps, reflects public interest in the two matters. That is not to say that we have no interest in the views of the public on this matter. However, it might be unreasonable to expect there to be great public interest in it.

At the previous meeting, we agreed to consider the matter again and to consider a paper on wider participation. We have that paper now. Paper ST/S2/05/11/5 examines the problems associated with the consultation exercise and offers a possible solution if members still feel that the committee should consult more widely. Members will have received an e-mail from an academic who is interested in the area, expressing his views on how the matter might be progressed.

I invite members' comments on what we should do and on the clerk's proposal for how we might go about consulting the wider public.

11:15

Donald Gorrie: The proposal in the paper is sensible and I suggest that we adopt it. If the people at the workshop say, "You really need to have much wider consultation," we could go ahead with the full all-singing, all-dancing consultation. However, for the reasons set out in the paper, public consultation on this sort of issue tends to attract only people with often legitimate personal grievances, which are not a suitable basis for changing the system. A normal consultation will

not attract a response from the man walking down Sauchiehall Street.

The proposal is a useful step. It may be all that we need to do, or it may lead to further action. However, some of the academics and other people who spend their time studying our activities—which is slightly frightening—should be among those who are present. I do not know whether it would be possible to have a few well-known complainants, so that their point of view could be put, without having hoards of them. However, the paper presents a good approach.

Christine May: I agree with Donald Gorrie that a workshop is probably the most appropriate way of proceeding, although in that workshop I would like to see a balance between the academic approach—academic theory will always exist, as seen in the e-mail—and the practice in reality. They are never the same, because practice is adapted to individual circumstances and individual people. In our dealings with the public, we all act as individuals and develop our own way of dealing with difficult constituents who feel that we have not dealt with their grievance adequately or that we have produced a letter that they would have written differently. It would be nice if we could strike a balance. Perhaps we could hear from former politicians who have gone into the academic world, because they have experience of both sides of the equation. In addition, Donald Gorrie has a point when he suggests that we might ask some articulate complainers from the past to assist the process.

The Convener: But is not there a danger that if we accept Donald's suggestion they might see the process as some sort of appeal mechanism to revisit cases that the committee and the Scottish parliamentary standards commissioner have already dealt with? Are not there dangers in selecting such people?

Christine May: That is always a danger, but unless other members have ideas about how we might otherwise strike a balance in the workshop, I believe that that point of view, as opposed to the purely academic point of view, is worth having, if only to test its reasonableness.

Karen Whitefield (Airdrie and Shotts) (Lab): I am grateful to the clerks for the paper, which has some merit. We should go ahead with organising a workshop as outlined in the paper. My view differs slightly from the views of Donald Gorrie and Christine May, because I am not sure that we should attempt to contact people who have complained in the past. When the clerks organise the workshop we should try to be as inclusive as possible and see who wants to come. We might start off knowing the people who we think should participate, but if we are inclusive and allow people an opportunity to indicate their interest in

coming along, we will get as wide a range of views as we possibly can. I have reservations about inviting back people who have experience of the complaints procedure, because they might consider that an opportunity to reopen their complaint and to revisit decisions that they did not like.

We should continue to call for written evidence on the subject just as any other committee would. I appreciate that this consultation will be unlike the smoking consultation that the Executive ran in which people on both sides had strong views. I am not so sure that people will want to engage with us on this subject in the same way. However, we should give people the opportunity and we never know—we might be surprised and get one or two people with something genuinely interesting to say. I hope that they will be encouraged to participate in the workshop when it is arranged.

The Convener: Just before we come to Mr Fergusson, I remind members that we are not discussing the complaints process, which is set out in legislation, so we could not use the workshop to consider how complaints are handled. Therefore, any value that might come from the complainers, however articulate they have been in the past, might be limited. It is likely that such people would complain about the complaints process, which is not a matter that we can revisit at this stage, nor is it our intention to revisit it at this stage. That was set out in the Scottish Parliamentary Standards Commissioner Act 2002.

Alex Fergusson: I have a slight worry about workshops in general. My experience of them leads me to believe that they tend to end up reflecting what the person who leads the workshop thinks should be agreed in the first place. I note the intention that the person who leads the workshop should be independent, but I often find that people are led down a chosen path in workshops—I have a healthy scepticism about them.

My difficulty is that I do not see an alternative. I expressed before my worry about the effect of a wider consultation and the responses that it might receive, but I have not come up with anything else. Rather reluctantly, I endorse the principle of having a workshop as a way of consultation, but I agree with Karen Whitefield that we should not seek to bring on board people who know the complaints system best.

As the convener rightly said, the inquiry is not about the complaints system. We might invite difficulty if we were to go out and seek proactively some complainants to give us their views.

We could have a workshop in-house, but one sentence in the e-mail that we received from the academic makes an impression on me. He wrote:

“It would do the Parliament’s public reputation no good, if it were thought, however erroneously, to be trying to ‘sneak through’ such changes.”

I am glad that he included the words “however erroneously”. I fear that however thorough we might be internally, we would be open to that allegation. That sways my thinking slightly.

The Convener: We will always be open to accusations, however unfounded, of trying to close down debate. We have the alternative of not proceeding down the route of a workshop and continuing to consult in the normal way by inviting members of the public to submit their views, as Karen Whitefield said we should do in any case.

I do not know whether we need an alternative, although I am prepared to be convinced about that. I share Alex Fergusson’s scepticism about the value of having a workshop; indeed, one of its perceived advantages—that we would select who would participate—is perceived by the academic referred to earlier as a disadvantage. However, we have the advantage of being able to gauge and select among the range of views. As Christine May has suggested, it might well be appropriate for former politicians who are now academics—or, indeed, former politicians full stop—to offer us the benefit of their experiences and thoughts in hindsight.

What we do will take place in public, not private, and it is simply not the case that we will be sneaky or underhanded or will participate in some kind of carve-up. After all, we are now discussing an e-mail that is not in the public domain. If members so wish, I am quite happy for the e-mail to be appended to the minutes of the meeting or to the *Official Report*.

Christine May: That is assuming that the author has no objection.

The Convener: We can certainly approach him to confirm that. I just do not think that we have anything to hide on this matter.

Karen Whitefield: I appreciate that I have already commented on this matter, but I must respond to Alex Fergusson’s point about the committee being open to accusations of not being inclusive enough in the process. Many parliamentary committees carry out pre-inquiry work to prepare for consideration of legislation; indeed, the Communities Committee, of which I am convener, invited public participation in a number of events that it held to prepare for the forthcoming planning bill. However, we were so heavily oversubscribed that, unfortunately, we had to tell people that they would not be able to participate this time. That said, we will continue to allow people to engage with the committee during the bill’s passage. At no point has anyone suggested that the Communities Committee—or,

for that matter, any other committee—has been in some way exclusive in its approach to its work.

I appreciate that this particular area is sensitive because, after all, we are considering our own conduct and must be seen to be open and transparent in everything that we do. However, although we are all a bit sceptical about the effectiveness of a workshop and whether it will work, I believe that it represents a genuine attempt really to engage people in a subject that unfortunately does not excite most of them. It is worth a try. None of us knows whether it will work or be effective, but if we start from the basis that it will not be our only attempt to engage people, it will be difficult for anyone to accuse us of ending the debate and not allowing genuine engagement on the matter.

Donald Gorrie: I wonder whether I might be of some comfort to Alex Fergusson. I share his scepticism about most things; however, as the clerk to the committee, who also clerks the Procedures Committee, will testify, that committee held two one-and-a-half-hour round-table discussions, the first with seven or eight outside worthies and the other with seven or eight inside worthies from different parties, which led to a free-flowing conversation that raised many issues. It might be worth considering such an approach, as it does not involve as much preparation, cost as much or lead to as many delays as a fully-blown workshop might. Informal discussion with various people who come at a subject from different angles is quite helpful and might be worth considering.

11:30

The Convener: It was previously suggested that we might have an online questionnaire. The clerks examined what would be involved in setting up an e-forum for discussing the issues and getting feedback on what had already been in the public domain. However, that is not without potential pitfalls as well. It poses questions about what kind of comments we might receive. Would they be in the public domain? Might the fact that the website is hosted by the Parliament make it appear as if we were endorsing them? Might expectations be raised that we might not be able to deliver? The area that we are discussing is fairly technical and, although there are things that we can do to make changes, there are also things that it is beyond the scope of this committee to do because they relate to an act that this Parliament cannot change.

Alex Fergusson: I did not mean to imply that we were in danger of not being inclusive. I wonder whether there would be merit in considering putting out a call for written evidence, which we would do anyway, but inviting in particular written input from those whom we would invite to a

workshop if we were going to have one, then considering the input that we received from that call before debating whether there was any more that could be gleaned from having a workshop before we commit to the expense of having one. It is distinctly possible that, if we got written evidence from those who we would invite to a workshop anyway, we might not see any further benefit in having the workshop.

Christine May: There is only merit in having a workshop if we think that we are going to get something out of it. We would want to know, broadly, what we were seeking to have that workshop achieve. For me, any code of conduct is about the reality of its operation versus the theory of its establishment. What should concern us is what lessons can be and have been learned from the first six years of operation of the existing code.

A workshop that sought to draw some conclusions from the evidence of that first six years of operation and from other people's experience of similar codes and their application to individuals' approaches to the way in which they do their job might have merit. However, just to have a workshop to talk about the code of conduct would be an exercise in navel gazing that would not achieve much. If there were a focus on a particular question, we might well elicit some useful examples of the application of other codes and of individuals' experiences in previous lives that might result in some useful suggestions for changes that we might make.

The Convener: We need to start making decisions.

Mr Fergusson suggested that the first thing that we should do is to invite written evidence, as a consequence of which we might decide that it would be useful to proceed down the route of having a workshop. That would give us a more detailed basis on which to have a discussion with interested but, I hope, objective outside bodies or individuals. Would that be a reasonable course of action for us to take?

Alex Fergusson: Have we decided on a timescale yet?

The Convener: The timescale is completely in our hands. We are more constrained in relation to the Interests of Members of the Scottish Parliament Bill because of the need to meet an overall parliamentary timetable. For the review of the code of conduct, we have to reach a conclusion and write a report for the Parliament to endorse. It is much easier to find an hour or a half day of committee time in the Parliament to make the changes. I seek guidance from the clerk on whether that is an accurate response to Mr Fergusson's point. The timescale is in our hands. Changes to the code of conduct will be made

following a report from the committee, which will be debated by the full Parliament in the committee's debating time.

Andrew Mylne (Clerk): The changes to the code must be made by the Parliament, on a motion of the committee. I presume that the committee would produce a report to facilitate that debate. The timetable constraint that we have arises from the Interests of Members of the Scottish Parliament Bill, which will require changes to be made to the code around the time that the bill is passed, which will be the middle of next year. That is the timescale within which the committee should recommend further changes to the code.

The Convener: So we have time. As the clerks went to the trouble of following the guidance that we gave them and producing a report, is there any advice that they care to offer the committee on the record, before we reach a conclusion?

Andrew Mylne: The workshop model would be a way of enabling people to have a structured and facilitated discussion of the issues. The particular benefit of the process would be that the context would be explained and the issues discussed by the participants before a conclusion emerged, so the committee would not just get the initial, unfiltered views of individuals.

If the committee chose the alternative of seeking written evidence, it would need to decide from whom to invite such evidence. Thought would need to be given to the questions that were to be asked, to ensure that we did not just get general responses from people who have a particular grievance. We would need to be clear about the questions, but we can give that further thought if the committee wants to go down that road.

Christine May: For what it is worth, I think that that is a sensible suggestion. For starters, the questions might be about whether people are aware of the code and have had experience of its operation, whether they have any comments to make on it, whether some parts of it should be reviewed and, if so, in what way.

The Convener: If we decide to go down that route as a first step, while not ruling out the workshop idea, we need to know whether we are issuing a general call for evidence or just writing to individuals or interested organisations. Simply posting a questionnaire on the website has a potential downside. Of course, as a safeguard, we could choose to publish only evidence that is relevant to the review of the code of conduct, not evidence that might be given on other matters. I would prefer that rather than immediately having a workshop. I am not sure whether we need to divide on the issue.

Alex Fergusson: I realise that this suggestion runs the risk of ruining the clerk's Christmas recess, but is it possible to have a further paper at the next meeting that includes a list of the likely people from whom we would wish to invite written input and the type of questions that we would like to ask? We could then endorse and/or add to the list at that meeting and put out the call for evidence relatively soon after that.

Donald Gorrie: We must make clear the parts of the code on which we seek views, because people who are enthusiastic but not totally informed might regurgitate many of the issues that will be dealt with through the changes to the law rather than through the review.

The Convener: That is a helpful suggestion, Donald, and a previous paper highlighted specific code of conduct issues that would be under review. Some of those issues are referred to in Barry Winetrobe's e-mail. Alex Fergusson's specific suggestions were also helpful.

We could consider a paper at our meeting in a fortnight's time, but I suggest that we leave it until our first meeting in 2006. Are members content that we invite written evidence and that we ask the clerks to produce a draft questionnaire—or, if not a questionnaire, a few paragraphs—on the issues on which we will seek people's views? Committee members as well as the clerks can consider which individuals or organisations we should invite. The onus is on us, as members, as well as on the clerks.

Andrew Mylne: I have a slight concern about the timescale. Although the timescale that we have outlined for the whole exercise seems quite long, it is not indefinite. If the committee wants to keep open the option of running a workshop, a decision will have to be taken at the beginning of next year so that the workshop can be set up and the results fed back into the committee. If we wait until the beginning of next year to call for written evidence, everything will be knocked further back.

The Convener: That assumes that we cannot change the code of conduct after any changes to the law on members' interests are made through the bill. Unless there are technical reasons why the two things have to dovetail, I do not see why there should be timetable constraints—which is why I made the remarks that I made earlier. Obviously, it would be desirable for the two things to finish at the same time, but are there technical reasons why they have to?

Andrew Mylne: You are quite right: it is open to the committee, whenever it considers it appropriate, to recommend to Parliament changes to the code. There could be two separate exercises, if the committee so wishes. I was simply working on the assumption that we would

try to co-ordinate the two things as much as possible, but you are quite right.

The Convener: I think that we are moving towards agreement that we will invite written evidence and that the invitation will outline the issues on which we want to hear people's views. Committee members and the clerks will consider the people to invite, and we will consider a paper at our first meeting in 2006.

Actually, because we have thrashed this topic around, I wonder whether we could deal with parts of it by e-mail.

Christine May: I am happy to do that.

The Convener: Would that facilitate things?

Members *indicated agreement.*

The Convener: In that case, I encourage members to suggest to the clerks as soon as possible the people to invite.

Meeting closed at 11:44.

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