

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 17 January 2006

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

1st Meeting 2006, 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 :

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 2

Scottish Parliament

Standards and Public Appointments Committee

Tuesday 17 January 2006

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

Items in Private

The Convener (Brian Adam): I welcome members to the first meeting of the committee in 2006. I remind you that it is a good idea to switch off your mobile phones.

I suggest that we take in private item 4, to allow a full discussion of the policy issues that arose from the stage 1 debate on the Interests of Members of the Scottish Parliament Bill and in particular to allow us to receive legal advice on the courses of action and options that are available to us and the consequences of those. Is that agreed?

Members indicated agreement.

The Convener: I suggest that we also take in private item 5, to allow us to discuss the selection of witnesses for our review of the code of conduct for MSPs. Are members agreed?

Members indicated agreement.

Cross-party Group

11:02

The Convener: I welcome Mark Ruskell to the committee. Do you wish to make any opening remarks about the application for a cross-party group on electromagnetic radiation and health?

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I will make some brief remarks. There is much interest in the establishment of such a group among MSPs, the public, industry bodies and academics. A range of issues concern the public, surrounding different technologies and their ability to emit an electromagnetic field, and what the potential effects might be on human health. One of the main issues that concerns members of the group is the Beaulieu to Denny pylon upgrade. There have been about 12,000 letters of objection to that line, many of which cite health issues as a concern. There is a feeling among members who attended the two initial meetings of the group that we need to get to the truth behind those health concerns; that we should invite academics and industry representatives to speak to the Parliament; that we must understand better how the guidelines relating to various types of EMF-emitting equipment are established; and that we should invite members of the public to share in that dialogue with MSPs. There is a feeling that the jury is out on many types of equipment. We need to get up to speed on that and to try to foster dialogue. That is why we have decided collectively to set up the cross-party group, which had its inaugural meeting last week.

The Convener: The application meets the criteria for cross-party groups. Any cross-party group is entitled to use that title only if it is approved by the committee. Members have before them details of the application. Are there any questions?

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I share a number of the concerns behind the formation of the group, many of which came to the fore in the early days of the cross-party group on ME, when I was its vice-convenor. If this cross-party group's aim is to become better informed, will it be hearing from the many sides of the argument? As you will be well aware, everyone seems to have a different opinion on the issue. What can a cross-party group on the issue achieve that would not be better achieved by an inquiry of some nature, which a lot of people would welcome?

Mr Ruskell: To deal with your last point first, in a number of public petitions that have been submitted to the Parliament there have certainly been calls for a full inquiry into issues surrounding

EMF. However, a number of members and I have sensed a reluctance on behalf of the parliamentary committees to wade into the science behind concerns about EMF. There is a general feeling—certainly among the members who have come to the meetings so far—that we need to be better informed as MSPs before we can start to engage fully in the debates around such technologies. A cross-party group is needed to bring MSPs' knowledge up to a level at which we can take the issue more seriously in the Parliament.

On the need to consider all sides of the argument, that is why we have decided not to have a class of membership for people outside the Parliament. We recognise that we will want to bring in a variety of stakeholders for different meetings and for different issues. For example, in the case of pylons—which is one of many concerns—we would want to bring in stakeholders from the industry; the utility companies; the stakeholders advisory group on electric and magnetic fields, which is constructing guidelines relating to pylons; and indeed many of the communities that have been running campaigns. At our initial meetings, we stated that we would not want the group to turn, in effect, into a campaign group for MSPs to campaign against pylons, terrestrial trunked radio—TETRA—masts, mobile phones or digital handsets and so on. The aim is very much to provide a bit of objectivity while, of course, fostering dialogue between people who have different views. The group wishes to bring key stakeholders together as and when appropriate, within the debate about individual technologies.

Alex Fergusson: That reassures me in many ways.

The Convener: Mr Ruskell, will you elaborate on Mr Fergusson's underlying point? Do you intend that the group should be a long-term cross-party group? In your opening remarks you indicated that the impetus behind the group is the current controversy over pylons. A decision will be made one way or the other on that issue, probably relatively soon.

This is yet another health-related cross-party group. There are 63 cross-party groups and only around 100 members available to service them. How confident can you be that there will be enough commitment on behalf of the members of the group, who will be exclusively MSPs, to maintain its parliamentary nature?

Mr Ruskell: You raise important issues. On the short-term versus long-term issue, in our initial discussions we envisaged that the group would be set up to run for the remainder of this session. Given the range of concerns and issues that respective members of the group want to discuss, there are enough topics to run a series of

meetings—perhaps between four and six—between now and the end of this session. I do not know whether, next session, members will feel that there is a need to form a CPG again and to continue the work, but there is enough meat in there for us to consider holding four to six meetings between now and spring next year.

I take the point about the number of cross-party groups—I find it extremely difficult to get to meetings of cross-party groups, which often conflict. However, the formation of the group has been driven by the concerns of the public, the counter-concerns from industry and new evidence from academics. The concerns have resonated with MSPs, a number of whom have come to our initial meetings. As you can see, more than a dozen MSPs want to participate in the group, and a number of them have told me that they are receiving correspondence on the issue from constituents, academics and the industry and are having trouble making sense of it. The CPG will not be made up of a small selection of MSPs concentrating on a special interest; it relates to constituency work and questions that MSPs are being asked and do not necessarily know how to answer. I am sure that, because the CPG seeks to inform MSPs and relates directly to their parliamentary work, we will see more of a commitment from members to attend the meetings.

The Convener: Do you have any plans to co-operate with any of the other cross-party groups on health whose interests might overlap with those of the proposed group?

Mr Ruskell: We have appointed a number of co-conveners who sit on other CPGs. For example, Dr Jean Turner convenes one or two other cross-party groups on health issues. As a result, we could hold some joint meetings. Indeed, as Alex Fergusson has pointed out, the cross-party group on ME has already considered the issue of electromagnetic sensitivity. In any case, as I have said, we need to hold a series of four to six meetings towards the end of this session to investigate MSPs' concerns.

The Convener: Do members agree to the application?

Members indicated agreement.

The Convener: In that case, I will write formally to Mr Ruskell on the committee's behalf to offer its approval of the CPG. I thank him for attending the meeting.

Interests of Members of the Scottish Parliament Bill

11:11

The Convener: We move to item 3. I am delighted to welcome to the meeting Dr Jim Dyer, from whom we will hear on the Interests of Members of the Scottish Parliament Bill. Later in the meeting, the committee will deliberate on the points that he raises.

Dr Dyer, the floor is yours.

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): I thank the committee for the invitation to come along and offer some observations on the bill. I will do so very much from the point of view of someone who has to interpret its provisions.

When a complaint is made, I will have to make the first decision, based on the current Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 or, in future, the provisions of the bill. The committee will then make the second decision. Obviously, there is scope for guidance on interpretation to be issued, but it struck me that it would be in my interests—and, indeed, in the interests of the committee and other members—for the intention to be expressed as clearly as possible in the bill to avoid, as far as possible, arguments about the interpretation of the relevant provisions.

In that spirit, I have offered observations on three topics, mainly on the basis of my experience to date. That said, my observations on the first issue that I have focused on—paid advocacy—are not based on direct experience of any cases, although I have dealt with cases relating to paid advocacy. I have simply imagined myself in the position of having to interpret the bill's provisions on the matter, which, with the addition of payments or benefits in kind to spouses, are different from the provisions in the members' interests order.

I do not know whether members have a copy of the bill, but I am referring specifically to section 14(2)(b), which deals with what is to be regarded as a

"payment or benefit in kind".

I have noticed that the phrase is defined differently for members and for their spouses or co-habitees. In order to qualify, any such payments or benefits in kind to spouses or co-habitees must

"be provided in connection with the Parliamentary duties of the member".

There is no such requirement with regard to payments or benefits to members, and I could not immediately see why that should be the case.

The problem is that it might be difficult to establish whether a payment or benefit in kind to a spouse was or was not given

"in connection with the Parliamentary duties of the member",

because such an investigation would require me to speculate on the motives of the giver of the payment or benefit in kind. Surely, the essence of the matter is the member's motivation in undertaking the parliamentary action in question and whether it has been undertaken in consideration of any payment or benefit in kind either to the member or to his or her spouse.

11:15

If an action is taken in consideration of a benefit to the member or his or her spouse, surely that is enough to qualify under the provisions without having to prove that the benefit was provided

"in connection with ... Parliamentary duties".

I am worried that, although paid advocacy might be taking place, it might be difficult in a case involving a spouse to prove that the payment was made by the giver in relation to

"the Parliamentary duties of the member".

I suggest that such a requirement is not really necessary.

When I re-examined the matter in preparation for today's meeting I noted that section 14(2)(b)(ii) contains the requirement for any "payment or benefit" to the member's spouse or co-habitee that might qualify as paid advocacy

"to result in some benefit to the member".

Having to prove that will cause problems. After all, a payment or benefit to a spouse or co-habitee might please or influence a member without actually conferring any benefit on them. The question is whether the member's parliamentary actions are influenced by a payment or benefit either to him or her or to their spouse, and it seems excessive to have to prove that a payment or benefit in kind to the spouse brings "some benefit" that might influence the member without directly conferring some benefit on them. It is enough that the spouse receives the benefit.

Do you want me to pause before I move on to the other two issues that I have highlighted or do you want me to carry on?

The Convener: The committee—and indeed the previous committee in the previous parliamentary session—has already discussed the matter at length and we have now had the stage 1

parliamentary debate. It is now open to committee members to consider potential amendments to areas of the bill in which we might not have got things quite right. Dr Dyer, we were pleased to hear from you and will seriously consider what you have to say. In fact, we will do so in private later in the meeting and will consult our legal advisers on how such provisions might be drafted.

I am quite happy for members to comment on Dr Dyer's observations or to ask him questions. Given that he wrote to me on the matter, it might be helpful if we had his permission to publish his written material.

Dr Dyer: I have no difficulty with that.

The Convener: I did not think that you would have, but it is useful to put that on the record.

Do members have any questions?

Donald Gorrie (Central Scotland) (LD): My question might appear slightly frivolous, but I point out that I am not a lawyer.

Dr Dyer, do you think that if giving gifts and all that stuff made the member's spouse or cohabitee happier it would confer benefit on the member?

Dr Dyer: I am arguing not that that would confer benefit on the member but that it might influence them. For example, if one's spouse had been given a gift, they might bring some influence to bear on the member's actions with regard to the giver of the gift. We should have to guard against such an occurrence rather than have to prove that there is

"some benefit to the member".

Donald Gorrie: I am sympathetic to the main thrust of your argument, which is that the rules should be as simple as possible. I think that you have a point about the fact that the issue of benefit to members and the spouses of members could be dealt with in one avenue rather than two separate avenues.

The Convener: Perhaps I should point out that simplicity in these matters is not always possible. Sometimes, it is not even at our hand. Section 39 of the Scotland Act 1998 has constrained our attempts to make changes to a number of the articles of the members' interests order that we have sought to make changes to. One can read the bill as it stands but one cannot do so successfully without reading it in conjunction with section 39 of the Scotland Act 1998. That has not made the task of the committee easy. However, I understand Dr Dyer's point.

Dr Dyer: I understand what you are saying, but it would seem to be desirable to make the bill as clear as possible.

The Convener: I understand the constraints that the situation places on you, in particular, because you have to interpret the legislation. We can offer guidance, of course.

A number of the issues might become clearer once the bill has been dealt with and we come to codify the legislation in the code of conduct, in which we can spell out the details of what we are going to do.

Dr Dyer: If there are no further questions on paid advocacy, I will say a word or two about gifts and overseas visits, issues relating to which arose in cases that I have dealt with in the past year. There is scope for improving clarity with regard to these areas.

Like the MIO, the bill provides for the registration of gifts to a member or to a spouse if they are in excess of a threshold, which is to be, in future, 0.5 per cent of a member's salary—which would come to roughly £250, at the moment.

No provision is made for situations in which a member and their spouse receive a gift jointly. For example, if someone gave a member and a member's spouse a weekend stay in a hotel that cost £400, would that count as one gift of £400, which would be above the threshold, or two separate gifts of £200, which would be below the threshold and would not have to be declared?

The Convener: I think that that is clear. What counts is the aggregate value of the gift. Therefore, the example that you gave should be registered.

Dr Dyer: In my letter, I have suggested a way in which that could be clarified if the committee feels that it is the aggregate value of the gift that is important in relation to laying bare any potential influence.

The issue of overseas visits is quite complex. There seems to be uncertainty in the minds of some members about the scope of the article in the MIO. It has been put to me that the article refers only to visits of a parliamentary nature, notwithstanding the fact that the code seems to make it clear that what is important are visits of any nature, regardless of their purpose. On that front, I have suggested that paragraph 7 of schedule 1 to the bill could include the words, "whatever its purpose or nature" after "visit" in line 30. I note in my letter that, in Westminster, the intention is more restrictive. The guidance on the code of conduct there refers to

"overseas visits relating to or in any way arising out of membership of the House".

If the intention is that any visit, whatever its purpose or nature, should be covered, it is arguable that it would be possible to say so in the bill and remove any argument on that point.

My letter goes on to argue that there is some overlap in the MIO and the bill in relation to gifts and overseas visits, because an overseas visit that was paid for by someone else would also constitute a benefit in kind or a gift that would have to be declared if it were over the threshold and, in future, if it passed the prejudice test. I have suggested that overseas visits should be treated more like gifts as there is an argument for having a threshold and a prejudice test.

On the threshold, a member pointed out to me that, if someone bought the member lunch while the member was on a trip abroad that was otherwise paid for by the member, the trip would not have been wholly paid for by the member, which means that, strictly speaking, it should be registered. One can also construct anomalies. For example, if someone had a trip to Dublin that was paid for by someone else, that would have to be registered as an overseas trip, regardless of what it cost, whereas a trip to Belfast that was paid for by someone else would have to be registered only if the value were over the threshold and, in future, if it passed the prejudice test. I have suggested that it might be helpful if there were a threshold for minor expenses contributed by others in relation to overseas trips. Perhaps the threshold could be the same as for gifts.

Trips that are paid for by a member's mother, father, son or daughter are exempt, but trips paid for by other relatives are not. Therefore, if a member went to see a brother in New Zealand and the brother met some of the cost, that would have to be registered but not if their father, mother, son or daughter did so. One does not immediately see why that is relevant to the register of interests. Having a prejudice test similar to that for gifts would deal with the problem of innocent visits to relatives that are not otherwise mentioned in the exemptions in the bill.

I end my letter by asking:

"Is there a reason for treating overseas visits differently from gifts?"

I am suggesting that there is not.

I put my suggestions before the committee for its consideration.

The Convener: I am grateful to you for doing so. Now that your suggestions are on the public record, any member of the Parliament can act on them by lodging appropriate amendments prior to stage 2. The members of the committee will give the matter due consideration.

Do members have any questions?

Donald Gorrie: I would like to clarify something. I am not sure what the rules are about visits within the United Kingdom. I have never quite understood why overseas visits are considered

wicked. I think that it is a throwback to our Calvinist past.

When researching a place to have a family gathering on the new year weekend, one of my sons found a posh hotel in England that charged £3,000 a head. I hasten to add that we did not take up the proposition. However, why should a trip there not be counted, while a bog-standard, cheap holiday to Spain that someone gives you is counted? If someone went to an expensive hotel in England at someone else's expense, would that be counted as a gift?

The Convener: If it cost in excess of £250, it would be. However, the point that is being made is that all overseas visits, irrespective of such considerations, ought to be registered.

There is a point to be made about the distinction between overseas visits and gifts. It might well relate to our Calvinist past, but it might also relate to the fact that we inherited the existing MIO and neither we nor our predecessors thought about whether we should just regard overseas visits as gifts and not treat them any differently. If we are to revisit the issue with an amendment, we must do so quickly. We can discuss that afterwards in private session. Again, it is always open to any member to lodge an amendment at stage 2 or, indeed, stage 3—it would be much better to do so at stage 2—if they feel that we should go in that direction.

Donald Gorrie: I have a further point. I was interested in a sentence in the clerk's paper, ST/S2/06/1/3, on the issue, which said that

"there is no restriction on the overall value of gifts received in any year or in any parliamentary Session from a single source".

Is that not a defect? Somebody could give an MSP something in a drip-drip way. For example, if somebody set up a standing order to give an MSP, say, £150 a month or whatever sum would keep them under the threshold, that might be a considerable inducement over the year.

The Convener: Indeed. The committee can consider that point when we discuss the bill. I am not aware that we have considered the point in detail before. We will get advice on it when we move into private session shortly. Do members wish to engage Dr Dyer on any other points?

Alex Fergusson: I have nothing specific to add, but I voice my personal thanks to Dr Dyer for his work because it is useful for us to see how he regards what we are putting into practice. How much his comments will affect our deliberations is obviously for the committee to decide. However, it is useful that he brought to our attention what are possible anomalies.

The Convener: Obviously, the committee and our commissioner have two separate roles. The commissioner is here to interpret the rules as we produce them and our role is to be policy makers. However, it would be foolish indeed of us not to listen at least to his views on how the bill will impact in practice. His engagement with us in writing and over the table today has been valuable. I thank you on behalf of the committee, Dr Dyer.

Dr Dyer: Thank you.

The Convener: We will move into private session to consider agenda items 4 and 5.

11:32

Meeting continued in private until 12:07.

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