

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 28 February 2006

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

2nd 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

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 5

Scottish Parliament

Standards and Public Appointments Committee

Tuesday 28 February 2006

[THE CONVENER *opened the meeting at 11:00*]

Code of Conduct

The Convener (Brian Adam): I welcome everyone present to the second meeting of the committee in 2006 and invite them to switch off their mobile phones. We have had apologies from Linda Fabiani and Alex Fergusson. I presume that the other members who are absent are on their way.

Item 1 concerns the review of the code of conduct for MSPs. Paper ST/S2/06/2/1 contains responses from a number of the groups in the Parliament and from the Scottish Parliamentary Corporate Body to our request for views on the review. Members will be aware that we have agreed to seek the views of selected outside organisations and individuals—that is currently under way.

I propose to go through the paragraphs in the paper that are highlighted in bold and to seek members' views. The first of those is on page 2. Do members have any views on how we should go about restructuring the code of conduct?

Donald Gorrie (Central Scotland) (LD): I agree with the thrust of the paper, which is that the core of the code of conduct should be as brief and focused as possible. If we want to have additional guidance, that is fine. Distinguishing between the core, mandatory stuff and the other stuff is a good proposal and we should pursue that.

Karen Whitefield (Airdrie and Shotts) (Lab): I agree with Donald Gorrie. We should keep the language as simple and as straightforward as possible so that not only the public find it easily accessible but members know what they are and are not required to do.

Christine May (Central Fife) (Lab): I think that I am on record as saying that this is and always has been a difficult area for members. The key principles should be explained as clearly as possible. As Donald Gorrie suggested, there could be additional guidance, on areas in which members might wish to consider their position for example. That would be better than writing such guidance into the code of conduct, which would put us in danger of not only tying everybody up in red tape but the code not working as it is intended to work.

Bill Butler (Glasgow Anniesland) (Lab): I agree with my colleagues. The code should be a mixture of mandatory and advisory and should be as straightforward and succinct as possible.

The Convener: In that case, I take it that members agree that we should have a paper at a future meeting on how the restructured code would work in practice. Members have expressed fairly clearly their view that the code should be as simple and straightforward as possible, in the interests of the public and members alike. Is that agreed?

Members indicated agreement.

The Convener: Page 3 invites the committee to decide how it wishes to deal with section 2, on the key principles. Do members wish to make any comments?

I take members' silence to indicate that the committee agrees with the report's general thrust and that it would like a paper on and an opportunity to discuss the matter in detail at a future meeting. Although we have received some responses from interested parties in the Parliament, we have also received views from external bodies that we agreed to consult. Are members agreed?

Members indicated agreement.

Donald Gorrie: I have a bit more difficulty with what is called the "aspirational" element of the code. After all, I recall a case in which a colleague might not have achieved the highest possible standards of office management and so on but had not actually done anything wrong. It is fine to set out the goals to which we should aspire; however, if, like all human beings, we fail always to achieve those goals, we should not be hanged, drawn and quartered for it. Putting such goals into the code is a good thing, but they should not be used as a device to pillory MSPs.

I point out that I am not dissenting from your position, convener.

The Convener: What you have highlighted can be achieved if we restructure the code to make clear the aspirational elements, the mandatory elements and the various elements of guidance for interpretation and information. The key principles would certainly fall into the aspirational category rather than the mandatory category, in which non-compliance would have certain stated consequences.

I note that moves are afoot elsewhere to specify the level of service that parliamentarians might offer their constituents. We should at least consider that issue in our discussion, although I, for one, would find it very hard to accept anything other than the electorate's periodic right to choose members. The area has proved problematic and

separating the aspirational elements from the mandatory elements should help to deal with it. However, we should have a general discussion about the matter to ensure that, when the code comes up, MSPs and people outwith the Parliament can express their views on whether we should take a service level agreement approach to the appointment of members of the Scottish Parliament.

Bill Butler: That approach is entirely sensible. We should try to strike a balance between aspirational elements and what we must do. As far as service level agreements are concerned, I believe that we all have one of those, which lasts four years. However, I take your point that we should perhaps examine the matter, although I think that we need to be subtle about it.

The Convener: It is always appropriate to examine our practices, but at the moment we are dealing with how we police them. Perhaps the judgment on how well or otherwise a member has performed is best left to the electorate. However, if others are considering slightly different methods in that respect, there is no harm in looking at their deliberations.

After paragraph 19, on page 4, a paragraph in bold asks us to consider lobbying and access to MSPs. Do members have any comments or views on the submissions that we have received on those matters?

Donald Gorrie: The Greens have a point about the difference between a sandwich provided here and a sandwich provided somewhere else. There is a widespread view that MSPs will not go to something unless there is food—or food and drink.

The Convener: I am glad that you put it that way round, Mr Gorrie.

Donald Gorrie: It is thought that they will come only for the rather bad sausage rolls—well, the sandwiches are not bad here. We all suffer from eating some pretty unpleasant lunches in order to be briefed by some organisation. If one pressure group gives me really good sausage rolls and one gives me rather bad sausage rolls, I do not think that I will support the first lot rather than the second lot and give them priority treatment. However, there is an issue about where one draws the line.

In addition to commercial, paid lobbyists, many organisations increasingly have an in-house lobbyist who often provides a useful service in alerting MSPs who are interested in their sphere of work—whether it is caring, youth work or whatever—to issues that are arising, cases of the system not working and so on. Such lobbyists perform a useful function. It is possible that paid lobbyists might perform as useful a function for those groups that use them.

Other than saying that we must all be sensible about it all, I am not clear about how we should draw up strict rules. That is not helpful—I am sorry.

The Convener: If it is not very clear how we should draw up the rules, that probably indicates that we ought to have a look at the situation and seek views on it. That is my suggestion.

I have some concerns that apply perhaps not directly to the code of conduct; they probably relate more to ministers. We have a conference industry here at the Parliament—we all receive invitations to attend conferences. Usually an Executive minister will speak at the conference on some terribly worthy topic—not necessarily to launch a policy, but to explain a policy. There is a place for that, but I am not so sure that it is not, in effect, another form of lobbying. I do not know whether we could consider that and the review of the code of conduct together, or whether that would encroach on others' territory.

Would it be worth having a close look at the whole approach to conferences and invitations to speak at conferences, whether to ministers or conveners—I am looking at a few conveners and deputy conveners around the table? The sole reason for the existence of some companies appears to be to organise conferences on the business of government. Their access to members should not be any more or less than any other person's and such access should at least be open and transparent. I do not know whether other members share my concerns.

Christine May: The realities of lobbying and influencing are infinitely more subtle than paragraph 7.3.6 of the code of conduct indicates. It is not so much an influencer's dinner as a dog's dinner.

The ways in which we are informed—or inform ourselves—and are influenced are extremely subtle. In large proportion, they are beneficial rather than negative, because we are given access to varying shades of opinion and nuances of policy that we might not have appreciated.

Paragraph 7.3.6 is particularly ineffective because it deals merely with one aspect, which is hospitality. That in no way takes account of the matters that Donald Gorrie highlighted—for example, the very well put together briefings and arguments that are espoused on behalf of one point of view or another that many of us receive in our e-mails day in, day out. The code of conduct should cover all such matters, not just whether we are offered a pencil or a rubbish sausage roll.

The Convener: Or a grand dinner.

Christine May: Yes—that is covered, too.

11:15

Bill Butler: We have considered the matter sufficiently to enable us to ask that a paper be produced on the issue. I suppose that we are trying to regulate individual judgment and I do not know whether we can do that. However, the points that Christine May, Donald Gorrie and the convener have made are worthy of further discussion.

The Convener: Do members agree to the approach that Bill Butler suggests?

Members indicated agreement.

Donald Gorrie: I agree with Christine May and the convener. Conferences raise difficult issues. There is a conference industry, which as Christine May said, can be informative and helpful but can involve a degree of lobbying. I take an arrogant view: if I am invited to speak, that is fine, but if I am invited to pay to listen to a minister explain something, the invitation goes straight in the bucket. However, if an MSP is offered a free place at a conference that charges the public £50 or £100 for attendance, does that constitute wicked lobbying?

The Convener: I suspect that the figures that you mention are rather low, because I often hear about conferences that are charging three-figure sums for attendance. Such events can be positive, which is not well understood by the public, so we need to strike the right balance. However, I am a little concerned that elements of the conference industry seem to have ready access to committee conveners or ministers, who front conferences that would have no interest if the conveners or ministers were not speaking. In such circumstances people pay to gain access to conveners of parliamentary committees—or whoever. We should consider the pluses and the minuses of the situation.

We have covered that issue adequately, so we move on to the action points in paragraph 26. What are members' views on the regulation of cross-party groups?

Christine May: May I first comment on paragraph 24, which refers to the Scottish Parliamentary Corporate Body? It says:

"The SPCB states in its submission that it has 'practical experience of the sponsorship, facilities and events management side of group activity which we would like to see reflected in a review of these provisions'".

It might be worth exploring the SPCB's comments in more detail by requesting oral or written evidence. I would be interested in hearing the SPCB's points, which might influence our thoughts.

The Convener: I agree that it would be useful to hear from the SPCB. I might be taking advantage

of my position by saying this, but I would like it if the SPCB went out of its way to use notice boards to announce what was happening in the Parliament every day. A notice to indicate that a cross-party group would meet in committee room 5, for example, could be placed not just outside the committee room but at the public entrance and in the garden lobby. Such notices would help members to know what was happening, so that they could spend time attending the meetings that they wanted to attend, rather than scurrying about trying to find out what was going on. We could improve the way in which we inform not just the public but members of the Parliament.

Bill Butler: I agree with Christine May and the convener that we should seek the views of the SPCB. We could start by seeking written evidence and perhaps take oral evidence later if we wanted to do so.

Perhaps we should also consider the composition of CPGs and whether we are satisfied that the interim decision that we took early in the session—in 2003, I think—is working. It may or may not be. We should reflect on whether to stick with it or to return to what happened before, although that is highly unlikely, given the composition of the Parliament. We should at least have a wee chat about the matter.

The Convener: So you are interested in considering the membership of CPGs.

Bill Butler: I am interested in considering their party and non-party membership.

The Convener: Okay.

Karen Whitefield: We should take written evidence from the SPCB and consider whether the interim decision that the committee took in 2003 on the membership of cross-party groups is working effectively. The Greens suggested in their written submission that the committee should examine the decision, and their point is at least worth considering. There are more Green party, Scottish Socialist Party and independent group members of the Scottish Parliament than there are members of the next two largest parties after the Labour Party and the Scottish National Party, so perhaps they are not as badly done by as they seem to think they are. However, if we want our cross-party groups to be genuine cross-party groups, it is right to monitor the decision that we took in 2003 to ensure that it is working effectively.

The Convener: So members agree that the committee will consider section 8 of the code of conduct, on the regulation of cross-party groups, at a future meeting and that we will invite the corporate body to give us more written evidence, as it has offered to do. Are members also content that we should invite the corporate body to say how we might advertise to the public and to people

who work in the Parliament what is happening in the building by appropriate display notices rather than simply advertising outside committee rooms?

Members indicated agreement.

The Convener: Perhaps we could have dealt with such details later, but I may not remember to do so.

We move to page 6 of the paper. There are two statements in bold after paragraph 31, which is on section 9 of the code of conduct, on general conduct and conduct in the chamber or in committees. Do members have any views on what the paper says?

Christine May: It is entirely appropriate for us to revisit section 9 of the code of conduct to see whether it covers the appropriate equalities areas and to look at the list of equipment. We should also see whether the code is adequate to deal with exceptional expressions of behaviour that have been evident in the chamber.

The Convener: Do members agree to that proposal and to seek further written evidence from the SPCB?

Members indicated agreement.

The Convener: Do members have any comments to make on what is said after paragraph 33 on page 7 of the paper? Section 10 of the code of conduct, which deals with enforcement of the rules, is referred to.

Donald Gorrie: The section goes with section 9 of the code—conduct and then enforcement are dealt with. To the best of my knowledge, no minor penalties can be imposed if members misbehave themselves a bit in a full plenary meeting, for example. We have discussed that previously. There is the nuclear option or nothing. I have no clear suggestions to make about whether members can be told to stand in a corner without their lunch for an hour, or something like that.

Christine May: Would that be the parliamentary equivalent of the sin bin?

Donald Gorrie: We could have a dunce's hat on offer—I do not know. It might be reasonable to have more modest penalties for more modest offences. However, on the whole, members behave reasonably well. Other than when the poor chap or chapess speaks just before 5 o'clock—they generally have a really thick time of it—we do not behave too badly.

Karen Whitefield: If we are taking written evidence from the SPCB on the previous issue, we should take written evidence on this one, as the two issues sit together. We can consider the issues at a later date when we have received that written evidence.

The Convener: I will throw in my tuppenceworth, although I am more than happy to accept Karen Whitefield's suggestion. Mr Gorrie makes the perfectly valid point that the committee has a limited range of sanctions available to it. We discovered when we exercised the sanctions how convoluted the process is. We should consider what powers or sanctions should be in the hands of committee conveners, the Presiding Officer, the Parliamentary Bureau and, ultimately, the Parliament. We do not need to go as far as to produce a tariff that sets out, for example, that for a second offence a member would get a three-week ban, or perhaps a sine die ban, to use football parlance. It might be difficult to produce a tariff, so we should not go that far. However, at present, the public and members have no indication of the likely consequences of various breaches. We should at least discuss the principles of that and who would most appropriately exercise any sanctions. We could also consider whether there should be an appeal route.

Is it agreed that we should consider the issue again at a future meeting and that we will invite the SPCB to give us its views in writing, as it has once again kindly offered to do?

Members indicated agreement.

The Convener: On page 8, following paragraph 41, we are asked whether we should consider annex 5 to the code of conduct, which covers matters that are in the hands of the Presiding Officer. How do members feel about annex 5 to the code and the suggestions in the paper?

Karen Whitefield: In six years as an MSP, I have never once discovered that my correspondence with a public agency has been passed to a list member. I wonder how common an occurrence that is, but that is not for us to judge. Such a matter would be for the individual MSP, who would rightly have a grievance. The Greens have a right to be angry and concerned about the case that is highlighted in their submission. However, they should pursue the issue with the public agency that was responsible for the breach of confidentiality. The committee is not responsible for policing public agencies; we are responsible for members' conduct and the conduct of the Parliament. It is enough for us to police those things effectively and properly, without encroaching on the operations of other agencies. In circumstances such as those that are outlined in the Green party's letter to the committee, it is for the individual member to take up the matter with the public agency and explain why they think that there has been a breach of confidentiality and why that is unacceptable.

The Convener: It is not all that unusual a practice for public agencies to pass on details of

correspondence to list and constituency MSPs and particularly to councillors—that was prevalent when we had the two-tier local authority arrangement. The principle that you mention is accurate and is spelled out in the paper.

However, we have to deal with some rather more substantive points. Do we want to have another look at annex 5? Ought the matter to be in the hands of the Presiding Officer? Is he the appropriate person to police the arrangements? The suggestion that we should seek further evidence from the Presiding Officer about what he has dealt with in practice is probably sensible.

Bill Butler: That is entirely sensible. We should ask the Presiding Officer to provide that evidence and reflect on it when we receive it.

The Convener: Is that agreed?

Members *indicated agreement.*

11:30

The Convener: On page 9, following paragraph 44, we are asked to consider what we should do about persistent and abusive constituents.

Christine May: I have always taken the view—not as an elected member, but when I worked for one—that that matter should be dealt with in the constituency and that, if the complainant was particularly abusive or aggressive, the matter should be taken to court as a last resort. I have done that.

We might want to take some evidence on what might be an appropriate code of guidance for members, or to find out whether what we already have in place is adequate. Again, this might put something objective into an area that is, basically, subjective. It relates to one-to-one relationships and how they are dealt with. I would be pleased to hear from folk who have ideas about general codes of guidance or practice that could be adapted for use. However, at the end of the day, the matter is for the member, their staff and the appropriate authorities, if it comes to that.

Bill Butler: It is reasonable that we discuss the matter. However, I would think that the codes of conduct of some public services would have ideas about dealing with customers who are abusive or vexatious. Perhaps we could reflect on those various practices and find out whether they have anything from which we could benefit.

Donald Gorrie: I am sure that we could learn from other people.

One could try to lay down a principle that would suggest that, while the member thinks that they can progress the person's case a bit further, they should bite their lip and try to do so, even if the person is being abusive. By all means, the

member may write to them to say, "If you moderate your language a bit, we'll get on much better." Of course, there might come a point at which the member can do no more to help the person, whereupon the person might get even more abusive. At that stage, the member could say, "I have done everything I can. I am sorry, but the case is closed. I am not going to speak to you again."

My successor as MP for Edinburgh West does not allow a certain person into the office because there has been too much trouble. That is quite legitimate, after a certain point.

Bill Butler: I think that there are instances in which trade unions, in the course of representing their members, have had to seek interim interdicts in the courts with regard to particularly vexatious individuals. Perhaps we could examine the way in which those who represent working people try to ensure that they are protected from the few—I am thankful that it is a few—who indulge in such behaviour.

The Convener: Can I take it that the committee would like to have a report that considers practice in the private and public sectors and, in particular, the parts of the public sector to which we are closely related, such as the commissioners, some of whom have developed such a code? We will consider that report at a future meeting along with the suggestions that have been made today.

Members *indicated agreement.*

Cross-party Group

11:35

The Convener: Alasdair Morrison had hoped to be present but, because of the vagaries of the weather and consequential travel arrangements, he has not been able to join us. However, we have before us the proposal for a cross-party group on golf. As with all such proposals, the group is entitled to use the title only if it is first accorded recognition by the committee under section 8 of the code of conduct.

Committee members have before them copies of the application form from the proposed group and a cover note. Alasdair Morrison is the convener of the proposed group. Unfortunately, neither he nor his proposed substitute could quite make it today. Do committee members have any concerns? As far as I can see, the group complies with our current requirements.

Christine May: I have one comment. I thought that inclement weather never hit golf or golf-related activities.

Donald Gorrie: It might hit flying to the golf-related activity.

The Convener: That sounds like the comment of a golf widow, Christine.

Christine May: Oh, no.

Karen Whitefield: The group clearly meets the requirements that the Parliament has laid down and we should approve its establishment.

Donald Gorrie: That is correct. However, I have a slight longer-term fear that, just as we possibly have too many cross-party groups dealing with individual medical conditions, we might end up with too many groups on sport. We have a cross-party sports group—next week will we have a group for friends of Andy what's-his-name?

The Convener: Andy Murray.

Donald Gorrie: Yes, Andy Murray. We could end up with a cross-party group on football. We certainly need it and, as we have actually won two rugby matches, we could have a cross-party group on rugby. I would be sorry if the cross-party group on golf opened the door to a flotilla of individual sports groups but, as Karen Whitefield correctly said, the proposal stands up under the current rules and we have to agree it.

The Convener: On your general point, the approval of the cross-party group on golf means that we now have 65 cross-party groups. There must be concerns about the viability of such a large number. There is no constraint on the setting up of any group as long as it complies with the rules.

Your point about there being a large number of cross-party groups on medical conditions is true and we also have more than one transport cross-party group. I do not know whether all the groups are actively working, so perhaps we will have to revisit the matter as part of our consideration of the code of conduct to determine whether we might need rather more rigorous rules for the next parliamentary session.

Having said that, we have agreed to the establishment of the cross-party group on golf and I will write accordingly to Mr Morrison in due course.

Karen Whitefield: I have a point of information. You highlighted the fact that we have more than one cross-party transport group. However, the cross-party group on sustainable transport, of which I am the convener, amalgamated all the transport groups under one heading because we were conscious that there were a number of cross-party transport groups and that, in some ways, we were duplicating work. As a result, I think that we now have only one cross-party transport group.

The Convener: A number of rail groups are still in existence and rail still qualifies as transport. Nevertheless, I commend you for bringing together a number of groups.

Bill Butler: The cross-party group on Glasgow crossrail will be delighted to be subsumed in the cross-party group on sustainable transport once we get Executive go-ahead for the crossrail. It pays to advertise, so I thought that I would make that point.

Christine May: Is that called lobbying?

Donald Gorrie: I will lower the intellectual tone by saying that I hope that members might agree to join my proposed cross-party group on blow football, for which the table in committee room 5 would be a magnificent arena.

Christine May: I think that we should close the meeting.

The Convener: Indeed. I will do so before we get any more such suggestions.

Meeting closed at 11:40.

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