

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 25 April 2006

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE **4th 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 3

Scottish Parliament

Standards and Public Appointments Committee

Tuesday 25 April 2006

[THE CONVENER opened the meeting at 11:00]

Code of Conduct

The Convener (Brian Adam): I welcome everyone to the fourth meeting in 2006 of the Standards and Public Appointments Committee. I remind folk to switch off their mobile phones. We have received apologies from Alex Fergusson and Donald Gorrie—Donald Gorrie has to attend another committee meeting.

There are two committee papers for item 1, which is our review of the “Code of Conduct for Members of the Scottish Parliament”. I am sure that eagle-eyed members have noticed that the paragraph numbers in the conclusion of paper ST/S2/06/4/1a are wrong, because the paper has been revised. The references should be to paragraphs 4 to 8, 9 to 12, 13 to 17 and 21 and 22.

The committee agreed that the code would benefit from restructuring and members who responded to our internal consultation largely supported a restructuring. Paper 1a therefore considers a revised structure. When our review nears completion it might be a good idea to invite business managers from the Parliamentary Bureau to take part in a round-table discussion, so that we can dot the i’s and cross the t’s before we ask the Parliament to debate a revised code of conduct. We will consider the detail of the code in future meetings; our discussion today will be about the code’s overall structure. I invite members’ comments on the direction that we should take.

Linda Fabiani (Central Scotland) (SNP): I agree with the general principle of positioning the mandatory code in front of the guidance.

Paragraph 15 asks us to decide whether the code should mention the “Scottish Ministerial Code”. My gut reaction is that it should do so for information, but I am open-minded. Similarly, on paragraph 16, the code should state that a member’s conduct in a party-political capacity is excluded. On paragraph 17, I am all for putting as much in the code as possible, to give people a steer.

The guidance from the Presiding Officer on relationships between MSPs—

The Convener: Are you talking about the guidance that is currently in annex 5 of the code of conduct, which is mentioned in paragraph 20?

Linda Fabiani: Yes. It is suggested that the guidance should be included in the code. However, the guidance should not become mandatory, because much depends on how individual MSPs decide to operate. I am a list MSP and constituency MSPs in the region that I represent deal with list MSPs in different ways.

On paragraph 22, the elements on disclosure should be mandatory, as they are at present, and they should be kept in the code. How we deal with section 10 of the existing code, which is on enforcement of the rules, warrants discussion.

The Convener: That was useful. Do members want to discuss the points that Linda Fabiani raised? Alternatively, perhaps we should just go through the paper paragraph by paragraph. Would members prefer that?

Members indicated agreement.

The Convener: I assume that members are happy with paragraphs 1 to 3, so we will now deal with paragraphs 4 to 8. As members seem to be content with the paragraphs, I take it that the code should have an introduction or preamble along the general lines that are laid out in those paragraphs. Is that correct?

Members indicated agreement.

The Convener: Paragraphs 9 to 12 discuss the mandatory part of the code. Linda Fabiani mentioned annex 5, which is at present mandatory and is likely to remain so. On that issue, we ought to discuss with the Presiding Officer how he sees his and his successors’ role. We have had almost two parliamentary sessions, so this is an appropriate point at which to review whether the Presiding Officer should deal with matters that relate to annex 5, whether he wants to do that and where annex 5 ought to fit in.

Bill Butler (Glasgow Anniesland) (Lab): That is eminently sensible. As a matter of courtesy, we should liaise with the Presiding Officer on that issue through you, convener.

The Convener: We should invite him to come to the committee or at least write to him to ask how we should progress. He could inform us of his view either in writing or by coming to talk to us.

Bill Butler: That is fair and we should do that.

The Convener: Do members agree to paragraphs 9 to 12, with that minor change?

Members indicated agreement.

The Convener: We now come to paragraphs 13 to 17. Linda Fabiani made several points about

paragraphs 15 to 17. Do members wish to comment on those paragraphs?

Christine May (Central Fife) (Lab): As a preamble, I refer to the comments that I made during a previous discussion on guidance. We are trying to set out a series of rules that can be measured objectively, but we are applying them to matters that have subjective elements, such as behaviour. It is important that the elements of any bill are explicit about what we seek to do—

The Convener: There will not be a bill.

Christine May: No, I realise that.

The Convener: I accept your point, though.

Christine May: Legislation, or that which is written down as law, should be absolutely clear about the principles that are being applied. The code is mandatory and breach of it is a serious matter, so it should be absolutely clear which behaviour we are talking about. It is not good that revisions that are made in the light of experience require a change to primary legislation. It should be possible to review the code regularly, as experience dictates and as circumstances and lifestyles change. I had a conversation earlier about the fact that many rules on conduct and interests relate to a former time, when members were businessmen and families' interests were perhaps more relevant, given the nature of the businesses that many members were in.

That is my preamble. The guidance should be advisory. As Linda Fabiani has said, it would be helpful to list those things that are not specifically covered.

On the separate ministerial code, it is important that when we consider other issues later, and during tomorrow's debate on the Interests of Members of the Scottish Parliament Bill, a clear distinction is made between the activities that members undertake as constituent members of this Parliament and those that they undertake as ministers, if they happen to be one.

The Convener: Do members wish to engage with the First Minister on that issue? I concur with Linda Fabiani and Christine May that for the benefit of members and members of the public the guidance should spell out that any action that is taken by a member in their role as a minister is not covered by the code. Just as we are going to offer the Presiding Officer the opportunity to engage with us on annex 5, it might be useful to offer a similar opportunity to the First Minister in this instance.

Christine May: Would not the appropriate person be the Minister for Parliamentary Business rather than the First Minister?

The Convener: We could offer the opportunity to whoever is appropriate. I hesitated in making the suggestion, but I thought that, as we had offered someone else who would be affected by the code the opportunity to engage with us, we should do so in this instance as well.

Linda Fabiani: Elsewhere in our papers it is suggested that the business managers be asked to look over the proposals. If business managers are being asked to consider them in general, we could pick out a few points that we would like them to consider further.

Karen Whitefield (Airdrie and Shotts) (Lab): I am not sure that we need the First Minister to come before the committee, but there would be no harm in our writing to him asking whether he has any comments to make about the ministerial code of conduct. When he responds, we can reflect upon his views.

On paragraph 14 of paper 1a, which is about what is not covered by the code, I take a different view from Christine May. I have reservations about making a big list of what is not included. We should concentrate on what is included. Inevitably, if we have a list of what is not covered we will miss something out and some doubt will be raised. We need to be clear about what the code does and concentrate on that.

The Convener: The following few paragraphs of paper 1a suggest that, in the minds of many members of the public, there is confusion about the various roles. A list of what is not covered would not have to be all-inclusive; it could be indicative.

Your suggestion with regard to the First Minister was well made. I was not suggesting that we ought to summon him before us; I was trying to be helpful. I make it absolutely clear that the ministerial code is not, in any way, part of our remit. It has come up in our discussions simply because there is some confusion—particularly in the minds of members of the public—about who people should complain to when they have a complaint. We are trying to clarify the situation for everyone.

Christine May: Karen Whitefield's comment was helpful in that it leads me to clarify what I meant. I was not suggesting that we have a great long list. The paper includes examples of what might not be covered by the code—such as ministerial activities and party political activities—and it is reasonable to refer to those big-ticket issues as being excluded. However, I would not suggest that we should have either a list for or a list against.

11:15

Bill Butler: It would be pointless having an exhaustive list. The paper suggests that we should state that the code does not cover the large issues to which Christine May, Linda Fabiani and Karen Whitefield referred. Simply stating what the code does not cover would assist any member of the public who wanted to spend an hour or two—perhaps less time than that—looking through the code. It would say, “Here is what is covered; here is what is not covered. Now, continue on your way, gentle reader.”

The Convener: Well put.

Paragraph 17 refers to circumstances in which the quality of representation, in the eyes of a constituent, is a matter for debate. There is no doubt but that other legislatures take the view that the quality of representation is best dealt with through the ballot box. We have strayed into measuring it in terms of the code of conduct. Certainly, some members of the public have felt that that was an appropriate avenue through which to seek redress. We ought to give the Parliament an opportunity to take a view on that, one way or the other. That is what paragraph 17 is meant to do. We can have a debate around that level of detail.

Are members happy with paragraphs 13 to 17 and do we agree to write to the First Minister to ask for his views on the potential confusion that might arise between the code of conduct for members and the ministerial code?

Members indicated agreement.

The Convener: Are there any comments on paragraphs 18 to 20? Do you want to reiterate what you said earlier, Linda?

Linda Fabiani: Thank you for correcting me earlier, convener. I had not realised that the Reid principles were mandatory. Maybe I should read them again, now that I know.

I am the only list member on this committee and I think that the Reid principles can cause difficulties. Whether a list member is reported for the slightest violation of the Reid principles depends greatly on that member’s relationship with the constituency MSP. It is easy to fall foul of the Reid principles in the course of day-to-day work, even though one has no intention of so doing. I have been the subject of letters to the Presiding Officer and when I have received a complaint I have said, “Lordy me, I missed that one.” It happens—although, of course, it would be another matter if someone deliberately set out to ignore the principles. Further, there is a grey area around exactly what needs to be reported to constituency MSPs as a courtesy.

We often hear that people are confused by our system, but a lot of people are not confused at all and they write to each of their list MSPs and to their constituency MSP. If the issue is general and not case specific, it can fall into a grey area with regard to how it is dealt with. I was pleased to hear you suggest that we ask the Presiding Officer to come to the committee to talk about those issues, convener, because the principles can cause confusion and there is no real uniformity with regard to their operation.

Bill Butler: I agree with Linda Fabiani. We should hear from the Presiding Officer, whether in oral evidence—if his busy schedule allows him to come to the committee—or in correspondence or both. We are seven years into the life of the Parliament and it strikes me that fewer issues arise now than did in the Parliament’s early years. However, it would be interesting to hear what the Presiding Officer has to say, especially as he was the main—if not the only—author of the principles.

The Convener: The Presiding Officer is in a unique position to offer an insight into the matter: he was a list MSP in the first session of the Parliament and he is a constituency MSP in the current session. Few members are in that position, although I am one such member and so is David McLetchie. We might have another member who is in that position in the near future, although that will depend on events later in the week.

However the Presiding Officer chooses to engage with the committee, it would be useful to hear from him, because he was intimately involved in drawing up the guidance. It is important that how constituency and list members should interact is understood. The Parliament does not retain the same members for ever; there is inevitably a turnaround, so it would be useful to have guidance on the matter. It is for the Parliament to debate whether there should be mandatory rules. Mr Butler is perhaps right to say that the issue is less contentious than it used to be, but that is not to say that it will not be contentious again. Perhaps the role and importance of the guidance in the code will change.

We will invite the Presiding Officer to comment on annex 5 in whatever way he deems appropriate. If members have no further comments on the annexes to the code of conduct, I take it that everyone is happy with paragraphs 18 to 20.

Members indicated agreement.

The Convener: We move on to paragraphs 21 and 22. Do members agree that section 10 of the code would be better placed as an annex to the revised code?

Members indicated agreement.

Linda Fabiani: The paper says:

“paragraphs 10.1.7 and 10.1.8 (Disclosure) may require to be kept in the Code as they are mandatory requirements.”

What is our response to that suggestion?

The Convener: You quote paragraph 22. I dealt with paragraph 21 first.

Linda Fabiani: Sorry.

The Convener: Do members agree that the paragraphs on disclosure should remain in the revised code, as suggested in paragraph 22?

Members indicated agreement.

The Convener: We move on to paper ST/S2/06/4/1b, which is on guidance to MSPs on handling abusive, threatening or unreasonably persistent constituents. Last year, the committee issued guidance to the Scottish parliamentary standards commissioner on dealing with unacceptable actions, but there is no formal guidance for members on the matter, although members can approach the clerks for advice in individual cases—and they have done so. The inclusion of guidance in the code of conduct would help not only members but the public, because it would set out what is expected of members of the Parliament in certain situations and how members should act. We should make it clear that guidance is just guidance—it is not rules that might cause members difficulty, and its existence would not prevent members of the public from submitting complaints, which would be assessed against the criteria set out in the legislation that governs the complaints system.

Bill Butler: This is an excellent background paper, which comes to a good conclusion. As you said, convener, the proposed policy is necessary not only for us but for the people of Scotland. I tend to agree with the paper's points for possible inclusion in a draft policy. I do not see anything in them that is out of place and I cannot think of anything to add, though perhaps other members can. The draft policy is reasonably detailed. We should circulate it to business managers and invite comments from them.

Linda Fabiani: I agree that we should do that. It is worth noting the examples in the paper of institutions that do not have the guidance that we seek and that are considering introducing it. I remember being impressed by the Scottish public services ombudsman's evidence. I like the language that she uses and how her policy states the facts. It is clear and understandable. That is the way we should go rather than try to get complicated.

Christine May: My views are similar. I have a comment about the first bullet point in paragraph 16, which states:

“The policy should define unacceptable behaviour including ... abusive language and behaviour towards an MSP”.

Is it appropriate to add “or staff”?

The Convener: Yes, although the paper does refer to that later.

Christine May: We all accept that people who are upset or angry about an injustice—the ombudsman's code refers to this—will not necessarily use temperate language. I think that most of our staff can deal with that—we train them to deal with it—but there is a stage beyond which intemperate language or demeanour becomes unacceptable. We want to be able to differentiate the stages.

The Convener: We must bear in mind the fact that we are discussing the code of conduct for members, which is primarily about members. Obviously, members' staff deal in the first instance with members of the public. Your point is valid, Christine, but we must be careful that we do not try to produce a code of conduct for members' staff.

Linda Fabiani: There must be wording or a legalistic phrase that we can use—for example, “towards the office of an MSP”—that makes it plain that the code refers to MSPs and people who deal with them. Following our acceptance of the proposed policy, MSPs should issue, as employers, guidance to their staff that covers them as employees. That would be sensible. Something could be put in employee contracts and in the booklet that is given to staff when we use the Parliament's contracting service. We should point out to all MSPs that if the proposed policy is accepted, we should pass on guidance to our employees.

The Convener: Are members in general agreement with the paper's points, particularly the point that we should engage with business managers on the subject before any guidance is formally adopted?

Members indicated agreement.

Annual Report

11:29

The Convener: Item 2 is our draft annual report, which covers the committee's activities from 7 May 2005 to 6 May this year—we are ahead of ourselves. Do members have any comments on the report?

Linda Fabiani: It is very good.

Bill Butler: It is excellent.

The Convener: I am sure that the clerking team is grateful for those comments, which I endorse. Are members agreed on the report?

Members *indicated agreement.*

The Convener: That completes this week's business. I hope that members enjoy tomorrow's debate, when we will conclude many years of work—that might not be the case for all committee members, but it certainly is for some of the staff and others—on producing a new members' interests order as part of the Interests of Members of the Scottish Parliament Bill. I look forward to hearing members' views.

Meeting closed at 11:30.

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