

# **STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE**

Tuesday 13 February 2007

Session 2

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## STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

### 1<sup>st</sup> Meeting 2007, 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 4



## Scottish Parliament

### Standards and Public Appointments Committee

*Tuesday 13 February 2007*

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

### Decision on Taking Business in Private

**The Convener (Brian Adam):** Welcome to the first meeting in 2007 of the Standards and Public Appointments Committee. Everyone should ensure that their mobile phones are switched off. We have received apologies from Karen Whitefield.

Item 1 is a decision on taking business in private. Item 4 relates to a complaint referred to the committee at stage 3 of the complaints process. The code of conduct specifies that initial consideration of a complaint should take place in private to avoid prejudicing any possible further investigation. Do members therefore agree to take item 4 in private?

**Members** *indicated agreement.*

## Code of Conduct

11:01

**The Convener:** Item 2 is the code of conduct, which we have been considering for some time. It has been reviewed mainly as a result of our own legislation: the Interests of Members of the Scottish Parliament Act 2006.

Initial consultation of all MSPs and former members of the consultative steering group took place in spring 2005 and a second consultation took place in December 2005. The committee wrote to the business managers of all groups and parties in the Parliament and to the Presiding Officer, the Scottish Parliamentary Corporate Body and the Scottish Parliamentary Journalists Association. That consultation focused on the committee's proposals for the code's structure. In February 2006, a third consultation exercise was carried out, during which the committee wrote to invite comment from various parties who have an interest in governance throughout the United Kingdom and beyond. All the consultations were carried out following the agreement of the committee, which was given in public. All papers have been published on the Parliament's website.

At its meeting on 25 April 2006, the committee agreed to recommend restructuring of the code of conduct. The committee also agreed that there would be merit in making a clearer distinction between the code itself and the larger document in which the rules are explained and contextualised. It could be made clear that the code itself consists only of the mandatory elements of the document and that the advisory and informative elements have a different status—they are there to guide and inform members and the public about what the code involves and how the procedures that are associated with its enforcement are expected to operate.

The Scottish parliamentary standards commissioner's annual report of June 2004, which is a public document, referred to the broad nature of section 2 of the code of conduct and the potential difficulties that it posed. That has helped to inform our review of the code.

It is suggested that the introduction or preamble should contain the key principles, as currently set out in section 2 of the code, and that it should also make it clear that they are not part of the code and perhaps state that the key principles that underpin the code, as opposed to the specific rules of conduct, are aspirational: their intention is to guide members towards high ethical ideals. General principles, in contrast to standards or rules, do not represent obligations, so the committee feels that

they should not form the basis for imposing sanctions.

At its sixth meeting in 2006, on 20 June, the committee agreed to delegate authority to me to work with the clerks to produce a draft code of conduct for MSPs. That work has been undertaken and the committee will consider the latest draft today.

The committee also agreed to consult representatives of all the parties and groups in the Parliament, once it had discussed the draft. That will take place later this month. The final decision on the code will, of course, lie with Parliament. It is hoped that it will be debated some time before the end of the session in order that the new advice and provisions will be in place for session 3, to assist members in complying with the new legislation.

Members have been provided with an introductory note, a summary of the differences between the current edition and the draft edition, the paper that the committee previously considered, which summarised progress and includes suggestions from respondents on revisions to the code, and a draft edition 3 of the code, which is based on the revisions that were agreed by the committee and those that were suggested by respondents. Perhaps not all the cross-references are in place in the draft code, but we will ensure that they are all taken care of before we report to Parliament.

Do members have any views on how the code of conduct has been set out or on any of the issues that may still need to be resolved?

**Linda Fabiani (Central Scotland) (SNP):** Despite how long it took, having seen it complete, I will say that the code seems to be much clearer and more readily understandable than it was before. I am quite pleased with its being split into different sections. It makes a lot of sense.

**Donald Gorrie (Central Scotland) (LD):** The general structure is good. It is helpful to have detailed guidance that is separate from the code. On a previous individual issue, we fell foul of the difference between aspirational and realistic requirements.

I have a small point that illustrates my ignorance of the rules. At various points in the code of conduct there is reference to 1 per cent of a member's salary. If a member is also a minister, does it include that as well? Do ministers have a higher threshold?

**The Convener:** It is useful that you raised that issue. It will be clear from the *Official Report*. It is the member's salary as a member as opposed to any ministerial salary.

**Donald Gorrie:** I have a suggestion related to cross-party groups. I am a member of far too many cross-party groups, some of which work well and some of which work not so well. One problem is that some non-MSP members of cross-party groups think that the groups can actually do something and so they get upset when it cannot. Obviously, the groups can raise issues and so on, but I think that non-MSP members confuse the groups with parliamentary committees. It might be worth including in the rules about cross-party groups the fact that they must initially make it absolutely plain to all non-MSP members the limits on the authority, if any, of the cross-party group.

**The Convener:** Can you suggest where that might be included?

**Donald Gorrie:** No, it was just an aspirational idea.

**The Convener:** Indeed—although it may well be one that your colleagues on the committee share. The draft code will have to go out again for further discussion, in particular to the cross-party groups. Members who wish to suggest minor textual changes may do that in writing to the clerks. However, it could well be that section 6 in the guidance would cover the issue that has been raised by Donald Gorrie. As we discuss the rest of the code, he will have the opportunity to see whether it satisfies his query.

**Bill Butler (Glasgow Anniesland) (Lab):** I agree with Donald Gorrie that we should emphasise that although CPGs play an important role, they are decidedly not committees of Parliament. That would be useful.

I pay my respects for the work that has been undertaken by the convener and the clerks to present the very detailed draft that will go out to members before we have a debate before the end of the session. That is the right course of action.

The only issue that I want to raise relates to paragraph 7.2.4, which is in section 7 in volume 2. The paragraph begins:

"Parliamentary staff will treat Members with courtesy and respect. Members must show them the same consideration."

The first three sentences in the paragraph are absolutely fine, down to "and investigated." However, I suggest that, for the sake of brevity or directness, we should take out the final two sentences, because the first three sentences already carry their meaning implicitly—they contain the idea of the complete unacceptability of sexual harassment and state that complaints will be thoroughly investigated, so the paragraph does not need to state that again.

**The Convener:** How do other members feel about that?

**Linda Fabiani:** I will go along with that. I had not noticed that, but now that Bill Butler has mentioned it, I agree with him. His suggestion is fine, in the interests of brevity. Also, the re-emphasis of sexual harassment may make it seem implicitly more important than other forms of harassment, such as straight bullying. The current wording probably overeggs the pudding.

**Christine May (Central Fife) (Lab):** Although the second-last sentence, which is on sexual harassment, is redundant, it is helpful that the final sentence emphasises that a procedure is in place for investigating complaints. Without that, somebody might read the paragraph and wonder why it does not say what will happen.

**Bill Butler:** The third sentence states:

“any ... inappropriate behaviour ... will be taken seriously and investigated.”

We are overegging the pudding.

**Christine May:** You are right—in that case, I support your suggestion.

**The Convener:** I am informed that there are no technical reasons why we cannot accept the suggestion. I assume that Bill Butler proposes that the change he suggests should be made.

**Bill Butler:** Yes—I propose that formally.

**The Convener:** Do members agree to that proposal?

**Members indicated agreement.**

**Christine May:** I have two points, one of which Bill Butler has covered. The first is to express my thanks to the clerks for the helpful explanatory papers on the code and for the work that has been done on tidying up the various wordings as a result of our deliberations.

My second point arises from Donald Gorrie's point about the rules on lobbying and gifts that refer to a percentage of a member's salary. For completeness on the record, can the clerks say whether I am correct in thinking that there is a separate code that covers ministerial obligations and which covers elements of their salaries?

**The Convener:** The advice that I have been given—which is what I would have said anyway—is that all members, ministers or otherwise, are covered by the code of conduct. The ministerial code of conduct is on top of the code for members. On the point that Donald Gorrie made, the percentages relate only to members' salaries as members, rather than to any ministerial appointment.

In my discussions with the clerks, I raised a couple of other points that are not absolutely minor, although I thought that they were.

Anyway, I ask members to look at paragraphs 4.2 and 4.3, which relate to the key principles of the code of conduct and to public duty. I have various copies of the code, so I hope that I have that absolutely right.

11:15

**Linda Fabiani:** Is that the bit about sanctions and offences?

**Christine May:** Which bit are we looking at? Paragraph 4.2 is about sanctions and offences in my copy.

**The Convener:** It has obviously been renumbered—I am looking at my original copy. It is paragraphs 3.1.3 and 3.1.4 in volume 1, under the heading “Introduction: Key principles” and the sub-heading “Public duty”. I was looking at the initial draft.

I do not like phrases such as “In doing so”, so the second sentence of paragraph 3.1.3 should read: “Members should act in conformity with the rules of the Parliament.”

**Linda Fabiani:** Do you mean that we do not have to uphold the law?

**The Convener:** Everybody has to uphold the law, but the paragraph relates to our code of conduct and the law on registration of interests. However, “In doing so” and “uphold the law” do not add much. I am not suggesting that we should not uphold the law, but we are talking about the rules of Parliament. That is my view, but other members may take a different view.

I also thought that was rather odd to include in paragraph 3.1.4 the point that we

“have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.”

It is true to say that we must do that, but I do not think that the oath of allegiance is anything to do with the code of conduct. We all have to take the oath of allegiance, but I do not understand how that relates to our code; it is not an essential feature of it.

I suggest that we delete the phrases that I have mentioned, but I am happy to hear members' views on both suggestions. We will take the first one first. How do members feel about the wording of paragraph 3.1.3 and my suggested amendment to it?

**Bill Butler:** I do not have any problem with taking out “In doing so”, but we can keep “uphold the law”. It is a general point that everybody, including members of the Parliament, should uphold the law, so we should just leave the phrase in, although I would not die in a ditch over it.

**Linda Fabiani:** I agree with Bill Butler. It does no harm to state explicitly that members should uphold the law.

**The Convener:** Is it agreed that we take out only "In doing so"?

**Members indicated agreement.**

**The Convener:** I would probably not have looked at the detail of the sentence if I had not seen that phrase. I was just being pedantic because I did not think that it added anything.

On paragraph 3.1.4, the oath of allegiance is set out in the standing orders, so I do not think that it also needs to be in our code of conduct. I do not see how anybody would be better advised by having it in there.

**Bill Butler:** As a good republican, I should agree with you, convener, but I think that we would be on much safer ground if we were to reword the paragraph to say something like, "Under the Scotland Act 1998, members are expected to take the oath of allegiance at the beginning of a session," and end it there with a full stop. It is simply a matter of fact that we are expected to take the oath. Whether we should take it is an interesting debate.

**Linda Fabiani:** We are obliged to do so.

**Bill Butler:** Yes, we are. We should leave it as a statement of fact. I am not mad about including:

"have a duty to be faithful and bear true allegiance"

and the rest of it. Those words are in the oath that we are expected and obliged to take, so we should simply state for the record that, before we take up our seats as members, we are expected to take the oath and leave it at that.

**Linda Fabiani:** I agree with Bill Butler: paragraph 3.1.4 is redundant and, to be honest, a bit silly. If we used wording such as "expected to take the oath or to affirm" it would seem as if it was voluntary. If you are "expected" to do something, you do not really have to do it. The fact is that we have to take the oath of allegiance or make a solemn affirmation. Perhaps the wording should be "members must take the oath of allegiance or make a solemn affirmation when elected to the Parliament."

**The Convener:** It might be helpful to refer specifically to rule 1.2 in the standing orders.

**Christine May:** I am perhaps less concerned about paragraph 3.1.4 than are other members. It seems to me to do no harm, but I am not prepared to force a vote on it. As long as we retain wording that is along the lines of the present suggestion, I will be content.

**Alex Fergusson (Galloway and Upper Nithsdale) (Con):** As an avowed royalist, I

listened with interest to what my friend the avowed republican had to say. I rather agree with Christine May. The fact is that we are expected to take an oath of allegiance when we become members of this Parliament. We take that oath and, during our four years as members of the Parliament, we surely have a duty to abide by what we have publicly stated. I therefore do not see any harm in members being reminded through the code of conduct that they are expected to abide by the oath. Otherwise, there seems little point in taking the oath.

**The Convener:** It could be argued that the Parliament did not choose to impose this rule on its members. If we had had any choice, things might have been different. I am more than happy to support the deputy convener's position, although I respect your view, Mr Fergusson.

**Alex Fergusson:** There are some issues on which it is not always good to have a choice. However, in a spirit of co-operation, I am happy to leave this for the moment—it will go to the Parliament in due course.

**The Convener:** Yes, it will. At the moment we are producing a draft. The draft will then go to the parties for further consultation, before it goes to the Parliament to be agreed to or not agreed to.

**Alex Fergusson:** That being the case, I propose that paragraph 3.1.4 be left as it is while we await feedback from further consultation.

**Donald Gorrie:** As everyone has said, the oath of allegiance is a fact. It is perhaps worth reminding people of that.

As paragraph 3.1.4 stands, there is an implication that the oath of allegiance supplements what is said in paragraph 3.1.3—that we should behave in a decent sort of way

"in the interests of the Scottish people".

I am a slightly liberal royalist—

**Bill Butler:** Another one!

**Donald Gorrie:** However, I do not see that that affects my conduct as a member of the Parliament. It has been suggested that the wording should allude to the oath of allegiance without spelling out the duty as paragraph 3.1.4 does. If the duty is spelled out, there is an implication that the behaviour expected of us is slightly different from that expected by paragraph 3.1.3.

**The Convener:** Perhaps I should explain again why I raised these issues. There may well have been an element of the republican versus royalist argument in my reasoning, but I felt that paragraph 3.1.4 did not in any way enhance my perception of the public duty of a member of the Scottish Parliament or my perception of what the public



might expect of an MSP. However, there are perhaps different views on that, and it is probably appropriate that we have a debate on the issue.

**Linda Fabiani:** I suggest a compromise. Perhaps there should be a separate heading—although I do not know what it would be—referring to the fact that members have to take an oath or make an affirmation, whether or not there is a reference to the standing orders. The public duty bit could be under a completely separate heading. That would remove the link between a member's performing their public duty properly and their having to be true to the Queen.

**The Convener:** We have had specific suggestions from Alex Fergusson and Bill Butler. I will paraphrase Bill Butler's suggestion, if he is happy with that, and we will put the two points together, along with the point that Linda Fabiani has made. Alex Fergusson is suggesting that we leave paragraph 3.1.4 as it is—is that fair, Mr Fergusson?

**Alex Fergusson:** That is what I have suggested, convener.

**The Convener:** Linda Fabiani and Bill Butler are suggesting that paragraph 3.1.4 needs to be renumbered and should appear separately before the heading "Public Duty". They suggest that it should read, "Members must take the oath of allegiance under standing orders rule 1.2".

**Alex Fergusson:** Or make a solemn affirmation.

**The Convener:** Yes, "or make a solemn affirmation."

**Bill Butler:** I hate to contradict you, convener—please take this in the spirit of debate—but that is not exactly what I said.

**The Convener:** I was trying to be helpful.

**Bill Butler:** I know you were. I will try to be equally helpful. I think we should include that wording under the heading "Public Duty". Unless a member takes the oath or makes the affirmation publicly, they cannot exercise their public duty: the one follows the other. If they do not do that, they risk being no longer a member of the Parliament. We could say that, for members to be able to exercise their public duty, they must take the oath of allegiance or make a solemn affirmation.

**The Convener:** A reference to the standing orders would be helpful in clarifying that.

**Bill Butler:** Yes, of course. Is it rule 3.1.2?

**The Convener:** It is rule 1.2.

**Linda Fabiani:** We could swap the paragraph numbers around, so that the allegiance bit comes before the public duty bit. That may imply less of a link, as Donald Gorrie suggested.

**Alex Fergusson:** Showing that loyalists and republicans can walk arm in arm, I am relatively content with Mr Butler's suggestion.

**Bill Butler:** We have the restoration, convener.

**The Convener:** Mr Butler, are you content with the suggestion that we just swap the paragraph numbers?

**Alex Fergusson:** I am sorry; I understood Mr Butler's suggestion to be that both paragraphs should remain under the heading "Public Duty".

**The Convener:** Yes, but we could swap the paragraph numbers so that the wording about allegiance would come first.

**Alex Fergusson:** Oh, I see. That is even better.

**The Convener:** So the following will be the wording—unless we receive technical advice that it should not be—"Members must, in order to exercise their public duty, take the oath of allegiance or make a solemn affirmation under standing orders rule 1.2."

**Bill Butler:** I am sorry, convener, but as you raised the issue—perhaps you now wish you had not—I must say that, logically, the numbering of the paragraphs has to stay as it is. First, the general comment should be made:

"Members are expected to act in the interests of the Scottish people and the Scottish Parliament",

and so on. The code should then state that, to exercise their public duty, members have to take the oath of allegiance.

**The Convener:** You mean to place those statements in order of importance, suggesting that we are much more accountable to the people than we are to the Queen?

**Bill Butler:** No, although people might wish to interpret it in that way—I might wish to interpret it in that way. I simply want those statements to reflect the logical sequence of events—it is events, dear boy, events. I think that those statements should be made in that order.

**Linda Fabiani:** I bow to the superior logic of Mr Butler.

**The Convener:** Are members content with the wording that I have put in the mouth of Mr Butler?

**Alex Fergusson:** I am sorry, but, for the sake of plain English, "members must" ought to come after whatever you said after that. It should be, "In order to comply with"—or whatever it was you said—"members must". Well, we are being pedantic—I think that we are all agreed on that.

**Bill Butler:** You are right. We are absolutely agreed on that.

11:30

**The Convener:** Are members also content for that to continue to be paragraph 3.1.4?

**Members** *indicated agreement.*

**Alex Fergusson:** Yes. Move, move, move.

**The Convener:** We have reached agreement on paragraphs 3.1.3 and 3.1.4.

**Christine May:** What we have agreed will go out to consultation to all the political groups, will it not?

**The Convener:** Absolutely.

**Christine May:** That will be interesting.

**The Convener:** We have already dealt with paragraph 7.2.4.

Are members content that what we have agreed is what we should put out to consultation and that we will consider the responses at our next meeting, on 27 February, with a view to agreeing and recommending the code of conduct to the Parliament?

**Members** *indicated agreement.*

## Legacy Paper

11:31

**The Convener:** Item 3 is consideration of whether we should have a legacy paper and what it should contain. It is common practice for committees to produce legacy papers, but it is not obligatory. It can be helpful for incoming committees to be aware of work that was being undertaken by previous committees or that the previous committees were unable to do but suggested that future committees undertake. Do members think that there is any need for a legacy paper?

**Linda Fabiani:** We probably should compile a legacy paper to note what has been done during the session. My caveat to that is that the paper should be as short as possible—it should probably contain bullet points that refer to where people can find out more if they wish to do so. I do not think that we should give the clerks an awful lot of work in the production of reams of paper.

**Alex Fergusson:** I agree with that, convener.

I also agree with the point that Donald Gorrie touched on earlier: a fresh look needs to be taken at cross-party groups. We are all members of too many such groups. Two MSPs is a quorum, but we are often scratching around to get a quorum. The system needs to be reconsidered, and it would be worth recommending that our successor committee do that. Even if it were the only issue in our legacy paper, that suggestion would be worth making.

**The Convener:** That is precisely why I asked for the item to be placed on the agenda. I have one other suggestion to make, but Mr Butler is going to have a go first.

**Bill Butler:** I agree that cross-party groups and their workings need to be reconsidered. We might suggest to our successor committee that no cross-party groups should be formed in the final year of a parliamentary session unless there are exceptional circumstances. It takes most, if not all, of a session to play a cross-party group in, although I accept that there will be exceptional circumstances. We should place the issue in our legacy paper at least for discussion by our successor committee.

**The Convener:** Are members content with Mr Butler's suggestion that we include, as a bullet point in our recommendation about cross-party groups, the statement that consideration should be given to not allowing cross-party groups to be formed in the final year of a parliamentary session? We cannot bind any incoming

committee. I found it odd that we received very few late applications.

**Christine May:** I know that we have only just agreed the code of conduct, but it and the members' interests legislation will continue to be tested by events and incidents. Perhaps we should recommend a further review of those matters in the light of experience in the third session.

**The Convener:** The paper indicates that that would be appropriate. As members are nodding in agreement, I am happy to include such a recommendation. Do members have any other suggestions for inclusion in the legacy paper?

**Bill Butler:** Paragraphs 16 and 17 in the clerk's paper should be included automatically.

**The Convener:** I have a somewhat more controversial suggestion. In the two parliamentary sessions that we will have completed, the standards committees have carried out the substantial work of establishing the procedures for the members' interests order—and, subsequently, the Interests of Members of the Scottish Parliament Act 2006—the Scottish Parliamentary Standards Commissioner Act 2002 and a major review of the code of conduct. The committee in the next Parliament might not have such a heavy workload. Perhaps the incoming Administration, Parliamentary Bureau and, indeed, Parliament might consider the possibility of having freestanding committees to deal with largely internal matters.

I realise that I have a great deal of temerity in making the suggestion, given that the convener of the Procedures Committee is present, but perhaps we need only one committee that meets on alternate fortnights to discuss procedures and standards. I do not know whether it is appropriate to make such a proposal in the committee's legacy paper. Perhaps we should ask the conveners group to consider the matter in its own legacy paper, which I think is being finalised.

**Bill Butler:** I am not against including such a proposal in the legacy paper, but I believe that the Scotland Act 1998 stipulates that there must be eight standing committees, two of which have to deal with standards and procedures.

**Linda Fabiani:** You mean mandatory committees.

**Bill Butler:** Yes.

**The Convener:** I do not think that that would prevent the bureau from allowing two committees to have exactly the same membership and to meet on alternate fortnights.

**Bill Butler:** I am grateful for your response to my query. I am not against including the suggestion in the legacy paper.

**The Convener:** If such a proposal were considered, it might have to be referred to the conveners group and the bureau as well as to the successor committee.

**Christine May:** Before you received that advice about the mandatory committees, I had been concerned that such a move might send out the message that standards are not seen as particularly important and can simply be wrapped up with procedures. Indeed, I am still slightly uncomfortable not only about that issue but about the value that might accrue to the work of any committee that took in such a broad range of matters. However, it is fair to raise the point in a legacy paper for debate.

**The Convener:** I am grateful that very few cases have come before the committee and feel that that says quite a lot about how well the procedures introduced by the Scottish Parliamentary Standards Commissioner Act 2002 have worked. It is always difficult to anticipate the workload that might be associated with such matters. I am certainly not suggesting that we downplay the role of any standards committee; I am simply trying to find ways of making the best and most efficient use of members' time. Members might well have a range of views on the matter, and they should be considered.

**Bill Butler:** It is an interesting idea to include in a legacy paper. After all, the volume of complaints has, thankfully, been fairly low.

However, members who have been on the committee from the very start know that some complaints can result in a lot of work. If that happened again—heaven forbid—it might not prove possible to follow your suggestion and have two committees with the same membership meeting on alternate fortnights. One simply cannot guarantee the volume of complaints that a standards committee might have to deal with.

**The Convener:** I accept the point. I simply wanted to discuss the suggestion, and I am pleased that we have done so. If we include the point in the draft legacy paper, we can make our minds up whether to leave it in at a future meeting. Are members content with that?

**Members indicated agreement.**

**Alex Fergusson:** I take it, then, that we will have another chance to discuss the legacy paper.

**The Convener:** Absolutely. We will discuss it again in two weeks' time.

**Alex Fergusson:** On that basis, I am very content.

**The Convener:** We now move into private for item 4. I ask members of the public and press to leave the room.

11:42

*Meeting continued in private until 12:00.*

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