

STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 27 February 2007

Session 2

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STANDARDS AND PUBLIC APPOINTMENTS COMMITTEE

2nd 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 27 February 2007

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

Code of Conduct

The Convener (Brian Adam): Welcome to the Standards and Public Appointments Committee's second meeting of 2007. I invite all who are present to switch off their mobile phones. We have received apologies from Karen Whitefield.

Agenda item 1 is the code of conduct for members of the Scottish Parliament. Members should have our draft report, which includes edition 3 of the code of conduct. We have received responses to the code from members who are not members of the committee. Do committee members have comments on those responses or on anything else on which they might have reflected since we previously considered the code?

Donald Gorrie (Central Scotland) (LD): Alasdair Morgan made some reasonable points. Perhaps it would be worth going through his remarks to see whether the consensus is that some changes should be made.

I have had several conversations and e-mail exchanges with Mike Rumbles. As a result, I thought that some points—not exactly the points that he made—were relevant to some of the issues, so I sent them into the system.

I read the Scotland Act 1998, which one should read daily to understand everything. Technically, junior ministers are not ministers and are not part of the Executive, so our phrase about members who act as part of the Executive should be reworded to say something like, “members performing a function as a minister or junior minister”. Otherwise, junior ministers will not technically be covered. That point may be pedantic, but I think that it is correct.

The Convener: For the record, will you point us to the paragraph to which you refer? I assume that it is paragraph 1.3 in volume 1 of the draft code of conduct.

Donald Gorrie: Yes. It contains the phrase that starts “Members who are Ministers” and ends with the word “Executive”. That is worth pursuing.

Section 8 of volume 2 is headed, “Relationships between MSPs”.

The Convener: It might be an idea to deal with each point separately.

I understand that the code of conduct covers all members, irrespective of whether the member is a minister or junior minister, but what is excluded could be a little clearer. The aim was to prevent complaints from being made under the code of conduct about breaches of the ministerial code, which covers junior ministers. However, if members are concerned about the words that have been used, we will consider them.

Bill Butler (Glasgow Anniesland) (Lab): I do not support changing paragraph 1.3; it is clear enough. It seems to me to say—quite rightly—that the code of conduct covers all members and that members of the Executive have other responsibilities. Members of the Executive must observe the code, but they are also subject to other rules. They would be in trouble if they breached the ministerial code of conduct, for example. Therefore, there is a double whammy. We do not need to modify the paragraph, because it is reasonable.

Christine May (Central Fife) (Lab): Members may recall that, at the previous meeting, I expressly asked for the point to be clarified.

I propose two minor changes. First, the first line of paragraph 1.3 could refer to “all members’ conduct in relation to duties connected to being a member of the Scottish Parliament”. Secondly, something could be inserted in brackets after the final bullet point in paragraph 1.3 to state which activities are covered separately under the ministerial code of conduct.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I agree with Christine May that a little clarification is needed, because it looks at first sight as though ministers are exempt from following the code of conduct. I had in mind a wonderful form of words that we could have used, but those words have now completely disappeared.

I wonder whether the third bullet point should refer to “members while acting as ministers of the Scottish Executive”. I do not know whether that would clarify matters. I heard what the convener said about all members being covered by the code of conduct, but a member who is acting as a minister or junior minister on behalf of the Scottish Executive is also covered by the ministerial code of conduct. An Executive minister's conduct does not come under the members' code of conduct when they are acting as a minister. I wonder whether it would clarify matters if that was said.

The Convener: It has been pointed out to me that members are never exempt from the code of conduct, irrespective of whether they are a minister. I think that Alex Fergusson meant that

members who are acting as ministers or junior ministers are not accountable for their conduct through the procedure in the members' code of conduct; rather, they are accountable through the ministerial code of conduct.

Alex Fergusson: Let us consider the matter logically. Paragraph 1.3 states that the volumes do not cover

"the activities of Members in other circumstances, for example"

the activities of

"Members who are Ministers of the Scottish Executive".

It would somewhat clarify the situation in my mind, if not in anybody else's mind, if the paragraph referred to "members when they are acting in their capacity as ministers of the Scottish Executive".

The Convener: Mr Gorrie expressed concerns about paragraph 1.3, whereas Mr Butler thinks that the paragraph is sufficiently clear. Members have given alternative views on it.

Linda Fabiani (Central Scotland) (SNP): I understand what Alex Fergusson is concerned about. Under the third bullet point in paragraph 1.3, ministers could be seen as being exempt from following the code of conduct as opposed to having additional responsibilities. I quite like the form of words that Alex Fergusson suggested. The paragraph could refer to "members when they are acting in their capacity as ministers of the Scottish Executive".

The Convener: Members have used the word "exempt", but it does not appear in paragraph 1.3.

Linda Fabiani: I am talking about perceptions.

The Convener: There is no exemption for ministers.

Alex Fergusson: The paragraph states that the code does not cover ministers. That suggests to the reader that ministers are exempted from it.

The Convener: The activities of members in the other circumstances that are specified are not covered.

If we are to go down the route of trying to spell out the issue in more detail, let us consider the first suggested change. The suggestion is that the first line of paragraph 1.3 should state "these volumes only relate to all members' conduct". Are members content with the addition of "all"?

Alex Fergusson: This may be a slightly minor point, but do we need the word "only"?

The Convener: I do not have a problem with removing the word "only". The suggestion is that the first line of paragraph 1.3 should state "these volumes relate to all members' conduct". Does that address people's concerns? Is Mr Gorrie content with that?

Donald Gorrie: Yes, that is helpful. My point was that, technically, junior ministers are not members of the Scottish Executive.

The Convener: I am not finished with the first point yet. I will deal with each of the points in turn.

On the third bullet point under paragraph 1.3, we have received a number of suggestions. I want to add another suggestion in response to Mr Gorrie's point. For clarification, the third bullet point should start "members who are ministers or junior ministers of the Scottish Executive". Are members content that we should add "or junior ministers"? If there is doubt in some people's minds, my suggested addition would get rid of it. However, I have no such doubt in my mind.

Bill Butler: I think that ministers are ministers are ministers.

Donald Gorrie: The Scotland Act 1998 says differently. That counts for more than your opinion.

Bill Butler: It is true that what the 1998 act says counts for more than what any of us says. However, I was simply giving my point of view. Junior ministers are ministers of the Scottish Executive.

The Convener: We have two ways of addressing the issue. Either we can include a direct reference to junior ministers, or we can refer directly to the ministerial code of conduct, which states explicitly that it covers the activities of junior ministers. Alternatively, we can take a belt-and-braces approach and have both.

I will let Bill Butler continue.

Bill Butler: That is kind of you, convener.

We could incorporate both Alex Fergusson's and Christine May's suggestions by changing the third bullet point so that it states "members when they are acting in their capacity as ministers of the Scottish Executive and carrying out a function of the Scottish Executive (covered by the Scottish ministerial code)". That would also cover Donald Gorrie's point about the Scotland Act 1998. I suggest that formulation.

The Convener: Should we omit a direct reference to junior ministers in the third bullet point?

Bill Butler: Yes. In the wording that I have suggested, it would be implicit that all ministers, including junior ministers, were covered by the ministerial code of conduct.

The Convener: Is Mr Gorrie content with the formulation that Bill Butler has suggested?

Donald Gorrie: Yes.

The Convener: None of our advisers seems to be concerned about the form of words that Bill

Butler has suggested and it seems to achieve what is wanted.

Is the committee agreed that, in the first line of paragraph 1.3, we should remove the word “only” and add the word “all” so that the text states “relate to all members’ conduct”? Is the committee also agreed that the third bullet point of paragraph 1.3 should read “members when they are acting in their capacity as ministers of the Scottish Executive and carrying out a function of the Scottish Executive (covered by the Scottish ministerial code)”?

Members indicated agreement.

11:15

The Convener: Okay. Are there any other minor textual changes?

Christine May: May I make a pedant’s change in the first line? It would be more grammatically correct and nicer English to say, “It is important to note that these volumes relate to the conduct of all members”.

Alex Fergusson: Hear, hear. I quite agree. That is important.

The Convener: I am grateful for that. If members are now content that we have dealt with paragraph 1.3, which was mentioned by Donald Gorrie and Mike Rumbles, can we move on, Mr Fergusson, or do you want to make another point?

Alex Fergusson: Not on this section.

The Convener: I want to let Donald Gorrie finish making his points.

Donald Gorrie: Section 8 of volume 2 is entitled, “Relationships between MSPs”, but much of it is about dealing with all sorts of other people. Perhaps the heading should reflect that and say “Relationships with constituents and other MSPs” or some other phraseology. That would reflect the content better than the present heading does.

The Convener: Do other members have a view on that?

Linda Fabiani: Only a pedantic one.

The Convener: Fire away.

Linda Fabiani: It should say, “Relationships amongst MSPs”, rather than “Relationships between MSPs”, should it not, fellow pedant?

Christine May: Yes. I think that it probably should.

The Convener: Irrespective of whether we agree with that pedantic point, do members agree or disagree with Donald Gorrie’s concern that the section relates to relationships not just between—or even amongst—MSPs but with constituents?

Linda Fabiani: I understand what Donald Gorrie is saying, but I am not sure that there is a tidy and reasonable way of reflecting that.

The Convener: If we argue that annex 5 of the current code—which is section 8 of volume 2 of the draft new code—allows the Presiding Officer to deal with complaints from constituents who are aggrieved about the service that they are receiving, Donald Gorrie’s point might be valid.

Bill Butler: I do not think that we should include constituents under this heading. The section is about the relationship between MSPs. All sorts of issues are raised in the submission by our colleague Alasdair Morgan, which is annex B of the paper. It would not be correct to add constituents into the mix. The section is about the way in which we deal with one another in constituency and regional matters. I would be content for the heading to remain, “Relationships between MSPs”.

The Convener: Are you happy for it to be “between”, as opposed to “amongst”?

Bill Butler: I am not fussed either way. You say tomato, I say tomatoy.

It would be inappropriate to add constituents into the mix.

The Convener: Do I need to press the point? I am content to accept the current heading. Mr Gorrie has a different view. Having heard the discussion, do you wish to press the matter?

Donald Gorrie: No. If colleagues feel differently, I will not go to the stake on it.

The Convener: Mike Rumbles has pointed out, in a subsequent communication, an anomaly in section 8 of volume 2. Paragraph 8.2.1 of the draft code of conduct states:

“All eight MSPs have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.”

That is the current position and, to date, no complaints have come before the Presiding Officer. However, with the removal of the key principles to the introduction, constituents who would previously have complained to the commissioner might make complaints to the Presiding Officer. That is the point I was trying to make earlier. Complaints under this paragraph are still excluded and would go to the Presiding Officer; they are not a matter for the commissioner.

Do we want to leave the sentence in?

Christine May: Which sentence are we talking about?

The Convener: The second sentence in point 1 of paragraph 8.2.1. We can leave that in, but it is a point of principle.

Alex Fergusson: We should leave it in.

Christine May: I think that we should as well.

The Convener: As I understand it, that would leave us with all eight MSPs—seven regional members and one constituency member—being accountable and accessible to their electorate, but rather than any complaint being a matter for the commissioner, it would be a matter for the Presiding Officer in the first instance. If he feels that he cannot resolve the matter, he can refer it to the committee directly.

Bill Butler: That is reasonable.

The Convener: So there is an apparent anomaly, but it is not actually an anomaly at all. The Presiding Officer is left with the authority to deal with complaints, as he does with all the other matters that were formerly in annex 5. If he cannot resolve those complaints, they might be referred to the committee.

Linda Fabiani: I can see how that slant could be put on it, and I can see that an anomaly could result from the paragraph. However, the prime purpose of setting out the five key principles is to inform the rest of section 8; it is not about the principles themselves. Paragraph 8.2.1 sets out MSPs' aspirations and responsibilities to their constituents; the section then continues with guidance. That is the important point. If someone feels that they should complain to the Presiding Officer because of what is written in here, their complaint will be dealt with.

The Convener: Leaving in the second sentence of point 1 of paragraph 8.2.1 would reinforce the committee's decision, following discussion and representations from the commissioner, that it is not appropriate that he deals with complaints from constituents about the level of service and accessibility. If we leave the sentence in, the Presiding Officer will deal with such complaints in the first instance and, if he believes that there is a real or continuing problem, he has the right to refer the complaint to the committee for action, thereby taking it out of the commissioner's hands. Are members content with that?

Members indicated agreement.

The Convener: Those were the two points that Donald Gorrie wanted to raise.

Donald Gorrie: I have a third point. Other members have asked about the status of volume 1. Is it part of the code?

The Convener: No.

Donald Gorrie: Should it be?

The Convener: That would be a fairly major change in what we are recommending to the Parliament. Volume 1 is the aspirations and

principles; volume 2 is the code; and volume 3 is the explanation, examples and advice. If, at this stage, members want to change the status of volume 1, it is open to the committee to consider that. It is also open to any member to offer a different view from that which we have taken until now. Are you suggesting that we should change the status of volume 1?

Donald Gorrie: We had quite a lot of discussion about paragraph 1.3 in volume 1, which is not part of the code.

The Convener: That is correct.

Donald Gorrie: Is that point covered in the code?

The Convener: The point about whether ministers are covered by the code merely spells out where the code applies for those who are unclear about the role of ministers and junior ministers in relation to the code. We make it clear that all members are subject to the code and that where members are acting in their capacity as ministers, they are subject to the ministerial code. Putting that in the code adds nothing to it.

Donald Gorrie: It appears that we have an example of a member who, if there are allegations against him, can produce some fairly subtle arguments in defence of his position. I would not want to leave scope for somebody to say, "These things that you're talking about are not in the code." I may be looking forward to dealing with future difficult people—they will be around even after I have gone.

The Convener: One issue that governs how we deal with this is the Interests of Members of the Scottish Parliament Act 2006, which—as it makes clear—applies to all members. The 2006 act was one of the drivers for the changes in the code. The code is volume 2, and it is the measure by which the commissioner will assess whether there has been a breach or otherwise of the code. It is up to our successor committee to determine whether it agrees with the commissioner and to recommend appropriate action.

In our earlier consultations, I am aware of little or no dissent from the view that we ought to separate out the three different parts of the previous code. Indeed the standards commissioner, at a fairly early stage following his appointment, felt that there was a difference between the aspirations in the current code and requests to him to assess the performance of MSPs in relation to accessibility and openness. The committee decided that it would consider that, which is why, as I understand it, we arrived at the position that we are in today. Donald Gorrie has raised a fairly fundamental point; he is entitled to do that, but it is not an opinion that I would share.

11:30

Christine May: I can appreciate why Donald Gorrie might want a set of rules that would apply to the behaviour of everyone else. I might, too, because I, of course, am entirely reasonable. However, if at this stage we were to include volume 1 as part of the code rather than leave it as an explanatory document that contained the key principles, we would have to go through it line by line, examining every word to ensure that it was explicit. I am not inclined to do that at this stage, because we have spent a fair amount of time considering what is in the code, identifying the principles that underlie it, codifying them—that is what the code does—and giving examples at the end. Although I would love the behaviour of some colleagues to be even more explicitly circumscribed than it is by the code, I think that we would be giving ourselves an impossible task. For that reason, I think that we should progress with the present structure.

Bill Butler: I agree with Christine May.

Christine May: Can I get that in writing?

Bill Butler: On this issue.

Linda Fabiani: I, too, agree with Christine May on this occasion.

Donald Gorrie: Okay. I made my point. I know that I made it rather late in the day, but if one thinks about such matters a great deal, one sometimes comes to a different conclusion. However, I am quite happy to go with colleagues' view.

The Convener: In that case, let us be absolutely clear about the status of volume 1—it will not be part of the code, nor will volume 3. Volume 2 will be the code. That is the view that the committee will put to the Parliament.

I think that we have covered the points made by Mike Rumbles and Donald Gorrie, but Alex Fergusson has some other issues that he wants to raise.

Alex Fergusson: I do not want us to move on without discussing Alasdair Morgan's submission.

The Convener: Fine. We were going to do that anyway, but please give us your view. Alasdair Morgan makes a series of points, which we should deal with. Please go ahead, if that is how you would like to proceed.

Alex Fergusson: I would be happy to await your guidance but, overall, I have quite some sympathy with the arguments that Alasdair Morgan puts across. As he points out, he has been both a constituency member and a regional member. I am now the constituency member for the constituency that he used to represent and I share his feelings. It is clear that the present

guidance irks him enormously because not once has he—or any other regional MSP—tried to inform me of a constituent's case that they have taken up. I have no problem with that, but I understand that some constituency members insist on a stricter adherence to the current requirement. I think that the present system represents an imposition on the constituent and creates unnecessary paperwork and correspondence. Members may find it strange, but I have some sympathy with what Mr Morgan is saying.

Bill Butler: I do not have a problem with the first point that our colleague Alasdair Morgan makes, although I would not go to the stake about it. If people want to change the word "volume" to the word "part", that is fine.

Alex Fergusson: What is wrong with "chapter"?

Christine May: And "verse"?

Bill Butler: Those are all options, of course.

Donald Gorrie: What about "psalm"?

Bill Butler: I did not know that what Alasdair Morgan describes as "a trivial point"—I agree that it is trivial—would provoke such discussion.

Alasdair Morgan makes a reasonable point when he says that the guidance

"was created fairly early on in the Parliament's existence"

and that things have moved on since then, although he

"would not pretend that all such problems have gone away".

That is a fair summary of the situation that we are now in.

However, I think that we should keep the guidance, given that the Presiding Officers went to the bother of drawing it up to prevent—or at least to deal with—local difficulties. Due to the usual churn, there will be new members in the next session of Parliament. The guidance should stay to guide those new members—and all members. I do not agree that it creates a great bureaucratic nightmare. All that members have to do is to write a note saying, "Dear Bill, I have taken up the case of Mr and Mrs Smith. Yours sincerely, A N Other." That is polite and it keeps members aware of what is happening.

I also disagree with Alasdair Morgan's suggestion that we should do away with paragraph 8.9.3 of the code, on the suppression of party affiliation on parliamentary notepaper. We represent all our constituents. That is plain and simple, and it should remain that way. It would be wholly inappropriate for members to use parliamentary notepaper for party-political publicity because it is paid for by the Parliament. I know

that he would not do that, and nor would any other member, but it could happen in the future.

Alasdair Morgan's submission is well reasoned and he raises some interesting points, but I agree with only his first point, on the use of the word "volume", which is a trivial matter. I think that the status quo should remain.

Linda Fabiani: On the point about party affiliation, I agree with Bill Butler rather than Alasdair Morgan. Paragraph 8.9.3 of the code states:

"members are strongly discouraged from identifying party affiliation on stationery".

However, it does not state that members must not do that. If some members decided to do that, there appears to be no sanction against it. If some of the new members mentioned by Bill Butler were unreasonable and started to use stationery in that way, others would end up doing it too and the guidance on the matter would become null and void. That is an issue for the future. Should the wording be changed to something other than "strongly discouraged"?

Donald Gorrie: I am relaxed about whether the sections are called volumes or parts.

I agree with Bill Butler that, when regional members take up cases, they should notify the constituency member. I use the etiquette that he suggested; I send a note to the constituency MSP when I pursue a matter at a constituent's request. I do not state what the issue is. I merely state that I have been approached by the person. That is polite and it allows a bit of clarification in both directions.

I do not agree with Alasdair Morgan's point on the guidance on how regional members should operate within their region. To insist that they should be active in more than two constituencies is a reasonable attempt to prevent something that has happened in some cases—a regional member camping in a particular constituency and setting themselves up as, in effect, an alternative constituency MSP. That is not what is intended. It might be that the wording of paragraph 8.10.1 in the code could be improved, but the concept behind it is good.

Alasdair Morgan's final point, about MSPs not running the switchboard, may be a good one. It may be that guidance to third parties could be given in some way other than in the code.

The Convener: I will go through Alasdair Morgan's points one by one, to see how members feel. He concedes that his first point is trivial. Are members content to keep the word "volume", which was carefully chosen, or do you wish to use an alternative word, such as "part"? Are we content to leave the word "volume"?

Members indicated agreement.

The Convener: That is fine.

What was annex 5 is now very much part of the code. Although we have considered the contents of annex 5, so far we have taken the Presiding Officer's view and have not engaged in any significant debate on the issues. We are asking Parliament to approve the code, and we have moved annex 5 into the main part of the code, to make everything clearer. Indeed, this morning we have clarified the way in which the Presiding Officer will deal with complaints on, for example, accessibility.

Alasdair Morgan does us a great favour by raising a series of issues that probably deserve further consideration. Our successor committee may well want to look into the issues fairly closely. He is one of the select band who have served in the Parliament both as a constituency member and as a regional member—as is Alex Fergusson and as am I. I, too, have served—

Alex Fergusson: There is one difference, convener. I do not want to personalise this, but Alasdair Morgan is the only member who has gone from being a constituency member to being a regional member. That presents a set not of problems but of circumstances that are unique, so far, in the Parliament. To my mind, those circumstances very much reinforce the need for some sort of description of how a regional member should act, behave and busy himself or herself.

The Convener: I sympathise with most of Alasdair Morgan's points. It has been very rare for any of the regional MSPs in my area to write to tell me that they are taking up casework. I know that those MSPs are taking up casework, because it is inevitable that I will come across the people who have raised issues with them. I do not consider that a problem. Everybody has eight MSPs and if people in my area choose to go to someone other than me—their constituency MSP—they will have a reason for doing so. They are entitled to make that choice.

It is rather late in the process and this is probably not the time to make the adjustments that Alasdair Morgan suggests at point 2a) of his submission. In the third session of Parliament, things will have settled even more and will be clearer. As Alex Fergusson says, Alasdair Morgan is in the unique situation of being the only MSP who is a regional MSP in this session of Parliament but was a constituency MSP in the first session of Parliament. In the third session of Parliament, his situation may no longer be unique.

I am happy to hear other members' views, but I suggest that we include Alasdair Morgan's point in our legacy paper. Our successor committee might want to take it into account when considering how the code is working.

Christine May: I support that suggestion. We could include a recommendation in our legacy paper that Parliament should carry out some sort of audit of how that part of the code is working. In four years, I think that I have received two letters from a list member to say that they have taken up an issue.

The Convener: The notion is honoured more in the breach than in the observance.

11:45

Alex Fergusson: On exactly that point, if the regulation or guidance—or whatever it might be—is not and cannot be enforced effectively, why have it at all? Clearly, there is a postcode lottery across Scotland—the situation depends on the regional member and the constituency member. After the last election, one new regional member assiduously wrote to me when anybody contacted him—it was a him in this case—and I told him not to bother. Life is too short and—let us be honest about it—it also used to drive me up the wall to know that a constituent had gone to him and not to me.

Where the constituency member becomes a regional member, it is perfectly natural that people will go to him. The fact is that the local papers refer to Mr Morgan and me as “our local MSPs”. I do not hugely like that—I am sure that he does—but that is life. Life is too short to get too pernickety about these things. I agree that we should add the issue to our legacy paper, although I say that with one slight reservation: there is the potential for our successor committee to be composed almost exclusively—indeed, entirely—of new members. The light of experience has a big part to play in the way in which the code of conduct is drawn up and put into practice.

The Convener: In that case, it may be helpful for us to put the issue into our legacy paper. Doing so will give members with experience who are re-elected, in whatever capacity, the opportunity to participate in any future discussion.

Bill Butler: That is the point that I was going to make, convener. If we are re-elected, and if there is a Standards and Public Appointments Committee, we can get around the table and throw in our tuppence-worth in the debate, if and when it occurs. We can do that even if we are no longer members.

Alex Fergusson: I hope that I will not be watching from the public gallery.

Bill Butler: Snap.

Linda Fabiani: I do not have a problem with anything that you said, convener. That said, I find some of the discussion a bit cumbersome and strange. Whatever we do, even if we just put the

issue in our legacy paper, we should state explicitly upfront that what we are doing is being done in the interest of constituents. We must make it clear that this is not about our little fall-outs and ways of working. We must always bear in mind that the constituent has the right to say, “I want you to keep this to yourself. I do not want you to pass this on.”

The Convener: That is absolutely the case. Indeed, it is spelt out in the current annex 5 to the code. Are members content with the suggestions made in paragraph 2 of Mr Morgan’s submission? Obviously, we have acknowledged that the area needs further discussion, but that that would be best done in the next session of the Parliament and by our successor committee.

Alex Fergusson: I am sorry, convener—I do not want to extend the discussion unnecessarily. I am content that the points that Alasdair Morgan makes at paragraphs 2 a), c) and d) should be put into the legacy paper, but I agree entirely with Bill Butler on paragraph 2 b). The matter is absolutely correct and as it should be. We should not even open it up for debate.

The Convener: I may well agree with you, but we have to have confidence in those who will succeed us. It is undoubtedly the case that members of our predecessor committee in the first session of the Parliament will not necessarily have agreed with all our recommendations to the Parliament on the code. I did not intend to spell out at the level of a, b, c and d what we will put into the legacy paper in terms of review. My intention was simply to point out the duty to review and, in particular, to draw our successor committee’s attention to annex 5, without specifying that level of detail.

Alex Fergusson: That is fine. I have made my point.

The Convener: Are members content?

Members indicated agreement.

The Convener: Having dealt with the submissions that we have received, do members wish to make any other changes?

Bill Butler: No, I do not. I am content with what we plan to report to the Parliament. It gives members in the next session sufficient material to work with and raises issues that they may wish to discuss.

The Convener: In that case, are we agreed that we do not wish to make further changes?

Members indicated agreement.

The Convener: Members are content that the draft code, with the amendments that we have made today, should go in a report to the Parliament.

Are members content to leave it to me and the clerks to ensure that the changes are made correctly?

Members *indicated agreement.*

The Convener: The intention is to publish the report in the week commencing 5 March—as near to the start of the week as possible. We may even publish it this week, with a bit of luck, but that may well depend on factors outwith our control.

Legacy Paper

11:50

The Convener: Item 2 is our legacy paper. Members have a draft legacy paper before them. We have already agreed that we will beef up one particular item a little. Do members have any views on the draft paper?

Bill Butler: I think that the paper is entirely reasonable, because it raises the salient points. With the addition that we have just agreed to, it gives enough guidance to those who will succeed us on areas that they may wish to discuss. Therefore, I am content with the paper.

The Convener: Thank you very much. I take it that members are again happy to leave the minor amendments that are required to me and the clerks.

Members *indicated agreement.*

Annual Report

11:52

The Convener: Item 3 is the annual report. We have a duty to publish an annual report; members have a draft of the annual report before them. Obviously, some of the statistics are not included in the draft, because we have not quite finished meeting as a committee yet, although that will happen shortly. We will obviously drop in the statistics prior to publication.

I noted one minor mistake, in that I have not attended, in May 2007, a seminar in Belgrade—that happened in 2006.

Linda Fabiani: You are amazing, convener.

The Convener: In addition, I should point out that the committee will not have powers to meet until 6 May, of course—paragraph 11 should refer to 2 April 2007. With those two minor corrections, are members content to accept the draft annual report?

Donald Gorrie: The draft annual report does not mention the individual cases that we have dealt with. Should it do that—perhaps anonymously?

The Convener: We have not done that in the past. Case reports are all published in detail anyway. It has not been suggested in the past that details of individual cases, or even the number of cases, should be referred to in our annual report.

Donald Gorrie: Okay.

The Convener: Do members want the annual report to refer to cases?

Alex Fergusson: The information would appear in the commissioner's report, would it not?

The Convener: Yes. He says how many cases he has investigated.

Alex Fergusson: I would not have a problem with the information being included in our annual report. It is public knowledge as it is in the commissioner's report.

Linda Fabiani: Can we not just make reference in the annual report to the commissioner's report?

The Convener: If that suggestion is acceptable, I suggest—as I did in relation to the other reports that we have discussed today—that any minor changes in wording to accommodate that point be left to me and the clerks to agree.

Members indicated agreement.

The Convener: We now move to agenda item 4, which is the continuation from our previous meeting of our discussion of a complaint. We agreed that, as is our practice in relation to such

matters, we would deal with the item in private. Therefore, I ask members of the public, the media and the official report to leave the meeting. If the committee reaches agreement on our next action on the complaint, the meeting will resume in public later.

11:55

Meeting continued in private.

12:14

Meeting suspended.

12:38

Meeting continued in public.

Complaint

The Convener: I will announce the outcome of the complaint. The committee's decision is as follows.

The Standards and Public Appointments Committee considered the report by the Scottish parliamentary standards commissioner at its meeting on 13 February 2007 and again today. The committee accepts the commissioner's findings on the facts of the complaint and agrees with its conclusions that Mr Brian Monteith breached the code of conduct for MSPs.

The committee wishes to restate that it views very seriously the unauthorised disclosure of parliamentary material. Members of Parliament should all be well aware of the serious nature of carrying out such an action. This committee is aware that other committees share that view, as does Parliament. The ability to respect a confidence is a key responsibility for any MSP.

The committee is concerned that, although Mr Monteith issued his news statement with an embargo that matched that of his committee's news embargo, and although he claims that the media broke the embargo, his doing so was clearly in defiance of advice that was given to members on 5 June by the head of the private bills unit. At that meeting, what the embargo meant and the reasons why it was necessary were explained, and members were advised that nothing should be given to the media—embargoed or otherwise—prior to the 8 am release time. The official press release was not issued to any member of the media until 8 am on 8 June.

The committee also notes Mr Monteith's arguments and reasoning in respect of his releasing the statement to a journalist in advance of the committee's published report, the fact that he claims not to have acted from any malice or intention to usurp the committee or break its rules, and his claim that he will learn from the experience. Notwithstanding the explanation that has been offered, the committee is minded to accept the conclusions of the standards commissioner and agrees that there has been a breach of sections 9.4.2 and 9.4.8 of the code of conduct for MSPs. The committee also concurs with the commissioner's conclusions that Mr Monteith's conduct does not constitute a breach of sections 9.4.4 and 9.4.5 of the code.

I invite members to say whether they want the committee to recommend to Parliament any sanctions as a consequence of our decision to

accept the commissioner's report that a breach has occurred.

Donald Gorrie: I draw the committee's attention to our most recent case—that of Mike Pringle—although there are obviously considerable differences of detail between the two cases. Most people felt that the penalty that was inflicted on Mr Pringle was commensurate with the seriousness of the breach; the same penalty could reasonably apply to Brian Monteith. The penalty would be to exclude Mr Monteith from the business of Parliament—the full Parliament and its committees—for five working days. He could still use Parliament and its facilities to satisfy his work and constituents. I throw that idea into the pool as a starting point for discussion.

Christine May: I support Donald Gorrie's suggestion. We spent a lot of time on our previous decision, and considerable publicity was given to it and the reasons for it. A breach of the rules and of confidentiality is serious. A breach is a breach, as others have said before. The sanction that Mr Gorrie has recommended was appropriate in the previous instance and would be equally appropriate on this occasion, although the cases are not directly comparable.

Alex Fergusson: I agree entirely with both members. Donald Gorrie mentioned the previous sanction as a good starting point, but I think that it might be more than that—it would be entirely appropriate, so I hope that we will consider it.

Linda Fabiani: I concur with the other committee members. That sanction is fair and reasonable.

The Convener: To get the technicalities right, I suggest that we recommend to Parliament that Brian Monteith be excluded from all meetings of Parliament and its committees for the first five sitting days immediately after the motion is agreed. Is that acceptable?

Members indicated agreement.

The Convener: That will conclude the public part of the meeting. We will now consider the draft report and any other recommendations that we may wish to make in the light of what the standards commissioner has said. We will agree the report, and it will be published in due course.

Donald Gorrie: I presume that we will seek a parliamentary debate as soon as possible.

The Convener: Indeed. The committee has made its decision in public, and we will seek an early opportunity for Parliament to make its decision on our recommendations.

12:44

Meeting continued in private until 12:45.

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