

# **STANDARDS COMMITTEE**

Wednesday 1 September 1999  
*(Morning)*

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## **STANDARDS COMMITTEE**

### **3rd Meeting**

#### **CONVENER :**

\*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

#### **COMMITTEE MEMBERS :**

- \*Ms Patricia Ferguson (Glasgow Maryhill) (Lab)
- \*Karen Gillon (Clydesdale) (Lab)
- \*Lord James Douglas-Hamilton (Lothians) (Con)
- \*Mr Adam Ingram (South of Scotland) (SNP)
- \*Des McNulty (Clydebank and Milngavie) (Lab)
- \*Tricia Marwick (Mid Scotland and Fife) (SNP)

\*attended

#### **THE FOLLOWING MEMBER ALSO ATTENDED**

Lewis Macdonald (Aberdeen Central) (Lab)

#### **COMMITTEE CLERK :**

Vanessa Glynn

#### **ASSISTANT CLERK :**

Alastair Goudie



## Scottish Parliament

### Standards Committee

Wednesday 1 September 1999

(Morning)

[THE CONVENER opened the meeting at 09:32]

**The Convener (Mr Mike Rumbles):** I welcome members of the Standards Committee to our first meeting since the parliamentary recess. I also welcome Lewis Macdonald, who is observing the meeting. If he wishes to speak, we would welcome that. I should point out to observers that item 3 on the agenda will be taken in private session.

### Statement of Convener

**The Convener:** Over the recess, there has been considerable public interest in several issues that relate to the committee's remit and I want to take this opportunity to bring members up to date with developments on the issue of lobbying.

Members should have a copy of a short extract of the code of conduct working group's supplementary report to the consultative steering group on this issue. For the record, this is the only information that I have used over the summer on which to base my comments. The report says:

"In considering the case for the regulation of lobbying, we recognised that recently there has been a lot of general concern about the activities of 'professional' paid lobbyists. The concern about lobbying has been tied into concern about 'sleaze' in public life and has attracted much media coverage and support for regulating lobbyists. The work of lobbying organisations is already regulated in other countries. For example, in Canada and the United States all lobbyists are required to register their activities and the information is publicly available.

However, we noted that there are a number of strong reasons not to recommend regulation. The open nature of the Scottish Parliament would hopefully encourage individuals and groups to approach MSPs directly, therefore, to some extent, making the need for specialist lobbying organisations redundant . . . By regulating lobbyists, we believe that there is a danger of creating an elite group conferring upon them a commercial advantage associated with being a 'registered' lobbyist. We consider that it is important not to create the impression that the only or the most successful way to approach an MSP is through a lobbyist. It is clearly the right of everyone to be able to lobby Parliament. We want to avoid affording any special status to lobbyists. We concluded that to register lobbyists would afford them a degree of importance and approval that was best avoided. If the Parliament recognised voluntary registration or provided for statutory regulation, there would be a risk that in some way registered lobbyists were considered the approved way to approach MSPs."

I have taken great care to react to media inquiries on this issue by giving my own views,

which accord entirely with the consultative steering group's recommendations. This committee has not yet discussed lobbying and I fear that by the time we come to consider it events may have moved on—we may be inundated with calls to legitimise lobbying organisations before we have had a chance to deliberate on the matter.

A major commercial lobbying firm has already approached the First Minister requesting legislation on this issue. I am concerned because it seems that a public authority may also be planning to go down the same route.

The committee may feel it appropriate to take that information into consideration when we discuss item 4. It is important that we consider the stage at which sections of the draft code may be made available to the public.

I hope that my statement has been helpful. I invite comments from members before we move on to item 2.

**Karen Gillon (Clydesdale) (Lab):** Your statement raised a number of issues about which all members of the committee are concerned. We are all aware of the situation at the Westminster Parliament and we are keen to avoid the same thing happening in Scotland.

I endorse the views of the consultative steering group. Registering lobbyists would give them a kind of legitimacy, which is not necessarily helpful.

Agencies or areas may employ someone to be based at the Parliament to co-ordinate their activities, which raises a slightly different issue from that of lobbying. We must have a full and frank discussion about what lobbying is if we are not to be sidelined. I know my local area and I know how people in Lanarkshire can unite to present their views to Parliament. That is something positive—it is different from professional lobbying by organisations that represent companies and seek access, favourably or otherwise, to ministers or to MSPs.

The remit of the Parliament is to be accessible to members of the public. I hope that none of my constituents would feel that it was necessary to go to a professional lobbying organisation to get access to me. That has more to do with what MSPs do than with what lobbyists do. If we make ourselves accessible, we will remove the need for lobbyists. Because this Parliament is new, it has the opportunity to change the way in which things have always been done. We can make a real difference by letting the public have the access that they never had before to us and to our proceedings. That should lead to the demise of lobbyists, but we must prove to the people of Scotland that that can be achieved.

**Lewis Macdonald (Aberdeen Central) (Lab):** It

was kind of you to let me come along and speak at this meeting, Mike. At 4 o'clock yesterday afternoon, I had not expected that I would be here at half-past 9 this morning. However, my local newspaper, the Aberdeen *Evening Express*, ran a story last night under the title "Anti-sleaze committee to probe lobbyist bid". You were quoted as saying that that controversial proposal would be at the top of the agenda.

I welcome what has been said about the distinction between professional lobbyists and public bodies that are carrying out their duty to represent citizens. Karen referred to Lanarkshire. Aberdeen is another area where the local authority is considering what steps it can take to help the city's MSPs and other representatives to put across the interests of the city. I would like the convener to confirm that there is no suggestion whatever of any probe by this committee into any improprieties, real or potential.

It is also important to put on record the fact that Aberdeen City Council's consideration of lobbying has been carried out with other public authorities in the area in an attempt, as I say, to support those who can put forward the city's case. Any lobbying will be done by me, by the other Aberdeen MSPs, and, I am sure, by the local councillors. I thought that it was appropriate to set the record straight and to assure the citizens of my city that there is nothing on the agenda of the Standards Committee to suggest that there is anything inappropriate in what the council is doing or considering.

**The Convener:** Thank you for your contribution Lewis. I can certainly confirm that there was no proposal to launch any investigation. However, as you have raised the issue, I should say that I am concerned about Aberdeen City Council. I am told by its chief executive that the information that I was given about the council is not correct. I have asked him to send me the details from his point of view, and I am still waiting to hear from him.

**Des McNulty (Clydebank and Milngavie) (Lab):** I am sorry that I have arrived a bit late for the meeting.

I am not sure that I concur with the views that you are putting forward, convener, or with the views of the consultative steering group on this matter. I believe that there is a reasonable case for a process of registering lobbyists.

**The Convener:** That is not what I am saying.

**Des McNulty:** Can I just clarify what you are saying? The paper in front of us does not show this to be an agenda item.

**The Convener:** It is an agenda item. If you had been here at 9.30 you would have been informed about it. I do not want to go over it again, but it is

recorded here on a paper that I will pass to you now, if you want to have a look at it.

## “Register of Members’ Interests”

**The Convener:** Everybody has received a briefing note on the publication of the register of interests of the members of the Scottish Parliament. The committee is invited to agree that the publication of the register should take place as soon as possible, probably in October or November this year, and on the same date in subsequent years. Does everybody agree?

**Members indicated agreement.**

**The Convener:** Turning to the second part of this item, have you all noted the proposed format for publication? Is everybody happy with it?

**Tricia Marwick (Mid Scotland and Fife) (SNP):** I am happy enough with the format of the register, but I am concerned that there will be a cost for members of the public who want to buy it from the Stationery Office. Can we not make the register readily available in the same way as briefings are available in the visitor centre? Do we need to ask members of the public to spend an as yet unspecified amount to find out the interests of their MSP? The information is freely available on the internet; if it is freely available to the tiny percentage of the people of Scotland with access to the internet, I believe that it should be freely available to people who come to the visitor centre or to some other point of contact—one of the partner libraries, for example. We should not be asking the public to spend money purchasing it.

09:45

**The Convener:** Are there any further comments on that point?

**Karen Gillon:** Correct me if I am wrong, but I understand that there will be at least one partner library in each constituency.

**The Convener:** I think that that is true.

**Karen Gillon:** Costs are an issue, and we must look to the Stationery Office to see whether we can reduce the cost of the register. However, if people had paid 32p for the *Daily Record*, or 43p—or whatever it is—for *The Herald*, they would have read over the summer the full register of every member's interests. My local paper also printed the register, and I have had numerous inquiries about it.

We are trying to move away from producing a lot of paper copies of documents—we want to be slightly more environmentally friendly—so we need to consider other methods of making the register and other parliamentary publications publicly available. If it is not possible to reduce the

cost substantially, perhaps we could extend the scheme to two libraries per constituency.

**Lord James Douglas-Hamilton (Lothians) (Con):** I assume that the register will be made available on the internet.

**The Convener:** Yes.

**Des McNulty:** When I read the information as cited, I was not 100 per cent clear about the position of the MSPs who are also members of the Westminster Parliament, in terms of their total remuneration from the two Parliaments. Malcolm Chisholm's statement was clear, but that was not the case elsewhere. Might there be a mechanism by which we could identify members' total remuneration from public sources? We cannot see clearly from the list how much members are earning and that information should be available.

The present format shows the first statements. I am not clear how the format would change, or how updates would be recorded, as members change their entries.

**The Convener:** I will take advice from the clerk—*[Interruption]*.

The clerk's advice is that it is up to the Parliament to decide annually the frequency of updates. I do not see the point of the clerk speaking to me and my repeating that advice to the other members of the committee. Do members want to hear the clerk's advice directly?

**Members:** Yes.

**Vanessa Glynn (Committee Clerk):** Frequency of publication is a matter for the Parliament as a whole to decide, but the most practical arrangement would be to publish the full document annually. The internet version of the register is updated instantly, as is the loose-leaf version, which is kept in the office of the clerk for public inspection. The annual publication represents a snapshot taken at the time of publication—that is also the Westminster system.

Mr McNulty mentioned the manner in which remuneration is recorded, which is regulated by the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999—the legislation that covers members' interests and sets out the requirements. It might be difficult to change the legislation with immediate effect, but members could consider replacement legislation for the interim members' interests order after they consider the code of conduct.

**Des McNulty:** I raised the strange position of those who are members of both the Scottish Parliament and the Westminster Parliament. It would be helpful if there were guidelines, as, even if we cannot change the pattern of registration, we should advise members how to disclose relevant

information.

**The Convener:** Perhaps we should discuss that with item 3—the report on the initial registration of members' interests—because the details of how people are registering interests are relevant to that.

**Des McNulty:** In relation to the snapshot version, I am sure that the position of a number of people will have changed between 1 June and 1 August. Do we simply record the position at the publication date, or do we record changes retrospectively? I do not mind, but I want to be clear how we are going to do it.

**The Convener:** The idea is to publish the information as it is, is it not?

**Vanessa Glynn:** Yes, and that includes any changes. There is a requirement on members to inform us of any positive changes within 30 days; the printed version will contain changes entered in the register before the date of publication.

**Ms Patricia Ferguson (Glasgow Maryhill) (Lab):** Some of the points that Tricia raised need to be considered in more detail. I am quite happy with the current arrangements, but I share people's concern about keeping the costs down as far as possible so that the register is available to members of the public.

In addition, it might be useful for a loose-leaf version to be available for people to access in the visitor centre. Members of the public would probably find it useful if we pointed out that when they buy the Stationery Office version, it will only be as accurate as it can be at the publication date. If they require the updates and changes, they will have to access the register via the other available formats. We must be clear about the limitations of the published document.

**The Convener:** That is a sensible suggestion and I think that we should act on it. Are we agreed? Good.

Now we must agree the terms of the draft foreword. Has everyone had a chance to read the draft? The draft is a matter for Sir David, but it has been put before us out of courtesy. Are the terms agreed? They are agreed.

Finally, do we agree that I should lodge a motion at the earliest opportunity to seek the Parliament's agreement to annual publication of the register? That is agreed.

**Karen Gillon:** When is the suggested publication date?

**Vanessa Glynn:** As soon as we can arrange it.

**The Convener:** We will move on to item 3, which will be discussed in private session.

## Members' Interests

*Considered in private.*

### Code of Conduct

**The Convener:** I welcome observers back to the meeting—I am sorry that they were excluded from the previous agenda item. I am glad to continue the meeting in open session with item 4, which concerns the code of conduct for members.

Members will have received the briefing note on item 4. I will refer to the comments that I made on item 1, because the first matter that we need to discuss is the public availability of the draft code of conduct for members once we have agreed on the code's terms. The committee is invited to consider at what stage it wishes to make the draft code or sections of the code available to the public. That is important, because the public have a greater interest in some aspects of the code of conduct than in others. Do members think that the code should be published in whole or in sections?

**Tricia Marwick:** I want to ask a question first. If people had wanted to know what we were doing today, could they have used the internet to access briefing papers?

**Vanessa Glynn:** People have access to the papers that are listed on the agenda.

**Tricia Marwick:** Therefore, in many ways, those papers are already in the public domain.

**Vanessa Glynn:** No, not unless the committee wishes them to be.

**Karen Gillon:** May I suggest that we return to that point at the end of the meeting, Mike? The important thing is to make progress and if we make substantial progress today, perhaps we can discuss the issue in a few weeks' time. For my part, I would prefer to publish the whole code of conduct, but that depends on how long the process will take.

**Tricia Marwick:** We have taken the CSG report and the first report of the Nolan committee into account in our deliberations, and their recommendations will form the basis not only of our principles but of the code of conduct itself. There was widespread consultation on the CSG report. Although the code of conduct should be published at the earliest opportunity, we should bring out a final draft form of the whole code rather than chapters of it, so that people can say, at the final draft stage, "Wait a minute—we don't think you're getting this right." We can then take the text back and work on it. It will be difficult for folk to get a feel of the whole code from chapters in isolation, so we should make quick progress on a final draft form. As Karen says, that depends on the

progress that the committee makes.

**Mr Adam Ingram (South of Scotland) (SNP):** I agree with that. It does not make much sense to put out a draft code bit by bit. A draft code is only a draft code and I am not in favour of dripping parts of such a draft into the public domain. I would rather put out a final draft.

**Lord James Douglas-Hamilton:** We should publish in full as soon as possible.

**Tricia Marwick:** I have no objection to bits and pieces of the code being made available on the internet as we discuss them. We should put the final draft out formally and invite comments on it at some stage, but there is no reason to keep the process secret.

**The Convener:** I agree, but if the committee feels that we should wait until we have a finished document, that is fair enough.

**Karen Gillon:** My only concern is that putting out individual sections might cause those sections to overtake the ethos of the code of conduct. There is already some interest in lobbying.

**The Convener:** That is what I was thinking of.

**Karen Gillon:** If we put a section on lobbying out on its own, lobbying will be perceived as the main issue. However, the issue at hand is not lobbying; it is a general code of conduct for members. We should not let sections of the code become more important than others. If we put the code out as a package, it will be taken as a package; if we put it out in sections, the sections will become more important than the principle.

**The Convener:** Is that the general view of the committee?

*Members indicated agreement.*

**The Convener:** We will issue the code as a package.

The next item is the format of the code. The committee is invited to consider whether it is content that the code should take the general form of a single substantial document, to be entitled "Code of Conduct for Members of the Scottish Parliament"; be strongly influenced by the CSG code of conduct working group; set out key principles of members' conduct; set out and explain in detail the rules, both statutory and those created by the code, which are relevant to members' conduct; and set out and explain the rules and procedure for the enforcement of the code.

Is the committee content?

*Members indicated agreement.*

**The Convener:** I am strongly influenced by the work of the CSG code of conduct working group



and I referred to its work earlier.

**Des McNulty:** We might disagree with the CSG. I do not think that we should commit ourselves to not disagreeing. The CSG examined the code of conduct in the context of a series of issues. However, Parliament has been running for several months and we are beginning to see how, for example, the committees will work. Because of that, we might diverge from the recommendations of the CSG. The Nolan principles were taken on board by the CSG and I am happy to work within that framework, but I would not want us to commit ourselves to the CSG recommendations.

**Tricia Marwick:** I agree with Des. Most of us would agree with what the CSG tried to do, but one issue on which I take a different view is paid lobbying. I will be pushing hard to have lobbyists registered. That is different from what the CSG proposed. We must discuss the matter, and we will. The framework that the CSG put in place was quite good, by and large, and we must pay attention to it, but at the end of the day this Parliament will make the final decisions, not the CSG.

**The Convener:** The wording is strongly influenced by the CSG. Our proposal would not disagree with it.

We now move on to the text of the introduction to the code of conduct. There is a typing error in the first line. It should read, "The Scottish Parliament is an open, accessible and participative Parliament".

The briefing note states:

"The committee is asked to consider the text of the Introduction and is invited to:

- agree that there should be an Introduction,
- agree what, if any, changes should be made to the draft text of the Introduction."

We should address ourselves to the text of the introduction to the proposed members' code of conduct. I am not sure what members want me to do. I think that we should read through the introduction and then I will ask for comments. Would members prefer to comment on the introduction as a whole, paragraph by paragraph, or line by line?

**Karen Gillon:** Paragraph by paragraph.

**Tricia Marwick:** Paragraph by paragraph.

**The Convener:** We will do it paragraph by paragraph. Are there any comments on the first paragraph?

**Tricia Marwick:** We all agree that the Scottish Parliament should be an "open, accessible and participative Parliament", but it is up to us to prove that it is. Instead of making a declaration that it is

"open, accessible and participative", we should say that we seek, or aim, or strive to make it so. It is a great leap to suggest that we are already "open, accessible and participative".

**The Convener:** I agree. Do members prefer, "The Scottish Parliament strives to be", or, "commits itself to being"?

**Karen Gillon:** It is six of one and half a dozen of the other.

**The Convener:** We will use the words, "The Scottish Parliament commits itself to being".

Are there any other comments on paragraph 1?

**Members:** No.

**The Convener:** Are there any comments on paragraph 2?

**Ms Ferguson:** Could we put the full stop after, "all that Members do" rather than after, "in the Parliament", because the latter implies that the principle applies only to what happens here, not to what happens elsewhere?

**The Convener:** We could strike out the final three words. However, I am advised that that would raise questions about members' private lives.

**Tricia Marwick:** God forbid.

**Karen Gillon:** We would wish members to act with integrity in their private and public lives, so that change to the text need not cause concern.

**The Convener:** I am happy with that. We will remove the final three words.

**Tricia Marwick:** Could the phrase be changed to, "during the pursuit of their duties", or, "in pursuit of their public duties"?

**The Convener:** So the sentence would end, "all that members do in pursuit of their public duties"?

**Mr Ingram:** Members should apply the principle to their private business as well.

10:45

**Tricia Marwick:** We hope that they would, Adam, but we cannot expect that they will.

**The Convener:** Are we saying that the sentence should read, "will underpin all that members do in pursuit of their public duties"?

Are we happy with that?

**Karen Gillon:** I am not sure that it reads very well.

**The Convener:** At the moment the paragraph reads:

"The word 'Integrity' is inscribed on the mace which is the symbol of the authority of the Parliament; it is a principle

which must underpin all that Members do”.

**Karen Gillon:** I have concerns about that.

**The Convener:** James, what do you think?

**Lord James Douglas-Hamilton:** We cannot disagree with integrity. However, we could insert a full stop after “do”. I do not see how anyone could object to that.

**The Convener:** Can we all agree on that?

**Ms Ferguson:** In the next paragraph there is a line that could be taken to refer to members’ public role.

**The Convener:** I hope that we can all agree on integrity.

**Tricia Marwick:** We all agree on it.

**The Convener:** Let us move to paragraph 3.

**Des McNulty:** I suggest that we reverse the order of “in their relationships with their constituents” and “in Parliament”.

**The Convener:** Are you suggesting that it should instead read, “the way in which they behave in their relationships with their constituents and in Parliament”?

Is everyone happy with that?

**Lord James Douglas-Hamilton:** I think that “act” would be better than “behave”. When I was a prosecutor, we used the word demeanour with reference to the accused. I think that “act” would sound more appropriate.

**The Convener:** Okay. The next sentence reads:

“Members must meet those expectations by ensuring that their conduct is above reproach and worthy of the trust of the electorate.”

The next paragraph is fairly straightforward. Are there any comments on the last paragraph on the first page? Is everyone happy with that?

**Des McNulty:** The paragraph establishes a distinction between statutory requirements and code of conduct requirements. Might we end up with a third category of advice to members?

**The Convener:** How would you propose phrasing that?

**Des McNulty:** Obviously, we are bound by statute, and we will produce a code of conduct that will be binding on members. However, there might be areas where we do not want to lay down hard-and-fast rules. They could be included in the code of conduct, or under functions that we take on at some stage in the future. I wonder whether we want to take account of that possibility in the introduction. That might not be something that we have to decide at this meeting—it is just a query.

**The Convener:** No, it is a good point. The clerk

has passed me a suggestion that we include another sentence, which reads, “The code also provides advice to members in relation to conduct.”

Are members happy with that?

**Karen Gillon:** I would like something stronger than that. I do not want us to get into a situation where there is ambiguity about what is expected of people.

**The Convener:** There should not be any grey areas.

**Karen Gillon:** There should not. We have statutory responsibilities and there are rules that are binding on members in the code of conduct the Parliament has set out. If members break those rules, action will be taken against them. In that way we provide a clear line. If there are grey areas, members will say that they do not know what to do.

**Des McNulty:** On reflection I would agree with that. It is very hard to devise a code of conduct that includes rules that cover all circumstances. If we tried to do that we would end up by enshrining everything in formal rules. The process might then become unmanageable.

**The Convener:** That is the crux of the matter. The problem in Westminster and in other Parliaments has been that advice has not been clear, or that the rules are vague, or that there is a grey area. We should ensure that the advice is crystal clear so that we avoid problems. I would prefer to go along with Karen, who says that we should leave it.

**Lord James Douglas-Hamilton:** The Parliament’s intention is to review and, if necessary, to amend the code of conduct. I remember in days gone by and before the law was clarified, that surgeons were worried about whether they were legally entitled to perform kidney transplants.

As Des said, situations could emerge that are not covered by the code.

**Des McNulty:** If there are areas that are not covered by the code we might be able to issue advice additional to the code which would cover us in that eventuality.

Karen may be right—the code might consist of the rules, but there might be a need for advice on, for example, patterns of registration. We would want to enshrine that in such a way as to make it crystal clear. It is almost impossible to produce a comprehensive set of rules that covers all eventualities. We could strive as hard as possible for that, but there might be areas in which we would prefer to issue advice rather than to change the structure of the rules. The practical difficulty in

constructing a system of rules might be worth taking into consideration.

**The Convener:** So if we take, for example, the “Register of Members’ Interests”, the rules could require that members register income but not pensions. We could, however, advise that pensions should also be registered. Is that the sort of thing members mean?

**Des McNulty:** That is probably not the clearest example. The rules require full disclosure, but there might be areas in which it is not 100 per cent clear what constitutes remuneration. Rather than trying to write the rules in such a way as to make them comprehensive, we should consider making them quite simple and supplementing them with advice that refers to particular cases.

**The Convener:** In trying to square the circle on this point, we should perhaps add that the code also provides clear—as I am sure it will be—advice to members in relation to their conduct. Would that satisfy you, Karen?

**Karen Gillon:** What is this about?

**The Convener:** We are talking about adding a sentence to the first page of the code. I propose that we add, “The code also provides clear and unambiguous advice to members in relation to conduct.”

**Des McNulty:** I suggest that rather than trying to construct this in committee—which is always a false thing to do—we should highlight issues of concern and leave it to the clerks to devise a form of wording. If the committee agrees, we can presumably simply advise on that.

**The Convener:** That relates to whether we should decide on matters as they arise or at the end of the debate—I think that we will do so at the end. We could proceed with the full stop where it is and flag it up as something to make a final decision on at the end of the process.

Let us move over the page, to the next paragraph of the introduction, which begins:

“The Code draws heavily on”.

Are we happy with that? We have already discussed this, have we not?

**Tricia Marwick:** Yes, but I am a wee bit unhappy about the next two paragraphs. We are talking about the Parliament’s code of conduct. The seventh paragraph of the draft introduction says:

“It is important that the Parliament has a Code of Conduct in place early in its life.”

What is the point of saying in the introduction to the code of conduct that it is important that the code of conduct is in place early in the Parliament’s life?

**Vanessa Glynn:** The point of the sentence was to make it clear why this would not be a definitive code that would stand for a long time; in a sense, it is a transitional code. Parliament needs a code, so something needs to be in place early on.

**Des McNulty:** An interim code of practice.

**The Convener:** We addressed this point early on. It raises again matters such as the procedure for complaints: how can there be a procedure for complaints before there is a code of practice? We will not get this right first time; this will be a first shot.

**Tricia Marwick:** The final sentence in the same paragraph says that we will amend the code in future; I do not see the point of having that first sentence.

**The Convener:** We can remove that sentence; do other members think that we should?

**Mr Ingram:** Should we not say in the introduction that the code of conduct is developing and that we are at the forefront of the process of setting standards for public life in Scotland?

**The Convener:** That is a good point. Shall we take that on board?

**Des McNulty:** Yes.

**Karen Gillon:** I suggest that if the first line is being removed, “This ensures that” should be taken out of the second line and that it should begin, “Members should be clear about the principles”.

**The Convener:** Yes.

Are there any other comments? Are we happy with the first two paragraphs on that page? Can we move to the last paragraph of the introduction?

**Ms Ferguson:** In the first line of the last paragraph, the words “are expected to” could be changed to “will”.

**Des McNulty:** Or to “are required to”.

**The Convener:** Either would be more definite.

**Des McNulty:** Is “underpins” the correct term? It might be better to say “sets out” or “outlines”.

**The Convener:** What about “makes clear”?

**Tricia Marwick:** There should be a sentence requiring MSPs to sign a statement to say that they have read the code of conduct on election, or once a year, so that nobody can say later, “I didnae read that bit.” As we are putting so much time and effort into drafting this code, we should require MSPs to read it. Even if members do not read it, we need them to sign something stating that they have read it. It should be a requirement that they sign something.

**The Convener:** And that should be handed into the clerks so that we have a record?

**Tricia Marwick:** Yes.

11:00

**Karen Gillon:** I quite like “underpins” because the code talks about the ethos of what we are about. It is slightly more appropriate to use the word underpins than to make a statement of intent. The code underpins the whole work of the Parliament and how members will conduct themselves here and in their constituencies. It is about an ethos rather than just a guideline.

**The Convener:** Some members believe that this paragraph should be clearer. Karen is suggesting that we leave underpins in. Do we want to leave underpins?

**Members indicated agreement.**

**Tricia Marwick:** I suggest that “carrying out business” at the end of that first sentence should be taken out and changed to “carrying out duties”. “Carrying out business” could mean anything.

**Des McNulty:** Going back to Tricia’s statement, I think that it would be useful to make MSPs sign something. In local government, people have to sign a statement—the standard practice is after each election—before they are allowed to participate. Something similar might be appropriate here. Members should be required to sign a statement, perhaps at the point when they make their declaration of interests, that they have read the code.

**The Convener:** You mean make it a requirement?

**Des McNulty:** Yes. Members would sign a statement every four years—after election—and if members came in after a by-election they, too, would be required to sign a statement.

**The Convener:** Is everyone happy with that? We will make it a legal requirement.

**The Convener:** We have completed examination of the introduction; we will now we move to the text of the key principles. The briefing note states:

“The committee is asked to consider the text of the section on the draft Code on Key Principles and is invited to:

- agree what should be the Key Principles governing Members’ Conduct,
- agree the text of the section on Key Principles.”

I propose to discuss the draft code paragraph by paragraph.

“Section 1: Key principles of the Code of Conduct.

The key principles which follow set out how Members of

the Parliament will carry out their responsibilities. They are a means by which Members declare what they stand for. They are more than aspirational, however; the principles are a compact between the Parliament and the people it serves.”

Are there any comments on that?

**Tricia Marwick:** The second sentence sounds a bit clumsy.

**The Convener:** Shall we remove it altogether?

**Karen Gillon:** We could take that line out.

**The Convener:** Take it out? It is out.

**Des McNulty:** If we take up the suggestion that members must sign up to a code of conduct, I wonder if we should revise that section to make that fact more explicit. We could include the words, “Members will be required to sign a document that indicates their agreement to the set of principles.” That would set the tone for the relationship between the Parliament and the people. We need to make it more positive. It needs to be clear that people are signing up and that the code and these principles will set the tone for the relationship between the member and his constituents and the Parliament and the people of Scotland.

**The Convener:** That is a good suggestion. The next paragraph has the heading “Public Duty.” We are considering the two sentences under that heading. Are members happy with

“Members have a duty to uphold the law”?

**Karen Gillon:** Yes.

**The Convener:** We are the legislators—if we cannot uphold the law, who can? Is everyone happy with that?

**Tricia Marwick:** Can we take a raincheck on that and come back to it?

**The Convener:** Of course we can come back to it. That is the second point that has been flagged up for us to consider at the end. You do not want to raise it now?

**Tricia Marwick:** No. I would like to have a think about it and, if I can, suggest a different wording—one does not immediately come to mind.

**The Convener:** As we have agreed, we will consider the issue as a whole and come back to any points that have been raised.

**Tricia Marwick:** I would appreciate it if we could flag up the second paragraph.

**The Convener:** Is everyone happy with that?

**Karen Gillon:** To be honest, I would not be happy to change that paragraph. I am happy to have the discussion, but the paragraph is a statement of fact. The oath binds us as members

of this Parliament. Given the vast publicity around the various antics at the swearing-in, I am concerned that if we make any changes we will reopen the debate.

**Tricia Marwick:** I was not suggesting that we change it.

**The Convener:** I do not think that anyone is proposing that we change it. We will leave it as it is. All that we have done is to flag it up. We can return to any point, and this is the second flagged-up issue.

**Tricia Marwick:** All I wanted to do was to show that at some time in the future I might return to that point.

**The Convener:** The second principle is the duty to electors.

**Des McNulty:** Why is the word “residents” used? Normally we would talk about electors rather than residents.

**The Convener:** Is it not because the word is all-inclusive? We represent everyone within the community. Children do not vote. Lunatics do not vote.

**Des McNulty:** You could instead say all the people living in the area.

**The Convener:** Is it just the word “residents” that you are not happy with?

**Tricia Marwick:** Some people have no residence—they are homeless and might feel excluded by that language.

**The Convener:** That is true. We should change that word.

**Mr Ingram:** We could use the word “citizens”—if we are citizens and not subjects, of course.

**The Convener:** “People” is a more neutral word. The text would read: “Members have a duty to be accessible to the people of the areas for which they have been elected to serve”. Are we agreed?

**Members:** Yes.

**Des McNulty:** Members have a duty to make themselves accessible, rather than to be accessible. The onus is on the elected person. I am a bit unclear about the last part of the second sentence. Does it clearly express the expectation that we have of members?

**The Convener:** We should be able to ensure that the people whom we represent are able to pursue their concerns, even if we disagree with them. I think that that is what we are saying.

**Des McNulty:** I would like greater clarity.

**The Convener:** Do you have any suggestions?

**Des McNulty:** I do not like drafting in committee.

Can we flag this up as something that could be better expressed?

**The Convener:** That is the third flagged-up issue.

We move on to selflessness.

**Mr Ingram:** The text there is very clear.

**The Convener:** It is Nolan. What about the section on integrity?

**Mr Ingram:** What about the political party to which you belong?

**The Convener:** Can you expand on that?

**Mr Ingram:** The wording states that you should not put yourself under obligation to any individual or organisation that might influence you in the performance of your duties. If you belong to a political party you might be whipped to vote.

**Karen Gillon:** I do not mind.

**The Convener:** That is an interesting point.

**Karen Gillon:** Can I ask where that wording comes from? Is it part of Nolan, or does it come from the CSG?

**Vanessa Glynn:** It is Nolan.

**Karen Gillon:** If it is Nolan, I think that we should accept it.

**The Convener:** What about inserting the word “unduly” in front of “influence”? If not, should we flag it up and return to it?

**Karen Gillon:** I think that if it is from Nolan we must accept it and move on.

**The Convener:** As everyone is happy with that, that is what we will do.

The next section is on honesty.

**Des McNulty:** I am looking at the Nolan procedures and at this draft side by side. Can I ask why we left out objectivity?

**The Convener:** It is not Nolan, it is the CSG.

**Des McNulty:** Why did the CSG leave out objectivity?

**The Convener:** Perhaps we should ask the CSG that. We do not know. Do you think that we should include objectivity?

**Des McNulty:** I think that we should include it, or at least flag it up as an issue.

**Karen Gillon:** Yes, we should flag it up as an issue.

**Des McNulty:** We need to find out whether the CSG was given advice about it.

**The Convener:** The advice that the CSG was given was that the Nolan committee had a wider

remit and was examining all elements of public life, not members of Parliament specifically—certainly not members of the Scottish Parliament.

**Des McNulty:** Yes, but the concepts in the Nolan report, such as objectivity, would apply to members of the corporate body—I am one of them—in terms of the way in which they carry out that particular function.

**The Convener:** That would apply only to members carrying out that function. Normal MSPs do not award big contracts and so on.

**Des McNulty:** Ministers often award contracts, as does the corporate body.

**The Convener:** In that case there is a ministerial code.

**Des McNulty:** I do not see any reason to remove objectivity from the general principles.

**Tricia Marwick:** Can we flag it up?

**The Convener:** We will flag it up and come back to it. There are going to be a lot of flags.

The next principle is honesty. The draft code states:

“Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.”

That seems to be fairly straightforward.

The next principle is openness. Members can read through the paragraph on openness for themselves.

**Tricia Marwick:** I am not sure that the second sentence says what I think that it means. We need to add something to the end of it—perhaps “that they do so”.

**The Convener:** I am not clear what you mean, Trish.

**Tricia Marwick:** I do not think that the sentence makes sense.

**The Convener:** I think that we are trying to say that we have a predilection for openness in everything that we do. We cannot just say, “I’m sorry, that’s private”.

**Tricia Marwick:** Yes, I understand but, for the sentence to make sense, I think that we need to insert the words “that they do so” at the end.

**The Convener:** It would then read: “They will give reasons for their decisions and restrict information only when the wider public interest clearly demands that they do so.” Is that okay?

**Tricia Marwick:** Yes.

11:15

**The Convener:** The next issue is responsibility for decisions.

**Des McNulty:** I am beginning to pick up a tension here that is getting in the way. This is a code of conduct for individual members. Side by side with that will be a set of principles for the conduct of business in the Parliament. Some of the ways in which the matter is framed by the CSG fall between the two areas. The code is not sufficiently clearly directed at the individual member.

Some of the issues are more properly dealt with. For example, the principle of openness relates to the procedures of the Parliament; it is more important in that dimension than at the level of the responsibilities of individual members. Whether decisions should be open is not the choice of the individual member; it is about how the Parliament conducts itself. There is a wee tension in what has been suggested. It is framed in the context of the individual’s responsibility, whereas the responsibility might more properly lie in the way in which the Parliament conducts its business.

**The Convener:** The code of conduct focuses clearly on the behaviour and conduct of MSPs. We are trying to give them guidance about what they should be doing. I think that we are agreed that the predilection should be to be open in everything that we do. All that the code of conduct is saying is that, on occasions, when we feel that we cannot be as open as we would like, we have to give a reason.

**Tricia Marwick:** I think that what Des is saying is that tensions are creeping in, in terms both of our duties as individual MSPs and of the wider duty of the Parliament and the Executive in their decision making. The second sentence of the paragraph shows that conflict clearly. While we are open with our constituents and do what we can for them, decisions about the wider public interest will, by and large, be a matter for the Executive and not for individual MSPs.

**Des McNulty:** It could also be a matter for the procedural structures in the Parliament. This committee has decided that it will be as open as possible and other committees are also taking decisions on openness. The decision is not for individual members. The key issue on openness is that it involves a procedural decision that members are taking collectively. The intentions are good but, in the translation of the Nolan report to our code of conduct, that dimension has not been properly explored.

**Karen Gillon:** There are parts of the paragraph under the heading of “Openness” that perhaps have not been defined as clearly as they could have been. The draft code of conduct states:

"Members will be as open as possible about all the decisions and actions they take."

For me, that means that I must be able to be held to account about why I have voted in a particular way in a debate. I am happy to do that, and will give reasons for my decisions, because it is clear to me what that is about. I will give members reasons for the way in which I have voted and acted within the Parliament. The bit that confuses me is the part of the paragraph on openness that says:

"and restrict information only when the wider public interest clearly demands."

I understand why that is there for members. I have worked for an MP, and constituents come with issues on which action has to be taken that initially cannot be made public because it is on behalf of an individual. It is about confidentiality.

We are mixing up how we conduct ourselves during parliamentary business, and the decisions that we make, with how we conduct ourselves in our individual dealings with constituents. Both of those aspects are important, but we are confusing constituency work with openness. I do not think that constituency work will necessarily be open. That is a matter for us and for our constituents to determine, as issues of confidentiality are involved. We have caused a muddle for ourselves by including constituency casework in what we do in the chamber and the making of decisions on local issues. That is not individual constituency casework. Perhaps we could have two differently worded sets of guidance, to reflect the two key strands of our work: how we deal with individual constituents and how we act and vote in the chamber.

**The Convener:** It is not clear to me how an individual MSP should behave, regardless of whether they are in the Executive, and regardless of any other job that they do. The code of conduct says that members

"will be as open as possible about all the decisions and actions they take. They will give reasons for their decisions and restrict information only when the wider public interest clearly demands".

I understand what Karen Gillon means about confidentiality, but I thought that the next sentence dealt with that.

**Karen Gillon:** I would split the two responsibilities more clearly, but I do not know how that might be done. As a non-Executive member, I was confused by that statement, as were other members of this committee. We must clarify exactly what we are dealing with. I understand what the convener is saying about Executive members.

**Tricia Marwick:** The paragraph makes perfect sense to me with the omission of the second line.

Without that, it says everything that needs to be said about openness. I do not believe that that second line is necessary. If that line were removed, committee members' confusion would be lifted immediately.

**Mr Ingram:** I would be happy with that.

**The Convener:** Just to remove the second sentence?

**Mr Ingram:** Yes.

**The Convener:** Are we agreed that the second sentence should be removed?

**Lord James Douglas-Hamilton:** There are certain circumstances in which an MSP is entitled to take up a matter with the Lord Advocate in confidence; for example, if an MSP is approached by a witness in a murder case and the witness is terrified of intimidation and has already had a brother killed. If the MSP is asked to give such information to others, he or she would not necessarily feel obliged to do so. If the Lord Advocate makes something public, that is because of the wider public interest, but criminal cases and cases of mental illness are matters in which confidentiality should be privileged.

**Karen Gillon:** That is exactly the type of problem that we face.

**The Convener:** If it is causing confusion, we must consider the paragraph again.

**Karen Gillon:** I would not disclose information if a constituent who was involved in a criminal case came to me in confidence.

**The Convener:** We are trying to make everything crystal clear. There is an obvious problem here, and we must consider the matter again.

What about the paragraph "Responsibility for Decisions"?

**Des McNulty:** That is a translation. I suspect that it refers to public office, when people such as the head of a health board make individual decisions. Members' responsibility concerns the decision-making process rather than the decisions, which are made by Parliament. Their responsibility is probably better framed in the second sentence than in the first.

**Mr Ingram:** I do not agree. I am not sure that that should be included at all.

**The Convener:** You do not think that we should be responsible for decision making?

**Mr Ingram:** No. I do not think that this paragraph should be included. The previous paragraph says that we must be as open as possible and explain things. That subsumes the fact that we are taking responsibility for what we

are doing. This paragraph is tautologous.

**The Convener:** We could combine those paragraphs as “Openness and Responsibility”. Shall we combine them? Okay.

Are there comments on the paragraph under the heading of “Accountability”?

**Des McNulty:** We could be more specific about “whatever scrutiny is appropriate to their office”.

We could be self-referential and mention the code of conduct here. Those words are very vague; it is straight from Nolan. We might want to specify.

**The Convener:** Is being an MP an office rather than someone who holds office?

**Karen Gillon:** We could come back to responsibility and accountability with a different draft.

**The Convener:** Are there any comments on the paragraph under the heading of “Leadership”?

**Karen Gillon:** I think that it is a very important paragraph—very strong and useful. We should make sure that is what we do.

**Tricia Marwick:** I am not 100 per cent sure that the second use of “members” in the same sentence is the best way of putting it. Could we say “the integrity of the Parliament”?

**The Convener:** You are suggesting:

“Members will promote and support these principles by leadership and example, to maintain and strengthen the public’s trust and confidence in the integrity of the Parliament”?

**Tricia Marwick:** I suggest “in the integrity of the Parliament and individual members”.

**The Convener:** Are we agreed? Okay.

We have a paragraph with the heading:

“Guidance on the Code of Conduct”:

“The sections which follow have been developed in line with these key principles and provide additional information on how the principles will be interpreted and enforced in practice. No written information can provide for all circumstances”—

we talked about that earlier—

“when in doubt members should seek the advice of the Standards Committee”.

**Des McNulty:** I do not think that we should include that final point. In the event of a breach we may end up having to deal with particular circumstances, so there must be some other mechanism.

**The Convener:** Possibly “seek the advice of the clerk to the Standards Committee”?

**Des McNulty:** The alternative is to set up some other entity, so, yes, the clerks.

**The Convener:** For the moment, anyway.

**Des McNulty:** We have worked through the principles in this draft and identified areas where we are more or less happy. Before we finalise anything, I would like to have a further opportunity to think through whether the principles have been adapted to the purposes of the Parliament with adequate care and attention. The consultative steering group recommendations are very, very close to Nolan. I am not sure that they are as customised to the requirements of elected representatives as we might want. Could we add the proviso that we have made suggestions but we may discuss it further to make sure that we get it right?

**The Convener:** Would this be an appropriate point to pause, before examining the detail? We have covered the key principles of the code. Are you suggesting that we finish for the moment, which would give us some time before the next meeting?

**Des McNulty:** I suppose that I am suggesting that the clerks go away and take account of our suggestions, and that if people have further suggestions or ideas, they submit them to the clerks in writing before the next meeting, before we sign this one off.

**The Convener:** I think that that is an appropriate suggestion. Should we look at what we have done again when we return at the start of the next meeting? Okay. The next meeting is in a fortnight’s time, in the same slot. Does anyone else have anything to say before I close the meeting?

**Des McNulty:** Can I make a request to commence the meeting at 10 am rather than 9.30? I do not think that the meeting will be terribly long, but that would make life easier.

**Tricia Marwick:** We still need to have lunch on a Wednesday. The Parliament sits in the afternoon. I come in at 8 am and, frankly, I would like the meeting at 9 am, never mind 9.30. If we are pushing the start time to 10 am, we are going towards lunchtime. In view of the necessary work of preparing speeches for the afternoon session, for example, the start time should not, in my view, be any later than 9.30.

**Ms Ferguson:** Some of us have other business at the lunch break. I for one have regular briefings at lunchtime, and I would be reluctant for the committee to continue towards that time.

**The Convener:** I have just seen the clock—I did not realise what time it was. We have been going for two hours. I think members will agree that that is long enough. Shall we aim at 9.30 to 11.30?

**Karen Gillon:** I would rather we have 10 am until 12 pm.



**The Convener:** Why do we not start at 9.45, then?

**Karen Gillon:** That would not make any difference in regard to train times. We might as well just start at 9.30 and get on with it.

**The Convener:** We will say 9.30.

**Tricia Marwick:** There will be trains from Glasgow every 15 minutes in a few weeks.

**The Convener:** Let us just agree that the next meeting will be at 9.30.

*Meeting closed at 11:32.*



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