

STANDARDS COMMITTEE

Wednesday 10 November 1999
(Morning)

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STANDARDS COMMITTEE

12th Meeting

CONVENER :

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

COMMITTEE MEMBERS :

*Lord James Douglas-Hamilton (Lothians) (Con)

*Karen Gillon (Clydesdale) (Lab)

*Mr Adam Ingram (South of Scotland) (SNP)

*Tricia Marwick (Mid Scotland and Fife) (SNP)

*Des McNulty (Clydebank and Milngavie) (Lab)

*Dr Richard Simpson (Ochil) (Lab)

*attended

COMMITTEE CLERK:

Vanessa Glynn

ASSISTANT CLERK:

Alastair Goudie

Scottish Parliament

Standards Committee

Wednesday 10 November 1999

(Morning)

[THE CONVENER *opened the meeting at 09:53*]

The Convener (Mr Mike Rumbles): Welcome to the 12th meeting of the Standards Committee. We have a busy agenda.

First, I would like to make a decision on item 5 on the agenda, the consideration of the draft report on the matters raised by *The Observer*. It is expected that the committee will agree to discuss the report in private, for obvious reasons. Are members agreed that we do that?

Members indicated agreement.

Work Programme

The Convener: The first item on the agenda is the committee's forward work programme.

Members will have received the initial papers and will see that a substantial amount of issues require our attention. We need to agree on how to organise our work to address all those major issues. Members have said several times that completing the draft code of conduct is a priority. There is also an urgent need to put in place a complaints procedure and to consider, as it is appropriate to our remit, the issue of lobbying.

Do members reaffirm that the draft code is our priority?

Members indicated agreement.

Des McNulty (Clydebank and Milngavie) (Lab): In particular, we must put in place an interim complaints procedure as quickly as possible, so that members are aware of how complaints should be channelled through the committee.

The Convener: I agree that the draft code of conduct should include a complaints procedure and an enforcement procedure, and that we must complete it as quickly as possible. I suggest that the draft code of conduct, including, as Des McNulty said, the interim complaints procedure, be the main item on the agenda of the meeting on 24 November.

It will help our deliberations if we set a target date for completion of the draft code. I know that that is difficult, but it is important to give a steer to what we do. We should make progress by Christmas, with a view to having the draft available

by January.

Can we agree to that time scale, with the meetings on 24 November and 8 December devoted to that item? We might need additional meetings to meet the January deadline, but we will address that closer to the time.

Karen Gillon (Clydesdale) (Lab): If it is at all possible, we should try to complete the draft code of conduct before the Christmas recess. The problems that we have encountered in recent weeks have been due primarily to the fact that there is no code of conduct in place, nor any complaints or enforcement procedure. The committee is beholden to make the draft code available to members as soon as possible.

The Convener: I take that point on board.

Karen Gillon: I know that people's diaries are tight and that we are becoming busier as the recess approaches, but I suggest that we consider fitting in another meeting, so that the draft can be completed before the recess.

The Convener: I have already asked whether we can meet weekly, but parliamentary staff have told me that it is difficult to arrange the facilities for that. I asked whether we could meet next week, but that has proved impossible.

Des McNulty: We could look ahead—it might be possible to schedule a meeting between 24 November and 8 December.

The Convener: We have meetings on 24 November and 8 December. The clerks tell me that they will do all the preparation to allow us to complete our work by then. I am suggesting a January deadline, because 8 December might be too tight. The legal advice that we received was that the draft code could not be checked before then. I acknowledge what you say. We will have to review the situation after each meeting.

Karen Gillon: With respect, we have been round the houses on the matter on a number of occasions, and have had to set it aside. I do not want a repeat of the situation that we have been in, and for us to be found negligent. This must be a priority for all of us.

I understand the pressures for the staff of this committee, in particular, but if the Parliament is serious about having a code of conduct, a room will have to be found. If that is all that stands between us and having another meeting, a room will have to be found, and we will need to get on with it. The longer this drags on, the more it looks as if the Parliament has not got its act together on a code of conduct for members. We must try as hard as we can to fit in another meeting.

10:00

Tricia Marwick (Mid Scotland and Fife) (SNP): I agree wholeheartedly with Karen. The code of conduct is a priority. Unfortunately, it was derailed for a month because we had to investigate other matters. However, now it must get back on track, as we owe it to our fellow MSPs to put something in front of them before the Christmas recess. Karen is right to say that it is a matter not just for the Standards Committee but for the Parliament. If the members of the Standards Committee are urging that we have additional meetings to progress the matter satisfactorily and timeously, it is incumbent on the parliamentary staff to facilitate that and to find us the rooms and offices that we need. We understand the pressure that they are under, but there is pressure on the Parliament.

I also agree with Des McNulty on the pressing need for an interim statement on a complaints procedure. That needs to be done first, but we should aim to have the code of conduct in more or less final form by the December recess.

The Convener: I confirm to members that, prior to this meeting, I requested a meeting for 17 November—this time next week—because I felt that we should be meeting not fortnightly, but weekly. The advice that I am giving you now is advice that I received from the committee clerks, who said that that was not possible. However, I hear what members are saying and take the same view. We should go back to parliamentary staff and say that we want to meet on 17 November to progress the issue.

Karen Gillon: I do not think that that is what we are saying, convener. We are saying that we want a meeting next week. It does not have to be on Wednesday morning—it can be on Tuesday morning or Tuesday afternoon. People have difficulties with other committees meeting, but we can rotate the three slots available. I am sure that we can find a space. It does not need to be between 9.30 am and 12.30 pm—it can be in the early evening or at lunchtime. I am sure that we can find a time when there is space available in the building. Other committees are meeting to deal with business that is not as pressing as this. If space can be found for them, it can be found for us, given the nature of the business that we have to expedite over the next few weeks.

Des McNulty: My understanding is that the problem is not a shortage of rooms, but the work load on staff and the availability of, in particular, legal advice. The issue is not whether we meet next week but whether we can fit in enough meetings between now and the relevant point in December to complete the code of conduct. I am not in favour of meetings for the sake of meetings: we meet to transact business effectively. I suggest that we proceed on that basis.

Lord James Douglas-Hamilton (Lothians) (Con): We should have as many meetings as are necessary to get the job done effectively, and I suspect that one meeting in December will not be enough. We have to ensure that we get the resources, the facilities and the time to do the job properly.

Dr Richard Simpson (Ochil) (Lab): I am the only MSP who is currently a member of three committees, and two of them are now having difficulty finding space. A meeting of another committee that was scheduled for today could not take place. The committees are keen to do the work, but the facilities and back-up are under huge pressure. That simply illustrates further the inadequacies of the buildings in which we are situated, but we will have to put up with that.

Karen Gillon: I would like something clarified. I have in my possession a draft code of conduct, or parts of one, that was given to us some weeks ago. I am confused by what Des McNulty said about legal advice. What legal advice do we require? We did not require it at the beginning of the process—we were merely working our way through the code of conduct. Can you clarify what is the legal problem with our establishing a code of conduct for members of this Parliament?

The Convener: I was given to understand that the clerks could make the drafts available to us reasonably quickly, so that we could deal with them at our meetings on 24 November and 8 December. It was made clear by the legal staff at the pre-meeting briefing that because of pressure of work they could not agree to give the necessary legal advice on the draft code of conduct this side of Christmas.

Tricia Marwick: If that is the advice that we are being given, we should make representations to the Presiding Officer. The reputation of the Parliament depends on a code of conduct for MSPs. We must be able to produce that code of conduct, and the committee has indicated that it wants to do that work. The Presiding Officer should be asked to use his offices to ensure that the staff, resources and facilities are available to the committee to allow it to do the work.

The Convener: If other committee members agree, I will write to the Presiding Officer to draw his attention to the fact that the establishment and presentation to Parliament of a draft code of conduct is our No 1 priority. I will mention that the advice that we have received today indicates that those resources will not be available to allow us to do so before Christmas.

Des McNulty: Our meeting on 8 December should move us towards finalising that process. We should aim for that target. In the next four weeks, we need the resources that will allow us to

achieve that.

The Convener: Let me get this absolutely clear. My intention as convener was to try to get the committee to agree to complete a draft code of conduct by the end of this parliamentary term. I said at the start of the debate that my advice indicated that that might not be physically possible—we might have to stray into January. I understand that that is not acceptable to members and that members feel that we must complete the task before the Christmas recess.

I am happy to take that to the Presiding Officer, to ensure that we can make available a draft code of conduct to the Parliament by the end of this parliamentary term.

Is that agreed?

Members *indicated agreement.*

The Convener: Before we move on, I would like to say that I am concerned that we might be diverted from our timetable if we are required to deal with individual cases.

Des McNulty: We have had to deal with complaints. We are dealing with one today; others might come before us. We should go—with the permission of the Parliamentary Bureau—to the Scottish Parliamentary Corporate Body to ask its permission for the appointment of a temporary adviser who could assist us in our work in dealing with forthcoming complaints. That would make the process more manageable.

Lord James Douglas-Hamilton: I strongly support that. The appointment of a parliamentary commissioner should be left exclusively to this committee; we will come to that later. I have consistently supported that, but in the meantime, Des McNulty's proposal is extremely sensible and I am sure that the bureau would support it.

Tricia Marwick: The committee needs support, but I am concerned that we are asking for an adviser on issues that might or might not come up. I am not happy about taking on an adviser just for the sake of it. We must be clear about the role of such an adviser, and we have not had that discussion. The adviser could not be a default parliamentary commissioner. We need to have the debate about whether we need a parliamentary commissioner, but that is quite distinct from appointing an adviser on a pro tem basis.

Karen Gillon: I have serious concerns about engaging an adviser to deal with the rush of complaints against MSPs. I do not think that such a rush will occur and I would point out that, after our deliberations of recent weeks, we have not found the MSPs concerned to be in breach of any code. We are pre-empting a discussion that we might have to have in the future about the appointment of an independent adviser.

We will consider a complaint today. We should discuss other complaints as they come up. Some might be of sufficient seriousness for the committee to consider and others might require a letter from the convener. At the moment, we appear to be suggesting that we are expecting a rush of complaints against members. I do not think that that is a good message to send.

The Convener: I think that we decided that any letters of complaint would be handed to the clerks in the first instance. The point of asking for a temporary adviser is to deal with the initial sifting of complaints.

Des McNulty: I am of the same view as Tricia Marwick. We do not want to pre-empt the discussion that we need to have about complaints-handling procedures. I was suggesting not that we appoint a temporary adviser, but that we ask for permission to do so should the need arise. We do not have the power to deal with that; we have to go through a similar process to the one that we went through for the appointment of Malcolm Duncan.

I know of no complaints other than the ones before us today, but we have recorded that we are in a difficult position as regards handling complaints. We want to be sure that we are in a position to deal with anything that might arise. However, that is not to expect that something will arise.

Tricia Marwick: We took the decision on a Tuesday to appoint Malcolm Duncan to advise us during our previous inquiry and he was appointed on the Friday. There were three days between the need for an adviser being identified and someone being appointed.

As Karen Gillon said, only one complaint is outstanding, and no one anticipates a rush of complaints. If a serious complaint comes to us, the Parliament is flexible enough to let us deal with the problem in a couple of days. I do not think that we have to have an appointee on hold. We should get work done on the code of conduct and the complaints procedure, and we should also have a discussion about whether we need a parliamentary commissioner for standards. We have not had that discussion yet.

Mr Adam Ingram (South of Scotland) (SNP): What Des is proposing is not unreasonable. We need to alert the SPCB to the fact that we could need people. I accept what Karen and Tricia have said: we do not anticipate a flood of complaints against MSPs, and we hope that that will not happen.

We should set that issue aside and get on with the rest of this morning's business. We have already used up almost half an hour of our time on issues that are not fundamental to our

discussions. I would like the committee to move on.

10:15

The Convener: Are there any other views?

Karen Gillon: The role of the adviser that Des is suggesting is to sift complaints. That is a different role from the one that Malcolm Duncan had. Malcolm Duncan's role was to scrutinise evidence and information that the committee, as the supreme body of the Parliament in dealing with the standards of members, had asked for. I would be concerned if, at this stage in the proceedings, we were to preclude the committee from deciding whether a piece of evidence or a complaint needed to be dealt with. At this point, the committee is responsible for that. If we are setting up a system that is different from the one that we have had in the past, we are precluding discussion of the role of an independent adviser to the committee.

Lord James Douglas-Hamilton: Des McNulty's point is that we should be in a position to act quickly if the need arises, and that is reasonable.

The Convener: I think that the general view of the majority of the committee is that we should leave the issue until a later date. Is that right?

Members indicated agreement.

The Convener: Thank you. We shall move on to—

Dr Simpson: I think that we ought to take a vote on that, as the committee is clearly split. Either we get permission to appoint an adviser or we do not.

Karen Gillon: This is a serious decision and we have not yet had a discussion about what the role of the adviser would be, how they would go about their job, and when they would speak to the committee—

Dr Simpson: I know. You have said that already.

Karen Gillon: I am not prepared to take a decision on the appointment of someone who will take on the responsibilities of the committee after a five-minute discussion that is, quite frankly, ill informed.

Des McNulty: If a number of members of the committee are unhappy about the proposal, we should leave it in abeyance and deal with matters as they arise.

The Convener: Des is suggesting that, and I think that we should move on.

Cross-party Groups

The Convener: Our next item is the draft

committee report on the regulation of cross-party groups. I do not want to spend too long on this item, but we need to progress the draft report, as there is mounting pressure for arrangements to establish cross-party groups. I understand that groups are already starting to meet throughout the Parliament, but they can have no established status until the Parliament has set up the regulatory system.

The rules on cross-party groups, annexed to the draft report that members have, were substantially agreed by us previously; we have gone through all the rules. The briefing note highlights and explains the amendments that the staff have added.

I think that Des wanted to go through a few of the minor changes, so I shall ask him to start. Anyone else who wants to discuss the amendments should then feel free to flag up their concerns.

Des McNulty: I would like to go through the document paragraph by paragraph.

The fifth line of the fourth paragraph of annexe A states that the Standards Committee

“may refuse recognition if it considers that a group does not comply with the rules or it may”.

At that point, I would like to insert the words, “defer consideration to seek clarification from the group about its application.”

That would, in a sense, give us three options. We could approve, refuse or defer. My suggested wording would make that clear.

The Convener: Is everyone happy with that?

Members indicated agreement.

Des McNulty: Point 3, at the bottom of page 2, states that

“the overall membership profile must remain clearly Parliamentary in character”.

That is absolutely in keeping with what we discussed, but we probably need to define it in some way and it is difficult to know how to define it.

The Convener: You are right that there was difficulty in defining “parliamentary”, but in the event that a problem arises, it will be for the committee to make a judgment.

Des McNulty: One possible clarification would be to say that as a minimum, the group would be expected to be in compliance with point 10 of the draft report, which states that at least two members of Parliament should be present at each meeting. We should make a reference to that point.

It may be that “parliamentary” will be defined in practice, but if I was reading the document as

someone who had not taken part in the debate, I would not necessarily understand what was meant by point 3, so perhaps we could consider a note of clarification.

The Convener: Are members agreed that we should clarify point 3?

Members indicated agreement.

Des McNulty: I have raised a general point with the clerk to the committee. On pages 5 and 6, we have tried to be helpful to groups by saying that the signatory to the declaration need not be the person who is recommended by the group as responsible for maintaining the details of group compliance. That is an attempt to be helpful, but because of the way in which it is written, it comes across as a wee bit confusing. Initially, we should require that the person who registers is the person who is responsible for compliance, but we should allow the group to change that person as the group evolves, because people's interests might change. Our instructions should be clearer.

The Convener: That is an important point. Are there any other observations on it? There is none, so are we agreed that we will ask the clerk to make a change to the instructions?

Members indicated agreement.

The Convener: Keep going, Des.

Des McNulty: On page 8 of our draft report, in the sections headed, "Financial or other benefits received by the Group" and "Staff employed by groups", I am concerned whether we have covered adequately people who are employed by outside organisations and are doing work with, or on behalf of, a cross-parliamentary group. In a sense, that is covered in the part of the document that refers to financial or other benefits that are received by the group, but we must discuss whether it is covered in the point about staff employed by groups.

It is relatively unlikely that staff will be employed by cross-party groups, but it is possible, if we look at practices elsewhere, that cross-party groups will have access to people who are employed by other organisations.

The Convener: Perhaps we could change that part of the document so that it refers to "staff either employed by, or working for, groups".

Des McNulty: Yes, something along those lines. I am just flagging up the issue. We need a satisfactory resolution.

The Convener: Is everyone happy with that change?

Members indicated agreement.

The Convener: We will change the text.

Des McNulty: Apart from that, I thought that the document was fine.

The Convener: Do members have any points that they wish to raise or changes that they would like to make? Unless there are any objections to what has been proposed, the draft report—even though we have just tweaked it again—will be submitted to the SPCB for approval of the recommendations on the use of parliamentary facilities, because they are that body's responsibility. Once the SPCB has considered it, we will need to agree our report for the final time, so that it can be presented to Parliament.

Do members agree that we should send the draft report to the SPCB?

Members indicated agreement.

Lobbying

The Convener: Our next agenda item is an initial debate on lobbying. This item was deferred from our meeting on 29 September and our experiences since then can only contribute to our consideration of the matter. Although the debate should present a useful opportunity to exchange views in a free-ranging way, committee members should bear in mind some points.

As our remit under standing orders means that we have to consider and report on matters concerning the conduct of MSPs, we should focus our discussion on the relationship between MSPs and lobbyists. With the reaffirmation of the code of conduct as our top priority, the discussion will provide an opportunity to identify members' requirements concerning lobbyists. We could include those requirements in the draft code at our next meeting. Committee members may wish to range more widely than that, but the needs of the code have to be our priority.

We will consider issues such as the acceptability of lobbying to MSPs, bearing in mind our general principles of openness and accessibility. Does existing legislation such as the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and the proposed arrangements for cross-party groups make sufficient provision for encouraging appropriate relationships between lobbyists and MSPs? If not, what other requirements should be imposed? Should such requirements be included in the code of conduct or are they for longer-term consideration?

Having primed committee members with some initial thoughts for this debate, I open the discussion.

Lord James Douglas-Hamilton: There is a very strong case for the Parliament to have a parliamentary commissioner for standards. Any

queries or assertions could be sifted and he or she could submit a report to the committee. If the committee chose to have such a commissioner, obviously the position would have to be advertised so that any well-qualified applicants—for example, retired judges—could put themselves forward.

The second issue—

The Convener: Lord James, may I stop you there? You have made a valid point about the Parliament's policing mechanism—which we will discuss—but this debate is about lobbyists.

Lord James Douglas-Hamilton: My next point is about whether lobbyists, as well as MSPs, should have a code of conduct. There is a strong case for making absolutely certain that lobbyists have such a code. The form of that code could easily be determined by resolving the question of whether lobbyists should be registered. The argument for registration is that lobbying will happen and that, without registration, there is a greater danger that the activity will go underground. The counter-argument is that registration might confer greater legitimacy on lobbyists, which is not desirable. Although I doubt whether registration will affect my view of lobbyists one way or the other, it will mean that the activity will be out in the open and more easily controlled.

Although the committee will decide and vote on the matter in due course, lobbyists need at the very least to be controlled by a code of conduct. Any registration scheme would impose its own code of conduct. If the committee decides against a registration scheme, there should be a voluntary code of conduct to let lobbyists know what is and what is not acceptable.

Tricia Marwick: I am glad that we have finally reached the lobbying debate that was aborted about a month ago. The issue concerns the Parliament and I am grateful for the opportunity to have this initial discussion.

I am not going to say that my views have changed over the past month. I have always believed that, as a Parliament, we need to register companies that lobby. There is a distinction between companies that lobby—companies that take money from a third party to act on their behalf in connection with this Parliament—and bodies such as voluntary organisations, charities and individual companies that employ their own staff to interface with this Parliament and its MSPs.

The lobby companies often say that a distinction cannot be made between lobbying and the work of voluntary groups. However, the distinction is clear to me: it concerns whether someone is employed by a company or organisation to interact with the Parliament and communicate with MSPs, or whether a company is employed to do that work on someone else's behalf. My view is that

companies that are employed to do that work on behalf of another organisation should be registered.

10:30

I am conscious that the code of conduct that we are scrutinising should deal primarily with the relationship between MSPs and the companies, but that should be approached from the perspective of MSPs' conduct, not the lobbyists' conduct. We need to include some form of registration regulation for companies that lobby. Just as we had a discussion this morning about the regulation of cross-party groups, it is entirely appropriate that, at some point, this committee should return to discussion about the regulation of companies that are employed in lobbying this Parliament. I would like to hear the views of other members of the committee on that. I am grateful that we have this opportunity—albeit a wee bit later than we had hoped for—to discuss the matter.

The Convener: Do other members want to add to that?

Dr Simpson: The prime difficulty is that MSPs may not know whether someone is employed by a lobbying firm. One of the things that we must consider is whether MSPs should declare contact with lobbying groups. If there is no requirement to register, it will not be known which organisations are lobbying groups.

I also foresee intermediate problems. If a lobbying company seconds somebody to another company to undertake work on its behalf, where would that fall in relation to direct or indirect employment? The only way in which we can deal with such issues is by having a registration process that defines absolutely clearly what constitutes a lobbying firm and what does not. I do not think that there is any way out other than through registration. Frankly, I would prefer not to impose registration, as I think that we should have the fewest possible regulations. Nevertheless, there is no alternative if we are to make the matter absolutely clear.

Mr Ingram: I hear what Richard Simpson and Tricia Marwick are saying. Tricia is asking for a clear definition of a professional lobbying operation that is established solely for the purposes of attracting business from people outwith the parliamentary system, of making contacts with MSPs and ministers, of affecting the decision-making process or of giving its clients an advantage in acquiring the relevant information. I am not entirely sure that voluntary groups do anything other than what the professionals will do. That must be teased out in our debate.

Are we saying that professional lobbyists are

somehow to be discouraged, if not exactly deplored? In this Parliament, we are trying to be as open and transparent as possible. The need for lobbying companies will be less, in our system, than in the USA, for example. The Scottish Parliament has been set up closer to the people. People should have much better access to their politicians than they have in other countries. When it comes to the practice of the Scottish Parliament, the problem has been more about perception than reality. I agree that we should have a registration system; every organisation—including voluntary organisations—that wants to lobby should be registered.

Karen Gillon: Lobbying is a legitimate part of this democracy and of this Parliament. It is imperative that individuals, charities, voluntary organisations and companies of all shapes and sizes can lobby any member of the Parliament on any issue that is important to them. When I first campaigned for a Scottish Parliament a number of years ago, I did so in the earnest hope and belief that it would be different from Parliaments elsewhere. I wanted this to be a Parliament in which the views and interests of individuals, voluntary organisations and companies would be taken on board when we—as politicians—made decisions.

My concern about lobbying companies is that they can act for a number of different interests—you do not always know what you are getting. If a charity comes to lobby you, you know what its sphere of influence is and the issues that it is bothered about. If a constituent comes to lobby you, you know what they want because they tell you straight away; they are not one day wearing one hat saying that they are lobbying you about the environment and the next day wearing another hat saying that they want you to reduce the price of fuel. They are lobbying on issues that bother them; they are not speaking with forked tongues. *[Interruption.]* Richard, I am entitled to my opinions.

Dr Simpson: Absolutely.

Karen Gillon: I am on record as saying—in this committee—that I do not believe that lobbying companies are necessary in the Parliament. If the Parliament works in the way in which I hope that it was set up to work and the way in which everybody round this table wants it to work, lobbying companies that represent organisations for a fee will be unnecessary. Companies, organisations and individuals should feel able to meet members of the Parliament; they should not need a third party to speak on their behalf.

My concern is that we will not be able to achieve that if we introduce registration and establish a system that gives credence and credit to lobbying organisations. Lobbying organisations will become

part of the fabric of the Parliament; they will become necessary to gain access to it. I am extremely concerned about going down that road. My hope for the Parliament is that commercial lobbying companies will be unnecessary. Maybe I live in an unreal world—and maybe I will be criticised for that—but I believe that, as individuals in the Parliament, we are responsible to the people out there for the decisions that we make. They should be able to tell us face to face—individually or collectively—what they think. That is the way in which I would like the Parliament to work.

Des McNulty: It is part and parcel of the work of politicians to be lobbied from time to time. I hope that in the first instance they are lobbied by their constituents, but then by all kinds of interested parties, whether from the voluntary sector or any other area of public life.

Everybody has a view to put forward. The issue is not whether they should be allowed to do that, but whether some groups may be doing it in a way that is less than transparent. Transparency is the key issue to which we must pay attention.

I share Karen Gillon's view that, in an ideal world, lobbying companies would not be necessary. However, the reality is that if people think that these companies can do something for them, they will employ them. Lobbying companies exist not just in the UK political system, but in political systems around the world. Given that some lobbying companies will probably operate in Scotland, we might have to move towards either some kind of regulation process or a tight system of codes of conduct. I am not yet persuaded which of those two options we should choose. I lean towards registration, but I think that there is a debate to be had on that. The mechanics of any process of registration are very complex. Countries that have introduced registration, such as Canada and some states of the United States of America, have had huge difficulties establishing a registration code.

I tend to think that a code should apply not just to lobbying companies, but to professional lobbyists who work for them. Individual lobbyists should be required to disclose to MSPs on whose behalf they are working and the basis of that contractual relationship.

Also crucial—this arises from the civil service code—is guidance for MSPs on handling approaches from lobbying organisations. That would help people to keep themselves right and provide us with a template for dealing with any instances of wrongdoing by members. Unless we set out the best way of handling approaches from lobbying companies, we will be on weak ground when dealing with members who, it is felt, have not acted correctly. For that reason, we need to

pay attention to this issue in the context of the code of conduct.

The Convener: I think that everybody has had a first opportunity to make known their views. Do members have any further comments in response to what we have heard so far?

Dr Simpson: Nobody will dispute the points that Karen Gillon makes about being completely open to all groups. My concern is that MSPs are aware of who is approaching them. A member may be approached by a lobbyist who happens to live in their constituency—there is no requirement on that person to declare their profession. Is it necessary for members to know that they are dealing with a professional lobbyist? Relatively wealthy companies will employ parliamentary officers, as many companies in Scotland have already done. They will be professional lobbyists who happen to be employed by one company.

I am quite happy to speak to such a lobbyist about an issue, as I am prepared to talk to anyone. However, I want to know where they are coming from, what their role is and whether they are speaking on behalf of a specific group or area. It is important that I have that information, so that I know how to conduct myself.

Karen Gillon: That is absolutely true, but if someone comes to my surgery, I do not need to know what their job is—if they are one of my constituents, I do not care what they do for a living. I have a responsibility to them—he or she is my constituent. I may find other people's jobs less wholesome than others—than lobbying, even—but that person is entitled, as my constituent, to ask me for my opinion and to lobby me. That is perfectly within their rights.

I would have concerns, however, if we were to ask people from only one section of the community what their jobs were. If those people came to my constituency, I would know what they did, but I would not know exactly what other people did—that is a dangerous game at the constituency level. I see what Richard Simpson is saying, in terms of the bigger picture, but at a constituency level, as an MSP, I should deal with everyone equally, regardless of what they do for a living or of any other criteria.

10:45

My other concern, which emerged from the inquiry into Beattie Media, is that we do not know what happens behind closed doors. We know what happened in that situation, because it was videoed—there was a very strong sales pitch. From the evidence, we do not know that it was any different from any other sales pitch that that lobbying organisation used with any other client. I am concerned that other lobbying companies may

use exactly the same sales pitch with other organisations. Whatever we do, we will never know what is said or claimed in private meetings between two individuals. For that reason, I am, in some ways, grateful to *The Observer* for its action, as it clearly brought into the open what happens in such meetings.

The Convener: Yes, I agree with that.

Tricia Marwick: I speak as someone who was, before the election, employed by Shelter Scotland as a parliamentary lobbyist—I was the organisation's public affairs officer. As a representative of a charitable housing organisation, I had no difficulty in making contact with ministers and Opposition members. In fact, I had a good relationship with my colleague, Lord James, when he was the Scottish housing minister. I could pick up the phone or write to John McAllion, Malcolm Chisholm, Jim Wallace or Alex Salmond. Most voluntary organisations, charities and so on have similar experiences.

Lord James and the other politicians that I contacted then knew exactly what Shelter was and why I was phoning them, whether it was about the code of guidance on homelessness legislation or to try to prevent the introduction in Scotland of legislation that was similar to the English legislation. Shelter was up front and that was my job. It is not only wealthy organisations that employ parliamentary officers—many organisations throughout Scotland do so. The Scottish Council for Voluntary Organisations has set up a unit specifically to help the hundreds and thousands of people who are employed in and work with the voluntary sector in Scotland to do just the kind of job that I did for Shelter.

I share Karen Gillon's view—it is my hope that commercial lobby companies will wither on the vine, because, in my opinion, we simply do not need them. If we are to be the open, accountable, transparent Parliament that we say we are going to be, everyone should have equal access. Regardless of whether people are acting as an individual, for a voluntary organisation or for a commercial firm, everyone should be treated in exactly the same way by this Parliament and everyone should have the same access to information, which is often important.

We have advantages over the Westminster system. I take on board some of Karen's points about the need not to allow companies to bed into the institution that is the Scottish Parliament. I will reflect carefully on what she said. We must not allow them to get a grip. We must not allow companies to tarnish the name of the Scottish Parliament. We cannot allow the Westminster system even to get a toehold in this Parliament. That is why so many of us are concerned about the activities of lobby companies. We promised

the people of Scotland that we would be different. It is incumbent on us to ensure that we are different and that everything that we do is open. However, we need to engage with individuals because lobbying is a legitimate part of the democratic process and it is right and proper that that should continue.

We need the expertise that is available in the voluntary sector, for example. Voluntary organisations are not just lobbying to get something out of us. The expertise and professionalism that voluntary organisations and others can give to the Scottish Parliament cannot be underestimated.

I still incline to the view that we should register companies that are paid to lobby on behalf of others. I do not think that there is any need to register individual voluntary organisations—I have to tell Adam Ingram that that would be an impossible task, as there are simply too many of them. Moreover, it could send completely the wrong message to the voluntary sector in Scotland and to individual companies that come to us. However, we need to consider carefully those companies whose reason for existence is to make money out of the parliamentary system—I feel extremely uncomfortable about such companies.

The Convener: I am conscious of the time, but I will take two or three more comments.

Mr Ingram: We have to regulate our own affairs within the Parliament. Rather than focusing on lobbying companies as a bad thing, we should concentrate on advancing the process that Tricia Marwick described as lobbying companies withering on the vine because they cannot provide a service to the client that the client cannot get directly from the Parliament. This Parliament should concentrate on creating the conditions under which lobbying companies do not thrive.

That brings me round to Karen Gillon's view. I understand her argument that registering lobbying companies will give them a clout that they do not deserve. On Tricia Marwick's point about the registration of lobbyists from individual voluntary organisations, some voluntary organisations can be equated with commercial companies in the way in which they go about their business. I do think that it would be as easy as Tricia suggests to differentiate between some third sector organisations and commercial operations.

Des McNulty: We have to be careful to distinguish between the role of the Standards Committee and the role of the Parliament generally. I am in favour of the ethos, which has been outlined by Karen Gillon and Tricia Marwick, among others, that Parliament should be open and accessible. I agree that that ethos should inform the procedures of the Parliament and the

committees.

We can pass that spirit on to other people and committees but, in a sense, the job of the Standards Committee is to deal with areas in which Parliament might not be open and accessible. There are particular issues relating to lobbying companies, lobbyists and the role of MSPs in relation to them. Those are the three things on which we must concentrate our attention.

There are some clear advantages and disadvantages associated with the process of registering lobbying companies. Registration makes the matter clear and explicit, but the difficulty lies in defining the terms of the regulation and in enforcing it. We have the task of policing the behaviour of MSPs and we should consider carefully whether we want to extend our role into policing other organisations. It may well be that we have to do that, but we should be aware of the difficulties surrounding the terms of the regulation and systems of enforcement.

A voluntary code of conduct might be a way of offloading part of the responsibility on to the companies. Depending on the role we took in framing the code and the sanctions that we could impose on those who breach it, we might be satisfied that that approach would be tight enough. I cannot see how we can escape the process of registration and a tight code of conduct. The Scottish public will not tolerate a situation where lobbying companies are unregulated. The companies will not wither on the vine, and we have to deal with the situation.

It is important that we deal not just with the companies, but with the individuals who engage in lobbying activities. That should be part of the registration process or the code of conduct. Individuals as well as companies should be monitored. Our prime responsibility is to guide MSPs on how to deal with such contacts and organisations, even lobbying in general. Many people in the Parliament are new to politics and there are do's and don'ts that were available to me when I became a councillor which are not available to MSPs. The pressure in the Scottish Parliament is much greater than in a council. We should consider that approach alongside the more formal aspects, such as registration.

The Convener: I would like to take two more contributions before we conclude, unless someone is desperate to say something else.

Lord James Douglas-Hamilton: Lobbying has always happened. It cannot be abolished—not effectively—and any attempts to do so would probably drive it underground. The whole thrust of the Parliament is towards transparency and therefore registration seems a lesser evil.

I have one qualification about registration. Countries that have decided to use registration and a compulsory code of conduct have to review the registration process because there are so many different forms of lobbying. It is easy to slip through the net and there have had to be regular reviews.

Karen Gillon: I have a quick point. We have had a worthy discussion, but there are many things that we cannot do much about. There is a limit to what we, as parliamentarians, can do.

The public are probably worried about the role of lobbyists but, in my experience of the past few weeks, they are more worried about whether there is evidence of impropriety on the part of the people whom they elected to serve their interests. The committee's priority should be to put in place the code of conduct, including a section on lobbying, offering advice to members about what is expected of them. At some point we should revisit the issue of lobbying organisations. However, at the moment, we need to get the code of conduct together. That is the priority for the public because they are more worried about the people they elect than people who work in private companies.

11:00

The Convener: I would like to close this part of the meeting at that point. I think that we have had a valuable initial debate on lobbying. The committee has noted that lobbying takes many forms and that, except where impropriety is involved, it is an acceptable form of parliamentary democracy. I would like to make the point that provisions, registration, declaration of interests and the rule against paid advocacy are already in place in the members' interests order.

I take on board the points that have been made about more advice being made available to MSPs. The role of this committee is to ensure that that happens by drawing up a code of conduct.

The regulation of the cross-party groups that we considered before the lobbying debate is designed to prevent any improper influence arising from the activities of such groups. There is a difference of opinion on the distinction drawn by some members between the role of the professional lobbyist and that of lobbying companies. I think that the clerks have made a note of that point. It will form options for discussion when we consider that section.

On guidance about handling relations with lobbying organisations, Adam Ingram made the point that MSPs might not know that they are dealing with lobbyists. Tricia Marwick made good points about the differences between voluntary organisations who employ people to deal with public relations, as Shelter employed Tricia in her

previous existence, and private companies who lobby for one organisation or another.

We have addressed many issues. Our discussion has helped us focus on issues in relation to the code of conduct.

Before we move on to the next item on the agenda, I suggest a suspension for a few minutes while we take legal advice on the issue. Are we agreed that we will suspend the meeting?

Karen Gillon: I would like us to stop suspending the meeting all the time. I have other things to do today. However, five minutes to take legal advice sounds reasonable.

The Convener: It is not my intention to suspend the meeting for long. Are we happy with that?

Members indicated agreement.

11:03

Meeting suspended.

11:38

On resuming—

Complaint

The Convener: We have received the latest legal advice on the issue of the complaint against Mike Watson MSP. Before I throw the matter open for discussion among members, I want to make it clear that, because the complaint in question has been made in public, we should deal with the issue in public and not in private session.

However, because we are dealing with the complaint in this way on this occasion—because it was initially raised in the public domain in the way that it was—that should not create a precedent for the committee's work on future complaints. That is particularly important when considering the procedures that we are about to set up in the code of conduct.

I would now like the committee to consider the complaint against Mike Watson. We have received all the relevant papers, including the details of the complaint and Mike Watson's reaction and response to the committee clerk's letter.

Our debate focuses on two questions. First, should Mike Watson have registered the support he received in the register of interests? Secondly, has Mike Watson breached the advocacy rule?

I would like to throw the questions open to members. Having gone through all the papers that we have received, what is your view?

Karen Gillon: Can I ask that we deal with the two questions separately?

The Convener: Indeed we can. Let us deal with the first question, on the register of interests.

Dr Simpson: I understand that there was a registration of interests, but that it might not have been in exactly the correct form. I think, therefore, that Mike Watson should be invited here, or should be advised on how to correct this and make registration appropriate.

Karen Gillon: The issue of sponsorship is paramount and, as I understand it, registration comes under a different category. It also appears, from our information, that Lord Watson will continue to receive administrative support, drafting support and legal support during the passage of the bill. If that is so, there is a case to be made for changing registered interests to sponsorship and we should ask Lord Watson to do that as a matter of urgency.

The Convener: Are we agreed that that should be our course of action?

Members indicated agreement.

The Convener: On the first point, we will ask Mike Watson to register sponsorship forthwith. I will do that immediately after this meeting.

Des McNulty: Paragraph 5 in the schedule to the members' interests order deals with this. I am concerned that Mike Watson did not consider that he should be required to register, or that the support he receives amounts to sponsorship. It is now accepted that that must be done.

If the situation is sorted out as it relates to Mike Watson, it is important to ensure that members bringing forward members' bills in future realise that, if they get support from outside organisations in the drafting of bills, that could come under sponsorship. They should be advised on that basis to avoid uncertainty or confusion in future.

The Convener: According to the act, that, of course, will be the case if the help is provided on a continuing basis.

Des McNulty: So is our conclusion that Mike should be advised to register forthwith and that we should issue advice to those who have indicated an interest in members' bills and bills in which sponsorship might be an issue?

The Convener: We will ask the clerks to make that clear to MSPs.

Lord James Douglas-Hamilton: The effect of this will be that MSPs will in the same position as MPs in the House of Commons.

The Convener: I am not sure what the situation is in the House of Commons.

Are we happy with that first part?

Members indicated agreement.

The Convener: The second and perhaps more difficult area is the question of whether Lord Watson has breached the advocacy rule.

Karen Gillon: This is the primary issue for consideration by this committee and for any member who wishes to bring forward a member's bill. That rule appears in article 6 of the members' interests order and it is wide-reaching. We must read that order and section 39.4 of the Scotland Act 1998. That section states:

"Provision shall be made prohibiting a member of the Parliament from—

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or

(b) urging, in consideration of any such payment or benefit in kind any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means."

The key words are "in consideration of" and, having read the evidence, I do not believe that Lord Watson brought forward that bill in consideration of any support that he subsequently received. The key issue is whether he gained from it, and I do not think that that is the case. He has not broken the rules on unpaid advocacy, which we have examined alongside the Scotland Act 1998.

The Convener: Do other members have any views on that?

Lord James Douglas-Hamilton: I agree that there was no paid advocacy. We have had very good legal advice that I believe has been correct.

The Convener: Is that the view of every member of the committee?

Members indicated agreement.

The Convener: That is clear. Our conclusion is that there is no question of Lord Watson having breached the advocacy rule, but we will advise him that he must register his interests forthwith.

Karen Gillon: There has been some confusion among MSPs about the paid advocacy rule and about issues related to members' interests. I ask that for future consideration the clerks prepare a paper on any possible amendments to the members' interests order, if that is appropriate.

The Convener: I think that that is a reasonable and positive outcome from this incident that will be helpful to members in the future; it will certainly help us in the future.

We will move on to item 5 on the agenda.

11:45

Meeting continued in private until 12:47.

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