

STANDARDS COMMITTEE

Wednesday 24 November 1999
(Morning)

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STANDARDS COMMITTEE 13th Meeting

CONVENER :

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

COMMITTEE MEMBERS :

Lord James Douglas-Hamilton (Lothians) (Con)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

Karen Gillon (Clydesdale) (Lab)

*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:

John Young (West of Scotland) (Con)

COMMITTEE CLERK:

Vanessa Glynn

ASSISTANT CLERK:

Alastair Goudie

Scottish Parliament

Standards Committee

Wednesday 24 November 1999

(Morning)

[THE CONVENER *opened the meeting at 09:37*]

The Convener (Mr Mike Rumbles): Good morning. Welcome to the 13th meeting of the Standards Committee. Before we start, I would like to welcome back Patricia Ferguson to the committee and to acknowledge the presence of John Young, who is with us today.

Cross-party Groups

The Convener: The first item on today's agenda is the committee's report on cross-party groups. The Scottish Parliamentary Corporate Body has approved our recommendations for use of parliamentary facilities by such groups, and the clerks have suggested a couple of amendments to clarify the practical arrangements. Those are highlighted in the text that members received before the meeting. Is the committee content to proceed with the publication of the report on the basis of the amended text?

Des McNulty (Clydebank and Milngavie) (Lab): Yes. The text is now entirely satisfactory in terms of its clarity and detail. It accords fully with the principles agreed by the committee on how this matter should be taken forward. I am happy to support its going forward for publication.

I suggest that we find a mechanism for bringing to the attention of Parliament and the public the fact that the system that we have put in place is innovative. The Scottish cross-party groups will have a considerable impact on the broadening democracy agenda in Scotland. They are more open and more participative in intention—and, I hope, in actuality—than their equivalents at Westminster. It might be appropriate to suggest to the Parliamentary Bureau that it schedule a short debate in the Parliament to highlight that fact and bring it to the public's attention.

The Convener: Is that the view of the rest of the committee?

Tricia Marwick (Mid Scotland and Fife) (SNP): It would be an excellent idea to ask the bureau to find some time for a short debate on this matter. That would indicate to the general public and to the large number of organisations that want to interact with the new Parliament how we hope to go about our business; it would also provide an

opportunity for us to bring this issue to the attention of MSPs. Such a debate would enable people to see that we are trying to be the open, accountable, transparent and accessible Parliament that we promised. There is a great deal of interest in our deliberations on cross-party groups, particularly from voluntary organisations throughout Scotland, which are keen to place their relationships with us on a firmer footing. We have done a good job on this and it will be widely welcomed. We should ensure that the public is as well informed about it as possible.

The Convener: If that is the view of all members of the committee, I will approach the Parliamentary Bureau to ask for a short debate.

John Young (West of Scotland) (Con): Perhaps you can guide me on this, convener. For some months, I have been a member of what we term an all-party group. Its subject is the provision of hospitals on the south side of Glasgow and in East Renfrewshire. At this stage, not all our meetings can take place in public—I stress that at the moment they are taking place outwith the Parliament—because there are conflicting interests with respect to the hospital provision to which I have referred. Undoubtedly, there will come a time when we have to make approaches to the Parliament and even make use of its accommodation. I am not sure whether, as an all-party group, we are required to register under this provision.

The Convener: A group must register only if it wants to be recognised as a cross-party group in the Scottish Parliament. You must register if that is what you want.

John Young: That may come later. At the moment, I do not think that members would want to do that.

The Convener: That is fine.

Mr Adam Ingram (South of Scotland) (SNP): As John Young says, a number of groups have already sprouted up—indeed, they seem to be sprouting up all over the place. I notice that the clerks have included some rules on interim arrangements. Could Vanessa Glynn inform us of the time scale for registering groups and for establishing a cross-party bulletin and so on? Are we looking to get them up and running in the new year?

Vanessa Glynn (Committee Clerk): We had thought that we would try to start the registration process before the Christmas recess. If the committee wants to seek parliamentary time for a debate, the process may be somewhat delayed, but I would still expect it to begin early in the new year.

The Convener: I will take our suggestion before

the Parliamentary Bureau.

09:45

Des McNulty: It may be some time before the bureau can process it. Must we formally seek Parliament's agreement before implementing this as a de facto procedure, or can the Standards Committee say that it will be the procedure unless it is modified by Parliament? I am thinking about the next three or four weeks. I will be involved in the start of a cross-party group this evening.

The Convener: I understand your concerns. This is a major innovation and it would be most appropriate if Parliament were to approve it. All-party groups have started to form, but the advice from the clerks is that we should seek parliamentary approval.

Mr Ingram: We are not holding people back from doing the work—this is a question of registering the groups. I note that the Standards Committee must approve them; I think that we will have a long list to approve.

Tricia Marwick: Would it be possible to distribute this document on regulation of cross-party groups to MSPs as a draft? We should let members know that it is available and that it is likely that the proposals in it will eventually be adopted. If cross-party groups are being set up, they will be able to benefit from the thinking that we have done over the past few months. We could help with potential problems without taking away the right of the Parliament to approve groups.

The Convener: You are absolutely right, Tricia. We have approved this document, so it will be published immediately and be in the public domain.

Interim Complaints

The Convener: We now move to the next item on the agenda, which is a discussion of the interim complaints procedure. It was clear at our previous meeting that members felt strongly that a procedure should be put in place urgently. Members have the draft report on the procedure before them. It is proposed that the committee report to Parliament so that our intended procedure is clearly recorded and available to all MSPs and to anybody else who is interested. What are members' views on the procedure and the report?

Des McNulty: I would like to combine bullet points 4 and 5 in annexe A. The first sentence of bullet point 5 would be incorporated into bullet point 4, which would then read: "Any complaint should be substantiated by supporting evidence. It should specify the conduct which is being

complained about and what rules relating to MSPs' conduct it is alleged have been breached." I would omit the final sentence of bullet point 4 because it is implicit in that revised wording. What I am, in effect, suggesting is that we take out point 5 and incorporate its first sentence into the beginning of point 4, and that we take out the final sentence of point 4. That way it will be clear that when people register complaints they must provide evidence, they must say what the complaint is about and they must indicate what rule or aspect of the code of conduct it is alleged has been breached. If those three things are done, speculation is cut out.

John Young: It might not always be the case that evidence for a complaint is available, although more often than not it will be. The complaint might be based only on suspicion and it might be that a member is merely expecting an inquiry rather than making a complaint. We should expect evidence if any is available, but there should be an avenue for somebody who feels that something is gravely wrong but can produce no evidence.

The Convener: Suspicion is always based on some form of evidence. If there is suspicion of wrongdoing or malpractice, there must be evidence to support that.

John Young: That is true, but there may be no tangible evidence to produce. Suspicion can be based on opinion, although that opinion might be wrong.

Des McNulty: John Young's point is fair. I will go back on what I said to an extent—after the first sentence in point 4, we should include instruction that complaints should be supported and substantiated by whatever evidence is available.

The Convener: That would cover John's point.

Des McNulty: It would also cover another issue about which we had some reservations; that arose from a previous inquiry in which we had waves of evidence. We should require all supporting evidence to be made available to the committee at the beginning of the process so that we can see what we are dealing with.

The Convener: That is noted and we will change those two bullet points accordingly.

Tricia Marwick: In bullet point 2, we should delete the words

"including the press or media until the complainant is authorised to do so".

We should change the wording of the paragraph to: "The complaint may be copied to the Presiding Officer but should not be communicated to any other person until the Standards Committee has an opportunity to consider what action might be taken."

In the past few weeks a complaint was highlighted in the press before the Standards Committee had heard it. We do not want trial by the press and we do not want members running to the press to say that they are presenting a complaint to the Standards Committee. It must be clear that we will treat all complaints fairly and confidentially. It is not helpful if members try to make press opportunities out of complaints about fellow members of the Scottish Parliament. That brings the Parliament into disrepute. It does not help any of us to do our jobs if we are constantly hounded about letters that we have not seen.

Mr Ingram: That is fair, but is not it the case that, in the real world, complaints come out in the press before they are communicated formally to us? The code of conduct working party suggested that all complaints should be channelled through the Presiding Officer in the first instance. Is it the case that we will now be the channel and that the Presiding Officer is happy with that?

The Convener: I can confirm that I have spoken to the Presiding Officer; he is content that we take this responsibility and that complaints are directed to us rather than to him.

Mr Ingram: I am not surprised.

Des McNulty: We should consider making it clear that the Standards Committee takes a dim view of members going to the press first and that that in itself might be considered a breach of the code of conduct.

The Convener: There is a difference. Adam Ingram is talking about complaints which are highlighted by the press first, whereas Des McNulty is talking about MSPs going to the press with complaints before bringing them to the committee, which has happened.

To get this procedure right, we should incorporate both those points into the one bullet point. The clerk has made a note of that. Des McNulty is saying that it should be part of our complaints procedure that, if MSPs raise a complaint against another MSP, that complaint should be handled by this committee and not raised in the press first. Adam Ingram's point is about general complaints, which are not raised by MSPs but appear in the press from other sources. Those cases would also be open for us to investigate.

Is everybody happy about changing the bullet point?

Members indicated agreement.

Patricia Ferguson (Glasgow Maryhill) (Lab): In bullet point 8, would it be worth clarifying our position by adding on a new sentence such as, "As a general principle, however, the committee will meet and take evidence in public, but reserves

the right to deliberate in private"?

The Convener: Are members happy with that? I think that it is a good point; we could amend that part of the document accordingly.

Members indicated agreement.

The Convener: That is agreed. Are there any other points about the complaints procedure? Shall we leave it to the clerks to amend those points that we have raised, identified and agreed on, and proceed with the publication of the report so that it is in the public domain as soon as possible?

Members indicated agreement.

The Convener: That is agreed.

Des McNulty: I suggest that we circulate the report to members of the committee before it is finally published in case there are any last-minute changes to be made.

The Convener: That is agreed.

Draft Code of Conduct

The Convener: Our main business today is the continued consideration of the draft code of conduct for members. There are four sections of the draft to consider. We have set ourselves the ambitious task of completing our work on the code by the Christmas recess, but I am sure that it is well within our ability to do that. Our next meetings will be on 7 and 8 December, when we will consider the sections of the draft that we have not yet discussed at all. On 14 December, our final scheduled meeting before Christmas, we shall reconsider the whole code and finalise the entire draft.

There is quite a bit of text before us today and, if we are to meet our target, we must get through all the material. We must agree what these sections of the code are to contain, so that the text can be finalised.

We shall work through each section in turn. I ask members of the committee to focus on the content of the code, very much as we did with the previous item that we considered, rather than devote a lot of time to dotting i's and crossing t's.

First, we shall consider the introduction to the members' interests order. The text is a factual introduction to the legislation that forms the basis of existing rules on members' interests. Subsequent sections for consideration at our next meeting will go into the detail of the requirements of the legislation. I shall go through this document page by page, starting with page 1 of section 2, the introduction to the members' interests order.

Are there any comments on page 1?

Des McNulty: The final bullet point on page 1 reads:

“What constitutes a registrable interest is explained in the Schedule to the Order.”

As it is unlikely that the schedule would explain that completely, perhaps the sentence ought to read: “Guidance on what constitutes a registrable interest is explained in the Schedule to the Order.” That would be more precise.

The Convener: Point taken.

Are there any comments on page 2?

Mr Ingram: The second bullet point states that the members’ interests order

“restricts a Member’s participation in proceedings of the Parliament where he receives or expects to receive a payment from any person.”

Should not the word “prohibits” be substituted for the word “restricts”? Do not we want an outright ban on any remuneration or reward that derives directly from the role of members?

The Convener: The clerk informs me that there are some proceedings in which members are allowed to participate for payment. It is not absolutely prohibited, but I am not sure of the circumstances in which it is allowed.

Patricia Ferguson: The point refers only to business that has a direct effect on the interests of the other body or individual. Members are not prohibited from taking part in all the business of the Parliament; they are prohibited only in the particular area in which they have an interest.

The Convener: The word “restricts” is therefore appropriate. The lawyers have gone over this document with a fine-tooth comb.

Mr Ingram: The other question that arises concerns MSPs’ relationships with members of their staff and with family members. Will we mention anything about that?

10:00

The Convener: We have not done so yet, but we do not need to spend too much time on that as we are simply reiterating what is in the order.

Are there any other points on page 2?

Des McNulty: There is a point about preventing or restricting members

“from participating in proceedings of the Parliament”.

The preamble makes reference only to contravention of the members’ interests order. Strictly speaking, it should also refer to the relevant section of the Scotland Act 1998. That is really a legal issue.

The Convener: We shall come back to that

when we discuss paid advocacy. Do you think that that is appropriate?

Des McNulty: Yes.

John Young: Adam Ingram mentioned the point about restricting

“a Member’s participation in proceedings of the Parliament where he receives or expects to receive a payment from any person.”

There may be situations in which somebody could gain advantage not necessarily for himself but for members of his family. That may lead us into difficult depths, but it is not impossible that an advantage of some sort could be gained. Should that be mentioned? The payment need not be monetary, but it could be advantageous. As I say, we can only go so far with this; in many cases, we must leave members’ conduct to their consciences.

The Convener: The clerk advises me that the introduction to the members’ interests order refers to what is in the legislation, so we have no remit to go beyond it.

John Young: That is fair enough.

Des McNulty: The third bullet point states that the members’ interests order

“allows the Parliament to prevent or restrict a Member who fails to comply with or contravenes certain provisions of the Order . . . and, in certain circumstances, to exclude such a Member from the proceedings of Parliament.”

I thought that that role would be played by the Presiding Officer. The wording could be interpreted as meaning that a motion of the Parliament would be required.

The Convener: It would require a motion of the Parliament.

Des McNulty: The fifth point reads that the order

“provides that any person may inform the Presiding Officer if he or she considers that a Member has failed to comply with or has contravened certain provisions.”

The wording of that point should be consistent with what we said about the complaints procedure.

The Convener: That is what the order says, but I take Des’s point. What we are trying to do with the complaints procedure—the Presiding Officer has agreed to this—is to ensure that complaints come to us. Let us leave the wording of that point as it is, as it reflects what is in the order, and take advice on that.

Des McNulty: I just wanted to highlight it.

The Convener: Are there any other points about page 2? There are no more points on that section.

We now move to section 6, which is on lobbying. The draft aims to reflect our discussion of 10

November. It is important to set appropriate standards for MSPs in this part of the code. Members should remember that we are concentrating on the conduct of MSPs only. We have had some time to consider this section, so I would like to work through it page by page, as changes may be needed.

Tricia Marwick: The first sentence of the third paragraph of section 6 reads:

"Amongst the experts who offer relevant services are those who specialise in lobbying."

There are some people who lobby who claim to be experts, but I do not think that it is our role to give them more credit than they perhaps deserve. I am not happy to leave the words "Amongst the experts". We could say, "There are some companies that specialise in lobbying", but we should not suggest that such people are experts in their field or in any other.

The Convener: So the sentence might read, "Amongst those who offer relevant services, there are some who specialise in lobbying." Would that read better? What do other members think? Is that what you are suggesting, Tricia?

Tricia Marwick: It is the word "experts" that worries me. The Parliament should not imbue them with that respect.

The Convener: That will be taken on board. The clerk will change the sentence.

Patricia Ferguson: May we delete the word "relevant" as well? Whether services are relevant depends on the context. It would be safer to take the word out.

The Convener: I think we have the flavour of members' feelings.

Are there any other comments on page 1?

Des McNulty: I am not sure that I agree with the last sentence of paragraph 3, which says:

"In this Code, the term "lobbyist" is used to mean the whole range of those who lobby."

That is inconsistent with other parts of the document. We use the term to talk about lobbying companies later on. There is a need for clarity and consistency of language. I accept that, as an MSP, I am continually lobbied by people of all kinds, particularly constituents, about issues of interest to them, but in my view, those people are not "lobbyists". Lobbyists are people who put forward a position on behalf of a particular organised interest. There is also a category of lobbyists who are paid to lobby on behalf of clients—paid lobbying is their business.

The Convener: Is everyone happy to remove that sentence?

Members indicated agreement.

The Convener: That is what we will do then. Are there any other comments on page 1?

We move to page 2.

Mr Ingram: I agree with the first sentence on page 2, that

"A distinction can be made between individuals or organisations which lobby on their own behalf and individuals or organisations who lobby on a fee basis on behalf of clients – 'professional lobbyists'",

but "professional lobbyists" should include people who are employed by an organisation to lobby. There are examples throughout the world of people trying to differentiate between professional lobbyists, who have multiple clients in various fields, and people who are employed by large organisations to lobby. I would not like to see such a clear distinction here.

In Canada, a distinction was made between professional lobbyists from lobbying companies and lobbyists employed by individual organisations. There was a different set of rules for each. It proved difficult to disentangle the two and the system was unfair, so they dropped the distinction and included people who are employed by organisations to lobby in the definition of professional lobbyists. That is what we should do. In practice, we cannot differentiate between the two. We are not considering the regulation of lobbyists now, but we may move towards that. For clarity, the definition of a paid lobbyist should include all staff of organisations and associations who engage in lobbying, as well as journalists who have secondary lobbying interests.

Des McNulty: We are getting into a difficult area and we are doing things slightly the wrong way round. We must confront one fundamental issue: are we going for a system of registration of lobbying, a code of conduct, or no regulation at all? Those are the three choices.

Public pressure is strong for the Parliament to exercise a clear and transparent system of control over lobbying companies. That is clear. I believe that if we go for a system of registration. We should register not only lobbying companies, but the individuals who work for them, so that people must declare on whose behalf they act. However, if we try to extend control—whether through registration or a code of conduct—to other organisations whose main activity is not lobbying, there is a danger that the process will become unmanageable for the Parliament and for the organisations. We need to pay attention to the scope of the exercise.

We may decide, in the first instance, to concentrate our attention on lobbying companies and to move on to discuss whether there are any other groups that need to be controlled. The first thing is to decide whether the mechanism for

dealing with lobbying companies—who caused the concern among the general public—should be regulation, a voluntary code of conduct or whether we should simply try to discourage the companies, as you, convener, suggested at one stage. There are complexities and that question is at the centre of them.

Tricia Marwick: What we are discussing today is the guidelines for MSPs on how they should interact with people who lobby. At some point in the future we will have a discussion about registration, but that is not what is up for discussion today.

If we go down the road that Adam Ingram suggests, and define professional lobbyists as every person who ever lobbies—I accept Des McNulty's points—we will include a lot of people whose main occupation is not lobbying. That would make it impossible to have a future discussion on registration and regulation because at a conservative estimate—it is a small "c", John—there must be 20-odd thousand people in Scotland who lobby in some way. If we include our constituents who lobby us when they come to see us, we are talking about many more people.

Adam's suggestion would bind our hands in the discussion that we need to have on registration. Although I am not entirely happy with the wording that we have at the moment, it distinguishes between those who lobby for a fee because it is their job and the organisations and individuals who lobby us on behalf of themselves and their organisations. A distinction can be made now and in the future without drawing everyone into the huge pool that Adam is suggesting.

10:15

John Young: I agree with a lot of what Tricia said, but there is no question—I think that we accept it—that lobbying is here to stay. It has come across the Atlantic, like many other things. It will not go away. Not all professional lobbying is necessarily bad. Lobbyists can put forward good cases for integral parts of society, industry and so on. We are trying to govern the relationship between those types of lobbyists and members. It is crucial that members are not signed up as sub-agents and paid as sub-lobbyists. How the lobbying is done is important.

Lobbying will not go away, and it will increase with time. All sorts of specialist groups are coming into being. They can be helpful. In this building, a month or two ago, I attended a gathering at which the Road Haulage Association put forward some interesting points, which was advantageous to members. We must draw a distinction. We are trying to govern the relationship between elected members and lobbyists, but the latter come in all

shapes and sizes.

Mr Ingram: Tricia has misrepresented my position somewhat. Essentially, I am arguing that we should include people who are paid to lobby. That is not restricted to lobbying companies. There are a number of organisations that would not be included in the definition that we have, but which employ people to lobby.

We have already run into cases in which there were question marks about the relationship between lobbyists and members of the Scottish Parliament. For example, I can think of a number of countryside organisations to which that would apply. The definition of paid lobbyists should include people who are employed by companies or organisations to lobby MSPs, as well as lobbying companies themselves. I hope that clarifies what I am saying. I am not talking about just anyone who lobbies MSPs—constituents or otherwise. I am referring to people who are paid to lobby.

Tricia Marwick: My sincere apologies Adam, if you feel that I misrepresented you. I may have misrepresented you, but I still disagree with you, particularly with regard to your second point. I have no great love for the Countryside Alliance, as some here will know, but surely you are not suggesting that because that organisation employs a parliamentary officer, that person should be registered in the same way as someone who works for a lobby company and five or six other organisations? That would not make sense. For example, I know, whether it be the Countryside Alliance, the Road Haulage Association, Shelter or anyone else who contacts me, where they are coming from and what their agenda is, and I can take their advice or reject it as I wish.

A number of voluntary organisations have parliamentary officers, but their role goes much wider. For example, the parliamentary officer of Shelter deals with a multitude of matters. First and foremost, they are not employed as lobbyists; they are employed because they know what the issues are, and therefore they are the people who come to us.

If Adam's suggestion is taken to its ultimate conclusion, it means the parliamentary officer of, say, the Road Haulage Association being registered—and the managing director being registered if he interacts with us at a reception. Frankly, that is nonsense. We need to make a distinction with regard to such situations and leave enough room to manoeuvre, debate and discuss the future of regulation. We should accept what is in front of us and move on.

Mr Ingram: A lot of what Tricia said was relevant to a discussion of the regulation of

lobbyists, but we are not talking about that: we are talking about a code of conduct for MSPs with regard to their contact with lobbyists. All I am saying is that the relationship between MSPs and people who are employed to lobby, whether or not they belong to lobbying companies, should be covered by the code of conduct and we should not limit our definition in the manner suggested.

The Convener: If I can draw this together, we have a difference of view, but that is not inconsistent with what is in the section on lobbying, which states:

"A distinction can be made between individuals or organisations which lobby on their own behalf and individuals or organisations who lobby on a fee basis on behalf of clients – 'professional lobbyists'."

It also states:

"It is difficult to give a clear cut definition".

We have just proved that point. I would be content to leave the wording as it is, unless anyone wants to push the matter.

Mr Ingram: I would like to push it to include people who are employees of organisations that are paid to lobby.

The Convener: I see shaking heads. Do you want to push it to a vote?

Mr Ingram: My suggestion would be consistent with the working group code of conduct.

Patricia Ferguson: It is worth pointing out that the next paragraph talks about the rules and guidelines that apply to MSPs in their interaction with lobbyists. That is the part of today's discussion that is important. Most MSPs understand the difference between someone organising a lobby of MSPs for, say, Women's Aid—which has publicised how easy, transparent, open and helpful lobbying was—and someone who sends MSPs an invitation to an event, the genesis of which is not 100 per cent clear.

All we are trying to do, in what is almost a preamble to the guidelines to members, is to flag up that there are differences and that we are aware of them, as are many, or all, MSPs. We do not need to say any more in that section than we have already. People understand the distinction, and that it is not a definition that can be inscribed in tablets of stone and set for all eternity.

The Convener: Before we finalise this matter, there is one point that I would like to make regarding the sixth line. We should remove the word "sole". The text would then read: "In this Code the term 'professional lobbyist' will be regarded as including consultancies with paid staff or individuals whose business is lobbying".

Leaving

"consultancies . . . whose sole business is lobbying"

would offer a get-out clause. Are we content to lose the word "sole"? I am trying to proceed on a consensual basis. Without pushing the matter to a vote, Adam Ingram, I think that we should move on.

Mr Ingram: Obviously, I would lose a vote. I would still like to flag that up as an issue that we should return to.

Patricia Ferguson: Would it help Adam Ingram if we took out the words "on a fee basis"? I recognise that, as Adam says, there are people who are employed to lobby, but not necessarily on a fee basis.

Mr Ingram: I am saying that there are powerful organisations that gain advantage by employing people to lobby on their behalf. MSPs have to be as wary of them as of professional lobbying companies.

Des McNulty: In a sense, the second "on a fee basis" in that sentence is superfluous.

The Convener: Although the clerks—in consultation—produced this document, the language is taken from the consultative steering group guidelines.

Des McNulty: Is that a recommendation?

The Convener: I think that Adam is right to flag the matter up. I would prefer to discuss it again at a later date. We have removed the word "sole".

Are there any comments on anything else on the second half of page 2?

Des McNulty: The fourth paragraph says:

"Failure to observe these requirements may constitute a criminal offence."

I think that that is accurate, but I think that we should say, "Failure to observe these requirements would constitute a breach of the code of conduct and may constitute a criminal offence."

The Convener: That is agreed.

Are there any other points on page 2?

We will turn to page 3, which is on other rules and guidance.

Des McNulty: Can we flag up at the bottom of page 2 that we will have to consider hospitality rules in due course so that we can provide guidance to members on that?

The Convener: Yes. We must be clearer about what hospitality is appropriate and can be accepted.

Des McNulty: My experience of local government is that rules on hospitality are made

very clear in guidance to members. I would have thought that the Parliament would want something similar.

Tricia Marwick: I have a slight concern about the second last paragraph on page 3, which says:

"In making any representations as a result of being lobbied, an MSP should disclose the fact".

For example, if Parliament is debating domestic violence, Scottish Women's Aid might send us briefing papers, as many organisations do, to give us the facts and figures; do we expect that every member who has been sent that briefing, whether they have read it or not—it might have gone to their researcher—should stand up and announce that fact before they speak? At present, that is what we are suggesting should be done.

Des McNulty: On some issues, that might take up one's four minutes.

Tricia Marwick: That requirement needs to be taken out.

Mr Ingram: I think that we would want meetings between lobbyists and MSPs to be registered. That relates to having a standards commissioner, regulations, registers and so on.

You talked about measuring remuneration, gifts, hospitality and other benefits. That is not very specific, and could range from a cup of tea to whatever. I believe that the code of conduct working group thought that the value of gifts should be below 0.5 per cent of an MSP's salary. I think that that limit is rather too high.

The Convener: We are concerned about hospitality where it might reasonably be thought to influence a member's behaviour. I do not think that any reasonable person would imagine that a cup of tea would do that. However, you are right that hospitality is an important issue, on which we have received two or three letters requesting guidance. I have asked the clerks to research this matter. We will discuss it again in future so that we can give MSPs a little more guidance.

10:30

John Young: If one were offered a holiday in the south of France, it would simply not be acceptable to take it. On the other hand, I can declare here and now that last week I had one salmon rissole, three pieces of lettuce, a tomato, cheese, fruit and a glass of wine from British Energy, as did other members. That was a very nice lunch, but it will not influence me one way or the other.

We can go overboard on this. It is like a surgeon who is about to carry out an operation. He is 100 per cent certain that he will be successful, but something suddenly goes wrong so that he is not

successful. We can be too complex. Every MSP knows what is right and what is wrong. They may do something that is wrong, but everyone knows that they should not go beyond certain bounds. For example, they should not accept a crate of wine for Christmas. As Des McNulty says, such activity was prevalent at one time in local government.

The Convener: This is an issue for us, because I am not sure that members do know whether accepting a crate of wine is appropriate.

John Young: I do not think that it is—maybe a bottle of wine is acceptable.

The Convener: Exactly, but opinions differ. It is this committee's job to help members by saying clearly what is acceptable.

John Young: I understand that one committee convener told members when they were visiting other parts of Scotland that they should not accept a sandwich from a local authority. That is absolute nonsense. That convener should have known better, because she had been involved in local government.

The Convener: My point is that members have different interpretations, and need guidance from this committee. I have asked the clerks to work on this.

John Young: If one were invited to a local authority function at which tea, coffee and sandwiches were being served, one would look ridiculous if, while everybody else was munching away, one stood back and said, "Sorry, I am not allowed to take a tomato sandwich." It would almost be an insult to the host. It is a question of balance.

The Convener: You are absolutely right.

Rather than considering this document page by page, it might be wiser to go through each paragraph on page 3. It is important that we do that.

The first paragraph says:

"A Member should not, in relation to contact with any person who seeks to lobby him or her, do anything which contravenes this Code of Conduct or any other relevant rule of the Parliament or any statutory provision."

That is a straightforward introduction. Is everybody happy with that?

Des McNulty: I take the view that it is constituents and groups of constituents who lobby me on issues. The sentence should not read "any person" but "any lobbying company or organisation".

The Convener: The advice is that it should be "any person" because an individual constituent might treat a member to a slap-up meal.

Des McNulty: I agree in general, but this is about lobbying.

The Convener: Individuals lobby, do they not?

Des McNulty: Okay.

John Young: In the first few months we all received a proliferation of well-produced, expensive brochures and so on—two rainforests a day were being destroyed. That is lobbying. One can only go so far on this, and draw up broad guidelines to advise members on what they should not do.

The Convener: All the first paragraph is saying is that we should not contravene the code. Do we agree with that?

Members indicated agreement.

John Young: That is fair enough.

The Convener: Do members agree with the second paragraph:

“A Member should not act in any way in relation to a lobbyist which could bring discredit upon the Parliament”?

Members indicated agreement.

The Convener: The intention is that a member should not act in that way in relation to any person.

The third paragraph relates to the things that John Young was talking about, such as sandwiches or cups of tea from local authorities. It states:

“In addition to compliance with the statutory provisions referred to above, a Member should not accept any remuneration, gift, hospitality or other benefit from any lobbyist”—

a lobbyist is defined as a person or a group—

“that might reasonably be thought to influence, or be intended to influence, his or her judgement in carrying out Parliamentary duties.”

We are saying that that is for the individual MSP to decide. I am asking the clerks to provide some practical guidance for members, which might be useful for future meetings. However, that is the rule which individual members must take on board. Is everybody happy with that?

Members indicated agreement.

The Convener: The next paragraph states:

“A Member should not offer or accord any preferential access or treatment to professional lobbyists, nor should a professional lobbyist be given to understand that preferential access or treatment might be forthcoming from another MSP or group or person within or connected with the Parliament.”

We are talking about preferential treatment.

Mr Ingram: Again, we are defining the person as a professional lobbyist. The person is defined

rather specifically.

The Convener: I understand that difficulty. Perhaps we should change the wording to “lobbyists”, which would include our previous description. What about “preferential access or treatment”? Does anybody have any other comments on that paragraph, about “preferential access or treatment”?

Des McNulty: That gets to the point where we are talking about lobbying companies.

The Convener: I am advised that we should leave the description as “professional lobbyists”.

The next paragraph states:

“A Member should consider whether meeting one person or group making representations on a particular issue should be balanced by offering other individuals or groups a similar opportunity to make representations.”

Des McNulty: I think not. For example, I am a fairly militant anti-smoker, but I will not speak to the Freedom Organisation for the Right to Enjoy Smoking Tobacco about its views on smoking—I know what I think.

The Convener: On the other hand, the paragraph does not say that you should—it simply says that you should consider doing so. You took one second to answer that.

Des McNulty: Members should take a balanced view, but they should not be forced to speak to anyone.

The Convener: The paragraph does not force them to do so, does it? It says simply that a member should consider that.

John Young: I would withdraw that statement. A councillor, for example, would be constrained by it time and again during planning applications. One section of the community might want an application to succeed, while another might not. Both sides might approach the councillor—fair enough. However, the councillor should not be forced to go out and seek the other point of view, whoever may hold it. It is not always known who holds the opposite point of view.

The Convener: I would be happy to take the paragraph out if members wanted me to do so. However, I feel that it is asking members simply to consider that action, not forcing them to take it.

John Young: I do not think that it would be possible to include it, in any shape or form.

The Convener: We will remove it.

Des McNulty: We are trying to deal with members' approaches to lobbying.

Tricia Marwick: All that we are offering is a level of guidance for MSPs. Members might think that they could make judgments whether to meet

organisations, but others might not take that view. I do not think that there would be any harm in leaving the paragraph in.

John Young: The word that I find problematic is “offering”.

Mr Ingram: It is a political judgment. We are all supposedly politicians. We are here to make such judgments. The paragraph may be kept or not kept, but I would have imagined that most members were perfectly capable of making that decision for themselves. They do not need to have it written down in a code of conduct.

Des McNulty: If we are to give members guidance on the way in which they should treat information from lobbying companies, that is fine. I am concerned about putting the onus on members to balance their contacts with different organisations. By drafting, we could create a category of offence for members that I think it would be better to avoid.

The Convener: Do members have no strong views on the paragraph?

John Young: Will you remove it, convener?

Tricia Marwick: Please do not.

John Young: Fox hunting is an example. I am against hunting with hounds—perhaps I am the sole member of my party who is against it. However, I will not go voluntarily to the Countryside Alliance to ask for its views on the matter. If the Countryside Alliance approaches me, I will respond to it courteously. I might not agree with everything that it says—although I might agree with some things that it says—but there is no need to have it written down that I should make an offer to go to the other side, if I can call it that.

The Convener: The paragraph has been taken out.

The next paragraph states:

“Before taking any action as a result of being lobbied, a Member should be satisfied about the identity of the lobbyist and the motive for lobbying. A Member may choose to act in response to a professional lobbyist but it is important that an MSP knows the grounds on which he or she is being lobbied in order to ensure that any action the Member takes in connection with the lobbyist complies with these rules.”

Des McNulty: I have two points to make. The paragraph should state that members should satisfy themselves about the identity of the lobbyists and the motive for lobbying. It should also state that the onus of declaring that lies with the lobbyist. I want to make it clear that members have an obligation to attempt to find out who they are dealing with, but that the onus should be on the lobbying organisations to indicate where they are coming from and what they are up to.

The Convener: I understand that. That is absolutely valid. However, we must remember what we are drafting—it is a code specifically for MSPs. Bear that in mind.

Des McNulty: Perhaps we could dilute the paragraph a wee bit, and say that members should “seek to satisfy themselves”. It could be put in brackets that they should bear it in mind that the onus should rest with the lobbyists.

The Convener: Members should “seek to satisfy themselves”. However, within these rules, the onus is on MSPs, as they are guidance for MSPs.

As members have no other points to make on that paragraph, let us move on to the next one.

Tricia Marwick: I raised the point a wee while ago that I thought that we should exclude the next paragraph.

The Convener: Do members agree?

Members indicated agreement.

The Convener: We will exclude that paragraph.

The next paragraph states:

“No Member should use his or her position to help any lobbyist get a benefit to which the lobbyist is not entitled.”

That seems straightforward.

Des McNulty: I am not sure what “benefit” means in that context.

John Young: Is it straightforward? I am thinking about the Road Haulage Association, which has real problems that will affect the whole community. I would say that it is entitled to approach members. However, those who advocate moving freight by rail might think that it is not entitled to do so. Where do we go from there?

Des McNulty: The real issue might concern privileged access.

The Convener: We have been accused of providing that, which is why the paragraph is included.

Des McNulty: We should call it privileged access, rather than benefit.

Mr Ingram: I would like to return to the paragraph that was eliminated.

The Convener: The previous paragraph?

Mr Ingram: Yes. Surely we need some sort of record of contact with professional lobbyists. If we review a complaint against somebody, should not we have such information available to us? If we were to appoint an independent standards commissioner, would not he or she want to review such contact?

We should be clear about what we mean by

being lobbied. As I said originally, perhaps it is meetings with lobbyists that should be recorded rather than receiving something through the post.

10:45

The Convener: Does Adam Ingram want to reopen that paragraph?

Mr Ingram: I am just flagging up that point. I do not want to go over the ground again, but we should consider that issue.

Des McNulty: Depending on what we decide on lobbying more generally, we might have to return to this matter anyway. Perhaps Adam Ingram's point can be picked up in that context.

The Convener: We will do that.

Do members want to change the wording in this paragraph to "privileged access" rather than "benefit"? That will make it specific.

Members: Yes.

The Convener: We will do that.

Do members have any points about page 4?

Des McNulty: In the first paragraph, do we mean "professional lobbyist"?

The Convener: I think that it is written in such a way as to mean anybody.

Des McNulty: The wording should specify a professional lobbyist. If it means anybody, we might have to deal with a plethora of issues. If all those issues were brought before the Standards Committee, we would spend all our time considering them.

From our point of view, the issue at the moment is professional lobbying companies. When we broaden our consideration, we might widen the issues, but what we are concerned about at the moment is professional lobbying.

Tricia Marwick: I am slightly concerned, because I think that we are approaching the matter from the wrong angle. The draft code is about how the committee interacts with MSPs. It is not about lobbying and the potential registration or regulation of lobbyists. When we come to the debate about regulating and registering lobby companies, that is the time for complaints to be made about them.

The code is about the committee and how we interact with MSPs. If any member received a strange approach from a lobbying company, I am sure that they would alert the appropriate people anyway. I do not think that that should be mentioned in this document. That is for our next discussion, not this one.

The Convener: Shall we remove it?

Des McNulty: We should state that members could seek advice from the Standards Committee clerk. That might be the way to deal with that.

The Convener: We will change the paragraph to say that the member should seek advice from the Standards Committee via the clerk.

The next paragraph reads:

"Members should ensure that staff working for them also apply these rules and guidelines when acting on a Member's behalf or in any Parliamentary connection."

Des McNulty: I think that we should add that members should ensure that staff are aware of the guidelines.

Mr Ingram: Members have a duty to ensure that their staff abide by those rules. If they do not abide by those rules, the member has a duty to act.

The Convener: We will change the wording to, "are aware of and apply", rather than just "apply".

The final paragraph on page 4 states:

"Failure to comply with or contravention of the rules by an MSP in relation to contacts with lobbyists or behaviour by an MSP which falls short of the standards established in this Code may constitute a breach of the requirements of the Members' Interests Order or a criminal offence, or could lead to penalties being imposed on a Member by the Parliament."

That is a warning.

Are members happy with that?

Members: Yes.

Des McNulty: Now that we have agreed that section, is it now an interim procedure, about which we will inform members?

The Convener: Not yet. We must complete the code first. In the last meeting before the parliamentary recess, we shall review the entire code.

Des McNulty: This is different from the interim complaints procedure, which will be propagated.

The Convener: Absolutely.

We will now move on to section 8, which is on general conduct and conduct in the chamber or in committee.

It will be worth going through each of these points again. The first paragraph states:

"Members of the Scottish Parliament are accountable to the Scottish electorate who will expect them to conduct themselves in an appropriate manner consistent with the standing of the Parliament and not to engage in any activity that would bring the Parliament or the Member into disrepute."

Tricia Marwick: Could you say paragraph 1, paragraph 2 and so on, rather than reading the paragraph out? That will speed up the process.

The Convener: Are there any comments on that paragraph?

Members: No.

The Convener: Are members happy with the rest of the introductory section?

John Young: I am smiling at rule 7.3.1. I know that it is in the standing orders, but what seems to be discourteous and disrespectful to some in the Parliament chamber could be exactly what other members want, so that might be a little difficult. However, I think that we know what we mean.

Members must take cognisance of what the Presiding Officer or his deputies say at all times. If members do not do so, they could end up being put out of the Parliament.

We all know what

“a courteous and respectful manner”

means, but passion and spontaneity—which is perhaps lacking now, but will come—should not be considered as discourteous. It depends on the eyes and ears of the beholder.

The Convener: We have a Deputy Presiding Officer here. In the chamber, the Presiding Officer would normally give a warning if he or she felt that there was discourteous behaviour.

John Young: It is up to the Presiding Officer, otherwise there will be chaos. Irrespective of whether a member agrees with him, they still have to defer to him. I accept that.

The Convener: Would Patricia Ferguson like to comment?

Patricia Ferguson: Perhaps I should declare an interest first, convener.

There have not been any incidents of that nature so far, and I hope that that will continue to be the case. Members are capable of expressing themselves with passion, spontaneity and a great deal of knowledge on many occasions, without resorting to being discourteous to the Parliament, the Presiding Officer or other members. I am grateful that, by and large, that is the way it has been so far—long may it continue.

The Convener: We will move on to the part entitled “General Conduct”.

Des McNulty: Before we move on, section 8 is headed, “General Conduct and Conduct in the Chamber or in Committee”.

The first part is a statement about general conduct. The next part is more to do with committees and the proceedings of the Parliament. The next part then comes back to general conduct again. Would the paragraphs after the introductory part sit more in line with the information on committees?

The Convener: We can consider that. Do members have any comments on the paragraphs on general conduct and equal opportunities?

Members: No.

The Convener: We will move on to “Treatment of Parliamentary Staff.”

I am informed that the Scottish Parliamentary Corporate Body is examining that paragraph, so there might be one or two changes. We will come back to that.

Does any member have any comments on the paragraph on allowances? That is agreed.

Does any member have any comments on the paragraph on smoking?

Tricia Marwick: The paragraph on smoking says:

“The Parliament has a no smoking policy”.

That is simply not true. We have never had a parliamentary debate on such a policy and the consultative steering group report contains no guidelines about it. I understand that the SPCB has taken that view, but its view is not the Parliament’s view.

John Young: I would distinguish between the assembly hall and the Parliament headquarters. The SPCB has indicated that there is a no smoking policy in the latter because of fire regulations. Although I do not smoke—and have not done so for 25 years—I am not anti-smoking and I appreciate Tricia Marwick’s views on the matter. That said, we do not have the provision to establish smoking rooms in Parliament headquarters. There is no question but that there will be such provision in the new Holyrood building.

Tricia Marwick: But we are talking about a code of conduct.

John Young: I think that Tricia has a vested interest to declare.

Tricia Marwick: As this is a code of conduct for MSPs, it should not make any difference whether we are in the committee chambers or Parliament headquarters. If that is included in the MSPs’ code of conduct, it is there regardless of the buildings.

The Convener: Perhaps I can suggest a change. Tricia is quite right—the Parliament has not adopted a no smoking policy.

Tricia Marwick: It has not.

The Convener: However, the SPCB has adopted that policy. Perhaps we should change the first sentence in that section to, “The Scottish Parliamentary Corporate Body has established a no smoking policy.”

Tricia Marwick: Or, “The Scottish Parliamentary Corporate Body has decided that there will be a no smoking policy.”

Des McNulty: Tricia should view it as an opportunity rather than a penance.

Tricia Marwick: In this present building?

Des McNulty: Tricia has a substantive point. Perhaps we should not put something in the code of conduct that might not apply in the new Holyrood building.

The Convener: Are members suggesting that we remove that paragraph?

Tricia Marwick: Yes.

Des McNulty: Perhaps we should just remove that sentence.

Tricia Marwick: We should remove the whole paragraph, because it is simply not true.

Mr Ingram: I support Tricia.

The Convener: Shall we remove the paragraph on smoking?

Des McNulty: No. Perhaps we can put the matter factually and say that the SPCB has decided that members cannot smoke in any buildings of the Scottish Parliament, with one exception. However, we should take Tricia’s point on board. We do not want things to be set in stone.

The Convener: Indeed. The code of conduct is not set in stone, and we will come back to it on a regular basis if and when matters arise.

Des McNulty: That is what I am saying. We should just put the factual position.

Tricia Marwick: The decision on a no smoking policy is based on the inadequacies in the present building.

The Convener: Would you be content if we said, “As a result of inadequate provision, the SPCB has established a no smoking policy”?

Tricia Marwick: No. I would be far happier if we said, “The SPCB has determined that there will be a no smoking policy.” The Parliament has not decided on a no smoking policy.

John Young: It should be put on record that the SPCB has approved about £3,500 for door access and a further £1,500 for railings, so that smokers do not fall. The SPCB has desperately tried to accommodate smokers, but nothing can be done with the building.

Des McNulty: The SPCB has the devolved authority to decide such a policy anyway.

Tricia Marwick: However, any responsible employer has a no smoking policy that takes it into

account that people smoke and provides premises for them. We are being asked to accept that there are no facilities because the building is inadequate. We cannot make a leap from saying that to saying that there will be no smoking ever in any buildings of the Scottish Parliament. We are going to new buildings. If, as a good employer, the SPCB wishes to provide smoking premises for those unfortunates who are addicted, we can have that debate in future. All that I am saying is that the code of conduct should not tie our hands.

The Convener: I would like to pull the discussion together. We take on board Tricia’s point about the SPCB’s decision—that it applies while we are in the temporary accommodation at the Mound.

John Young: I have a final point of clarification. The other day, the Presiding Officer said that approaches had been made over time to try to get a room, but nobody—and no political grouping—would give up a room as there were no rooms to give up.

In the Holyrood building, there is no question but that provision will be made for smokers.

11:00

The Convener: We will say, “in the current parliamentary buildings”.

Those points have been well made, and now we will move on, as we have spent enough time talking about smoking.

Do members have any comments under the heading of “Alcohol”?

Des McNulty: The phrase—

“especially within the confines of the Parliament”—

is probably superfluous.

Tricia Marwick: I agree.

The Convener: Okay—it is out.

Do members have any comments under “Health and Safety”?

Do members have any comments under “Official Stationery and Mail”? There are no comments, so everyone is happy.

We move on to “Conduct in the Chamber or in Committee”. Do members have any comments about the introductory paragraph? I am going to go through each paragraph—[*Interruption.*] Of course—we cannot change these rules as they are set by the Presiding Officer.

Des McNulty: We could add in name-calling.

The Convener: We move on to page 4 and “Confidentiality Requirements”.

Tricia Marwick: Have we skipped page 3?

The Convener: Yes, because those rules are set in stone by the Presiding Officer.

Tricia Marwick: I was going to make a point about "Photography and filming", at paragraph (g). This document is about MSPs' conduct.

The Convener: Yes, but those rules are set down by the Presiding Officer.

Tricia Marwick: So that is it?

The Convener: We are informing MSPs, or reminding them, of what their behaviour should be in the chamber.

Patricia Ferguson: The rules also apply to members of the public.

Tricia Marwick: That is my point. Are the rules on photography and filming for members of the public or for MSPs?

The Convener: They apply to everyone.

John Young: Except for the television companies.

The Convener: They apply to individuals, MSPs included, which is why we are bringing them to the attention of MSPs.

John Young: I do not want to labour the point, but the only thing that surprises me a little is when we come to "Painting/sketching". Having to seek permission in advance for painting is fair enough, but would the rule apply to someone trying to sketch in the public gallery, as people do in court? It is not a major point, as I do not think that anyone would want to sketch us, to be honest.

The Convener: The Presiding Officer has decided that permission should be sought in advance. All we are doing is bringing those rules to the attention of MSPs. We are discussing the code, because MSPs will go to it to find out what they are able to do.

Tricia Marwick: Do the rules about photography and filming apply only when there is a meeting? I have taken guests to the chamber and they have been allowed to take photographs. I am confused about why that paragraph is in the document.

John Young: I believe that the rules apply only when there is a meeting, but I think that similar rules apply to all Parliaments when they are meeting—and not just to those in this country. Members could be disconcerted by flashes going off, or even by the noise that cameras make.

Tricia Marwick: But we are not saying that.

The Convener: Do you want me to check with the Presiding Officer?

Tricia Marwick: Yes.

The Convener: Okay. We could check with a Deputy Presiding Officer.

Patricia Ferguson: I do not remember the entire text of the announcement that was sent out, but I remember the individual areas that it covered. In business bulletin 5/1999, there was an explanation of how and why the decision was made, which might be helpful.

The Convener: We will check the position.

I move on to "Confidentiality Requirements" on page 4. Are there any comments on the introductory paragraph?

Des McNulty: It states:

"These occasions should be limited."

Do we want to be more explicit, so that circumstances where confidentiality is required are clear to members?

The Convener: The second paragraph goes into detail.

Des McNulty: That sentence could be removed.

The Convener: That is not a problem—we will remove it.

We move straight on to the second paragraph, where the detail is found. MSPs should be aware of the first sentence, which makes an important point:

"All drafts of Committee reports should be kept confidential."

Some draft reports are very controversial and need to be confidential; this paragraph explains why.

Are there any other points?

Are there any comments about the third paragraph?

Are there any comments about the last paragraph in that section? Fine.

We will take together the two paragraphs under, "Use of Services of the Staff of the Parliament". Are there any comments? There is none.

The last heading is, "Failure to comply with or contravention of the Rules on general conduct". Is everyone happy with that section? Good.

That brings us to the end of today's meeting. We have had a useful discussion—the speed at which we have managed to get through these sections is amazing in comparison with how long it took us when we started the exercise. I will ask the clerks to revise the text following our discussions. We will have a complete draft code when we come back to the subject at the end of our meeting on 14 December, so we will move on to the next sections at our next meeting.

Meeting closed at 11:07.

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