

STANDARDS COMMITTEE

Wednesday 8 December 1999
(*Morning*)

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STANDARDS COMMITTEE 15th 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)

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

*Des McNulty (Clydebank and Milngavie) (Lab)

*attended

COMMITTEE CLERK:

Vanessa Glynn

ASSISTANT CLERK:

Alastair Goudie

Scottish Parliament

Standards Committee

Wednesday 8 December 1999

(Morning)

[THE CONVENER *opened the meeting at 09:41*]

The Convener (Mike Rumbles): Good morning and welcome to the 15th meeting of the Standards Committee.

Before we start item 1 of the agenda, we should consider how we will handle item 2, which is the consideration of our draft report on the complaint against Mike Watson. I think that the report should enter the public domain only after the committee has agreed to its content. Do we agree that we should consider the draft report in private?

Members: Yes.

Tricia Marwick (Mid Scotland and Fife) (SNP): As you know, convener, I will absent myself from that discussion.

Code of Conduct

The Convener: First we will address the draft code of conduct for members. We have before us a number of revised sections, to which significant amendments have been proposed since our previous consideration of them or on which we need to do further work. The proposed amendments are highlighted in bold in the text, and the briefing note comments on the more significant proposals or changes.

My aim is that we finalise the content of these sections today to allow the clerks to incorporate them into the complete draft code, which we can discuss and approve as a whole.

Let us go through each section in order, page by page. Des McNulty is unable to attend the start of this meeting, but I know that he wanted to comment on the introduction and key principles. Do members agree to start with the section on lobbying and return to the introduction and key principles afterwards, by which time, I hope, Des McNulty will have arrived?

Members *indicated agreement.*

The Convener: We will start with the section on lobbying and access to MSPs. Are there any comments on page 1?

Karen Gillon (Clydesdale) (Lab): I apologise for not being here when you discussed this before. The last line of the second paragraph says:

"Others will choose to employ experts to present their views in the most effective way."

I take exception to the word "experts", as it gives lobbyists a status that they may not deserve. I think that "others" would be a more appropriate word.

Tricia Marwick: That is precisely the point that I made at our previous meeting, when I asked that that word be removed.

The Convener: That change will be made.

Is there anything else on page 1? I am not going too fast, as I know that we galloped through the draft code yesterday.

Are there any comments on page 2?

09:45

Mr Adam Ingram (South of Scotland) (SNP): I am not sure whether it is appropriate for me to make my comments while we are discussing this page, but when we are further on in the document I would like to refer back and make the point that this definition of professional lobbyist is too narrow.

The Convener: All right. We can come back to that point, but you have flagged it up.

Karen Gillon: I also have some concerns, not necessarily with what the paragraph on professional lobbyists is trying to say, but with the way that it reads. I think that we need to look at it again.

The Convener: We will have another meeting on 14 December to finish the other two sections of the code. The clerks will take it away over the break and present us with a final draft of the entire report in January, when we will have an opportunity to address these issues again.

On page 3, I suggest that we add a paragraph. Following our discussions yesterday, the clerks came up with a wording that you may like to take note of. After the last paragraph, we are proposing to insert: "It is not acceptable for a member to provide remunerated services as a member of Parliament, for example, as a parliamentary adviser or consultant." We decided yesterday that we would include that.

Lord James Douglas-Hamilton (Lothians) (Con): In the United Kingdom Parliament, parliamentarians act as consultants, and that is legitimate. Your wording is tight. I do not object to the suggestion, but the practice is followed in the UK Parliament.

The Convener: Yes, it is. The committee thoroughly discussed the matter at yesterday's meeting. There was an almost unanimous view that our code should be tighter. On that point there

is a distinction between the Parliaments.

Karen Gillon: In the third paragraph of section 6.3, what is meant by “hospitality”? I do not want to go back to a discussion about tea, coffee and biscuits, but if a member goes to a meeting with an organisation such as sportscotland, and members of a lobbying organisation are there, is the member not allowed to have tea or coffee?

The Convener: The test that must be applied is the one that is underlined. The paragraph says

“that a member should not accept, **in relation to any lobbying activity**, any remuneration, gift, hospitality or other benefit from any **person or organisation** that might reasonably be thought to influence, or be intended to influence, his or her judgement in carrying out Parliamentary duties.”

The test is about the judgment of MSPs—if you think that you are going to receive something that might reasonably be thought to influence, or be intended to influence, your vote, you must not accept it. The next page—page 4—gives some guidance.

Karen Gillon: I am worried about the phrase “be intended to influence”. How do I know what somebody intends? I may not think that something has an influence on me, but somebody may be intending to influence me. They could then make the accusation that they had intended to influence me.

The Convener: That is a valid point. How can we tell what others intend? However, before we alter the sentence, I would like to hear the views of other committee members.

Tricia Marwick: There is a larger section on acceptance of hospitality, gifts and other benefits in section 8.2 of the document. We are jumping around a wee bit, but we may want to discuss that section in relation to what we are discussing now. I was going to suggest that we remove the paragraph at the bottom of page 2 and the first full paragraph on page 3 of that section and insert a different form of words. With your agreement, convener, I will read out the alternative form of words that I suggest.

The Convener: We were given the copy in advance. If members are agreed, we will deal now with the guidance on allowances in 8.2, which is about general conduct.

Tricia Marwick: That might help us to focus our minds on the issue.

Karen Gillon: We need to be strict about people’s relationships with lobbying organisations, but the other organisations dealt with in section 8.2 are different. Constituency groups may give MSPs a bunch of flowers, for example, when they attend an event and MSPs might regularly have lunch with a particular organisation. I regularly go

to meetings with Lanarkshire Development Agency, which may or may not involve lunch, but LDA is a major influence and a major source of income in my constituency. It is a legitimate job for me to meet its representatives and to lobby them. I have a difficulty with lumping lobbyists in with everybody else. We have to be very clear about how we should deal with lobbyists.

The Convener: I take that point.

Tricia Marwick: We could play around with the form of words that I suggest we insert in section 8 to deal with Karen’s concerns about lobbyists.

The Convener: I am getting photocopies done of the extract that you showed me, Tricia, so that everyone has it in front of them.

Karen Gillon: Shall we come back to that point, rather than hold up the meeting?

The Convener: We will come back to section 8.2; when we do, we can refer back to the issue of lobbyists.

Are there any comments on page 4?

Karen Gillon: The second last paragraph does not make sense to me. It reads:

“No member should use his or her position to help any person or organisation to obtain any privileged access to which the person or organisation is not entitled.”

What is that trying to say?

The Convener: That refers directly to the experience gained in our previous investigation. We are making it clear that privileged access is not acceptable.

Karen Gillon: Should not it say that any access is unacceptable? The question is not privileged access, but any access to which a person is not entitled.

The Convener: That is a good point. We will remove the word “privileged”.

Mr Ingram: There are a lot of references on this page to professional lobbyists. I argue that the definition is too narrow. The document says:

“Members should treat with caution any offer from professional lobbyists”.

When we talk about preferential access to or treatment of professional lobbyists and so on, we are in danger of making the definition far too narrow. I bow to no one in my opposition to—or disapproval of—professional lobbyists as defined in the document. However, we cannot steer MSPs towards the idea that it is all right for them to talk to paid lobbyists from any organisation and to give them preferential access or treatment. That is my problem with the earlier, narrow definition.

The Convener: We could remove the word “professional” from that paragraph, so that it would

read: "A member should not offer or accord any preferential access or treatment to lobbyists, nor should lobbyists be given to understand that . . ."

Karen Gillon: Yes.

The Convener: So, shall we remove "professional" from the paragraph?

Tricia Marwick: The only difficulty with removing "professional" is that we have used that term earlier to signify the difference between those commercial companies that accept remuneration to lobby for clients and others who lobby, such as interest groups and professional organisations. If we remove "professional", we will have changed our definition.

The Convener: Yes, I understand that.

Patricia Ferguson (Glasgow Maryhill) (Lab): I understand Tricia's point but I am not sure that what is suggested will change our definition. I glanced quickly at the preceding pages and I think that we still make it clear that there is a distinction between professional and other kinds of lobbyists and that this paragraph applies to both categories. We are not offering preferential access or treatment to either category, so the paragraph works.

Tricia Marwick: I agree with Patricia's interpretation—we could remove "professional" from this paragraph.

Lord James Douglas-Hamilton: I have received a letter from the Scottish Council for Voluntary Organisations—I imagine that all members of the committee will have received that letter. The SCVO's member organisations are probably exclusively charitable organisations. It is perfectly legitimate for the SCVO to lobby on behalf of charities and it would be unfortunate if it was caught by a restrictive provision. Is it possible to insert "excluding charitable organisations"?

Tricia Marwick: That point is made earlier in the document—Adam Ingram highlighted it. It can be found on pages 1 and 2 of section 6, "Lobbying and access to MSPs". Under the current wording, the SCVO and others should have no concern about the direction in which the Parliament is heading. However, Adam Ingram has concerns that he wants the committee to address.

Patricia Ferguson: I am not sure what Adam Ingram is going to say—he might influence what I am going to say. However, Lord James identifies the reason why we should remove the word "professional" in this paragraph, but leave it in the preceding paragraphs. We are talking about preferential access—we should not offer preferential access to any group, whether voluntary, charitable or whatever. That is where clarification is needed.

Mr Ingram: That is my point precisely. As I said, I think that the definition of professional lobbyists in this paragraph is too narrow. However, the key to the definition will come when we are considering the regulation of lobbyists. In this document, we have to concern ourselves with the conduct of MSPs, which will be dealt with if "professional" is removed from the relevant lines on page 4. The committee will need to reconsider the definition of professional lobbyist if and when we discuss the regulation of lobbyists.

10:00

The Convener: Okay. Are members happy with that?

Lord James Douglas-Hamilton: My understanding is that, before long, the Parliament may reform charity law. Charities and bodies such as the SCVO may seek meetings with ministers about that—such meetings would not be out of place or out of the ordinary. Those bodies should not be caught by any of these provisions, as that might prevent them from seeking meetings with MSPs.

The Convener: I do not think that that is what this paragraph means at all. We are talking about preferential treatment.

Karen Gillon: We should remove "professional" from this paragraph and from the following one because no one, regardless of who they work for, should get preferential access to any MSP. The second paragraph is key, because sometimes we can be lobbied without being aware of it. Someone from a charity would identify themselves quickly on the telephone; they would say, for example, that they were phoning from Shelter to speak about homelessness legislation. The difficulty is caused by those people who say, "I am phoning on behalf of such and such an organisation," when they are really employed by a professional lobbying company. The onus must be on the member to ensure that they know to whom they are speaking.

The code gives clear guidance to those organisations, particularly charities, that seek to lobby MSPs. They will know that they should identify themselves when they phone an MSP; they will know that they should say, "I am so and so. I work for Shelter. I am phoning you about such and such." As well as guiding MSPs, the document will guide those people who wish to lobby us legitimately on behalf of organisations by which they are employed or for which they work in a voluntary capacity.

The Convener: That was well put, Karen.

I welcome Des McNulty to the meeting. We are going through the code of conduct, Des. We decided to leave the introduction and key

principles to the end of our discussion, as I know that you are particularly interested in those areas. At present, we are considering lobbying.

Lord James Douglas-Hamilton: Can I clarify this point? I have read the SCVO letter carefully and it appears to me that, although it is not a lobbying organisation, it might act in a lobbying capacity. I do not think that it would be caught by the provisions that we are seeking to agree today. I want to make that clear. If reference is made back to this meeting at a later stage, I want to be able to say fairly that our view is that the SCVO will not be caught by these provisions because we do not see it as a professional—in the normal sense of the word—lobbying organisation.

The Convener: It is clear that the SCVO is not a professional lobbying organisation but, if you look back at section 6.1, you will see the references to

“any person or organisation who lobbies”.

Anybody who lobbies an MSP must be aware of the rules.

Karen Gillon: Following on from what Lord James said, although the SCVO is not a professional lobbying organisation, I think that it would be perfectly happy with this form of words. I do not wish to speak for the SCVO, but I think that this clears up any ambiguity and clears the way for those legitimate organisations that wish to lobby MSPs on behalf of charities or voluntary organisations.

The Convener: Do members have any thoughts or comments on page 5?

Mr Ingram: It is important that mention is made there of staff working for members. Karen Gillon has made that point several times in the course of these discussions, and it should be highlighted that MSPs' staff are subject to these guidelines.

The Convener: The last paragraph of section 6.3 says that. We discussed it at our previous meeting.

Karen Gillon: I would like a tighter form of words in the second paragraph on page 5. I suggest that we change it to, “Members should not participate in any event where the impression given by the organisers is that paying to attend the event will result in preferential access to or treatment by MSPs”.

The Convener: The difficulty with that is that it would be saying, “Thou shalt not”, when the members might not be aware of the situation. I understand what you are saying. However, if we say in a rule that members should not do this and they do it unawares, that would mean that they are breaking the rule. Do you see what I mean? That is why it is useful to include the word “avoid”.

Karen Gillon: To be fair, convener, I think that we need something stronger. There may be a middle ground, but I am not sure what it is.

The Convener: I was just flagging up the difficulty. I understand what you are saying.

Karen Gillon: I think that we need to send out a stronger signal to the people organising such events.

The Convener: We need to remember that these rules are for MSPs and that it is they, primarily, who will read them.

Karen Gillon: Absolutely. However, do you think that this code will be published and nobody else will read it? We do not exist in a vacuum. Other people will read the code to see what standards we are setting for ourselves and to work out ways of getting round them. That is why we need something a bit stronger.

Patricia Ferguson: I agree that the wording needs to be stronger and that we should say that members should not participate in such events. I would also take out the word “preferential” in the second line of the paragraph. That would make clear that members should not participate in this kind of activity at all.

The Convener: The advice that I am getting is that that would cause great difficulties, on the grounds that if members go to an event that people are paying to attend—it might be a conference—those people are bound to get access to MSPs.

Patricia Ferguson: That is my point. That is why we should remove the word “preferential”. Access is not the problem, but preferential access, as we say in the previous paragraph.

The Convener: That is why the word needs to be included.

Patricia Ferguson: I suppose so. I am arguing against myself.

Tricia Marwick: I agree absolutely with everything that Karen has said. My difficulty with the paragraph is that if a member were invited to speak at a dinner, for example, six months in advance and pencilled it into their forward planner or put it in their diary—

Karen Gillon: Cheeky.

Patricia Ferguson: As if.

Tricia Marwick: The invitations to people who were interested in the event might not go until after the member had agreed to attend. We need to recognise that people try to get the key speakers first. Members might not be aware at the time—indeed, they might never become aware—of what the invitations to other people say. Where does

that leave the MSP who, in good faith, has accepted an invitation to speak at a conference or a dinner? I am worried that members might not be aware that preferential access had been promised.

The Convener: While listening to our discussion, the clerks have come up with a suggestion. There is a possible solution. We could change the paragraph to read, "Members should not participate in any event if they are aware that the impression given by the organisers is that paying to attend the event will result in preferential access to or treatment by MSPs".

Tricia Marwick: That is fine—"if they are or become aware" would cover that.

Des McNulty (Clydebank and Milngavie) (Lab): I wonder whether the last sentence of the previous paragraph is superfluous, given the sentence that precedes it. That reads:

"No preferential treatment should be offered or accorded any person or organisation as a result of having made initial contact with a member at such an event."

That is sufficient. We do not need the follow-up sentence.

The Convener: Are we agreed to remove the last sentence of that paragraph?

Members indicated agreement.

Lord James Douglas-Hamilton: How will the third-last paragraph on page 5 affect party events? If, for example, MSPs are present at a dinner or lunch that is arranged by a political party, which people pay to attend and which is addressed by a party leader, will they be caught by this provision?

The Convener: That is a very good question.

Lord James Douglas-Hamilton: I know that several of the political parties have held functions at which MSPs and senior politicians were present. The payment required of those wishing to attend those functions is greater than is normal for lunch or dinner, to put it mildly.

Karen Gillon: I think that this comes back to the point of how the invitation is worded. That is the key. People can be invited to pay to attend a function and have someone sit at their table. The key issue is whether

"paying to attend an event will result in preferential access to or treatment by MSPs."

I can sit at the same table as somebody, but that does not mean that they have any influence over me.

Mr Ingram: Could we check that out?

Lord James Douglas-Hamilton: I think that it needs to be checked. MSPs might attend a party function in support of the First Minister or other senior politician. If that is covered by this

provision, we would be catching activity that until now has been regarded as legitimate.

The Convener: The key issue is whether

"paying to attend the event will result in preferential access or treatment by MSPs."

I do not think that the rule creates a problem.

Des McNulty: But why would people want to come to a dinner if not for preferential access?

The Convener: For entertainment.

Karen Gillon: If we are saying that by sitting next to somebody at a dinner, members are giving them preferential access and special treatment, members could not have attended *The Herald's* politician of the year awards. That is silly. If it were the case, we would have to stay in this wee building and have no contact with the outside world. If I attend a dinner, I know what the invitation says. I saw the invitation for *The Herald's* dinner, and it did not offer any preferential access to me as a member of this Parliament. It said that there would be MPs and MSPs at each table, not that people would be able to lobby them or influence them. If I am invited to something as a guest or a speaker, I want to see the invite—I want to check myself what is being said about me before I go. However, we cannot live in a vacuum.

The Convener: I take that on board. That is a very sensible interpretation of what we are trying to achieve. Are there any other comments?

Des McNulty: We are reasonably clear about what we want to achieve, in that we want to ensure that organisers of events do not publicise them on the basis that they will lead to privileged access to MSPs. We do not want to create a situation where it would be inappropriate for MSPs to attend an event such as the politician of the year awards, nor is it necessarily our intention, as Lord James pointed out, to prohibit party functions. If that is our intention, we should take advice on the most appropriate wording and should not try to define it in the committee.

10:15

The Convener: I quite agree with you; that is how we will approach this. We will go away and the clerks will examine this. We will have an opportunity to consider it again when the whole report is presented to us on 14 January, or whenever that happens in January.

Lord James Douglas-Hamilton: I am quite content with that.

Karen Gillon: Can I come back to a point that I made yesterday? I think that somewhere in the code we should say that there will be a register of staff interests in which members will be obliged to ensure that their staff register their interests. If we

get the advice from Westminster that we requested yesterday, we could put in a line on that at the meeting on 14 January. It would be sensible to have a register of staff interests. I am flagging that up as something to which we might want to come back.

The Convener: Okay. Is there anything else on page 5? It appears not.

In section 7 we are considering the regulation of cross-party groups. I would like members to look through this section as a whole, as we spent some time on this very recently. All we are doing is incorporating these regulations into the code of conduct. I do not want to spend much time on this, unless anyone wants to reconsider any issue. I do not think that there is anything controversial here.

Tricia Marwick: Is this draft section exactly the same as the published document?

The Convener: Yes.

Vanessa Glynn (Committee Clerk): The section is pretty much the same, except for changes that have been made because it is a different format. It is addressed differently, but in substance it is the same.

The Convener: We will move on to section 8, on general conduct and conduct in the chamber. Are there any comments on page 1?

Tricia Marwick: Under "Equal Opportunities" on page 1, the document states:

"Members must adhere to this policy in their dealings with Parliamentary staff, and behave appropriately."

Do we want to limit that requirement to parliamentary staff?

The Convener: I think that the intention of that statement is to highlight the relationship with the staff. We can broaden that out if members wish.

Patricia Ferguson: From memory of a meeting of the corporate body at which equal opportunities was discussed, I think that we extended the requirement to include, for example, people who are contracted to work for the Parliament, as some of the security and catering staff are not direct employees of the Parliament.

The Convener: We can include them.

Des McNulty: On equal opportunities, the document mentions dealings with parliamentary staff and appropriate behaviour. Over the page, there is a bit about members' responsibility for the staff whom they employ. The order of presentation might be seen to exclude members' staff from the equal opportunities provision. We should reorder the provisions so that members' staff are appropriately encompassed.

The Convener: We will do that.

Are there any comments about the paragraph on allowances? As there are not, we will move to Tricia Marwick's proposal. Everybody has received a photocopy of the proposed changes to the whole of the paragraphs under the heading "Acceptance of hospitality, gifts or other benefits".

Tricia Marwick: On the acceptance of hospitality, I am suggesting that all the paragraphs that are in bold be removed from the code and that, in their place, we should insert the form of words that has been circulated to members.

The Convener: Is everybody happy about that?

Karen Gillon: The proposal removes any reference to repeated gifts, hospitality or attendance at football matches, to which some members, but not others, get access. If members want to go and watch Airdrie, I am sure that that can be arranged. That reference needs to be kept. Gifts or acts of hospitality may be small, but if they happen frequently, they may give rise to certain beliefs. Again, it is important to draw a distinction between organisations that one would be expected to meet regularly and other kinds of organisations.

The Convener: That is a very fair point. We will incorporate a reference to the frequency of receipt in the last sentence of the proposal.

The proposed amendment says that "a member should not accept any offer that might reasonably be thought to influence, or be intended to influence" a member's judgment. That relates to the same point that Karen Gillon raised earlier. Should we remove "or be intended to influence" as that assumes that one knows what the other person is thinking, although that is not in the control of the MSP? Are we happy to remove that?

Members indicated agreement.

The Convener: As everybody is happy with that, we will move on to page 3 on alcohol, smoking, health and safety, and office stationery and mail.

Karen Gillon: Before we move on, there should be something about staff accepting hospitality, gifts or other benefits that they receive as a result of being employed by a member of this Parliament.

The Convener: That is a good point.

Des McNulty: It might be helpful to include a sentence at the end to say that the onus is on members to make judgments but, in case of doubt, they are encouraged to seek the advice of clerks. I know that that is a general point that is being made throughout, but it bears repetition on this issue.

The Convener: You usually want to remove repetition, but not on this occasion.

Des McNulty: That statement should be repeated on this issue.

The Convener: You are quite right.

We will move on to smoking. No comment, Tricia? Are there any comments on alcohol, health and safety, and office stationery and mail?

I have been reminded that we said we would return to the lobbying element of hospitality in light of what we decided.

Des McNulty: Tricia has reminded me about one issue that I should have picked up. We need to make our wording on alcohol consistent with that of the Scottish Parliamentary Corporate Body; the intent is the same, but the wording is at variance. We need to avoid inconsistency.

The Convener: We will check that and ensure that the wording is the same.

Karen Gillon: The wording is quite tight already.

Des McNulty: The SPCB wording does not pick out the Parliament complex, but it emphasises the bit about office hours.

Patricia Ferguson: In the paragraph on alcohol, there should be a full stop after "during office hours".

Des McNulty: Yes. That sentence would then make a general point, rather than a specific one about drinking in parliamentary buildings.

The Convener: Is everyone happy with that?

Karen Gillon: So people cannot go to the pub at lunch time?

Patricia Ferguson: It is discouraged.

Des McNulty: Yes, it is discouraged.

Karen Gillon: The press guys will be out of a job.

The Convener: Can we keep to

"Acceptance of Hospitality, Gifts or other Benefits"?

Karen Gillon: May I return to the issue of alcohol? Come on now: are we getting silly? Members are over 18 years old. They are adults and must exercise judgment. Members should not be under the influence of alcohol while performing their parliamentary duties, but a glass of wine with lunch at a function is acceptable. Do we want members to be reported to the Standards Committee every time they have a glass of wine with their lunch? I know that the wording does not say that—

Des McNulty: It does not say that.

Karen Gillon: No, but a vicious person could interpret it in that way. We need the correct form of words or we may look stupid.

The Convener: Des, do you have with you the form of words used by the SPCB?

Des McNulty: No.

The Convener: Does it have the effect that Karen is suggesting?

Des McNulty: The issue is not one for us to make a judgment on. Karen is right: there is a general principle that Parliament staff are discouraged from drinking alcohol during office hours. There is no reason why that should not apply to MSPs also. The issue is one of discouragement, rather than prohibition.

Tricia Marwick: But we are discussing the code of conduct for MSPs. As Karen said, we are all adults. At the end of the day, we must exercise our judgment, which is better at some times than at others. It is difficult for us to say to folk that they are discouraged from having a glass of wine or a beer at lunch time.

Mr Ingram: The text does not say that.

Tricia Marwick: But we do not have the form of words used by the SPCB.

Des McNulty: I was just suggesting that we look at the two forms of words and sort them out.

Tricia Marwick: Can we come back to this issue once we have the form of words used by the SPCB?

The Convener: I have been informed that there is an understanding that the SPCB rules apply to members of staff and are not meant to apply to MSPs. Is that correct, Des?

Des McNulty: I do not think that that is correct.

The Convener: I am only asking.

Tricia Marwick: We need to see the form of words used by the SPCB, then we can have a discussion; we are trying to discuss the issue in a vacuum, which makes life difficult.

The Convener: We will return to this issue. Once we have covered the section on

"Acceptance of Hospitality, Gifts or other Benefits"

do members want to return to the section on lobbying?

Mr Ingram: Tricia made a point about that.

Tricia Marwick: Karen raised points about gifts and hospitality. I said that when we discussed my proposed insertion, she might feel that it addressed her concerns with the earlier part of the document.

Mr Ingram: Is that on page 3?

Tricia Marwick: Yes.

The Convener: Karen, are you happy that the

removal of

“or be intended to influence”

addresses your points?

10:30

Karen Gillon: In general, I am happy with that, but with regard to lobbyists we need to have stronger wording than:

“should treat with caution any offer of hospitality, a gift, a favour or benefit.”

Professional lobbying companies sell themselves on having access to MSPs—we have seen evidence of that. Mrs Smith in Clydesdale does not sell herself on the basis that she can speak to Karen Gillon MSP. We must be stricter with those companies than we are with anyone else.

The Convener: I think that we are.

Karen Gillon: Is Tricia suggesting that we insert the general guidance in the section on lobbying?

The Convener: Yes.

Karen Gillon: I am not comfortable that the wording is strong enough for the lobbying section.

The Convener: We can leave lobbying in that section. The first paragraph on page 4 of section 6 says:

“A member is unlikely to be considered to be influenced by accepting a token such as a diary at Christmas from a person or firm engaged in lobbying, but acceptance of a gift or benefit of even slightly more significance, such as free tickets to major sporting or cultural events, could lead others to think that the member’s judgement might be influenced.”

Karen Gillon: We need to consider this, because it is a jumble. I am not happy about inserting the proposed form of words in the general conduct section. We need to be tighter on this issue, because the situation is different.

Convener, you added a paragraph saying that it is not acceptable for a member to provide remunerated services. That is not covered. We need to look at this matter again. The clerks know how strongly I feel about it, and may be able to come up with an appropriate form of words for the final draft, rather than committee members trying to thrash something out today.

The Convener: We can do that. We will return to the matter when we consider the entire code again.

We will now turn to paragraph 8.3, dealing with conduct in the chamber or in committee.

Karen Gillon: It is becoming increasingly difficult, because members are shouting words such as “liar” across the chamber. I do not want to get into the Westminster system of

unparliamentary language, but members must be told that shouting “Liar, liar” across the chamber is not appropriate. We must examine abuse of members.

The Convener: Paragraph 8.3(c) states that no abusive language is allowed. To me, shouting “Liar, liar” across the chamber is abusive language. That is clear. It is up to the Presiding Officer at the time to ensure that that rule is applied.

Tricia Marwick: Particular upset has been caused when a member who is speaking has named another member and not given that named member the chance to respond. I am not sure whether that point should be included in paragraph 8.3. It is a matter for the Presiding Officer and the Deputy Presiding Officers, but instruction needs to be given that if a member says something about another member, the member speaking must give way to allow the other to respond. If that were to happen, some of the more boorish behaviour in the chamber would cease. We have to nip that in the bud. I am not sure whether it is in our power, through the MSP code of conduct, to say that people should give way.

Des McNulty: That is not a standards issue, but a matter for the Procedures Committee or for discussion with the Presiding Officer.

The Convener: The point is noted, but I think that it is outwith our remit.

Patricia Ferguson: I understand Tricia Marwick’s point and, in one way, I agree completely, but if one allowed a member to rebut what has already been said, we might end up with two people shouting at each other. Sometimes it has to be left to judgment and common sense. As a general principle, members should not say anything offensive about another member that might require immediate rebuttal.

The Convener: Let us move on to page five.

Tricia Marwick: I am not sure about the paragraph that says that members should not be referred to as “you”. Why has that suddenly appeared in the document? If my earlier point was not a matter for the Standards Committee, neither is this. It should be removed.

The Convener: I agree. That text refers to a problem in the chamber, which it is not proper for us to discuss. We should remove it.

Karen Gillon: We do not have the power to change that rule.

The Convener: “Confidentiality Requirements” was discussed at length at the conveners group yesterday. There are concerns about confidentiality and I would like members to examine section 8.4 carefully to ensure that they

are happy with it.

Are there any comments on that?

Karen Gillon: I feel that you are getting at something that escapes me, convener.

The Convener: I would like you to consider it carefully.

Karen Gillon: Is there an issue of which we should be aware?

The Convener: There may be.

Tricia Marwick: I suspect that the convener is not going to tell us about it at the moment.

It might be useful for documents that are not to be placed in the public domain to be marked "confidential to members".

The Convener: That was mentioned at the conveners group yesterday and we have all taken that on board.

Tricia Marwick: That way, no one would be in any doubt about whether a document is confidential.

The Convener: Yes.

Des McNulty: The difficulty with that is that it simply adds cachet to such documents when they appear in the press. There is a sense in which marking documents as confidential might make leaking them more attractive for those members who might be tempted to do that. The real issue is the appropriate discipline of members. Members should have no doubt about the status of documents that come into their hands—not every document needs to be marked confidential to remind members. I do not really agree with Tricia Marwick on that point. To mark documents in that way would shift the onus of responsibility from the member and would reward the activity.

Karen Gillon: I think that—now—we all know what you are getting at, convener, but you should not have raised the matter if you were not going to be explicit, because we are talking at cross-purposes. Members are aware of the issue.

There is an issue about the Health and Community Care Committee report, which was featured in the papers before the committee had published it. However, I do not think that paragraph 8.4 deals with that issue. If that is what we are discussing, we must reconsider what the code says. If a committee paper is confidential to the committee, and committee members are aware of that, would a leak be a matter for a disciplinary process?

The Convener: I have not raised a particular issue and—unless such an issue was raised with me officially—it would be wrong of me to do so. Never mind what has happened in the past, this is

a general issue and we must be clear in our approach. I fear that the issue will arise again in the future.

Karen Gillon: There is some confusion. At Westminster, there is a clear procedure for select committee reports, which should not be leaked—in any way—to anybody outside the committee, regardless of party background. That is not clear in the context of the Scottish Parliament. If we are trying to say something similar here, the section needs some work.

The Convener: That is what I am drawing to members' attention.

Karen Gillon: If that is what we want to say—I am not saying that it is—we need to do some work on that. I would ask the clerks to get some advice about the wording at Westminster, or the standard agreed procedure if it is not a written rule. I want us not to rely on protocols, but to have something written down, so that everyone knows exactly where they stand. Knowledge should not be based on how long members have been in Parliament, or on whom they know, but on what is given in black and white.

The Convener: I take all that on board, but I point out that that is why I asked members to examine the text. The text is specific—the second paragraph says that

"All drafts of Committee reports should be kept confidential, unless the Committee decides otherwise."

That is quite clear and I do not think that we need to do much more work on it. That is why I was happy for members to consider it.

Karen Gillon: However, there is a difference between a draft report and a final committee report. When our final committee report on the investigation into the issue surrounding Jack McConnell was published, I understood that I should not give a copy of that report to anybody before it was made publicly available. I understood that because we had discussed it in the committee—I had not been told formally.

There is an issue about draft committee reports and whether they might be given a status that they do not deserve. However, that should not be confused with the issue of the confidentiality of a final committee report before it is published.

The Convener: I am glad that we have had this discussion because it has emphasised my point; this is an important section of the code that has implications for the way in which the Parliament works. It is just a coincidence that there is a particular issue at the moment.

The clerks have got the message and we will put this as tightly as possible for the January meeting.

Lord James Douglas-Hamilton: It might be

worth putting in an extra sentence. Committees are far more important in the Scottish Parliament because there is no second chamber. Their work is essential. The wording should put our committees on at least the same level as select committees at Westminster. That must be clear.

Tricia Marwick: There is another issue that we have not considered. We have talked about drafts and committee reports going out to members of the public. At Westminster, there are clear rules about keeping such information within the committee—it is not to be transmitted to members of one's own party who are not serving on the committee.

The Convener: That is exactly the point that is made at the top of page 6, which says:

"This means that, unless the Parliament agrees otherwise, such documents should not be circulated, shown, or transmitted in any other way to members of the public, press or to any member of any organisation outwith the Parliament including the Scottish Executive, nor to other MSPs who are not members of the committee".

I would like to insert the words "or the relevant committee" after the word "Parliament" in that first line. That is quite specific, and tells MSPs unambiguously that documents are to be treated confidentially if that is how the committee wants to operate.

10:45

Karen Gillon: This may be a helpful suggestion or it may not, and other members can shoot me down if they want to. I think that we should put in a line that says something like, "Documents, once they are made public, will be available from the clerk to the committee or from the document supply centre." That would prevent members from being accused of being the source of a document. If a document is publicly available, it should be quite clear that it is published on the internet or through the clerks. Everyone should know where documents are coming from and the clerks should release only those documents that are in the public domain.

The Convener: That is a very good point.

Karen Gillon: If members choose to leak other documents, that would be a breach of the code.

The Convener: Thank you for that suggestion, Karen. We shall amend the wording accordingly.

Des McNulty: We should also include the phrase "prior to official publication". The wording as it stands says that

"documents should not be circulated, shown, or transmitted"

in any shape or form. That implies "prior to official publication", but it does not say it.

Karen Gillon: We do not want to preclude committees from deciding to give documents to people. We decided to give a document to members who were named, and that should remain a possibility.

The Convener: The document states that reports

"should be kept confidential, unless the Committee decides otherwise."

Karen Gillon: That refers to draft reports.

The Convener: We shall sort that out.

Karen Gillon: Can we come back to that point, Mike?

The Convener: Members will appreciate why I said that we must consider this important issue. We have to get it absolutely right. The clerk has noted all the points that have been made, and the document will be amended accordingly.

Des McNulty: The final sentence of that paragraph could expose members to allegations with which it might be difficult for this committee to deal. It says:

"Nor should information deriving from such documents be disclosed either in writing or orally."

That is quite vague. If that is to constitute an offence, the wording must be framed more tightly, although I understand what is meant.

Karen Gillon: I understood it to mean that, if I had a document that was not in the public domain, I could not read it to a journalist over the telephone. That would be as bad as giving them a printed or hand-written copy, and would constitute a leak. Perhaps the wording needs to be tidied up, but I would not like us to say that I would not be committing an offence unless I physically handed the document to someone who should not have it. We are not that stupid.

As I understand it, people who leak documents do not usually give the whole document away; they give away parts of it or information about it. There are ways and means of leaking a document without actually handing it over. If a member has privileged access to a document, they should not be passing that information on to anybody else until the matter becomes public.

Des McNulty: That is what I think the section should say. I do not disagree with the intent, but the terms are vague. It should say that to leak privileged information, in writing or orally, may be considered an offence.

Patricia Ferguson: This area of the code has to apply to staff as well as to members. Information may be filed by a member of staff, so they should also be covered.

The Convener: That is agreed.

That was a useful discussion on that point. We move on to the rest of the document. Section 8.5 concerns use of services of the staff of the Parliament, and section 8.6 concerns failure to comply with or contravention of the rules on general conduct.

Des McNulty: I have two points to raise that are not covered by the document. We have already mentioned conduct in the chamber and in committee. Do we also want to mention conduct in the building? We want to make it clear that people should not be abusing each other or acting in inappropriate ways—either members or their staff.

The Convener: Treatment of parliamentary staff is covered, but I understand the point that you are making. Should we incorporate a new paragraph to cover conduct in the parliamentary buildings as well as in committee and in the chamber?

Karen Gillon: I cannot remember the exact wording, but I am sure that the key principles stress the importance of acting in a manner that is becoming of a member of the Scottish Parliament. I am sure that that is included in the code.

The Convener: Karen's suggestion is sensible. We should return to the key principles in section 1. We delayed considering them because I wanted Des McNulty to be present for that discussion.

Des McNulty: I have concerns about attempts to change the pattern of committees or to introduce business that is not on the agenda. Some people have introduced issues to a committee and then dived out to brief the press, disrupting the business of the committees as a result. That is one issue of standards of behaviour that we must address.

The Convener: That is a matter for the committee of conveners; a report is being prepared for that committee on that very point. We should therefore leave that matter for the moment.

Des McNulty: It would need to be reflected in the standards documents.

The Convener: Standards concern behaviour and conduct. The issue that you have raised is a procedural one, which is being addressed by the committee of conveners.

Des McNulty: If somebody does what I described—

The Convener: It is for the convener to rule out of order any matters that are raised inappropriately.

Des McNulty: If people persistently raise matters that are not on the agenda to make a purely political point and then tell the press about it, that is a procedural problem. Is it also a standards issue?

Tricia Marwick: It is for committee conveners to exercise their judgment on such matters. If an item is not on the agenda and somebody persists in raising unscheduled business, it should be brought to the attention of the committee of conveners or the business managers of the party groups. It is not a matter for the Standards Committee.

Karen Gillon: It would be a matter for this committee if a convener—or another member of the committee—felt that the conduct of a member was unbecoming and in contravention of the standards that a member should have. If members are not operating according to the standards in the code, that should be referred to this committee—it would be for this committee to decide whether the member was acting outwith the code of conduct for MSPs.

The Convener: Karen Gillon is right. I have received advice that if MSPs' conduct in the performance of their parliamentary duties—that is a wide definition—falls below the standards that we expect, this committee has the remit and the authority to address that.

Des McNulty: I am content with that, but we should incorporate into the code of conduct a reference to the fact that committee conveners have a responsibility to ensure that, when a member is acting in an unparliamentary way in committee, that is brought to the attention of this committee.

Karen Gillon: I do not want to disagree with my colleague, but that is a matter of judgment for the convener; it is not a matter for the code of conduct. It may not even be the convener who has the complaint; any MSP on the committee may have a concern about another member. That raises issues about enforcement and how people make complaints.

The Convener: That issue is about enforcement, which we will consider at our next meeting.

We will now consider any additions to the introduction and key principles. There is a point of disagreement on public duty, which we can discuss when we consider the whole code of conduct. I know that Des McNulty has a few comments to make about the introduction and key principles. He requested that we consider this section again.

Des McNulty: A couple of issues arose. We are trying to work out how the code will apply in all circumstances. I was slightly concerned about the final paragraph of page 4, which states:

"In representing people's interests, Members have a duty to respect individual privacy, unless there are overwhelming reasons in the wider public interest for disclosure to be made."

That is a public interest defence of disclosure, which arguably gives any member the opportunity to say, "I believed that there was wider public interest for disclosure in this instance." I do not think that that is what we intended. We should examine that phrasing to make it clear that when information is given to a member in confidence, they are obliged to respect that confidence. We should not give members a code through which a clever lawyer could drive a coach and horses.

Tricia Marwick: Des McNulty has made a good point. If members of the public have approached an MSP with a problem, the MSP has a duty to respect that individual's privacy. They should not disclose information to anybody, regardless of whether there is a wider public interest, unless they have the approval and support of the person who approached them.

Karen Gillon: I disagree. If somebody tells me that they have murdered somebody or are dealing in drugs, they may not give me permission to disclose that information, but I say on the record that I would disclose that information to the police. That is my duty as a member who has the interest of the whole community at heart. This goes back to our long discussion about how we balance confidentiality of constituency cases with the interest of the community.

The code says what I want it to say. Perhaps there could be a better form of words, but I want it to say that members must respect individual confidentiality unless there is a reason, which they can justify, not to do so. I must know where my boundaries lie and other members must know where theirs are.

Tricia Marwick: I must admit that the thought had not occurred to me that we might be talking about murder; I was thinking of folk with housing problems and the like. I take Karen Gillon's point about someone confessing their crime to a member. The wider public interest must be addressed in certain circumstances. We must find a form of words that will take that into account.

11:00

Mr Ingram: That is the point that I was going to make. I think that the wording needs to be tightened up, particularly with regard to crime. We must specifically mention that.

The Convener: Okay. We will now move on to pages 5 and 6.

Des McNulty: We have discussed integrity before. The wording is "might influence them". The issue is that people or organisations might be seen to influence MSPs.

Karen Gillon: Where are we?

The Convener: On integrity, on page 5.

Des McNulty: We should change the wording to state that members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might be seen to influence them.

The Convener: In the section on acceptance of hospitality, we used the words

"that might reasonably be thought to influence".

We should use the same form of words on integrity.

Do members have any other points on pages 5 or 6?

Mr Ingram: Were we not going to put the point about personal behaviour in this section?

Karen Gillon: That point should be made in the paragraph on leadership, which states:

"Members have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its Members in conducting public business."

We could add a line to that, unless there is somewhere later in the code to which we could add it.

The Convener: We are considering making an addition to the introduction of section 8, which is on general conduct and conduct in the chamber. We could adapt that. Are members happy with that?

Members: Yes.

The Convener: If the committee is happy with that, that completes agenda item 1.

Complaint

The Convener: The next item is consideration of a draft report on the complaints against Mike Watson. As previously agreed, we will deal with this matter in private.

11:02

Meeting continued in private until 11:15.

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