

# **STANDARDS COMMITTEE**

Tuesday 14 December 1999  
(*Afternoon*)

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### **STANDARDS COMMITTEE 16<sup>th</sup> 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

**THE FOLLOWING MEMBER ALSO ATTENDED:**

John Young (West of Scotland) (Con)

**COMMITTEE CLERK:**

Vanessa Glynn

**ASSISTANT CLERK:**

Alastair Goudie



## Scottish Parliament

### Standards Committee

*Tuesday 14 December 1999*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:35*]

### Code of Conduct

**The Convener (Mr Mike Rumbles):** Welcome to the 16<sup>th</sup> meeting of the Standards Committee. There is one item on the agenda: consideration of the remaining sections of the draft code of conduct, on paid advocacy and the enforcement of the code.

Members will be aware that the Court of Session is currently considering an appeal against the decision by Lord Johnston in respect of the petition for interdict against Lord Watson. In that context, the court is giving wide-ranging consideration to the advocacy rule, the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999, from which the rule derives, and the whole regulatory framework for members' conduct.

As the matters that we will discuss today include some that are being discussed during the appeal, permission has been obtained from the Presiding Officer to allow our consideration to proceed. It may be that when the case is finally resolved—we cannot predict when that will be—we will want to reconsider the text of the draft code in the light of the court's decision. For the present, the Parliament needs a code of conduct, so we must continue our work to complete the draft.

We will deal with the sections separately, and begin by considering the section on paid advocacy. As in the other sections that we have considered, which derive principally from the members' interests order, the proposed text focuses on explaining the existing legislation. We must bear it in mind that, for the purposes of the code of conduct, we are bound by that legislation. Considerable thought has been devoted to the interpretation of the legislation, and that is reflected in the wording that is before us. We might not have much scope to deviate significantly from the text.

The briefing notes that members received give some additional areas to consider, but I feel that our priority is to establish the code quickly, so that members can fully understand the existing rules. We need time and experience to create additional

obligations effectively, so we might want to return to some items next year.

Let us consider the section on paid advocacy page by page—I assume that everybody has read through it carefully. I invite comments on page 1, which addresses the statutory requirements of the members' interests order.

**Des McNulty (Clydebank and Milngavie) (Lab):** I have a comment, which picks up on a point that you made. As it stands, article 6 of the order is probably unsatisfactory, and we should flag that up in the report that we give eventually to Parliament. If there is legislation in that area, we might want to revise the article. However, this part of the code reflects the present legislative framework, so we must take it as a given.

**The Convener:** That is absolutely right. The clerks note your point, and we will flag it up.

Are there any comments on page 2?

**Des McNulty:** The last sentence of the first paragraph requires two or three readings to be fully comprehensible. I do not disagree with what it tries to say, but the wording is not 100 per cent clear.

**The Convener:** We will examine that wording at our meeting next month.

**Des McNulty:** Essentially, the issue is the linkage between payment and action, and the wording needs to reflect that more clearly than it does now.

**The Convener:** Are there any other comments on page 2?

**Des McNulty:** I have a view that other members perhaps do not share. I think that, as far as possible, the code should contain principles and avoid giving examples. Therefore, I am not sure whether paragraphs 3 and 4 require to be included in the code, or whether the clerks might want to advise members when a particular issue arises.

**Karen Gillon (Clydesdale) (Lab):** I understand where Des McNulty is coming from on this matter. However, part of the difficulty is that paragraph 3 addresses an issue that has probably been raised already in relation to a member. I had certainly not realised that the actions described in that paragraph might have been prohibited by the order as it stood, so I think that some explanation is helpful. We have given examples elsewhere in the code. This is the most difficult section for folk to understand, so an example would be helpful—I do not know whether the example that is given is the best.

**Des McNulty:** I think that in a previous section we decided that we should identify the principles and suggest that members go to the clerks for advice. It might be appropriate to say that

members should be cautious when, for example, they are invited on fact-finding missions, and should ensure that they work within the rules.

**The Convener:** We are having difficulties because we have two opinions and there are only three of us here. I am tempted to leave the text as it is, but to ask the clerks for an alternative section so that we can compare the two versions at our meeting in January. Is that a feasible way forward, given that there is obviously a difference of view?

**Karen Gillon:** I do not feel strongly one way or the other, but if we are trying to prevent problems, it would be useful to have an example. Folk might not necessarily always go to the clerks for advice. It also puts a lot of the onus on the clerks.

**The Convener:** I tend to agree with the view that Karen Gillon has just expressed, but acknowledge that Des McNulty has a legitimate point of view and would like to explore it. It would be useful to compare those two options at our meeting in January when we consider the whole code. Are you satisfied with that?

**Des McNulty:** Yes. I want to pick up on the previous paragraph as well. The last sentence of that paragraph says:

"In other words, the existence of the remuneration, although still an important factor, is less important than the member's intentions."

That is slightly too stark. Inevitably, if we have to consider a case, it will involve some remuneration and an intended outcome. It is not for us to mind-read, but we could judge behaviour.

**The Convener:** So the suggestion is that we take that sentence out?

**Des McNulty:** The sentence does not help us. What is prohibited is the member acting as is described in those paragraphs in return for, or in anticipation of, remuneration.

**The Convener:** That is a valid point.

**John Young (West of Scotland) (Con):** There might be a slight problem. It is not unknown for a councillor to perform duties that he or she is entitled to carry out on behalf of someone who approaches them. The last thing on their mind might be remuneration, but a few weeks later, someone might arrive on their doorstep to remunerate them. That happened to me in my early days as a councillor. I got someone a house—perfectly legitimately—and about two weeks later I got eight packets of cigarettes, although I do not smoke. I was bemused, and did not know what I should do with them.

14:45

I asked the town clerks department, which suggested I send the cigarettes to Erskine

hospital, ask for a receipt and advise the person who gave me the cigarettes why I had to do that. It would not be hurtful to their feelings. It was not intended as a bribe, but bigger issues might come into play. This part of the code might cover such situations, but it is a difficult issue.

**The Convener:** That is a valid point, but it is covered by the fact that the paid advocacy rule prevents members from advocating causes "in consideration of" remuneration. That is the key. I am inclined to suggest that we remove the last sentence. Karen, do you have any thoughts on that?

**Karen Gillon:** I understand the issue that John raised. There have been circumstances in the past when, for example, people have brought boxes of sweets into the office. I do not believe that this section applies to those situations. We are liable to trivialise the issue if we say that that is what the section is about. Those situations are covered by the section on gifts, rather than the one on paid advocacy. Being given a box of sweets because you have helped someone is not paid advocacy.

**John Young:** No, it is not, but I heard of another case in which someone was given £1,000 in a similar situation. You cannot accept such a situation.

**Karen Gillon:** But that would be covered in the section on gifts. If someone accepted a gift of £1,000, they would have to declare it.

**John Young:** They should not take it.

**Karen Gillon:** I am not saying that they should or should not. Individual members should make up their own minds and register it appropriately. We cannot prescribe what people can do. They must have a choice, but there are rules by which they must abide.

**John Young:** The rule is: if in doubt, go to the clerk.

**The Convener:** Absolutely right, but coming back to the issue in question, we are talking about paid advocacy, which is a different kettle of fish from hospitality. I am inclined to suggest that we take Des McNulty's suggestion and remove that last sentence. Are we agreed?

**Members indicated agreement.**

**The Convener:** Are there any other comments on page 2? Are there any comments on page 3?

**Karen Gillon:** The paragraphs on bills are helpful. There was much concern among back-bench MSPs that they might run into difficulties in taking forward members' bills because they are not experts in the drafting of bills. For that reason, bills might not see the light of day. If Parliament is to be effective, back benchers must have the ability to introduce bills, and if they need

assistance in doing so—provided that it is within the rules—we can give them reassurance through the code.

**The Convener:** I agree.

**Des McNulty:** At the top of page 3, do we need the phrase:

“remuneration in the form of”?

We could say “received assistance”. We want to make it clear that members can receive assistance, but they cannot receive remuneration. We are trying to draw a boundary between assistance and remuneration.

**Karen Gillon:** I read that differently from Des. The sentence states:

“Members should beware of entering any arrangement from which it could be construed that the reason they had taken forward a Bill was because they had received remuneration”.

That is why we decided that Mike Watson could take forward his bill, because we did not believe that he had acted in consideration of remuneration. He acted because he wanted to take forward the issue.

**Des McNulty:** I see what you are saying.

**The Convener:** Are there any other comments on page 3?

**Des McNulty:** We should take the same approach on hospitality that we took on gifts, and refer to the principle and the opportunity for members to seek advice from the clerks. We do not want the rule to make distinctions in regard to modest hospitality such as cups of tea and coffee.

**Karen Gillon:** We should look at the form of words in the section on gifts to see whether it would fit in here. It might not, but we could work on it.

**John Young:** Does not page 3 conflict with page 4 on the matter of hospitality? The fifth paragraph of page 4 states that remuneration

“includes benefits or hospitality which members receive”.

It goes on to say:

“e.g. hospitality received in relation to Committee visits or on behalf of the Parliament.”

When committees visit local authorities, modest hospitality is acceptable. There is a problem with this somewhere.

**The Convener:** Yes, but this section of the code deals not with hospitality, but with paid advocacy. It is about being “in consideration of”.

**Karen Gillon:** I am a member of the Education, Culture and Sport Committee. As a member of that committee, I am invited to various cultural and sporting events. I understand that if I went to an

opera performance, that would not preclude me from taking part in committee business that involved, for example, Scottish Opera, as long as I did not go to the opera and act in my capacity as a member of the committee and in consideration of the benefits to the opera.

**The Convener:** That is the correct interpretation of the rules.

**Karen Gillon:** That means that I can go to the opera if I am invited.

**The Convener:** Indeed.

**Karen Gillon:** But I should not go if I believe that it will influence my actions on the committee.

**John Young:** I can see your point. That is what I wonder about.

**Karen Gillon:** I might wish to see an opera at first hand.

**The Convener:** But we are talking about paid advocacy, which is advocating something in consideration of the fact that you will receive a favour. In your example, you would not be advocating something for that purpose; you would be going along to increase your education or your awareness of that issue. The most important point concerns “in consideration of”. Is that okay?

**Karen Gillon:** I am clear about it.

**The Convener:** Are there any comments on page 4?

**Karen Gillon:** Can you calm down a bit and stay on page 3?

**The Convener:** Yes.

**Des McNulty:** I am not sure about the order of some of the section. For example, the definition of remuneration comes on page 4.

**John Young:** The definition is sweeping.

**Des McNulty:** The guidance on the detail of the paid advocacy rule is on page 4. I am concerned that examples are on page 3, because we go on to talk about the guidance and interpretation, and then points of detail. On pages 2 and 3, we should focus on the principles. Then we should move on to the definition of remuneration and the legal advice to members. Having examples in the discussion sections could be confusing.

**The Convener:** That is a sensible suggestion. We will do that.

**Karen Gillon:** On a point of clarification on the second last paragraph, as a result of the Nolan rules, members can no longer be sponsored by trade unions. Although trade union sponsorship of MPs was previously much sought after, it is currently not possible for an MP or an MSP to have such sponsorship. A trade union can have a

constituency development plan with my constituency Labour party, but that would not be a result of my membership of that trade union.

**John Young:** Does that mean that a trade union could not gift money for certain candidates' election expenses?

**Karen Gillon:** Sponsorship and giving money towards election expenses are two very different issues.

**John Young:** I am not saying that trade unions should not be able to contribute to election expenses.

**Karen Gillon:** If trade unions give a certain percentage towards a member's election expenses, either in cash or in kind, that is a registrable interest.

**John Young:** Trade unions should be able to do that.

**Karen Gillon:** The issue of sponsorship might just muddy the waters.

**The Convener:** Would it be helpful to amend the start of the second sentence to read, "Nor does it prevent a member from being sponsored by any organisation"?

**Karen Gillon:** I do not know of any other organisations that might sponsor members.

**The Convener:** The clerks have just reminded me that Lord Watson received sponsorship from an organisation. Perhaps it would be best to remove the words "Trade Union".

I am still on page 3. I will not turn over until I get the go-ahead.

**Karen Gillon:** Carry on.

**The Convener:** Do members have any comments on page 4?

**John Young:** The penultimate paragraph of page 4 says:

"It should be noted that this includes benefits or hospitality which members receive in the course of their Parliamentary duties, e.g. hospitality received in relation to Committee visits or on behalf of the Parliament."

Does that include food?

**The Convener:** You have to remember that we are talking about hospitality received in consideration of remuneration. We are not looking at hospitality as such.

**John Young:** But the word "hospitality" is there in black and white.

**The Convener:** It might be possible to receive hospitality for a consideration. We need to cover everything in that respect.

**Des McNulty:** I have some sympathy with

John's point. Hospitality in the form of cups of tea during a committee visit has no real relevance to the paid advocacy section. Perhaps the sentence that John mentioned does not add anything to that section.

**The Convener:** The clerk's advice reinforces what I said before. This section makes it clear that members are not allowed to receive hospitality in consideration of remuneration.

We dealt with the issue of hospitality at the previous meeting; today, we are considering paid advocacy. As far as that is concerned, any form of remuneration is out.

**Karen Gillon:** I understand what you mean, but perhaps your explanation is confusing other members. If the Education, Culture and Sport Committee visits another organisation to take evidence, committee members are perfectly entitled to have tea and coffee during that visit.

**John Young:** Or even a meal.

**Karen Gillon:** However, if an individual member decided to change his or her attitude towards an organisation as a result of receiving a meal, a bottle of wine or other hospitality, that would have been done in consideration of what he or she had received and would break the rules on paid advocacy.

**The Convener:** That is correct.

**Karen Gillon:** Members will not be prevented from accepting hospitality. However, they should not do that if they act differently in consideration of that hospitality.

**John Young:** Members of the Scottish Grand Committee used to say that Glasgow gave them the greatest nosh-up anywhere in Scotland. However, I am sure that that did not influence any of the committee's decisions on Glasgow.

**Karen Gillon:** It certainly did not influence any of the Conservative Government's decisions. *[Interruption.]*

**The Convener:** Okay. Do members have any comments on page 5 of the section?

Dare I move on to page 6?

**Karen Gillon:** I want to clarify something. I was reading about Linda Fabiani in the newspapers this morning. As I understand the section, Linda would not be precluded from taking part in debates on East Timor because she did not do anything in consideration of remuneration.

**The Convener:** That is correct. "In consideration of" is the key phrase.

Do members have any comments on page 6? If not, I would like to raise a point about the first of the five bullet points on that page. Although the



term “associate” has a legal definition in the bullet points, the first point says:

“A person is an associate of an individual if that person is the individual’s husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual’s husband or wife”.

Perhaps, in future, we should include live-in partners of the same or opposite sex, not just husbands and wives.

**Karen Gillon:** Can we change that, convener?

**The Convener:** That is the advice that I have received. That is how the term “associate” is defined in the members’ interests order. Perhaps we could include a sentence which makes it clear that the definition is lifted directly from that order.

**Karen Gillon:** Can we add something that might not be legally binding but which brings the matter to people’s attention? We do not want to have a situation in which individuals in same-sex relationships or in unmarried relationships are not under the same obligations as everyone else.

**The Convener:** I share your view, but the clerk’s advice is that we need to discuss the issue again when we examine the legislation in future. We are not able to do that in the committee. However, the issue is important, which is why I raised it.

**Des McNulty:** Perhaps we could have another catch-all bullet point, which would include people in established relationships with others in the definition of “associate”.

**The Convener:** That is not legally possible, because it would create two legal definitions. Perhaps it would be best if we left the matter.

**Karen Gillon:** But we have two legal definitions. If I were not married to my husband—which I am—but was living with him in a relationship that might be as binding as a marriage arrangement, would I be excluded from that definition?

**The Convener:** I will ask the clerk to explain this point.

**Vanessa Glynn (Committee Clerk):** The word “associate” appears in article 6 of the members’ interests order and is defined in article 2 of that order. It is defined as being construed in accordance with section 74 of the Bankruptcy (Scotland) Act 1985. All we are saying in the code is what the definition in law is in the members’ interests order.

I do not think that you can alter that at this point, but when you come back to writing the legislation, you can word it differently and include a different definition under paid advocacy.

**Karen Gillon:** We could bring that to the attention of the Executive for early consideration, because we do not want to have two classes of

MSPs, with the class depending on what relationship they are in. That would be wrong, and would set the wrong tone for the Parliament.

**The Convener:** Yes, and we have flagged that up.

**John Young:** I do not want to be pedantic, but bullet point 2 on page 6 reads:

“A person is an associate of any person with whom he is in partnership”.

Should not that be “he/she”?

**The Convener:** That comes from the language of the 1985 act.

**Des McNulty:** We cannot change it.

**John Young:** Bullet point 3 says:

“if he is that individual’s brother, sister”.

As we all know, women now make up a large part of the Parliament.

**The Convener:** All we have done is to lift words straight from the definition that was passed in an act in 1985.

**John Young:** Have we no power to insert additional words?

**The Convener:** Not into the definition that comes from the act.

**John Young:** I am sure that this would not happen but, hypothetically, a woman MSP who landed in difficulties with the section could say, “Well, it says ‘he’, and I am not a he.”

**Karen Gillon:** But if a woman is bankrupt, she will be subject to the same laws—

**John Young:** I am sure that she will, but—

**Karen Gillon:** If the wording is drawn from the Bankruptcy (Scotland) Act 1985, I take it that that is the legally established wording for anybody.

**John Young:** Perhaps we should be amending certain sections of that act.

**Karen Gillon:** We should.

**The Convener:** Indeed, we should—but not this afternoon.

**Karen Gillon:** Fifteen years ago, that was the language of the day. It is not the language of today, and we need to amend it—but we cannot do that just now.

**The Convener:** Let us move on to page 7, which is the last page of the section on paid advocacy. Is everybody happy with it?

**Members indicated agreement.**

15:07

*Meeting suspended.*

15:09

*On resuming—*

**The Convener:** We will now move on to the enforcement section of the code—section 9. The text that has been provided to members has been the subject of considerable thought to ensure that what is proposed is legally defensible. Considerations of the European convention on human rights are central to this section. Members should bear that in mind as we go through the text page by page. Our scope to change the proposed arrangements is limited by that. Having said that, we have already made a major contribution to parts of the text on complaints procedures.

Are there any comments on page 1 of the draft code? There are paragraphs on “How to make a complaint”, “Action on a complaint” and “Complaints to be considered by the Standards Committee”.

**Karen Gillon:** I would like to suggest an amendment to the paragraph on “How to make a complaint”. In the sentence that says that a complaint

“should be communicated to the Standards Committee”

we should add the words “in the first instance” after the word “should”. The first people to know about a complaint should be the Standards Committee.

**The Convener:** Is that not, in effect, what the paragraph says?

**Karen Gillon:** As it is, the paragraph would not stop anyone saying, “I’m going to make a complaint and I’ll take it to Mike Rumbles and the Standards Committee—but before I do that on Monday morning, I’ll take it to the press on Sunday night.”

**Des McNulty:** What Karen is suggesting is included in the interim complaints procedure, but it might be worth repeating.

**The Convener:** The last sentence of the paragraph says:

“A complaint raised by an MSP should not be communicated to the press or other media until a decision has been made as to how the complaint is to be dealt with.”

I think that that is quite clear.

**Karen Gillon:** Okay.

**The Convener:** It is a very important point that needs to be emphasised.

**Karen Gillon:** I would like to clarify my reasons for raising the point, because I have taken a bit of

flak for it. I am not taking an idealistic position; I am raising the point because every member of this Parliament has the right to be innocent until proven guilty. Allegations could be made by a member of the public which, even though they were unsubstantiated and unfounded, could have a damaging effect on an MSP’s personal and social life if they were made to the press before being considered by this committee. Members should be protected in some way, if possible.

**The Convener:** Yes, but this paragraph refers to a complaint raised by an MSP. We cannot have any sanctions against anybody else who raises complaints.

**Karen Gillon:** No, but we are setting a standard for ourselves. I hope that others will follow it.

**The Convener:** Every MSP must be aware that this committee would treat as a very serious matter anyone releasing a complaint to the press before lodging it with the clerk to the Standards Committee, and before we had met to decide on a course of action. That would be a serious breach of this code.

**Des McNulty:** I want to be clear about that, Mike. I thought that we had agreed in the interim complaints procedure that all complaints should be routed through the clerk to the committee—whether they come from an MSP or from anybody else. Although we can have no sanctions against anybody else, we do have sanctions against MSPs who use an inappropriate procedure. We should be absolutely clear that all complaints should come through the route that we have laid down.

**The Convener:** Do you think that, instead of the first two words of the paragraph being “A complaint”, they should be “All complaints”?

**Des McNulty:** “Any complaint”.

**Karen Gillon:** “Any complaint”.

**The Convener:** So “Any complaint” rather than “A complaint”? Is everybody happy with that?

**Members indicated agreement.**

**The Convener:** We move on to page 2. I should point out to members that, once we agree this next year, it will replace the interim complaints procedure that we have already published.

15:15

**Des McNulty:** On page 2, the draft states:

“The Committee may seek the services of an adviser to assist with aspects of its consideration.”

I wonder whether the word “seek” is appropriate there. It might be better to say, “Where appropriate, the Committee may take on the

services of an adviser to assist with aspects of its consideration." I just wanted to flag that up.

**The Convener:** We can take that on board.

**Des McNulty:** At present, when a committee wants to appoint an adviser, it has to make a case to the Scottish Parliamentary Corporate Body. The Standards Committee should say to the corporate body that we want to be entitled to go ahead with appointing an adviser, if we believe that to be necessary, without asking for the corporate body's permission.

**The Convener:** I think that we must ask. However, we can firm up the language a bit.

**Karen Gillon:** I hope that we are not straying into an old debate.

**Des McNulty:** No—I will try not to.

**The Convener:** We move on to page 3. I think that there is a small inconsistency in sub-paragraphs (a), (b) and (c). In sub-paragraph (b), on allowances, and sub-paragraph (c), on treatment of staff, we say that if a matter cannot be sorted out by the corporate body, it should be referred to the Standards Committee. I would like to apply the same procedure in sub-paragraph (a).

**Karen Gillon:** That ties in with a discussion we had at our previous meeting. If a convener is unsuccessful in dealing with a member, ultimately that member has the right to refer the complaint to the Standards Committee.

**The Convener:** We will ensure that all three sub-paragraphs are written in the same way.

**Des McNulty:** I have a question about the procedure for reports to Parliament. The document says that the committee

"will report to the Parliament",

but it does not say how. Do we need to specify that? Does it have to be a written report?

**The Convener:** Standing orders specify that it should be a written report.

**Des McNulty:** If a sanction is to be taken against a member, will that always follow a debate in the chamber?

**The Convener:** Yes. That is my understanding of standing orders. There would be a report to Parliament and, if necessary, a motion would be lodged on the recommendation of this committee.

**Des McNulty:** So we would lodge a motion on behalf of the Standards Committee.

**The Convener:** We move to page 4 and the section headed "Sanctions".

**Des McNulty:** There are three categories of potential case: a member's treatment of a member of the Parliament staff; a member's treatment of

somebody whom they are employing; and a member's treatment of an employee of another member. However, the draft identifies only two categories.

**The Convener:** I invite the clerk to give advice on that.

**Des McNulty:** She can take it away and examine it.

**The Convener:** I am told that this has come directly from the corporate body's material.

**Des McNulty:** Three categories were identified.

**The Convener:** The advice that I have received is that this comes within the bounds of employment law governing the relationship between an individual employee and his or her employer.

**Des McNulty:** That is right. That is why I think that we must—

**Karen Gillon:** It will be very difficult to deal with the third situation that Des McNulty describes. An individual employee will have a complaints and grievance procedure and, ultimately, the sanction of an industrial tribunal. That is slightly different from the situation to which Des is referring, involving a member and someone whom they do not employ. We would need to check out the employment law on that.

**The Convener:** I agree. This has been gone through with a fine-toothed comb by the lawyers, has it not?

**Vanessa Glynn:** Yes.

**The Convener:** That is why we delayed dealing with this section until our last meeting before the recess.

**Karen Gillon:** For our meeting in January, can we check to see whether we need to add anything?

**The Convener:** We will check it with the lawyers again.

**Karen Gillon:** We may go with the present wording, but something may need to be added.

**Des McNulty:** We might make some reference to employment law.

**Karen Gillon:** If a member were found negligent by an industrial tribunal with respect to their own staff, that would be conduct unbecoming a member of this Parliament, would it not?

**The Convener:** Not necessarily; the code governs parliamentary duties. This is a difficult area on which the lawyers need to give advice.

**Karen Gillon:** I think we need to check that.

**John Young:** Where will someone who is

employed by an MSP stand? If they do not get satisfaction from their employer, does Parliament have a wider responsibility as the overall employer?

**The Convener:** No. The relationship between the MSP and his or her staff is a personal one.

**John Young:** Despite the fact that the contract of employment is put together more or less by the Parliament?

**The Convener:** No, the contract of employment is put together by the MSP and their staff.

**John Young:** A 14-page standard contract of employment is supplied.

**The Convener:** The contract of employment is between an MSP and his or her staff. The personnel office of the Parliament has been helpful to members by providing them with a huge amount of information and help, but that does not negate the responsibility of the individual employer to his or her employees. We should not get into that issue, but we will ask the lawyers to look at this particular paragraph again.

**Des McNulty:** I am pretty sure of it, as I was involved in drawing up the model contract. A procedure is laid down in the model contract that addresses the role of the personnel office in dealing with complaints by an employee.

**Karen Gillon:** You may want to refer to that in the code of conduct.

**Des McNulty:** That is what I thought we might do.

**The Convener:** We should do that. Are there any other issues on page 4?

**Members:** No.

**The Convener:** Page 5?

**Members:** No.

**The Convener:** We now turn to page 6, which deals with criminal offences.

**John Young:** A fine of level 5 is mentioned. Out of curiosity, how many levels are there on the standard scale?

**The Convener:** I do not know. That reference is lifted directly from the order.

**Des McNulty:** I want to be clear on the issue of conduct at a meeting of the Parliament or a committee. We had a discussion on that earlier, under the broad issue of the code of conduct. I take it from what is said at the bottom of page 6 and the top of page 7 that if a member misbehaves in a committee or in the chamber, the enforcement procedures against that member are ultimately nothing to do with the Standards Committee, but that the Presiding Officer has

power and responsibility in those circumstances.

**The Convener:** Indeed, or the convener of the committee.

**Des McNulty:** It is quite clear that issues of enforcement would not come before the Standards Committee.

**The Convener:** Not on that issue. I am advised that our remit permits us to examine any conduct at all in the context of parliamentary duties; our remit is all-encompassing. In Parliament or a committee meeting, the Presiding Officer or the convener has the authority to exclude members for the rest of the meeting. That would have to be effective immediately.

**Karen Gillon:** There is a contradiction. It is obvious that, if I am out of order, you have the power to exclude me from this committee. You would not have to refer the matter through 23 sub-committees to decide whether I could be excluded. However, the second paragraph on page 7 says:

"The Parliament may decide, on a motion of the Parliamentary Bureau, to exclude the member for a further period."

If we are adding under this part, on the complaints that are to be referred elsewhere, that, ultimately, members could be referred to the Standards Committee, such a motion should be lodged by the Standards Committee.

**The Convener:** I am told that that procedure is in our standing orders. That is, however, a good question, as there seems to be some inconsistency.

**Des McNulty:** Perhaps a way round that would be to say that the Presiding Officer may refer a case to the Standards Committee or to the Parliamentary Bureau in those circumstances. The Parliamentary Bureau has one way of dealing with it—by a motion of the Parliament—but we might have another way.

**The Convener:** As I understand it, the Parliamentary Bureau, according to standing orders, is the only authority that has the power of exclusion in those circumstances. However, that does not prevent our taking further action if the matter is referred to us.

**John Young:** If the convener could simply name the member and exclude them from the rest of the meeting, he or she would not have to move a motion on that, and have another member of the committee second it.

15:30

**The Convener:** No. The convener of the committee has that authority.

Let us consider the other items on pages 6 and

7.

**Des McNulty:** We should consider whether there should be a catch-all point of reference, to state that the Presiding Officer may refer a member to the Standards Committee.

**Karen Gillon:** If they think a member is acting in a manner that breaches the code of conduct, any member of the Parliament should be able to refer the matter to this committee. If someone shouts across the chamber, a member should be able to refer the matter to this committee.

**The Convener:** We will insert a catch-all statement at the end. In the army we had a catch-all section—section 69—but perhaps I should not refer to that.

**Des McNulty:** I was concerned that the paragraph is written in such a way as to exclude the Standards Committee from the process.

**Karen Gillon:** Far be it from us to take powers from the Presiding Officer.

**The Convener:** The next two paragraphs deal with breaches of the allowances code and the treatment of staff. Do members have any points to raise on those paragraphs?

**Des McNulty:** Why is the treatment of staff included in that context?

**Karen Gillon:** If a member has acted towards a member of parliamentary staff in a way that breaches the code of conduct, their rights and privileges should be withdrawn. That should be automatic, if a member has been discourteous, cheeky or offensive, especially if they have been sexually harassing a member of staff, whose complaint is upheld.

**Des McNulty:** It is conceivable that other circumstances, apart from the treatment of staff, might arise.

**Karen Gillon:** Would those not be dealt with under the heading of other breaches?

**The Convener:** We are highlighting this particular issue of the behaviour of MSPs towards staff.

**Karen Gillon:** It is important that this Parliament is seen to be a team, and that every member of staff—MSPs or any others—are treated equally and receive the same respect. It is important that we highlight that in the code of conduct.

**Des McNulty:** We address breaches of the members' interests order, criminal offences, conduct at a meeting of Parliament or a committee meeting, breaches of the allowances code, then the treatment of staff. Is that the full range of areas?

**The Convener:** It is not. The next section, on

the next page, deals with other breaches. We will move on to other breaches now, on pages 8 and 9, which is the final part of the code.

I would like to raise a point about the first bullet point:

"Exclusion of a member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings."

We should include committee meetings, as they are not mentioned. We should insert "committees", as not only meetings of the Parliament are involved. Is everybody happy with that?

**John Young:** Would it not be better to leave that open? As it stands, surely that point covers everything and anything.

**The Convener:** There are issues that may arise in the future that concern committees. I want to ensure that "committees" is included somewhere in the code.

**John Young:** We might insert, "committee or any other relevant meetings", or something like that.

**The Convener:** I suggest that we use, "proceedings of the Parliament or its committees". That would be a good catch-all definition.

**Karen Gillon:** Generally or specifically.

**The Convener:** Yes. We will include that.

**Karen Gillon:** Can we compel members to attend particular meetings?

**The Convener:** We can exclude them, but I do not think that we can compel them to attend.

**Des McNulty:** We should exclude "Parliamentary Party meetings" from the second bullet point. We have no remit in relation to that. We might want to think about excluding members from committees of which they are not members.

**The Convener:** That would be covered by the first bullet point.

**Karen Gillon:** If the conditions of the third bullet point are imposed—if a member's right of access to the parliamentary complex is withdrawn—a member's right to participate in their parliamentary group is effectively withdrawn, unless other groups do not meet as the Labour group does. The member would be unable to enter the building.

**The Convener:** I agree with Des on the second bullet point. There is no need to refer to parliamentary party meetings in that context.

Do members have any other comments about this last section?

**Karen Gillon:** What are "representational, ceremonial and related privileges"?

**The Convener:** Those exist when a member represents the Parliament on various occasions, in meetings, and so on.

**Karen Gillon:** So they are more to do with the Presiding Officer and ministers?

**The Convener:** And those who represent the committees.

**Des McNulty:** There is an issue concerning allowances in that context. Should that sanction be included here, or has it been covered previously?

**The Convener:** I am advised that that does not appear here because of concerns over the European convention of human rights. That sanction would remove someone's livelihood.

**Karen Gillon:** It would remove a member of staff's livelihood rather than a member's livelihood. Members' allowances are not their livelihoods.

**The Convener:** A member might employ people through the allowances scheme.

**Karen Gillon:** Yes, so that sanction would affect another person's livelihood. I would not like anyone to think that allowances are part of members' livelihoods.

**The Convener:** I see what you mean. I should make that absolutely clear. The allowances are used to employ staff, which affects the livelihoods of those people.

**John Young:** That is not how the *Daily Record* saw the matter a few months ago.

**The Convener:** I am glad you made that point, in case there was any misunderstanding.

I am delighted to say that that brings our deliberations on the code of conduct successfully to a close. I shall ask the clerks to prepare a revised text of the draft code, which will take into account the discussion that we have had, so that the committee's report on the draft code annexe can be finalised at our first meeting in the new year.

This has been a mammoth task. We have achieved our aim: we have examined the whole code of conduct in draft form, which is now ready before the end of the year, as we suggested in our timetable it should be. I thank my colleagues on the committee, the staff, the public and the press, and I wish everybody a happy Christmas.

*Meeting closed at 15:37.*

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