STANDARDS COMMITTEE

Wednesday 12 January 2000
(*Morning*)

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STANDARDS COMMITTEE
1st Meeting (Committee Room 3)

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 12 January 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:30*]

The Convener (Mr Mike Rumbles): Welcome, everybody, and happy new year.

Before we start, I should say that we have received an apology for absence from Tricia Marwick and a phone call from Karen Gillon, who is stuck in traffic but will arrive soon.

Deputy Convener

The Convener: The first item of business is the choosing of a deputy convener for the committee. Members might be aware that, on a motion from the bureau, and having regard to the political balance of the Parliament, it has been agreed that the party whose members are eligible to be deputy convener is the SNP. I invite nominations from eligible members for the position of deputy convener.

Mr Adam Ingram (South of Scotland) (SNP): I nominate my colleague, Tricia Marwick.

The Convener: I assumed that you were not nominating yourself.

Lord James Douglas-Hamilton (Lothians) (Con): I would be happy to second that.

The Convener: The clerks have advised me that the decision can be taken in Tricia's absence. The decision can be made by acclamation or by election. Is the committee agreed that it should be by acclamation?

Members *indicated agreement.*

The Convener: Are we agreed that Tricia Marwick be chosen as deputy convener of the Standards Committee?

Tricia Marwick was elected deputy convener by acclamation.

Code of Conduct

The Convener: Our next item is the continued consideration of the draft code of conduct for members and a draft covering report.

The draft code includes all the sections that we have discussed in previous meetings. It reflects those discussions and other amendments, as outlined in the briefing note. Our aim today is to agree on the text of the code so that an early recommendation on the adoption of the code can be put to the Parliament.

There is a lot of material before us—the code has 10 sections. Rather than go through it page by page, I suggest that we go through it section by section.

Section 1 has been updated to reflect the new standing orders. It also contains a substantially new paragraph on the legal status of parts of the draft into which references will be inserted once the draft is finalised. The items that may need attention are in bold. I invite comments on section 1.

Des McNulty (Clydebank and Milngavie) (Lab): Where reference is made to something that is in the members' interests order, could it be set in a different typeface? Occasionally things are in boxes, sometimes they are in bold—such references would be more easily identifiable if they were in a different typeface.

The Convener: We will examine that with a view to implementing it.

Karen Gillon (Clydesdale) (Lab): Can I just clarify that the bits in bold are changes that we have made?

The Convener: Yes, the bold signifies new text or changes.

Karen Gillon: So those words will not appear in bold in the final version.

The Convener: They are in bold only to draw them to our attention. As soon as we have agreed to those changes, they will be printed as normal.

Des McNulty: On page 6, paragraph 1.10 says that

"it is Parliament's intention to review and if necessary to amend the code in the light of future legislation and other relevant developments."

Do we want to strengthen that? In our deliberations we have identified several areas where the existing legislation is out of step with what we think is appropriate. Perhaps we need to say that we will be coming forward with proposals to amend that legislation.

The Convener: We can do that.

Des McNulty: In relation to paragraph 1.11, if someone refused to sign the declaration that they had read the code and would abide by it, what would be the position of the Standards Committee? In future, we might be able to make the signing of the declaration part of the process of taking the oath but, in the meantime, what could we do if someone refused to sign the declaration?

The Convener: That would be a breach of the code and would be dealt with in the same way as any other breach of the code.

Mr Ingram: Further to Des McNulty's point, paragraph 1.6 says:

"Some of the rules set out in the Code are statutory requirements while others are non-statutory".

Is there any differentiation in the enforcement of the rules according to their different status? For example, if one of the non-statutory rules in the code is breached, can a complaint be raised against a member?

The Convener: Yes. That is dealt with under enforcement. We can reconsider that when we reach that section.

Are there any other comments on section 1? Do members think that we should mention that a failure to sign the declaration is a breach of the code?

Karen Gillon: We should include that.

The Convener: Let us move on to section 2. Members will see that it contains items in bold. Does the committee agree to the text as drafted?

Karen Gillon: I think that paragraph 2.5 sufficiently clarifies the points that we were making at a number of meetings and helps to establish the difference between confidential constituent information and other information.

Mr Ingram: Both Tricia Marwick and I have indicated our opposition to the inclusion of paragraph 2.3, and that opposition stands. If you do not mind, I will articulate the reasons for that.

The Convener: Please do.

Mr Ingram: I will do so carefully. To my mind, paragraph 2.2 admirably encapsulates the key principle of public duty for MSPs within our new democracy and is, quite clearly, immutable. It applies under any constitutional settlement and within any political framework. The oath of allegiance, by contrast, may currently be a legal requirement—and monarchy may enjoy majority public support—but it is subject to legitimate political and democratic debate. It cannot be denied that the current position of the monarchy could be changed by the will of the people, through the democratic process. In that context, requiring all MSPs to demonstrate allegiance to the monarchy is surely inappropriate. It would be asking some MSPs to be hypocritical, as there would be a discrepancy between their public pronouncements and the fact that they had signed the code.

Secondly, as last May's swearing-in ceremony demonstrated, many members of this Parliament took the oath either under protest or conditionally. I would like to hear how those members who support the inclusion of paragraph 2.3 envisage the enforcement of that part of the code. Will they entertain complaints against MSPs who articulate opposition to the monarchy or even against those who refuse to stand for the United Kingdom national anthem? What about members who choose to strike out paragraph 2.3 but sign up to everything else in the code? If such complaints will not be entertained, what is the point of including this paragraph in the code?

Karen Gillon: We have had this debate on numerous occasions. I want again to set out my views on why the paragraph should be included, whether Adam Ingram and his party like it or not. We are still part of the United Kingdom, which has a queen and a monarchy. By virtue of our membership of this Parliament, we were obliged to take an oath of allegiance to the Queen and to her successors according to law. That was not done conditionally. People had to do it to be members of this Parliament. If we remove this paragraph, we would be sending the wrong signals to the people of Scotland about the devolution settlement. We are very much part of this United Kingdom, and the oath of allegiance that members swore when they joined this Parliament is an integral part of their membership.

If at some point the people of Scotland vote for a different constitutional settlement, it will be for the Parliament to decide whether, in those different constitutional circumstances, changes to this code of conduct need to be made. At the moment, we are part of the United Kingdom and of a devolved settlement. As members of this Parliament, we have a duty to swear to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors according to law. Every member of this Parliament has done that.

The Convener: Do any other members wish to comment?

Lord James Douglas-Hamilton: I strongly support what has just been said. We have a constitutional monarchy in a democracy, and in those circumstances I strongly support the oath of allegiance.

Mr Ingram: Nobody has answered my question about enforcement of the code.

Karen Gillon: It would be a matter for the

committee to deal with if and when the situation that Adam Ingram has described arose.

Mr Ingram: So if an MSP refuses to stand for the national anthem, they can be reported to this committee for not bearing true allegiance to the monarchy.

The Convener: All complaints to the Standards Committee will be dealt with in exactly the same way.

Des McNulty: The issue lies in the words "according to law". If someone is not prepared to uphold the law, they would be debarred from office. However, how people respond to the national anthem is a matter for each individual—I do not think that it should be an issue for the Standards Committee.

Karen Gillon: To be fair, convener, I think that we are trivialising a serious constitutional issue. Whether someone stands for the national anthem should not determine whether we have an oath of allegiance to the Queen. This is a complex issue. It is part of the constitutional settlement by which, as a Parliament, we are bound, whether or not one or two parties—or individuals—like it.

09:45

Mr Ingram: I wish to clarify my position. I do not object to the code of conduct referring to the oath of allegiance—clearly, there is a legal requirement for that. There should also be an explanation of the obligations on MSPs under that legal requirement. However, I object to the inclusion of this clause in this part of the code in particular. Des McNulty's point about upholding the law is adequately covered in paragraph 2.2, which, as I said, encapsulates the key principle of public duty for MSPs. I do not think that it needs to be qualified by paragraph 2.3. I have no objection to mention of the oath of allegiance in another part of the code, but it should not be under "Key Principles of the Code of Conduct".

The Convener: The difficulty is that we voted on this matter and agreed on it. We are indulging you, Adam, and we should move on from this point to deal with the rest of the discussion.

Can we make progress? Does anyone want to amend this section or can we move on?

Mr Ingram: I wish to note my dissent to the inclusion of paragraph 2.3 in the draft.

The Convener: The only way in which you can do that—other than through the *Official Report*—is for us to vote on the matter, which I would rather avoid. Your comments have been recorded in the *Official Report*.

Mr Ingram: As a point of clarification, will the entire code go to the Parliament for ratification, at which point members can lodge amendments to parts of the code?

The Convener: That is correct.

Karen Gillon: Although that is true, it would be extremely regrettable if members of this committee felt it necessary to move amendments in the chamber after we had had full and frank discussions within this committee. I believe that we have operated in a non-party political way. It would be regrettable if we were to move from that position to one of acting in party political ways in the chamber.

The Convener: I would like to move on, but I acknowledge that this is an important point, which I would like to clarify.

Mr Ingram: I want to make it very clear that I am not raising this as a party political matter; it is a point of principle. If I note my dissent, surely that would allow me to speak in the Parliament on this matter. We have good relationships on the Standards Committee and, if the committee would rather that I did not speak against this part of the code, I would take that on board. However, I would have thought that, by noting one's dissent, one would be allowed to speak in debate on this matter.

The Convener: As there are no further comments, I will move on. Your comments have been recorded in the *Official Report*, Adam.

Are there any further comments on section 2?

Des McNulty: As a point of clarification, paragraph 2.7, on integrity, says that:

"Members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties."

I am happy with that text, but the vast majority of MSPs in the Parliament are members of political parties, which will influence the way in which they conduct themselves. We should record in the *Official Report* that we recognise that MSPs are members of political parties. Such phrasing would not subvert that recognition.

The Convener: You are right, but the phrasing is more applicable to the second sentence in section 2.9, which reads:

"They have a duty to consider issues on their merits, taking account of the views of others."

That encompasses acknowledgement of the fact that we are members of political parties and political groups.

Des McNulty: At the end of section 2.11 is the phrase:

"the Standards Committee clerks or of their own advisers".

That recurs a number of times in the document. I prefer the terminology that is used in section 4.2.1, on page 13, which says that a member should

"consult his or her own legal advisers and, on detailed financial and commercial matters, a member may need to seek the assistance of other relevant professionals."

The Convener: We will use that throughout the document.

Karen Gillon: Is that the legal position? We do not want members coming back to the committee saying, "But my lawyer told me not to register."

The Convener: That is the members' decision, because everybody is entitled to their own legal advice. We must emphasise that.

Karen Gillon: But would not that preclude this committee from taking action?

The Convener: No—this code is for the individual MSP, who must take personal responsibility for adhering to it.

We will move on to section 3, which is the introduction to the members' interests order. Apart from the highlighted introduction, no significant amendments have been made to this section which, as we have noted, is simply factual.

Des McNulty: We have tried to be consistent and have used the words "he or she" in other parts of the document but, on page 11, the third bullet point is gendered.

In section 3.7, the advisers issue comes up again.

The Convener: We will use "he or she" throughout as agreed.

Karen Gillon: I suggest that to save us having to go through each page where there is a problem such as that, the clerks make those standard changes throughout the document.

The Convener: Yes.

We will move on to section 4 on registration of interests, which is a detailed section. The briefing note that members have received highlights the main issues that came up in our previous discussion and on which we asked for further advice.

I would particularly like members' views on whether ceased interests should be removed from the register, or whether it is useful for the register to contain a complete record of members' interests throughout a session of the Parliament. That issue is set out in the briefing note. I have already discussed this in detail with the clerks and they believe that whatever we ask them to do will not be an administrative burden. It will not cause a difficulty for the clerks if we keep the complete record there.

Karen Gillon: At an appropriate time during the year—perhaps in May—we could remove ceased interests, but they might be kept on record for the lifetime of the Parliament for members of the public to refer to if appropriate. Otherwise, the register might become lengthy and difficult for people to understand as a lot of interests might build up. It might be appropriate if interests relating to a member's previous employment—which might not be relevant in a couple of years' time—are taken out but kept on record. That would make the register easier for the public to read.

The Convener: Are there any other views?

Des McNulty: I support Karen's view. The onus is on us to make the register as comprehensible as possible to members of the public.

The Convener: We will follow the instruction in the briefing note and we will amend the section accordingly.

Are there any other points on section 4?

Des McNulty: I have a couple of minor wording changes that I do not want to detain the committee with, so I will pass them on to the clerk if that is possible.

The Convener: Yes.

Des McNulty: There are a couple of items on which I seek clarification. I am not clear what is meant by the last sentence of section 4.2.20 on page 19. If I have been involved with producing this document and I am not clear what it means, I wonder whether its meaning would be clear to other members.

The Convener: We have just discussed that and we will amend the sentence accordingly.

Are there any other points on that section?

Des McNulty: One other issue that is, perhaps, substantive is that we are saying that gifts of more than £250 must be registered. Do we need to address the issue of cumulative gifts or benefits which, over a period, amount to more than £250?

The Convener: The advice that I have received is that, because of the briefing, we are stuck with that amount. If we want to change it we will need new legislation, which we can examine.

Des McNulty: I wonder whether we might put in a clause advising members that if the value of cumulative gifts from the same source exceeds that amount, it might be advisable for them to consider voluntary registration. Something along those lines would be positive.

The Convener: That is quite sensible.

Lord James Douglas-Hamilton: I understand that we can return to the issue of the exchange of gifts worth £250 between spouses at a later date,

with a view to recommending a change.

The Convener: Yes, but any change would require new legislation.

Lord James Douglas-Hamilton: That would be competent for this Parliament.

The Convener: Indeed.

Lord James Douglas-Hamilton: Someone might give a car to his or her spouse. Is that the kind of gift that should be registered?

Karen Gillon: Lucky spouse.

The Convener: The rule applies to any gift received by an MSP.

Lord James Douglas-Hamilton: Okay.

Des McNulty: I am sorry to keep going on about particular issues. Section 4.2.60 on page 32 states:

"Where registration is required, members should provide details of the dates, destination and purpose of the visit and where appropriate name the Government, organisation, company or individual who met any of the costs."

That should say, "specify the Government . . . and the amounts involved."

The Convener: Yes—that tightens it up.

Des McNulty: May I move on to section 4.2.61 on page 33?

Karen Gillon: Convener, are you taking the paragraphs in order?

The Convener: No, we can return to earlier paragraphs. We are looking at all of section 4. Des is just being comprehensive.

Des McNulty: Again, I am seeking to improve clarity. The clerks have come up with a definition of registrable heritable property. We should repeat that definition consistently on that page and on subsequent pages, rather than saying "as defined above" at various points. There is a lack of clarity that could be sorted out.

10:00

Karen Gillon: I would like to clarify a couple of things concerning election expenses. Can we clarify what is meant by election expenses? There has been some confusion over whether it means the maximum amount allowed or the amount that is actually spent. I understand that the phrase means the amount spent, but one extra line of clarification would be helpful.

The Convener: We could put an explanation of that point in brackets.

Karen Gillon: If someone were to be asked by a charity or voluntary organisation in their constituency to be, for example, an honorary president, how would that be covered by this document?

The Convener: It would be a voluntary declaration.

Karen Gillon: Would it come under "Miscellaneous"?

The Convener: Yes—because there would be no remuneration.

Karen Gillon: It would not come under the heading "Related Undertakings".

The Convener: No.

Karen Gillon: Would that preclude members who had registered an interest from taking part in the work of those organisations, or from discussing the issues that they raised?

The Convener: Not at all—but when a member speaks in the committee, it would be good practice to declare any voluntary interest that the member has registered.

Karen Gillon: I would like to comment on the point that Des made on cumulative gifts. Section 4.2.43 talks about one-off gifts as opposed to support on a continuing basis. If we clarify one section, we should clarify all the sections.

The Convener: Yes, that point is clarified in the last sentence of section 4.2.43. We could repeat the same sentence elsewhere.

Des McNulty: That sentence relates to sponsorship.

Karen Gillon: The kind of wording that is used there—although not legally binding—could be helpful if used elsewhere for clarification.

The Convener: I have been advised by the clerk that there is a distinction because there is no limit for sponsorship.

If there are no further questions on section 4, let us move on to section 5 on the declaration of interests. This section has been amended, largely to remove the examples that the committee thought superfluous. Are members content with the revisions?

Des McNulty: Generally yes—but I would like to raise a couple of issues for clarification. In section 5.2.6 on page 40, I wondered whether the word "only" was needed after the word "member". Without "only", the sentence could simply say:

"A member has a declarable interest in relation to registrable interests which have been registered or for which a statement has been lodged."

There might be eventualities in which the word "only" might cause us problems. I think that it would be easier to take it out.

The Convener: We could remove it; but the

clerk has pointed out to me that, if we are trying to clarify to members exactly what their legal position is, we should say that a member has a declarable interest only in relation to registrable interests. Keeping in "only" clarifies that.

Des McNulty: We could call it a legal declarable interest.

The Convener: Yes—if that will be helpful.

Des McNulty: Under section 5.3.5—

Karen Gillon: Can we return to that? I am not convinced about it. Des, can you explain why you want to change it? I though that it was fine as it was. We are, perhaps, trying to complicate something that does not need to be complicated.

Des McNulty: Possibly. The code refers to a declaration being made of a declarable interest. We are trying to suggest to members that the onus is on individual members to decide whether they have a declarable interest in relation to the matters that are being discussed. Ultimately, members must make a judgment in every case. If "only" is removed, the paragraph means that a member definitely has a declarable interest in relation to interests that have been registered, or for which a statement has been lodged. A member might consider that he or she has a further declarable interest, and the inclusion of "only" might discourage members from declaring when they might want to. We should try to avoid that confusion.

The Convener: I am advised by the clerks that the word "legally" would be helpful in explanations. Do members have any other comments on this section?

Des McNulty: I draw the committee's attention to section 5.3.5, on page 43, which says:

"where the interest is relevant to the proceedings."

That should appear at the beginning of the sentence rather than halfway through it. We do not want members to declare endlessly when that is not relevant to the issue that is being discussed. Putting that bit at the start would help members.

The Convener: If members have no other comments, let us move on to section 6 on paid advocacy. At its previous meeting, the committee asked the clerk to provide, alongside the original, a condensed version of the text that related to the purpose of the paid advocacy rule. The new text is included in the draft as version A. Can I have the committee's views on what should be included in the final text? I would like you all to read this through. We do not want it to be rushed. Let us spend two minutes reading it again.

Karen Gillon: I suggest that we go through the other sections first and come back to this one after that.

The Convener: Okay.

We will move on to section 7, which deals with lobbying and access to MSPs. The revised text has been offered to try to reflect the committee's views on the interaction between MSPs and lobbyists, without tying us down to any particular definitions of acceptable and non-acceptable lobbyists. The briefing note that members received explains the other points. It is a sensitive area, and I shall go through the text in detail.

Would members like me to go through this section page by page?

Karen Gillon: That would be helpful, convener.

The Convener: Okay—we will take it page by page. The first is page 56.

Des McNulty: I propose a minor textual amendment, but I shall take that up with the clerks afterwards, if that is okay.

The Convener: Are there any comments on page 56? If not, we will move on to page 57. There are no comments on that.

There is a lot of highlighted information on page 58. We should perhaps consider pages 58 and 59 together. I want to ensure that everyone is happy with section 7.3.5 in particular, which spans those two pages.

Mr Ingram: The last sentence of section 7.3.3 is:

"Nor should those lobbying on a fee basis on behalf of clients be given to understand that preferential access or treatment might be forthcoming from another MSP or group or person within or connected with the Parliament."

There is nothing in the code about Parliament's ability to enforce or police the provisions of that sentence. We would have to establish rules on that.

The Convener: Let us be clear: the important part of that sentence is:

"be given to understand that preferential access or treatment might be forthcoming from another MSP".

Remember that this is a code for MSPs' conduct. We are saying to MSPs that they must not give a lobbying organisation the impression that it could gain preferential access or treatment.

Mr Ingram: We will, I believe, discuss in a future meeting whether lobbying organisations should be regulated by the Parliament.

The Convener: Indeed. Remember that the focus in the code is purely on the MSP.

Karen Gillon: Section 7.3.3 is helpful. It seeks to clarify the distinction that we tried to make previously. My only concern is one of interpretation. The current wording reflects our earlier discussion and the emphasis that we put on

the matter. However, I am worried that the paragraph, which I think absolutely necessary, could be construed to say that people who lobby, but not on a fee basis, could be given to understand that they might get preferential access to ministers. I know that we came up with the emphasis, but I wonder whether there is a problem with the phrasing.

Mr Ingram: If the convener recalls, I made similar points at previous meetings, when we were defining "professional lobbyists", so I would emphasise Karen's point.

Karen Gillon: We need to be clear why that sentence is there: it has been written following our experience as a committee. It was clear that professional lobbying organisations, certainly the one that we investigated, used the bait of preferential access, or imagined preferential access, to secure clients. That is what we wanted to highlight: if, in a sales pitch, a lobbying company approaches someone and claims to be able to provide preferential access to ministers, that is not true in the eyes of the Parliament and its members. If people are offering such a sales pitch, the wider public and the relevant companies should know that, as far as the Parliament is concerned, that is not acceptable. It would be a breach of the code of conduct for members.

Mr Ingram: At the same time, we should emphasise the fact that preferential access is not acceptable full stop, and that, as far as access is concerned, everyone gets a fair crack of the whip.

Lord James Douglas-Hamilton: I understand that the Neill committee may issue a statement today on the subject of lobbyists, which is a topic that we will consider later. It would be very helpful to have a copy of the Neill committee's recommendations and thinking on the subject before we come back to the issue.

The Convener: I have asked the clerks to ensure that we all receive a copy as soon as possible. The committee is interested in best practice, from whatever source it comes. The Neill committee report will be of deep interest to us.

Karen Gillon: Members probably give preferential access to organisations with which they have sympathy. For example, I have met the National Asthma Campaign, because I am an asthmatic and I wanted to speak to it and hear the issues that it wanted to raise. The fact that I have a particular interest in asthma, and that it is at the top of my agenda, means that I probably met the campaign more quickly than I will meet other people. We can never take that away, but that is not what we are talking about.

10:15

The Convener: No. We cannot legislate against that.

Karen Gillon: We cannot legislate against people's interests. We can, however, legislate against companies using MSPs for their own financial gain.

The Convener: That is right. It is an important point, but I think that we should leave the discussion at that, although it was worth while clarifying our thoughts on the matter.

Are there any comments on pages 58 and 59?

Lord James Douglas-Hamilton: I want simply to clarify that the purpose of the guidance is to prevent commercial lobbying, not to prevent voluntary organisations or charities from making legitimate representations.

The Convener: Absolutely. Are there any comments on pages 60 or 61, which bring us to the end of that section?

Des McNulty: I have two points on page 60. We should amend section 7.3.7 to remove the words "'buying' influence over MSPs" and replace them with something along the lines of, "doing so in the expectation that they will receive subsequent preferential access to or treatment by MSPs." We are fundamentally opposed to people "buying influence" over MSPs and using those words in the code is perhaps not the best thing to do. The alternative that I suggest should be sufficient.

The Convener: Do members agree that we should remove that phrase? Karen, you are frowning.

Karen Gillon: My only concern is that when we had this discussion previously, the issue was raised of people buying tables at events to gain influence—people buying something in order to receive something. The wording is quite clear and I would be concerned about removing it. We are saying categorically that such behaviour is not acceptable in any circumstances. The wording should remain. It makes it quite clear that members should not participate in any event where the fact that somebody is buying something—for example, a table at a dinner—could be construed as unduly influencing an MSP.

Des McNulty: My concern is that we are saying the same thing twice when we could just say it once.

The Convener: I am inclined to leave the wording in.

Mr Ingram: We want to make the point as forcefully as possible. The wording stands perfectly well as it is and should be retained. We are reiterating our opposition to such action.

Guidance to MSPs ought to be firm on this matter.

Patricia Ferguson (Glasgow Maryhill) (Lab): I agree. We are talking about not just the influence that might be recognised at the event, but what happens subsequently—the relationships that might arise as a result. It is important to have things differentiated in that way.

The Convener: Okay. We will leave it in.

Des McNulty: My second point relates to section 7.3.10, which says:

"It is, therefore, intended to establish a Register of the Interests of MSPs' staff."

Some significant logistical issues may be attached to that and we would need to get Parliament's consent before going down that route. Could we say that we are going to consider how we would establish that register of interests?

The Convener: Okay.

Karen Gillon: If we are to be seen to have learned anything from the lobbygate inquiry, we must send a clear message that members' staff are a potential route to MSPs. The key allegation was that Beattie Media was able to gain access to Jack McConnell through his member of staff. We must have a code of conduct and a register of interests for members' staff. If the inquiry taught us nothing else, it taught us that.

A procedure exists at Westminster and there are logistical difficulties. However, if we pussyfoot around—if we give any indication that the register might not be introduced or might take an awful long time to be introduced—people will see a way into the Parliament through the staff. As the committee knows, that has not happened and we must ensure that it never happens.

Patricia Ferguson: I agree completely with Karen. If we start to say that there might be logistical problems, we put hurdles in our own way. There may be logistical hurdles, but our approach all along has been that whatever those hurdles are, we will get over them to ensure that the Parliament is as transparent, open and accessible to everyone as it can be. We should not be the ones to highlight potential problems in the system. The system will be made to work in the way that we want it to.

Des McNulty: I was saying simply that logistical issues will arise.

The Convener: Yes, but the committee's view is that we should leave the requirement in and highlight it clearly. We will consider all the arrangements and produce a report to Parliament on the register of interests for MSPs' staff.

Let us move on to page 61. Do members want to comment on anything in the last paragraph?

Members: No.

The Convener: Okay. Let us move on to section 8, on cross-party groups. Some clarifications have been proposed, in particular on the MSP acting as signatory and on compliance with the rules, on page 68. Are members happy with section 8? It is fairly straightforward, but there have been changes on page 68—especially in section 8.4.4. It reads:

"If the signatory leaves the Group, the Standards Committee clerks should be informed of this within seven days and another MSP who is an elected officer of the Group should, within that same timescale, sign the declaration on compliance with the rules."

As members have no points to raise, let us move on to section 9, on general conduct. Revisions that reflect our previous discussions have been made to the text on hospitality and gifts, alcohol, and the confidentiality of documents. I am particularly pleased with the paragraph on alcohol. Do members have any comments?

Mr Ingram: I refer to the point that was made about section 1, regarding the clarification that the breach of any article of the code—not just the statutory ones—can be the subject of a complaint against a member of the Scottish Parliament.

The Convener: Yes. That condition will apply to the breach of any part of the code, once Parliament has agreed it.

Karen Gillon: Convener, when you take the report to the chamber, perhaps you could clarify that there are differences in the eyes of the law, but that, in the eyes of the Parliament, there is none. In the eyes of the Parliament, any breach of the code is an offence. The member may be open to other sanctions, if he committed a criminal offence. In the eyes of the Parliament, every section of the code has equal importance, and it is no worse an offence to have a paid advocacy, than to mistreat a member of staff in the Parliament.

The Convener: I confirm what Karen is saying. Once we have agreed the code, and Parliament has accepted it, it is the code of conduct and any breach will be dealt with accordingly. For us, there is no distinction between statutory and non-statutory. Are there any other comments about section 9?

If there are no comments, I wish to move on to section 10 on enforcement, which has been amended, in particular to cover enforcement in relation to cross-party groups and to emphasise the role of the Standards Committee in relation to conduct in general. Are there any comments?

Karen Gillon: I have a comment about page 79, on the conduct of a meeting of the Parliament or a committee meeting. My concern is that the

wording gives the impression that a committee member who is not satisfied with the action of that committee's convener cannot report their dissatisfaction to the Standards Committee. In future, there may be an issue of party political bias. Obviously, the complaint should be taken to the convener in the first instance and, if appropriate, the convener should take action. However, if the convener does not take action, it should be open to the member to bring their complaint to the Standards Committee.

The Convener: Would it be helpful if we considered changing the second sentence, which reads:

"A complaint about a member's conduct at a meeting of a committee will be referred to the Committee Convener for determination"?

Karen Gillon: The last sentence, which reads:

"The Presiding Officer or Committee Convener . . . may report a member's conduct in the Chamber or in Committee to the Standards Committee."

indicates that the only people who can do that are the committee convener or the Presiding Officer.

The Convener: We can change that paragraph to ensure that your comment is taken on board.

Des McNulty: Section 10.2.9, on page 78, reads:

"any further Committee investigation will probably be held over pending completion of the criminal investigation."

Perhaps we should consider something along the lines of, "The committee may decide to suspend its investigation to allow legal processes to take place." That would be a bit crisper.

The Convener: Okay, we will tighten that up.

Des McNulty: Section 10.2.10, on page 78, reads:

"the right to decide, on a case by case basis, to deliberate in private."

I presume that that should read, "Meet in private".

The Convener: We could change "deliberate" to "meet".

Karen Gillon: I hate to keep doing this, but I think that "deliberate" is a helpful word, because it clarifies what we would be doing. We are not saying that we will meet in private, but that we might deliberate the case in private.

Patricia Ferguson: If I remember correctly, it was a deliberate choice of words, because we were making the point that, like a jury, we would say, "Here's evidence. Let's go into private session to deliberate on it". One would not necessarily want to discuss evidence in public. I am not sure that I want to delete "deliberate".

Mr Ingram: I would like to expand this paragraph a little. At the moment, it reads as if it is a blank cheque and that the Standards Committee might take the decision arbitrarily. I would like to establish the broad circumstances in which we would decide to hold a meeting in private.

10:30

The Convener: The wise legal advice that I have received on numerous occasions is that we must not establish a precedent for all cases. The code is written in a way that gives us the flexibility to act in the way that Karen just described. My personal view is that we should meet in private only when we are deliberating on evidence that has already been presented to us, as Karen and Patricia said.

Karen Gillon: You are right, Mike. However, I would not want the *Official Report* to report that those would be the only circumstances in which we would meet in private, as there may be others. For example, if children were involved in a complaint—I am not suggesting for a minute that they would be—it might be appropriate for us to interview them in private.

The Convener: That might be why Des suggested changing "deliberate" to "meet", as "deliberate" indicates an examination of evidence that has been presented to us; it would not include taking evidence from a child.

Patricia Ferguson: It says "normally meet"—it does not say "always".

The Convener: That is true.

Patricia Ferguson: I think that we have covered the point.

The Convener: Shall we leave the wording as it is?

Members *indicated agreement.*

The Convener: The wording is wide enough to give us flexibility, while clearly stating that it is our intention to operate openly and in public unless there are exceptional circumstances.

Karen Gillon: Section 10.2.16 sufficiently clarifies our concerns about MSPs' staff. We know that they have all lodged their contracts of employment with the allowances office or with personnel as appropriate.

The Convener: There is a lot of highlighted text on page 85, on cross-party groups. Are there any comments about that? [*Interruption.*] Sorry—we relocated that to the section on enforcement.

Mr Ingram: I missed the previous meeting and therefore I probably missed the discussion on section 10.2.19 on page 81. Could you clarify in which circumstances the Standards Committee would

"undertake to consider and report on any matter within this remit in relation to a member, whether or not any complaint has been received by the Committee."?

I do not understand what that is driving at.

The Convener: As I understand it, if no official complaint has been made but a member of the committee comes to a meeting and says, "Look, I want to discuss this and we should investigate it," the paragraph gives us the opportunity to do so. It would be difficult to do that if the paragraph were omitted.

Karen Gillon: If we knew—but no one else did—about a cabal operating, we should have the right to investigate it.

Mr Ingram: A cabal? I need to talk to you about that, Karen.

Patricia Ferguson: Do you want to go into more detail, Karen?

Karen Gillon: No. [*Laughter.*]

The Convener: I have just been reminded that we should clarify that we are talking about having the right to take the initiative, rather than waiting for a complaint to be made to us.

Before we return to the subject of paid advocacy, I would like to take a five-minute break.

10:35

Meeting suspended.

10:42

On resuming—

The Convener: We will now move to section 6, on paid advocacy. At our previous meeting, the committee asked the clerk to provide a condensed version of the text relating to the purpose of the paid advocacy rule, alongside the original version. The new text is included in the draft as version A with the original as version B. Although the lawyers are happy with both versions, version A is far more succinct, which is in line with the views that were expressed before. So, without directing the committee, may I ask whether members have any comments on this section?

Karen Gillon: I take it that sections 6.1 and 6.2 are automatically in.

The Convener: Do members want two minutes to read through both versions again?

Members: Yes.

Mr Ingram: Do the two versions have paragraphs in common?

The Convener: Yes. Version A is a simplified form of version B.

Now that members have had enough time to refresh their memories, which version is more acceptable to the committee?

10:45

Patricia Ferguson: I prefer version A because, although it is less succinct, it is easier to understand.

I have concerns about the examples that are given in version B because people might measure their conduct against an example and decide on a course of action based on it.

Although I prefer version A in general, I find the explanation in 6.2.7b better than the equivalent explanation that appears in 6.2.9a. The last sentence in 6.2.9a is less clear.

Lord James Douglas-Hamilton: I do not want to encroach on a case that is on appeal, but this matter is likely to have a bearing on the case. I think that it is important that guidance be given in relation to bills that are brought before the Parliament. Are we in a position to do that now or should we wait for the outcome of the case?

The Convener: We cannot afford to wait.

Lord James Douglas-Hamilton: In that case, I support what Patricia said. Section 6.2.7b gives guidance and should go in, but it may be subject to revision, depending on the outcome of any legal rulings.

The Convener: Because we are finalising the code of conduct we will take legal advice on this matter and return to it. We will try to do what you suggest, subject to legal advice.

Karen Gillon: I agree with Lord James, but we made our decision on the basis of the law that we had. We need to carry that decision through the code of conduct, because if we are seen to be doubting the decision that we made the courts might look differently on any case. Parliament has been seen to act appropriately and we must carry that through.

The Convener: Yes, I would like to confirm that as far as this committee is concerned, there is no question of doubting what we have done. We are clear, but the matter is subject to legal proceedings, which everyone will take on board.

Des McNulty: I am happy with Patricia's amendment, because it is clearer. I much prefer version A to version B. The only confusion that we need to take account of is in section 6.2.4a, which states:

"a member who has received or expects to receive remuneration (as defined) from an individual or organisation is not automatically precluded from taking action as described in Article 6 a) and b) in connection with that individual or organisation."

Legally, that is correct, but we want to convey that taking payment for advocacy is inappropriate. We are saying that it is not permitted. Unless the wording of that paragraph is properly contextualised, it could imply that the activity is appropriate. I think that that is partly due to the separation of this paragraph from the bits in the introduction that say that cash for advocacy is not acceptable. The problem lies with the order of presentation.

The Convener: Yes, we will put that paragraph into context so that it can be more easily understood. Is that the point that you are making?

Des McNulty: Yes.

Karen Gillon: That is the crux of the matter, is it not?

The Convener: Without a doubt.

Karen Gillon: The relevant phrase is "in consideration of".

The Convener: Absolutely correct.

Are there any other comments? The impression I have is that version A is far more acceptable than version B, with the changes that Patricia suggested.

Lord James Douglas-Hamilton: May I raise a general issue about expenses? If the media ask an MSP to come from far afield and offer to put the MSP up for the night in a hotel because he or she cannot get back to their constituency or home, is that a legitimate expense and therefore not necessarily declarable?

The Convener: It depends on the circumstances. Advice should always be taken and can be obtained easily from the clerks. Remember that with regard to paid advocacy, which is what we are talking about, as Karen just pointed out, the important point is the "consideration" issue. So if you are not doing it for the expenses, it cannot be—

Lord James Douglas-Hamilton: So the member would be in the clear with regard to paid advocacy?

The Convener: Yes.

Lord James Douglas-Hamilton: But they would have to take advice on declaring the expenses?

The Convener: Members should take advice if they have any doubts at all.

Karen Gillon: I also think that version A is much clearer. Comparing section 6.2.9a with 6.2.7b, there is an additional sentence in the latter that adds clarification.

Is that the bit that Tricia Marwick talked about? I thought that she was talking about section 6.2.7a.

The Convener: We have dealt with that. Are there any other points?

The clerks have noted the points that we have made and what we have agreed. The draft code will now be amended—there are not many changes to be made and I do not think that the committee needs to devote a further meeting to it. I propose that the clerks circulate the amended text to committee members so that we can satisfy ourselves that we are content with the final draft. We will give a final date for comments, but members should feel free to contact the clerks straight away.

I would now like to turn to the covering draft report. We will go through the report paragraph by paragraph.

The introduction is straightforward. The section entitled "Draft Code of Conduct" says that the code was designed to set out the approach that members should take to their duties. Let us begin with the first three paragraphs.

Des McNulty: When we present this, will the code be a draft code or an interim code?

The Convener: It is a draft. It is not approved until the Parliament approves it.

Des McNulty: I was just wondering whether it is a proposed code of conduct or the code of conduct that is recommended by the Standards Committee. We do not want to suggest to the Parliament that the code is a draft that is to be amended.

The Convener: Are there any other comments on the first few paragraphs? Are there any comments on the rest of the page? I will give members a few minutes to read through the last page.

Karen Gillon: I have a point about the fifth paragraph. That paragraph might detract from the code itself. There might be matters to which we might wish to return. I do not think that we should detract from the code by saying that we have produced it "speedily".

Mr Ingram: That gives the impression that we did a rush job, which is not the case. I suggest that we remove that sentence.

The Convener: Okay.

Des McNulty: We have identified a number of areas in which we have found deficiencies in the existing legislation with which we have been required to work. Should we signal that we have identified those deficiencies and that we would be prepared to examine the code again?

Mr Ingram: Could we have something produced

for the committee that expands on the bullet points in the draft report? We ought to discuss that at the earliest opportunity.

11:00

The Convener: As soon as we finish today's meeting, I will discuss with the clerk our potential work programme, which I will then bring before the committee.

Lord James Douglas-Hamilton: I would like to make a point about the second bullet point, which says:

"whether requirements in relation to Members' Interests should extend to family members".

I am thinking mainly of grown-up children, over whom the MSP might have no control. I am not thinking particularly of spouses, but of children over the ages of 18 or 21.

The Convener: We are merely saying that this is an area that we want to examine, without being specific.

Des McNulty: My concern is that we have specifically identified areas in which the existing legislation is inadequate or out of date. The report says something weaker than that—that there are issues that we might want to consider. Further to Karen's earlier point, I was wondering whether we could not tighten that up and say more explicitly, "The committee has identified a number of issues that it is going to consider further."

The Convener: Do you mean rather than just say that we need to consider the following matters?

Des McNulty: Yes.

Karen Gillon: We have not, however, discussed fully some of these issues. I would hate to use a form of words that suggested that we had taken a decision. There is a difference of opinion in the committee on some of these issues. We need to have that debate and I would not want anything to prejudice it.

Patricia Ferguson: I am anxious that the form of words that we come up with does not lead the chamber to believe that the debate should happen there and then. We must be careful about that.

The Convener: Conversely, if we do not say what is proposed we will be asked whether we have considered the issue. We must be very careful about how we phrase it.

Karen Gillon: We could say something like, "In particular, the committee noted the need to consider the following in greater detail at a future date." I would not want us to say that we were going to do A, B and C, because I do not think that we have had full discussions on many of these issues.

The Convener: However, we need to say something more than

"the Committee noted the need to consider the following".

Are you saying that we should leave it as it is?

Mr Ingram: Des's point was that we should identify clearly those areas of legislation that are deficient. We also want to indicate the issues that the committee would like to investigate or debate further. However, the committee is recommending that this code of conduct go forward to the Parliament for ratification and immediate application.

The Convener: Very much in the way that the Procedures Committee—

Karen Gillon: If we say that the legislation is deficient, does that open the code of conduct up to legal challenge? I would be very cautious about putting in words such as "legislation is deficient". We are in the middle of a court case.

Mr Ingram: We could say that the legislation lacks clarity in these particular areas or that it does not address these issues.

Des McNulty: The argument is more about whether further legislation might be required.

Karen Gillon: We should take legal advice on this issue. We are getting into an area in which none of us have expertise. We might open a can of worms.

The Convener: We have our own thoughts about what the problems with the members' interests order are. The committee has not worked its way through the deficiencies—if that is the word that we are using—as it considers that they are not apparent yet. Some members of the committee are concerned about using words such as "deficiency in legislation", so I do not think that we should go down that route. We should perhaps leave it as a general point. The paragraph states:

"In particular, the Committee noted the need to consider the following".

We should add words to the effect that we are not only noting the need to consider those issues, but that we will examine those issues in the future.

Karen Gillon: The way forward might be for the clerks to consult the legal team and come back with an appropriate form of words, in a draft that they circulate to us as they did with the report about the lobbygate inquiry.

Mr Ingram: It could be couched more in terms of development of legislation, rather than suggesting that there are deficiencies in the legislation.

The Convener: That is a good point.

Is the committee happy with the rest of the text?

Members: Yes.

The Convener: We will circulate the amended text of the report, in the same way as was done with the previous report. Please get back to the clerks with your suggestions and comments. I do not think that there will be a need to have another meeting to go through the code of conduct. If any committee members want to make substantive changes, we will need to have another meeting. I hope that all members find the draft that the clerks circulate to them acceptable. We will include a date by which, if we have not heard from members, we will assume that the draft is acceptable.

Karen Gillon: I would like to record the committee's thanks to the clerks for the work that they have done on this. It has been a substantial piece of work, which has been done thoroughly and well. All of our little idiosyncrasies have been taken into account, which I am sure has not been easy. I would like to record our thanks.

The Convener: Yes. That is unanimous. Thank you.

Meeting closed at 11:07.

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