

STANDARDS COMMITTEE

Wednesday 26 January 2000
(Morning)

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STANDARDS COMMITTEE

2nd Meeting 2000 (Committee Room 3)

CONVENER :

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

DEPUTY CONVENER :

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

COMMITTEE MEMBERS :

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

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Karen Gillon (Clydesdale) (Lab)

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

*Des McNulty (Clydebank and Milngavie) (Lab)

*attended

CLERK TEAM LEADER :

Vanessa Glynn

ASSISTANT CLERK:

Alastair Goudie

Scottish Parliament

Standards Committee

Wednesday 26 January 2000

(Morning)

[THE CONVENER *opened the meeting at 09:32*]

The Convener (Mr Mike Rumbles): I welcome everybody to the meeting. We have completed our work on the draft code of conduct for members and we will report to Parliament—very soon, I hope—with a proposed code.

Work Programme

The Convener: We must now turn our attention to other matters. Members will have received the briefing pack identifying pressing issues. It contains a proposed work programme that will take us to the Easter recess.

The work programme proposes that we consider models of investigation of complaints against MSPs. Members will recall that the arrangements in the draft code are proposed as an interim measure, pending the opportunity for the Parliament to consider models. The programme also proposes that we draw up recommendations for a register of interests of MSPs' staff and further consider the issue of lobbying in relation to the conduct of members in carrying out their parliamentary duties. Does the committee agree that we should go forward on the basis of the proposals in the briefing pack? I would like to hear members' views on the proposed work programme.

Karen Gillon (Clydesdale) (Lab): Are those issues to be dealt with in a particular order?

The Convener: The proposed timetable is that there will be meetings on 9 February, 23 February, 8 March, 22 March and 5 April. We propose to deal with the issues in the order set out in the briefing pack.

Karen Gillon: Okay.

The Convener: Are people happy with that, or do they want to make some changes? We are proposing to start work on the model for the investigation of complaints by taking oral evidence on 23 February. At the following meeting, we would discuss our options in the light of that evidence and agree a model. We should not close off any options today; we should first investigate the matter, so that we consider all the possible options.

Des McNulty (Clydebank and Milngavie) (Lab): The most important thing is to establish, and have clear agreement on, the mechanisms that will govern the investigation of complaints. However, I am a little concerned that we are leaving the initial discussion of lobbying until 5 April. We should be considering the scope and remit of that inquiry sooner. Once we have agreed that, we can decide when to initiate the inquiry.

I would like us to meet on 9 February to consider oral evidence on the investigation of complaints, because that may take up two meetings. I appreciate that there may be timetabling problems with that. I see that Alice Brown is on the list of proposed witnesses, but it would be helpful to hear from someone from the secretariat of the Committee on Standards in Public Life—the Neill committee—who could go through the minute details. I would like to hear from Elizabeth Filkin relatively early, if possible, and I would like to use the meetings of 9 February and 23 February to take oral evidence, because there is a lot in the Neill committee report.

The Convener: On the face of it, I think that that is a good idea. However, the inquiry into lobbying will be a major piece of work, and the fact that we will not consider the scope and remit of that inquiry until 5 April does not mean that no background work will be going on. Members of the clerking team are already working on that, and I am in close liaison with them. At the meeting on 5 April, we will, therefore, be presented with a host of ideas.

I think that Des is right: we should meet on 9 February, because one or two other issues—such as cross-party groups—are cropping up. I sat down with the clerks to discuss this programme, and I am advised that two weeks is not a long time in which to arrange for people to come and give oral evidence. However, it was felt that we would certainly be in a position to get started on 23 February.

Des McNulty: I appreciate that two weeks is not a long time, but it would be a mistake to try to take all the evidence on one day. We should hear from whomever we can on 9 February. It may be that some of the people we want to hear from have appointments on 23 February, so having only one day on which to take evidence could be a problem.

It may take us more than one meeting to agree on the terms of our lobbying inquiry. If we defer that to 5 April, we will not have the opportunity to have two goes at it. I think that we should bring that meeting forward. The issue is very complicated and to try to cover it in one meeting is probably not advisable.

Karen Gillon: I disagree with almost everything that Des has said. We must understand the

purpose of the Standards Committee. We already have a draft code of conduct for members, which deals with lobbying and clearly sets out what is acceptable and unacceptable. We also have an interim complaints procedure, which deals with members. We are in danger of putting individual causes at the top of the agenda and allowing the things that matter the most to fall to the bottom.

I suggest that the most pressing matter for the committee is the register of interests of MSPs' staff. If we have to have a huge discussion about who investigates whom and whether we need a standards commissioner first, we will be looking at 22 March before we can consider the proposed arrangements for MSPs' staff. If the last inquiry taught us something, it is that staff can be used or blamed for something in a complaint against a member.

I understand that there are difficulties, but I do not think that it will take us too long to get something worked out. From the timetable that we have, it appears that putting a register together will be a fairly quick process. The code of conduct for members and the "Register of Members' Interests" provide a basis on which to work. We should move this matter up the agenda and deal with the question of a standards commissioner later. Lobbying should stay where it is on the timetable, because it will need a long and difficult discussion. In terms of our responsibility as members of the Parliament, lobbying has been dealt with quite clearly in the code of conduct. Whether we should regulate lobbyists is another argument. It is not the most important issue. We must set our own house in order before we address everyone else's problems.

Tricia Marwick (Mid Scotland and Fife) (SNP): I agree with most of what Karen has said. We already have the code of conduct and register of interests for members and we must take forward the investigation of complaints, but lobbying will involve a lot of work and we should try to tie up other matters before we begin to deal with that. Our minds should be clear and we should not try to deal with two or three things at once. Although we need to deal with lobbying, it is not the most important item on the agenda.

The Standards Committee has sent out clear messages to those who are engaged in lobbying activities about the kind of conduct that is acceptable. I agree that we can consider the debate about registration at our leisure, because of the inquiry that we held last year.

The registration of staff interests is not a major piece of work—we already have guidelines. However, it must be done quickly. The committee should deal with it and get on with the rest of the programme.

Lord James Douglas-Hamilton (Lothians) (Con): The staff of MSPs would welcome a clarification of their position. If that were advanced in priority, I do not think that it would impose an intolerable burden on our clerks, who are assisting us with the drafting and are helping us to take evidence when that is necessary.

I want to raise two other issues. First, the paper mentions that deficiencies have been identified in the members' interests order, but suggests that consideration of a replacement be delayed for a year. It would be helpful to see a list of those deficiencies, because some of them may require more urgent action. We will be able to come to an informed view on that once we have been given a list of the deficiencies.

09:45

The Convener: I have already asked the clerks to draw up such a list; they are in the process of doing that.

Lord James Douglas-Hamilton: Thank you.

Secondly, I have seen the list of witnesses connected with setting up either a parliamentary commission or a standards commission. I recommend that the Parliamentary Commissioner for Standards be invited to appear before the committee as a matter of priority. I note that the suggestion has been made that the national standards commission should have a role in this area, and it would be useful to know how a parliamentary commissioner would fit in with a national standards commission. It is important that this Parliament should be seen not as an add-on to local government, but as a Parliament in its own right. I should have thought that that justifies its having its own parliamentary commissioner, for which there is widespread support.

The Convener: Can we address that issue under agenda item 2, which relates to the models that we will be considering and the witnesses that we intend to call? When we come on to agenda item 2 and consider suggestions for witnesses, it would be helpful if members could suggest officers and departments, rather than names. At the moment it would not be helpful to suggest named individuals.

Before I sum up, are there any more suggestions as to where we go on this item?

Mr Adam Ingram (South of Scotland) (SNP): I concur with what appears to be an emerging consensus on putting the question of staff to the top of the agenda. That is one gap in our defences that we need to fill pretty quickly. We can then move on to the question of a parliamentary commission. I agree that the lobbying issue will take some time to deal with, and I suggest that we

have one meeting to discuss how we go about that. However, it should be put on the back burner until we sort out some of the other problems that we have in front of us.

The Convener: To sum up, there is an emerging consensus that we want to address as a priority the issue of the registration of interests of staff of MSPs. I will ask the clerks to bring that forward, so that we can deal with it as soon as possible. However, there is a difficulty. This may look straightforward, but it will have to be subject to legal advice, on which, as we know, there is a strain at the moment. Registration of interests of staff of MSPs is an important issue, but members need to recognise that there is a problem in getting the lawyers to consider it at the moment.

Karen Gillon: Members understand that, but we need to get in place a code that the lawyers can examine. If we do not do that, they will be considering the issue in a vacuum. We have a responsibility to get a code in place, so that the lawyers can go through it line by line and identify any problems. I suggest that we contact Westminster, which has a system that might be easy to replicate.

The Convener: We have done that. However, there are very different circumstances here.

Karen Gillon: I accept that but, if a model exists, we ought to consider it.

The Convener: We are already in close touch with Westminster.

Karen Gillon: Okay.

The Convener: To sum up, our intention is to address the issue of the registration of interests of staff of MSPs as a No 1 priority. We will bring a draft code before the committee as soon as we have legal clearance to do so. We will consider having oral evidence on the investigation of complaints on not just one day, but at least a couple of days.

Investigation of Complaints

The Convener: Agenda item 2 relates to models for the investigation of complaints against MSPs. I would like to hear members' initial views on the arrangements for investigating complaints, which the Parliament should put in place to supersede the interim procedures on which we have already agreed.

The aim of the discussion will be to identify issues and to agree how to approach our consideration. At this stage, we are not seeking final views, nor can we come up with detailed arrangements. We should ensure that we tease everything out in the process. Investing allegations against a person and enforcing sanctions raises complex considerations; it is not a straightforward matter.

I have set out a few headings that members may wish to think about when we are proceeding with our discussions. Among the factors that members may wish to comment on is the legal context in which we are proposing to set up the arrangements. They have to fit our circumstances in the Scottish Parliament, and should not be a rehash of things elsewhere. We must consider issues of natural justice and fairness, especially in the light of the recent Neill committee recommendations.

Public confidence that our system is sufficiently robust is highly important in what we might call disciplinary arrangements for MSPs. In considering the scope of the arrangements, we should ask whether we should focus on the procedure for sifting complaints, on the referral of investigation of complaints or on the reporting of findings to the Standards Committee. Do we need to examine appeals mechanisms? What models do members think we should pursue further? Do members think that we should pursue only those with a significantly independent element? Are there any views on the models outlined in the briefing paper that we have all received—for example, on having a parliamentary commissioner or on links with a national standards commission?

On proposed witnesses, we need to consider ideas or areas on which we should seek oral evidence. Members should say if they think that there are particular organisations or departments from which we need to hear. If anyone wants to suggest individuals, we could do that at the end of this meeting.

Karen Gillon: I have genuine concerns about this. What is being proposed is for this committee no longer to have a role in the investigation of complaints against members of the Parliament. When this Parliament was set up, the Standards Committee was an integral part of it; it was the role

of the Parliament to monitor the conduct of its members.

I am not saying that Parliament should have that role because it is our club. My concern is with the openness and acceptability of this committee. I think that our previous investigation, irrespective of whether people agreed with its conclusions, showed that we could conduct an investigation under the fairly fierce glare of the media spotlight and come to conclusions on which the committee was unanimous and on which the Parliament agreed. It was open and was accessible to the public. My concern is that, if we move away from that model, we are shutting down one of the key elements of what this Parliament was meant to be about. I know that other members have different views, but my concern is that we are reacting to other people's agendas rather than to the views of this Parliament.

The Convener: Lord James, I know you take a different view.

Lord James Douglas-Hamilton: I have some sympathy with what Karen Gillon has just said, especially in relation to a secondary tribunal. The paper on models for investigation of complaints says that

"it is likely that the most serious allegations would fall into the category of possible criminal breaches . . . and would, therefore, be referred to the Procurator Fiscal".

That would be standard practice—although we hope that it will not happen.

The paper suggests a secondary tribunal—I am unclear whether we have had legal advice to the effect that the Standards Committee would be the secondary tribunal, operating according to principles of natural justice, or whether there will be a wholly separate tribunal. The Standards Committee should not evade its responsibilities; it should be prepared to deal with matters. If, for example, there were a conviction in court, the matter would come back to the committee. I hope that we would have advice from the parliamentary commissioner.

The Convener: On that specific point, the proposal for another body is a response to the Neill committee's recommendations. We are quite different from Westminster because, as Lord James pointed out, in the Scottish parliamentary system a criminal offence is handed straight to the proper legal authority—the procurator fiscal. We would not be dealing with issues of that magnitude. The suggestion is made for our consideration—Lord James's comments are appropriate.

Lord James Douglas-Hamilton: A complaint would have to be about a very serious matter indeed—and not some minor detail—before it was taken out of the hands of this committee and put

before a tribunal.

Tricia Marwick: Would the parliamentary commissioner be responsible for the initial sifting of complaints for investigation thereafter by the Standards Committee? Alternatively, is it being suggested that the parliamentary commissioner should be responsible for the initial sifting and investigation and that they would make recommendations to this committee, on which we would act?

The Convener: The latter model is the one that is proposed. When we talk about a parliamentary commissioner, we are talking about the Westminster model. It would seem odd if we went down the parliamentary commissioner route just to employ someone to sift the complaints. That would not be wholly appropriate.

Des McNulty: The real issue here is that we should decide the principles on which we will proceed, because the procedures should follow the principles. The Westminster system gives the Standards and Privileges Select Committee a kind of appellate role, rather than an investigatory role. That is different from how our role has been seen.

Rather like Karen, I would be inclined to operate on the principles for which we have opted so far. However, we need to decide on which principles we are operating and identify what the procedural implications of them might be. It has to be thought through in that way. There must be absolute clarity about the role of the committee and how it is expected to conduct its business in relation to complaints. We must work out the appropriate procedures to achieve that.

Karen Gillon: Forgive me for being rather slow on the uptake—I should have raised this earlier in our discussion. We are different from Westminster because much of the members' interests order is governed by the rule of law. It would not be for the Parliament to take action against an individual; it would be for us to refer the matter to the procurator fiscal, who would deal with breaches of the order, particularly in relation to paid advocacy and so on, through his or her own channels.

Other matters, such as members' conduct in the chamber or the conduct of members of staff, are dealt with in the code of conduct that we have drawn up. I am confused about what the parliamentary commissioner would do, apart from deal with relatively minor—on the scale of things—complaints. Legal complaints are dealt with by the procurator fiscal.

I am concerned that we are creating a system that would work at Westminster, but will not work here. This committee is the appropriate place to deal with breaches of the members' code of conduct if they are not dealt with by the procurator fiscal. We may need to consider an appeals

mechanism, but that is different from a parliamentary commissioner. We may need to consider whether we need someone to sift through complaints, but again, that is different from a parliamentary commissioner.

10:00

This issue may have to be considered again, because we may have a model that does not fit the Scottish Parliament, is not what the Scottish people want, and is not what this Parliament needs.

Des McNulty: It is also expensive.

Karen Gillon: Yes—very.

Lord James Douglas-Hamilton: We need legal advice on rights of appeal. Paragraph 18 of our document on models for the investigation of complaints states that the sixth report of the Neill committee

“recommends that where an MP disputes the findings of the disciplinary tribunal or of the Commissioner, there should be a right of appeal.”

It would be useful to know in which circumstances there would be a right of appeal from this committee. If the Standards Committee breached the principles of natural justice, I imagine that the individual concerned could go to the Court of Session and pursue the matter through civil law. We need to know what the role of this committee could be, and what legal rights of appeal there might be against it.

The Convener: That is an important point.

Lord James Douglas-Hamilton: It seems cumbersome to have a tribunal as well as this committee.

The Convener: Are there any more thoughts on this issue?

Tricia Marwick: Karen made some excellent points that the committee needs to consider. Perhaps we have lost our way a wee bit in talking about standards commissioners and parliamentary commissioners and the like, and we need to go back to first principles. The remit of this committee

“is to consider and report on-

(a) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties”.

That description is clear. As Karen said, the Standards Committee was set up in this Scottish Parliament to carry out a remit. We need to look carefully before we hand over to somebody else the responsibilities that have been given to us by the Parliament and, ultimately, by the people of Scotland.

Karen Gillon: I agree with Tricia. We have become caught up in words. Until we saw it in writing, we had not grasped what we were suggesting, or what was suggested to us. As far as I am concerned, this is not the appropriate way forward and we need to go back to the drawing board and look at the issue again, because we do not need a parliamentary commissioner or a standards commissioner in this Parliament at this time.

Lord James Douglas-Hamilton: It would be helpful to have a note on each of the options, setting out how each option would work all the way through, because there are several ways of achieving the desired principle, which is that the code of conduct should be upheld and observed. We need to choose the best model that is available.

Mr Ingram: I endorse that view. Having the Neill committee's recommendations for Westminster in this paper is confusing, because Westminster is not the model that we are working to. It would be helpful to have the note that Lord James asked for, so that we have information on how a standards commissioner would operate in the Scottish Parliament, rather than having information on the Westminster model. We must consider the options.

Des McNulty: If there is general agreement on the principle that Karen is suggesting—which, in effect, is that the Standards Committee has the prime role in dealing with these matters—that would, at one level, define the nature of our interest in the Neill committee's work. That has implications for the way in which principles of justice and fairness might be applied differently here, compared with Westminster. It might be useful to convey that to people who will come to speak to us, rather than getting them to give us a long briefing on something that may turn out not to be what we want to hear. The committee should give the clerks some guidance to the effect that we see the Standards Committee as playing the central role. That may influence the way in which information is brought to us.

Karen Gillon: I do not think it should be that “we” see the Standards Committee as playing the central role. When talking about this, we need to be clear that the Standards Committee is one of the mandatory committees mentioned in the Scotland Act 1998, which set up this Parliament. It was set up after wide consultation. This is not about us protecting our own wee bit of turf.

As a member of the Education, Culture and Sport Committee, which is about to discuss a bill, I would be happy to have less work and not to have to come to another committee every week for the next six weeks. Forgive me for repeating myself, but very serious complaints against members of

this Parliament are dealt with by law. That is clear.

The Convener: Paragraph 19 of the briefing notes, which we have all read, says:

“Any MSP involved in any conduct case serious enough to warrant action by the courts would automatically have rights of appeal under the normal judicial system.”

I therefore question whether we need to set up an appeal system. However, I want to tease out all of your concerns. This has been a useful meeting.

Karen talked about the committee being set up by the act and all the consultation that led up to the recommendations of the consultative steering group. I would like to bring to members' attention the additional fact that the CSG recommended that a commissioner be appointed. It was concerned about perceptions of the independence of this committee and felt that there should be an independent role for someone other than members of this committee. We should take that on board.

I think that there is broad agreement here that appointing a commissioner may not be the route that we should take. However, it is important that we stick to what we have decided to do: we should hear the evidence of witnesses. Des suggested that we should inform them before they come here of the way we are thinking, so that they can give evidence with the mindset of this committee in mind. You are looking puzzled, Karen.

Karen Gillon: I think we set down a number of those potential witnesses in the expectation that we would go down the route of appointing a parliamentary commissioner. If the committee's view is that we will not do that, do we really need to hear from all those witnesses and spend an awful lot of time having those discussions when I could be doing other things?

The Convener: That is a good suggestion—but there may have been a slight misunderstanding. The clerks and I did not produce this list for you to say that the people on it are the people we should talk to. It is a wide-ranging list of suggested witnesses, including academics from legal departments, people from professional bodies, and the parliamentary commissioner from Westminster. The list does not focus on the commissioner.

Mr Ingram: It is important that we take evidence from people outwith the Parliament. There is a broad movement in civic society to consider standards, and in Parliament there will be a bill on ethical standards in public life. It is important that we are not seen to be deciding this matter in this room. We must open up, allow people to come in and take on board the views that they express. We must not deal with this too expeditiously.

Karen Gillon: I do not have a problem with

inviting anybody to give evidence to this committee, but we started with a preconceived idea of where we were going. I may be wrong, but I think that these briefing papers clearly indicate that we are taking evidence on the basis that we want to develop the idea of a standards commissioner.

The Convener: It was certainly not intended that the papers should do that.

Karen Gillon: I accept that. Nobody has yet disagreed with me to say that we want to have a commissioner. If we are saying that that is not the most appropriate way forward, we should reconsider what we are taking evidence on, and why. Are we taking evidence on the general issue of standards in public life? Is it our role to do that? Are we taking evidence on standards in this Parliament, on mechanisms for enforcing standards, or on appeals mechanisms?

The Convener: We should be clear that we are taking evidence to find an acceptable method of investigating complaints—this committee decides what it will recommend to Parliament. I am sorry that Karen Gillon feels that the notes predicate a standards commissioner, as I did not intend that they should. They are intended to present arguments for various methods. I think that there is agreement that we should invite a wide range of witnesses.

Patricia Ferguson (Glasgow Maryhill) (Lab): Karen Gillon has covered most of the points that I wanted to make. I am concerned about the remit of the people whom we are inviting. In some cases, the suggested people represent a governing body rather than an individual organisation that might have experience of conducting inquiries like the one we will undertake. I would rather speak to people who conduct inquiries than those who perhaps have an overarching view of what goes on. I am being terribly vague, convener, because of what you said earlier, but I will be more than happy to elaborate to the clerks.

The Convener: When I pull this together, we will discuss how to proceed with individuals.

Lord James Douglas-Hamilton: Parliament is not a local authority. I certainly do not want the possibility of a parliamentary commissioner to be ruled out, or for there to be a presumption against having a parliamentary commissioner. Parliamentary commissioners are well established in most Parliaments. We should approach this with an open mind—if there is a better model, so be it.

We need to put in place the best mechanism, which, as the consultative steering group stressed, must be independent. The independence of the role was one of the major points in favour of having an independent commissioner. We should

hear from the witnesses about how such matters are dealt with elsewhere and reach our own conclusions.

Des McNulty: Perhaps the problem is, to some extent, the Westminster model, which differs from both the present arrangements here and those with which we are likely to end up.

There will be significant differences between an independent commissioner—even if we go down that route—and the Westminster parliamentary commissioner for standards, both in terms of the role given to the committee and the role of any independent group.

10:15

Whatever we do, we will have to address key issues such as how complaints are initially handled and vetted—whether they are serious or otherwise; how investigations are conducted; and how the evidence to be placed before the committee is collected. We must also consider the legal rights or entitlements people should have in the context of such investigations and the relationship between our procedures and court procedures, given the potential of certain kinds of cases. There is a series of procedural issues that we must get right.

As I said earlier, procedures follow principles in a sense and we must assess the principle on which we are to proceed. In the past, that principle has been that the role of this committee is to ensure that members of this Parliament conform to the standards that we, as a committee, have laid down. Karen Gillon made that point clearly and we have maintained it consistently. That is our responsibility to Parliament and it is the reason this committee was brought into existence.

However, as a committee, that approach generates certain issues and we will need to consider the parameters of an independent commissioner in that context. We should establish the principles under which we will work and then work through the procedures. At the same time, we should highlight the fact that, in our view, our interim procedures for dealing with such complaints are robust. We spent quite a bit of time on the interim procedures and, by considering this issue, we are not denigrating them, because they are effective.

The Convener: That is an important point.

Des McNulty: That is the basis on which we should invite witnesses. I would be happy to consider some of these issues in that context before arriving at a final decision. However, we have embarked on a particular route; we should pursue it and see it through.

The Convener: Do members wish to raise any

other points before I pull the discussion together? I think that consensus is emerging on how we should proceed.

The clerks have made a note of everything that has been said, and we will invite organisations with that in mind. If members have individual people in mind—Patricia, you had someone—

Patricia Ferguson: I did not have an individual in mind—I made a general point.

The Convener: If members know of individuals or organisations they think should be invited, please lodge the names with the clerk today or early tomorrow so that we can proceed. I would like to call those people or organisations as witnesses in order to hear what they have to say.

Is everyone content with that procedure?

Members indicated agreement.

The Convener: As there are no further comments, I close the meeting.

Meeting closed at 10:18.

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