

# **STANDARDS COMMITTEE**

Wednesday 22 March 2000  
(*Morning*)

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## STANDARDS COMMITTEE

### 6<sup>th</sup> Meeting 2000, Session 1

#### 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

#### THE FOLLOWING MEMBER ALSO ATTENDED:

Dr Sylvia Jackson (Stirling) (Lab)

#### WITNESSES

Eddie Bain (Convention of Scottish Local Authorities)

Elizabeth Filkin (Parliamentary Commissioner for Standards, House of Commons)

Mr Frank McAveety (Deputy Minister for Local Government)

Councillor Corrie McChord (Convention of Scottish Local Authorities)

Joanne McDougall (Scottish Executive Development Department)

Andy O'Neill (Convention of Scottish Local Authorities)

#### CLERK TEAM LEADER

Bill Thomson

#### SENIOR ASSISTANT CLERK

Jim Johnston

#### ASSISTANT CLERK

Alastair Goudie

#### LOCATION

Committee Room 2



## Scottish Parliament

### Standards Committee

*Wednesday 22 March 2000*

*(Morning)*

[THE CONVENER *opened the meeting at 09:35*]

**The Convener (Mr Mike Rumbles):** Good morning. I welcome everyone to the sixth meeting this year of the Standards Committee and extend a particular welcome to our witnesses, who have kindly take time out of their busy schedules to be with us this morning.

I also welcome Dr Sylvia Jackson, who is attending the meeting as reporter for the Local Government Committee.

### Investigation of Complaints

**The Convener:** The first item on the agenda is the second evidence session in our inquiry into models for investigation of complaints. I am pleased to welcome Councillor Corrie McChord, who is the social inclusion spokesman for the Convention of Scottish Local Authorities; Eddie Bain, who is the legal adviser for COSLA; and Andy O'Neill, who is a policy officer for COSLA.

I finally welcome Elizabeth Filkin, who is the Parliamentary Commissioner for Standards at Westminster. We will be joined later in the meeting by Frank McAveety, the Deputy Minister for Local Government.

I invite our witnesses from COSLA to make some opening remarks.

**Councillor Corrie McChord (Convention of Scottish Local Authorities):** We welcome and appreciate this opportunity to give evidence on the Ethical Standards in Public Life etc (Scotland) Bill to the Standards Committee. As we have already given evidence to the Local Government Committee and have had a fruitful meeting with the Deputy Minister for Local Government on the same subject, we appreciate that we have been consulted extensively on the matter and given ample opportunity to state our position in the consultation process.

Local government has always accepted the need for strict standards of probity in local authorities. In my time as leader of what was formerly a regional council and which is now a unitary authority—about 10 years—I have been directly involved with very few inquiries into members' probity. Indeed, I can count such

instances on one hand and still have fingers left.

That said, we welcome the bill and the creation of a national standards commission in Scotland. COSLA canvassed the 32 Scottish local authorities in the consultation process and came to the following conclusions. First, we support the introduction of a general framework of ethical principles that can be applied to all of Scotland's public life, although we realise that the Parliament does not have full responsibility for all aspects of the country's public life. Although we welcome the extension of the bill to cover quangos, we feel that it should be more involved with local enterprise companies and further education colleges.

We continue to support Lord Nolan's view that local government should be given a leading responsibility for its own ethical standards by way of external scrutiny and appeal mechanisms to ensure that action can be taken if internal mechanisms prove insufficient. It is important to point out that Lord Nolan thought that local government was the most constrained of all public bodies on matters of probity.

We believe in a dual system. Although councillors should be required to establish standards committees to enforce the code of conduct, the public should have confidence in the process through the introduction of safeguards such as the co-option of independent members; politically balanced committees; the right of individual referral to the national standards commission; and a call-in procedure for the commission.

I believe that such a set-up would prevent a lot of trivial cases going to a national standards commission, although evidence would be reported to act as a sift for triviality. We support a single code of conduct for local government, developed in consultation with local government, and we look forward to continuing partnership with the Scottish Parliament on that issue. We would like the bill to be widened to cover the whole public sector.

We welcome the imposition of a duty on councils and public bodies to assist members to uphold the code. There are still training responsibilities for councillors. I believe that we should take that seriously. We accept the establishment of rules concerning the registration and declaration of members' interests. That had been happening for some time on a voluntary basis before regulation was introduced. We do not want the national standards commission to be the only body that deals with breaches of the code. We believe that councils should be required to establish standards committees to enforce the code. We welcome the proposals for a clear and uniform set of sanctions for breaches of the code.

We reject the imposition of interim suspension.

We have made great play of that in our evidence to date and we are willing to go into that if members would like us to. We believe that a suspended councillor, if re-elected, should automatically be re-suspended if the suspension spans the election period. A right of appeal to a sheriff should be included. We think that that is necessary for reasons of natural justice.

That is all I want to say at the moment, but I will answer any questions.

**The Convener:** I invite Karen Gillon to lead the questioning.

**Karen Gillon (Clydesdale) (Lab):** How are complaints about members' conduct investigated?

**Councillor McChord:** It has been a long time since such a situation arose. There are ad hoc arrangements in local authorities in Scotland. My involvement in the past 10 years has been that, as a matter of courtesy, the chief executive would inform me of a possible problem—financial or ethical—with a member. In one case, the police were involved, so I took the matter no further as I had to keep a confidence.

Other cases that did not involve the police were reported to me. In one case, I had to go back to my political group and advise my colleagues of the matter and tell them what the individual's situation was. The group took action and fed it back to the chief executive. One case involved an aggrieved constituent. The chief executive wrote back to that constituent to inform them that appropriate action had been taken.

I can speak only for my own council, but that is how complaints are dealt with at the moment. Usually, matters begin with a police investigation, which is completely outwith our field of competence.

**Eddie Bain (Convention of Scottish Local Authorities):** As Councillor McChord said, there is considerable variety in practice. Many complaints are investigated by chief executives and referred to the appropriate political group leader to take action on an ethical issue. We accept that some councils do not have political groups. In some councils, complaints have been investigated by the chief executive and the council's monitoring officer or chief legal officer, and have been the subject of a report that is considered by one of the council's committees. In Edinburgh, one such complaint about breach of the national code of local government conduct was the subject of an investigation by me and of a report by the chief executive to the policy and resources committee.

Members of the committee will appreciate that, until this bill, any such procedure has contained no sanctions. Even if it accepted that a member had breached the national code of local government

conduct, a council committee could do no more than pass a resolution censuring that member. It could take no further action legally.

09:45

**Andy O'Neill (Convention of Scottish Local Authorities):** I think Eddie has summed it up perfectly. At the moment, there is a code of conduct, but there is no enforcement mechanism by which an investigation that results in a member being convicted of a breach of conduct can be taken forward. As well as the ad hoc investigations by monitoring officers and chief executives, which have subsequently been reported to councils or their policy and resources committees, councils began—in response to Lord Nolan's investigations—to establish standards committees. Councils expected the bill that is currently going through Parliament to require them to have standards committees with teeth.

Councils such as Glasgow City, Argyll and Bute, City of Edinburgh and Dumfries and Galloway have established standards committees. Their make-up varies, but most are chaired by an independent person and have a politically balanced membership and independent people who are not councillors. The problem is that no matter what happens with the investigation, when it comes to a decision there is no enforcement mechanism to deal with the complaint if it is upheld. That is why COSLA—and local government in general—has supported the new ethical framework encapsulated in the Ethical Standards in Public Life etc (Scotland) Bill.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** The Standards Committee has asked you to give evidence primarily because we are drawing up a framework within the Parliament and we want you to give us advice about what has happened in the past.

You mentioned a national standards commission. Should a national standards commission also cover the conduct of MSPs?

**Councillor McChord:** That is for MSPs to decide. We believe in self-regulation, to a point, at local level, but for the Parliament the local level is the whole of Scotland, so we appreciate your dilemma.

**Andy O'Neill:** I support what Corrie McChord said. We believe that there should be a framework of principles underpinning the public sector. Under that, there should be specific codes for councillors, MPs, MEPs and quango members.

We support Lord Nolan's idea that the code should be self-regulated. We disagree with the Scottish Executive's bill, which states that the national standards commission should hear cases.

We support the idea, which was mooted until the bill was published in consultation form, that councils' standards committees should hear cases rather than, as is prescribed in the bill, merely be training agencies to assist councillors to fulfil their duties.

**Eddie Bain:** At the risk of departing from the COSLA line on this, which is about local authority ownership, one advantage of a national standards commission for local government and perhaps MSPs is that the public would perceive that as an independent body. One of your concerns may be how the public will perceive the regulatory mechanisms.

**Karen Gillon:** The most obvious example of how this committee works would be the Argyll and Bute and Glasgow City examples. How would those committees deal with witnesses? Do they have evidence-taking sessions?

**Andy O'Neill:** In Glasgow, the chief legal officer undertakes an investigation and a report is considered by the standards committee, which is a cross-party group. A recommendation is then made to the council. I am not sure whether it hears witnesses—Eddie might be able to answer that. Further details of the Glasgow case are being faxed to me and I can supply them to the clerk.

**Eddie Bain:** My understanding—although I am not certain about this—is that, by and large, such matters are dealt with by somebody conducting an investigation, which involves interviewing people, producing a report and then allowing the person concerned the right to make representations, either in writing or orally. It is fair to say that the body of experience in this area is not enormous. Until Nolan, I do not think that there was any real mechanism in local government. All the authorities that have set up standards committees have done so in response to the concerns expressed by the Nolan committee.

**Councillor McChord:** I hope, however, that we will keep to the principles of natural justice—especially now that we have the backdrop of the European convention on human rights. We will all be required to adhere to the convention.

**Andy O'Neill:** I mentioned local government officers investigating councillors, who are, in effect, their employers. Eddie might want to comment further on this, but at the moment officials do not have any powers to investigate their councillors. Some of them do it, but in the process of investigation they may create problems for their future working relationships with councillors. It is a difficult area and it is one of the reasons COSLA has always supported the externalisation of investigations at an early stage, with decisions being brought back to the council's standards committee for approval by councillors.

We thought that that would be a much cleaner way of doing things.

**Eddie Bain:** Having to investigate one of your employers puts you in a fairly invidious position—you run the risk of pleasing no one. In my case, I reached the conclusion that the elected member had not breached the national code of local government conduct. That probably made me popular with him; it did not make me popular with the elected member who had lodged the complaint.

**The Convener:** This committee faces the choice between having an investigating officer or investigating complaints itself. From your experience in the Convention of Scottish Local Authorities, how effective do you think committees are at investigating such matters? If I understand you correctly, you are saying that the standards committees are not doing the investigating—that that is left to local government officers.

**Eddie Bain:** Yes, that is right. I am not saying that it is impossible for a committee to investigate a case but, depending on the nature of the complaint, it could involve a great deal of members' time.

**Lord James Douglas-Hamilton (Lothians) (Con):** Councillor McChord mentioned that a sift for triviality is helpful. Could that be done equally well by a legal assessor or commissioner?

**Councillor McChord:** There is an old adage about work expanding to fill the time available; if you set up a commission with a lot of resources, the danger is that it will find work to do. I can speak only from my experience, but very few instances have occurred that would justify a full-blown investigatory procedure.

**Lord James Douglas-Hamilton:** Writing about this Government, as opposed to local government, you felt that it should be for MSPs to decide how the code should be enforced.

**Councillor McChord:** Yes.

**Lord James Douglas-Hamilton:** Would you express any particular view as to whether it would be more appropriate to have a legal assessor or commissioner, or a national standards commission?

**Councillor McChord:** Those options are open to you—you are in a different set of circumstances from us at the local level.

**Eddie Bain:** As I understand the way in which the commissioner's powers would be structured, one advantage of having a commissioner would be that he would have fairly extensive powers to obtain evidence; I suspect that a legal assessor might not have those powers. The issue of triviality is important. It is obvious that a screening

mechanism is required. I have to sound a cautionary note: that a complaint that initially appears to be trivial may be of underlying significance. That always has to be guarded against.

**Karen Gillon:** Do the councillors involved in existing standards committees receive any training?

**Councillor McChord:** In some instances, yes. They certainly do in Glasgow. We do not have a great deal of in-depth knowledge about the various standards committees in place, but we have written submissions that we can distribute among members of this committee on those specific points.

**Andy O'Neill:** The problem is also that the standards committees that have been established by councils deal with so few cases that no body of expertise is built up. I have to accept that this is probably a good reason for having a national standards commission: so that excellence is centred—but we disagree with that.

**Dr Sylvia Jackson (Stirling) (Lab):** I would like to ask about the bigger picture. I have been sent to attend this committee meeting by the Local Government Committee. I think that I am aware of what COSLA's position is, but I have been asked to consider that on a wider scale here.

Can I confirm what you were saying about the structure that you were possibly advocating? You were saying that there could be a national standards commission, which would lay down the framework of principles for the system. Beneath that framework, councils may have their own code; MSPs may have their own code; LECs may have their own code. For each of those, there would be a degree of self-regulation. In the case of the councils, that would be their standards committee. As far as MSPs are concerned, this Standards Committee could take on that internal regulation, but it would be under the umbrella of the national standards commission.

Have I understood that correctly as the bigger picture?

**Andy O'Neill:** Yes.

**Dr Jackson:** I also want to ask you about the chief investigating officer versus a commissioner. There has been a lot of debate in the Local Government Committee about the chief investigating officer, and about who should appoint that person. As you know, the Scottish Executive has suggested that that be done by the Scottish ministers, rather than by the national standards commission—if that is what the body is going to be called.

The Local Government Committee is a little concerned about the independence of the chief

investigating officer. If we were to incorporate MSPs in the structure of a national standards commission, it strikes me that the Executive could be appointing the chief investigating officer, who would adjudicate.

**Councillor McChord:** As far as the national standards commission is concerned, public expectation is all-important. The public have certain expectations of public life—that is the key. Core standards of ethical conduct and probity in public life are not difficult to prescribe and they should be adhered to by elected members and appointed members wherever they should be. There are nuances in local enterprise companies, as in public companies, that there are different standards for different cases in certain areas, but the core set of standards should be available to all.

Eddie Bain is probably better placed to answer Dr Jackson's other point about the independence of the chief investigating officer.

**Eddie Bain:** I am not sure that I am in fact best placed to answer. I recognise the problem; I am not sure I have the solution. I accept that if the Scottish Executive appoints the chief investigating officer there will be potential human rights issues about independent and fair tribunals. To guard against that, those functions must be separated. The difficulty is that we might start running out of people who can appoint people. We run the risk of not being able to achieve a total separation of powers in all cases.

**The Convener:** On behalf of the committee, I would like to thank the witnesses for taking the time to give evidence. Your comments were interesting and informative and have added significantly to our inquiry. You are welcome to stay for the rest of the meeting.

**Councillor McChord:** Unfortunately, we have to leave because the COSLA conference starts today.

10:00

*Meeting adjourned.*

10:04

*On resuming—*

**The Convener:** I reconvene the meeting and call Elizabeth Filkin, who is the Parliamentary Commissioner for Standards at Westminster. You are welcome to make some opening remarks to the committee.

**Elizabeth Filkin (Parliamentary Commissioner for Standards, House of Commons):** Good morning, ladies and gentlemen. I am delighted to be here. It is very



nice to be invited and to have the opportunity to meet you. I hope that we shall have a useful discussion. I have no doubt that we have things to learn from you and I hope that I can offer you some of our experience. I bring you greetings from the Select Committee on Standards and Privileges at Westminster. I am here to speak to you on my own behalf and to try to answer questions on behalf of the committee.

You should have two bits of paper—one from me and one from the acting chairman of the Select Committee on Standards and Privileges, Alan Williams. I hope that those will provide you with some background.

If members would find it useful, I will take you through the job that my office does, although I am happy to answer any questions on a wider front.

**The Convener:** That would be very helpful.

**Elizabeth Filkin:** My office has three jobs. First, it creates, keeps up to date and tries to make accurate a set of registers. Those are the register of members' interests, the register of interests of the staff of members and the register of journalists who have access to the Palace of Westminster. The purpose of the registers is to allow the public, other members of Parliament and journalists to know where people are coming from when they participate in parliamentary proceedings.

Maintaining the registers is a major administrative task. I have one member of staff who works full time on that and another who spends three quarters of their time on it. It sounds like an easy activity, but keeping the registers up to date and accurate and making them public involves constant work, because—at Westminster at least—people's interests keep changing.

My second job—I hope it will turn into the whole of my job, although it has not yet—is to provide advice. I provide members with advice on how to ensure that they do not fall foul of the code of conduct or the rules, and I help them to pick their way through the difficult issues of probity with which they are faced from time to time. I am doing a lot more of that now than when I started a year ago, and I am doing more of it every day. Every day I see members or talk to them on the phone at their request.

My third job is to investigate complaints that members of Parliament have broken the code of conduct or rules, or that others have broken the rules that apply to the other registers. I can accept complaints from anybody including the public, other members of Parliament and journalists and I get them from all those sources. Our code of conduct and rules stipulate that I may not take anonymous complaints and that I have to have enough evidence in support of a complaint for me to investigate it. It is for me to judge whether there

is enough evidence to justify an investigation.

Of course, some of the complaints that come in are malicious, mad or have no basis, and I sift those out. In passing, I should say that in my years of investigating complaints—I investigated complaints for six years in another job as well—I have always worked on the premise that the fact that a person is mad does not mean that there is no substance to their complaint. One has to treat complaints on all fours until one has decided whether there is anything in them.

The next step involves preliminary inquiries. I try to tailor the investigative process to the particular complaint—I have a procedure that is usually largely the same, but I try to make it fit. I usually send the MP concerned a letter informing them of the complaint that has been raised with me and asking for their response. I offer them an opportunity to talk to me before they respond. Most MPs rush round to my office with all of the relevant documentation, facts and information. Having seen that, I often come to the conclusion that the person who raised the complaint is wrong and I dismiss the complaint. I will write back to that person to say that I have looked at the facts and have found that what they thought is not the case. I inform them of the facts and tell them that if they can produce evidence that the MP has broken the code of conduct, they should give me that evidence. I tell the Standards and Privileges Committee that I have received the complaint, but that I am not taking it further. I do not inform the committee of the content of the complaint.

Every time the Standards and Privileges Committee meets, I run through the complaints that I am dealing with at that time and I inform the committee either that I have had a complaint and am awaiting a response from an MP, that I have had a response and am not proceeding further or that I have had a response and am making further inquiries. I give the committee only the briefest information about the complaints before proceeding with my investigation. The committee does not comment on the complaint at that point and does not interfere with my investigation.

I do what I feel is necessary in an investigation. That varies hugely. As I have said, many MPs bring all the relevant documents to me and the matter can be dealt with at once. Sometimes, they bring round so much stuff that I send them away until I have read it. At other times I will read the information before I send them away so that I can think about it further.

Often, I will need to clarify matters with the complainant, too. I need to make sure that I am absolutely clear about what the complainant is saying, where they have got their information from and whether there is hard evidence.

I write to and interview any witnesses I wish to, whether they are from public bodies or wherever. I am supported by the powers of the Standards and Privileges Committee, which can call for any persons or records. The committee uses those powers at my request.

I am pleased to tell you that, in the year that I have been in my post, I have not had to call on those powers. Usually, when I tell people what those powers are, they are happy—or semi-happy—to speak to me voluntarily, which is a much better way of proceeding. That is good news.

The powers are useful when a person does not want to give information because they have understandable loyalties elsewhere, because they know that their evidence will demonstrate that someone has been lying or because they have commercial confidentiality arrangements with clients. Those powers allow people to tell me the truth in those situations.

Only once during the year have I had to tell someone what would happen to him if he did not give me the information or refused to come to see the committee or me. When I told that person—who was a barrister—that he could be arrested, there was a deep intake of breath and the documents were delivered to my office within half an hour—in that instance it was useful to have those powers.

10:15

What I am talking about when I give these examples are the most unusual situations. The most common situations are as I have described them. The vast majority of cases are complaints—some of which have some substance—but they are not what I regard as serious. They are matters of forgetfulness or casualness, when people have got it wrong and are happy to sort the problem out—that is fine. I have had to deal with one or two situations that were much more serious, in which people lied to me. One needs the Standards and Privileges Committee's powers to deal with such exceptional situations. When I have done that and got to the bottom of a case—or as far as I think I am going to get—I write a report for the Standards and Privileges Committee. The committee discusses the report, questions me about it and satisfies itself that I have turned every stone.

Alternatively, members of the committee may say, "We really would like a bit more information about this matter that you have reported to us. We would like you to go and find this or that out." I then go off and investigate further and bring that information back to the committee. When committee members are comfortable that they have all the information that they think they need

from my investigation, they discuss the case and come to agreement in principle about whether they agree with my view. They then come to an in-principle view as to whether to admonish the member. If they so decide, their usual practice is to ask the member to appear before the committee. They can also ask witnesses to appear before the committee, although they have not used that power during the past year.

Allowing the member to appear before the committee is terribly important. Although the member will have provided me with letters giving their view and, if it exists, their defence—all of which I present to the committee as part of my report—giving evidence to the committee allows the member to answer the committee's questions and to put their own case. That also allows the committee members to make a judgment about whether the member is telling the truth and to question them in some detail on my report.

That is the important, self-regulatory part of the process. The committee is made up of members of Parliament who know how Parliament works and who ask other MPs, "How could you not have known that you had to do this or that, when all this was going on in Parliament?" The committee members understand the institution, what happens in the institution and what was happening when people were in the process of breaking the rules.

When members of the committee take evidence from a member, they tell him or her that the oral evidence will be published in full, along with their report—they decide when to publish their report. They then come to a conclusion about whether they will uphold the complaint, whether they agree with my view and whether they want to say more or less than my report. They publish their report, which is backed by my report and evidence, plus any oral evidence that they have taken.

That document is published, usually the day after the committee has met. Yesterday, it met and considered a case; the report will be published at 11 o'clock this morning. That report will allow the public, journalists and other members of Parliament to see what happened, how the case was investigated and what conclusions the committee and I reached.

Afterwards, we have to put things right. If someone has not registered an interest, for example, that will have to be done. If the admonishment that is recommended by the committee is an apology to the House, which is the first level of penalty, that will happen without going before the House for a decision. I reported on a complaint last week and the member apologised this week. The next level of admonishment is suspension. If that is recommended, the committee must report the matter to the House, which will formally take a

decision on whether the member should be suspended. That happened a month ago, as the committee might have read in the press. That was a lengthy investigation that took me nine months to complete. The Standards and Privileges Committee decided to recommend a four-week suspension of the member, which was endorsed and enforced by the House. If a member is suspended, they lose pay as well as experiencing the humiliation of suspension. They are also subject to one of the most serious punishments for a member—the ensuing bad publicity.

That is the process and I will answer any questions that the committee has, if I am able.

**The Convener:** Thank you. That was very helpful.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** That was very interesting. I returned to the meeting after you had begun, so I missed the start, but what I heard was very informative.

What do you see as the principal benefit of the independence of your role? I might have already reached a conclusion on that, but I would like to hear your thoughts.

**Elizabeth Filkin:** The witnesses from COSLA made it clear that, however good and impartial a parliamentary committee might be, that is not always how it is perceived. The Select Committee on Standards and Privileges works extremely hard; it has met almost every week for a year. It works very hard at being impartial and non-party and it has come to a consensus on every report that it has published this year—all 17 investigations. However well the committee works, in certain cases, other members of Parliament will not see it as impartial. In my view, those people have their own axe to grind—they say that the committee was not impartial about X and Y for various reasons.

People within the House have that view from time to time. Much more pervasive is the view of journalists and the public. Rightly or wrongly, the public do not believe that MPs will be impartial in regard to their fellows—Westminster is seen as a club. The public think that MPs will protect one another and that it will be difficult for them to be independent and impartial. That is why Westminster decided to have someone who was not involved in Parliament or politics to carry out investigations. It committed itself to publishing the Parliamentary Commissioner for Standards' report in full, with all the evidence.

If at any time the committee disagreed with me, that would be made public. I am not claiming that my view of the world is necessarily right, but that system allows the public to make up their own minds. The committee decided to do that to ensure that the public had confidence in the

system. Although it is a pretty lonely role, I can see how immensely difficult it would be for an MP to take it on. It would be hard indeed for a member from the party system to be regarded as impartial by people from another party, if they were being investigated.

**Tricia Marwick:** I accept that what you are saying is true at Westminster. It was generally perceived, before the previous election, that Westminster had to clean up its act, and most people recognised that the Westminster Parliament had some baggage. I appreciate the point that you make about establishment of public confidence. Nevertheless, the Scottish Parliament is a brand new organisation and we do not have the same baggage. Can you not see that, as a new organisation that is firmly rooted in the Nolan report's principles, we have the opportunity to make a fresh start and that that might not necessarily include the appointment of an independent commissioner?

**Elizabeth Filkin:** I would not presume to advise you on what is necessary for you: you are the only people who can make that decision. All that I can do is describe why Westminster took the route that it did.

That decision is an immensely practical matter and it has nothing to do with impartiality or even public perception. I am employed to work four days a week, and I have a staff. However, I have worked more than five days a week every week since I came into the post, and throughout recesses. When I was appointed, the Speaker told me that she expected me to have plenty of time to do all sorts of other things that I wanted to do, as everybody in Westminster knew what the rules were and nobody would break them because it would be too uncomfortable. That has not turned out to be the case.

It might be that there would be no work here. However, if there was one complex case, which required the sort of delving that I have to undertake for most of the cases that I investigate, the committee would not have time to do that work in addition to all that members have to do. The question, therefore, is not about impartiality, but about having an investigation conducted professionally and within a realistic time scale. Of course, a simple case that required only a few witnesses could be handled by the committee system. Anything more complicated would require a lot more time. You hear from one witness and then get hold of a range of documents to study. You then have to go back to that person. It would be a cumbersome procedure that a committee could not carry out in a realistic time scale. There is therefore a practical reason for having a body—whatever that body might be—working for you.

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

During your presentation, you mentioned the powers that you have. Could you elucidate those a little more? Can you separate the powers that you have over MPs and their staff from those that you have over others who are outwith the Parliament? What kind of powers can you bring to bear when you are investigating complaints?

**Elizabeth Filkin:** Any breaches of the code of conduct or rules are the responsibility of the Standards and Privileges Committee, which has the powers that I have described. It has always said, and confirmed, that it uses them to back up my investigations. I have exactly the same approach in regard to anybody else who breaks the rules that relate to the Houses of Parliament—for example members' staff or journalists, who constitute the only other two groups that I have any locus with. It is much easier to discipline them. The discipline route for anybody other than MPs is to withdraw their parliamentary passes. On a recommendation from me, the Administration Committee of the House of Commons would withdraw somebody's pass. The committee would do that if someone from a particular group breached the rules that apply to that group.

10:30

**Mr Ingram:** When you are seeking information on a complaint, what powers do you have to call on third parties?

**Elizabeth Filkin:** The powers that I described—I can call for any person or record. If people refuse, they are in contempt of Parliament and can be arrested.

**Des McNulty (Clydebank and Milngavie) (Lab):** Briefly, can you describe the mechanism through which you were appointed? What role did the Standards and Privileges Committee have in that?

**Elizabeth Filkin:** The committee had no role in my appointment. Candidates for the post were sought through public advertisement and by headhunters—I was approached by headhunters. When I saw the advert, I thought, "That is a ridiculous job—I would never apply for that". However, I was persuaded by the headhunters to allow my name to be put forward and went through the competitive process of assessment. I was interviewed by a panel that was made up of a senior member of a parliamentary law firm in the City, an academic and one of the most senior clerks in the House of Commons. It did not include anyone from the Standards and Privileges Committee or any MP. The panel recommended two people—another candidate and me—to the House of Commons Commission, saying that it believed both of us were capable of doing the job.

As members will know, the commission consists of the Speaker, the Leader of the House, the leader of the opposition parties in the House and three senior independent members of Parliament. They interviewed the other candidate and me and offered me the job. The Standards and Privileges Committee had no role in the appointment process. It was landed with me and must put up with me.

**Lord James Douglas-Hamilton:** Roughly how many complaints do you receive a year? What percentage of them are marked "no case to answer" and what percentage of them are considered sufficiently serious to go to the committee with a recommendation?

**Elizabeth Filkin:** During the three years that my predecessor was in the post, he reported on 23 cases, on which the committee published reports. In the year that I have been in post, I have reported on 17 complaints and reports on those have been published. Although the numbers have gone up, members should not make too much of that, because it is a small sample. What really matters is the size of the cases. Some cases can be dealt with in a week, whereas some take nine months.

I have not done a count, so this is only an estimate, but two thirds of the complaints that come to me are probably not taken any further. They might be outside my area of responsibility—an MP may not have done what their constituent, Mr X, wanted them to do, or Mrs Y may not like the policy line that MP Z is pursuing, for example—or they might be matters for the police, the parliamentary ombudsman or another regulatory body. There might also be insufficient evidence to warrant taking a complaint further. Some complaints are no more than people's suspicions that someone is up to no good.

**Lord James Douglas-Hamilton:** In this Parliament, as opposed to Westminster, could a legal assessor do the job as well as a commissioner, or would a commissioner have more powers? What would be the difference?

**Elizabeth Filkin:** I am sure that a legal assessor could do a lot of the job, and any other pairs of hands doing some of the sifting would be extremely useful. Unfortunately, in most institutions, one must get somebody who is viewed—this is true of a few people at least—as being of the right status. Most people treat other people truthfully, sensibly and properly whatever their status, but there are some people who do not, as you know. It is therefore terribly important that those people, particularly if they go in for what I call bullying mode, are dealt with by somebody whom they regard as powerful. That is a sad thing to have to say and I am sorry that it is true. I hope that it will not be true for the Scottish Parliament.

**Lord James Douglas-Hamilton:** You may be aware that our Standards Committee is different from the committee at Westminster in that our proceedings can be subject to judicial review and Westminster's, as I understand it, cannot.

**Elizabeth Filkin:** That is right.

**Lord James Douglas-Hamilton:** From that point of view, do you think that it would be advantageous for us to have a commissioner, as that would make the decisions of the committee less open to challenge?

**Elizabeth Filkin:** I hope that that would be the case. If the commissioner were doing his or her job properly, an important part of the role would be to get the procedure right and provide the right advice to the committee, so that the committee could be seen to be acting fairly.

**Lord James Douglas-Hamilton:** How necessary is it to have a register of interests for journalists? Would that be for journalists acting as lobbyists?

**Elizabeth Filkin:** Before I got the job, I thought that such a register would be terribly useful and that people would want to consult it all the time to see where journalists were coming from. However, most lobby journalists do not have many outside interests. The register exists and people can see it, so it provides some sort of check, but I have received no complaints that journalists have not registered outside interests. The register is more for form than for use, but that is not to say that people do not consult it—they do.

**Lord James Douglas-Hamilton:** Should advice to members be a matter for the clerks, the commissioner or both?

**Elizabeth Filkin:** Of course, it is a matter for both. Clerks will always answer a question and be helpful to a member if they can. The registrar who works for me is a clerk and he does a lot of that advice for me. However, I have no doubt that there are some issues—particularly difficult issues of probity—on which members of Parliament want my view. They want me to recognise the problems that they face and to make suggestions about how they should handle the situation. I can give advice, but the decision is theirs and they are responsible for their own probity. I cannot tell them what to do. However, I also tell members that, if I get a complaint about the matter that they are telling me about, there are a number of things that I would need to ask them, and I advise them to bear that in mind in sorting out that probity problem. Members tell me that that is extremely useful.

**The Convener:** This is an important issue, and I shall allow members to come in again in a moment. Do you feel that your independent investigatory role is compromised by the advice

that you were giving to members of Parliament?

**Elizabeth Filkin:** No, I do not. Before I started, I thought that it might be. I thought that there might have to be a separation of roles and that I should say that members could take advice only from the registrar. However, I decided quickly that that would not be so. I keep a note of the advice that is given and I write to MPs with anything complicated after we have talked, so that there can be no confusion about the advice that I have given. I always underline to the member, and in writing, that the decision of what the member does remains with the member.

**Tricia Marwick:** You may be aware that this Parliament has been greatly exercised by the possible implications of the European convention on human rights. We are already fully committed to it, through the Scotland Act 1998, but Westminster procedures will not be subject to it until October. I wonder about the implications of the ECHR for your role.

**Elizabeth Filkin:** There were none. My investigatory operation is a proceeding in Parliament.

**Tricia Marwick:** So it would not be subject to the ECHR.

**Elizabeth Filkin:** No. However, one would adhere to the principles behind the convention.

**Tricia Marwick:** Do your present procedures need to be adjusted to take account of the implications of the ECHR?

**Elizabeth Filkin:** We have considered that and have concluded that they do not.

**Karen Gillon:** Perhaps you can confirm my suspicion that journalists—like MSPs, perhaps—need to get a life. Is it just lobby journalists who are covered by the Parliamentary Commissioner for Standards?

**Elizabeth Filkin:** It is anybody who has a pass into Westminster.

**Karen Gillon:** What are they required to register?

**Elizabeth Filkin:** Outside financial interests.

**Karen Gillon:** Similar to MPs' staff?

**Elizabeth Filkin:** They are required to register the same sorts of things—the same arrangements. They might be on the board of a company or be big shareholders.

**Karen Gillon:** The sanction, as for members, would be withdrawal of their parliamentary pass.

**Elizabeth Filkin:** Yes.

**Lord James Douglas-Hamilton:** Are penalties for the committee, rather than for you, to decide?

**Elizabeth Filkin:** Penalties are entirely the decision of the committee; I never get involved in the imposition of penalties.

**Lord James Douglas-Hamilton:** Has there ever been a case—or cases—in which you have made a recommendation and the committee has taken a different view?

**Elizabeth Filkin:** Yes. The only case in which there was any light between us—you would have to read the reports to come to a view on how much light there was—was that of Peter Mandelson. The committee, understandably, took the view that Mr Mandelson had already suffered considerably by having to resign from his ministerial post. If you read its report in that light, you will understand why that report is written as it is. My position always has been, and always will be, that I am totally unconcerned with people's roles and what has already happened to them. I must treat everybody exactly the same, and I take no notice of whether people are in senior or junior posts. On that one finding, I was more acerbic than the committee. The reports are in the public domain; I urge you to read them and to come to your own conclusions.

**The Convener:** The situation in the Scottish Parliament is quite different from that at Westminster in several respects. One of the major differences is that this committee's operations are carried out in public, as today's meeting exemplifies. One of the concerns is that, if we give a role for investigating complaints to an independent commissioner or an officer of the Parliament, that investigation would probably be conducted in private. Do you think that there is a problem with that? You talked about the need to ensure that we were perceived by the public as independently minded. Do you think that it would be harder for us to conduct such an investigation in private? In the House of Commons, the Standards and Privileges Committee meets in private anyway.

**Elizabeth Filkin:** In our case, the safeguard for the public is that the report on the findings of the commissioner is public, as is the evidence on the basis of which the commissioner has come to his or her view. The public get all the information in due course. I have no doubt that holding all the bits of an inquiry in public would work fine in many situations. It would work fine where the people who are being investigated are being totally transparent, helpful and honest. However, in my experience, both over the past year and in my previous role, I have found that in some situations I am better at getting at the truth if I have the person who is being investigated in front of me

and no one else is present. It depends on whether one is trying to get at the truth.

10:45

**The Convener:** Do you think that members who are being investigated or anyone else whom you investigate should have legal representation with them?

**Elizabeth Filkin:** I always offer it to people. I say that they are welcome to bring anyone they like with them; many people take up that offer. I make it clear that I will not talk to the representative or through the representative, but I always give the representative or friend a chance to speak at the end of the discussion if they want to say anything. In the most serious case that I dealt with this year, in which the member found it very difficult to accept the facts—although the facts were hard—the Standards and Privileges Committee decided, unusually, to provide the member with a copy of my report before it took oral evidence. It also advised the member to get legal advice—although it turned out that they had been receiving legal advice throughout—and informed them that they could bring their legal adviser with them when they appeared before the committee, if they so wished, which the member did. At the request of the member, the committee also directed some of its questions at the legal adviser.

**Patricia Ferguson:** I want to return to your description of your role as adviser as well as, in some cases, arbiter. When a member comes to you for advice and their conduct arising from that advice is questioned by another MP or member of the public, how do adjudicate on that? Has such a case arisen?

**Elizabeth Filkin:** Let us take the case that is being published today. A newspaper ran a complaint against the MP in question. The next day the MP came to my office with the newspaper article and said, "I need your advice on this; you must investigate it as a complaint." I said that I could not investigate it as I had not received a complaint. He said that he would make a complaint against himself. I replied, "Oh no, you won't—I'll give you advice, and I will tell you how I will deal with a complaint if I get one." We went through the facts and I told the member that in my view he was best protected if he did certain things. I told him what things I would want to know if I received a complaint and how I would proceed.

I then received a complaint. When I reported to the Standards and Privileges Committee, I set out that sequence of events. I said that an article was published in a newspaper, the MP came to me and asked for advice, I gave him advice, he followed it and then I received a complaint relating

to the matters that we had discussed and more. I went on to say that I thought that I was correct in the advice that I had given and that the member should have done X, Y and Z on the matters that we discussed. I also set out my views on the matter that I had not known about. The committee considered the case with all the information in front of it, with the advice that I had given, and came to its own view, which supported mine totally. The important thing is to report what has happened in great detail, even if one has made a mistake and given the wrong advice, as the committee will take a decision and that wrong advice will be in the public domain.

**Tricia Marwick:** Has your office been involved in any investigation of leaks of confidential documents?

**Elizabeth Filkin:** No.

**Tricia Marwick:** Would you like that to be part of your role?

**Elizabeth Filkin:** I have been asked whether I would take that on. As you will see from the chairman's paper, the committee is anxious about the difficulty of conducting such investigations itself, as it feels constrained. All that the committee can do is get people to appear before it and they come with a prepared brief. It has no other mechanism for doing the sort of checking that I do. The committee is considering whether my role should be extended to take in investigations of leaks of confidential documents, but no decision has been taken.

**Lord James Douglas-Hamilton:** Do you feel that you have sufficient powers to obtain the necessary documents and to get at the truth? In what circumstances have you found it hardest to get at the truth?

**Elizabeth Filkin:** It is very hard to get the offshore stuff, but I have got it. I have to access it by other methods, as I have not got powers outside the landmass. Luckily, some of the lawyers involved in the offshore trusts that I have investigated also operate in England.

**Lord James Douglas-Hamilton:** Whatever system we put in place—whether it is a legal assessor, a commissioner, or this committee doing the work—a devolved Parliament has fewer powers than Westminster to deal with non-co-operation. Can you give us any advice on that?

**Elizabeth Filkin:** Generally, I would be the last person to say that the press is your backstop, because in many situations the press does not behave well when dealing with complaints about members of Parliament. However, in cases of non-co-operation, responsible journalists are your backstop. If the details of a case are published, how people have behaved is out in the open and

the public can make a judgment. Being the sort of investigator that I am allows me to sit down with a witness, as I did yesterday, and say, "You have told me the following things, but I have now collected evidence from many other people who tell me something quite different. I am telling you that to give you the opportunity to decide whether you want to stand by what you have told me and have me report that to the committee, or whether you want to alter your evidence." The witness then changed what they had said. I do not think that that would have happened in an open committee, but I think that I have now got the truth from the person in question—I do not think that that was the case at the beginning.

**Patricia Ferguson:** One question that has taxed us is lobbying and lobbyists. At Westminster, is there any mechanism for dealing with complaints about lobbying or lobbyists?

**Elizabeth Filkin:** As you will recall, my office was created in response to improper lobbying. I am sure that I do not need to say what I am about to say, but lobbying is the lifeblood of political bodies. Lots of lobbying is good—it is about perfectly reputable organisations putting their point of view to members of Parliament. However, during the previous Parliament, there was some disreputable lobbying—people paying MPs to do things on behalf of companies and so on. By the end of that Parliament, about 290 MPs had registered roles as providers of parliamentary advice to lobbying companies. Because of the new rules on advocacy—and the new intake of members of Parliament—that number has fallen remarkably; it is now well below 100. Because anybody who gives advice in their capacity as a member of Parliament not only has to register that but has to deposit their employment agreement with my office and to declare what they earn for their services, such activity has become much less attractive for MPs. It has also become much less attractive for lobbying companies, because they feel that MPs cannot now do what they might have done in the past.

I am convinced that lobbyists are now most active through the all-party parliamentary groups. I have no doubt that most of that activity is perfectly proper, above board and transparent, and that everybody knows where the lobbyists are coming from. If I had concerns, they would relate to the influence that can be exercised in that situation.

There is another area that does not concern many members of Parliament but concerns me. Many members of Parliament are offered non-executive directorships. Some are offered to members because of their business knowledge and because of what they can contribute to the company. However, some members think that they are being offered directorships for those

reasons when, I have no doubt, the companies think that they are getting an inside track into Westminster.

It is unlikely that companies are getting an inside track into parliamentary proceedings, because members are constrained by the advocacy rules as to what they can talk about or introduce. On the whole, members are very careful to observe those rules, and there is a set of watchdogs on the benches on the other side of the House ready to jump on them if they get things wrong. However, there is no doubt that people have huge informal networks. People are friends with ministers and have conversations with them, most of which are absolutely above board, but problems can occur if people are not very acute about what it is right and wrong to do.

**The Convener:** I would like to bring this part of the meeting to a close. Members may ask one more question.

**Dr Sylvia Jackson:** I am here on behalf of the Local Government Committee, which is considering the Ethical Standards in Public Life etc (Scotland) Bill. The bill contains a proposal for a national standards commission and a chief investigating officer. How would you see such a commission operating? In previous evidence, it has been suggested that councils, local enterprise companies, MSPs and ministers could have their own internal mechanism.

**Elizabeth Filkin:** I cannot speak to you about that from my own experience—I can only speculate and I am sure that my speculations are along the same lines as everyone else's.

In many situations it is desirable to have as much self-regulation as possible, as that involves people internalising what is right and wrong and ensuring that their colleagues, whom they see every day, act properly. That cannot be done from somewhere else—in any institution, there has to be an ethos that makes it happen, so that when people are about to do something wrong they get a dig in the ribs and are told to stop. That is the way in which to ensure good standards of behaviour.

When something goes wrong, it is good if it can be sorted out locally, as that helps in the process of internalisation. It means that regulation is in the hands not of someone in the capital city or some great organisation, but of local people who are being seen to know what is right and what is wrong. Any business organisation or public body needs that.

However, when things get very serious, there has to be a mechanism that allows people to decide that the problem needs to be dealt with from outside. In several investigations that I have carried out for local authorities and police forces,

the local authority or police authority members said that, although they had done what they could, the matter was so serious that public confidence would not be retained without an external investigation. Therefore, I think that a properly run commission could be useful to all sorts of bodies. It could be called on by those bodies and, in certain instances, it could intervene. Sadly, from time to time, there are local authorities that do not have high standards of probity and that are run by cliques that are into one thing or another; an outside mechanism is needed to deal with such cases.

**Lord James Douglas-Hamilton:** Is it your evidence that a commissioner can carry out an investigation at a more profound level than a committee could by conducting a cross-examination in one morning?

**Elizabeth Filkin:** That is my view. I think that most members have too many other things to do to allow them to spend the time on the detail that is required in some of the cases with which I deal.

**The Convener:** Is your view based partly on the fact that you can conduct one-to-one interviews in private?

**Elizabeth Filkin:** There is much more to investigations than interviews. One has to obtain documents, study them, check whether they are authentic and come to a view about what they mean about the company or body that one is investigating—major investigations demand much work other than talking to people. In one investigation, I was lied to by the member who was involved, so I had to track down some companies. A great deal of work is required if one has to do that.

**The Convener:** I thank you for giving evidence today. I know that you have a busy schedule—you have outlined that today—and I am sure that the committee can learn much from your experience of enforcing standards at Westminster. You have given us much food for thought.

**Elizabeth Filkin:** Thank you. I will be only too happy to answer any questions that you need to ask from time to time—I am sure that the committee clerk can put those to me. I will be delighted to assist you at any time; I am sure that contact will be useful to me as well as to you.

11:02

*Meeting adjourned.*



11:13

*On resuming—*

## Cross-party Groups

**The Convener:** We now move on to agenda item 2, colleagues, which is consideration of applications for recognition as cross-party groups. Members have copies of the forms that have been submitted, and we shall take the applications in order.

The first group is information, knowledge and enlightenment. I should inform members that the application for registration of that cross-party group has been withdrawn. We will therefore go straight to the next one, on media. Do members have any comments on the media application?

**Karen Gillon:** The application conforms with the rules on cross-party groups as I have read them, and I suggest that it be approved.

**The Convener:** Is that the view of us all? Members are agreed.

The next group is that on epilepsy. Do members have any comments on that proposed application?

**Tricia Marwick:** Like the previous one, this application seems to conform with all the regulations that we set down, so I propose that we accept it.

**The Convener:** Is that the view of everyone? Members are agreed.

**Des McNulty:** I think that I raised this at the previous meeting, convener: once we get past the point of approving groups, what is the next stage of monitoring their activity? Elizabeth Filkin mentioned that one of the issues that concerned her was the use of cross-party groups for advocacy purposes—I will put it no other way than that.

I think that we should discuss mechanisms for regulation. At the previous meeting, I highlighted the need for us to be certain that a cross-party group had a sufficiently general scope for its activity, and was not being used as a vehicle for a purely local campaign. I think that we need to examine that in the context of dealing with these approvals. I would like those issues to come up on the agenda for discussion.

**Tricia Marwick:** I agree with Des McNulty. We need to look beyond where we are at the moment, and at how we monitor the cross-party groups. I am less concerned about the activities of lobby companies in relation to our cross-party groups, as they are essentially quite different from the bodies that are effectively the cross-party groups at

Westminster. We said clearly that our cross-party groups shall be essentially parliamentary in nature. That is not the nature of the beast of cross-party groups at Westminster.

That is not to say that we should be complacent, but there is a recognition that the systems are quite different in Scotland compared to those in Westminster. While I agree with Des that we need to consider carefully how the groups operate, I do not think that we should be unduly concerned at this stage that they may be hijacked by lobby companies.

**Des McNulty:** I agree with Tricia. What we have so far heard confirms the rightness of the decision that we made about the process of regulation. Once we get past the registration process, we need to consider in due course any other aspects of the role that we might have.

**Lord James Douglas-Hamilton:** I have no difficulty at all with the cross-party group on the media. The point which we heard about having a register of interest for journalists in due course could be usefully put on to the agenda of a later meeting. If everyone else is covered, and if it is the practice in other Parliaments, I think that we should consider it.

**The Convener:** If that is the view of the committee, I will put those two issues on the agenda so that we can discuss them at an appropriate time. I will ask the clerks to write to the conveners of those two groups, informing them of our decision.

## Register of Interests (MSPs' Staff)

**The Convener:** On agenda item 3, the register of interests of staff of members of the Scottish Parliament, colleagues will be aware that the Parliament agreed, following debate on Thursday 16 March, that the Standards Committee's motion on the introduction of a staff register be withdrawn to allow a further period of consultation with members and their staff.

Members have in front of them a brief issues paper, listing the principal areas of concern that were introduced during the course of Thursday's debate. However, our primary purpose this morning is to consider the character and time scale of the further consultation that is required. I suggest that we invite written submissions by Friday 7 April from members' staff and any staff associations representing members' staff.

If colleagues agree, I can ask the clerks to write to the Presiding Officer, party business managers and representatives of the smaller parties, including of course Dennis Canavan, the member for Falkirk West, with a view to facilitating this fuller consultation process. I now open this up for discussion.

**Patricia Ferguson:** One of the groups that should have been mentioned from the outset of this process is the trade unions representing members' staff. There are a number of them—for example, I know that the GMB and the Transport and General Workers Union are active among members' staff, and I hope that they will be fully involved.

**The Convener:** I will ask the clerks to contact those representatives directly.

**Karen Gillon:** I understand what you are saying, convener, but there is a need, given the debate last week, for some clarification. A lot of red herrings were being thrown around by people for their own political purposes, and they did not have anything to do with the register of members' staff interests. They only succeeded in causing alarm among staff, which was not merited by the register and was not raised with any member of this committee prior to the motion being put before the Parliament, even though the draft register had been in the public domain for some weeks. That caused me some concern.

You have identified a number of issues that we need to look at. If we are serious about consulting people, we have to provide them with some clarification, because what members were saying was not necessarily what was in the code of conduct. It would be stupid on this committee's

behalf if we did not provide clarification, particularly with regard to a clear definition of members' staff. A member stood up in the chamber and talked about staff working for another organisation who did some work for him. Clearly, that would not come under the register of interest of members' staff but that would come under the rules on paid advocacy or sponsorship. That is mixing up the issues.

The issue of members' families giving members advice at home was also raised. Clearly, they are not members of staff. People were trying to cause problems there. However, in relation to temporary staff, if people are working for 10 full calendar days a year, according to the register they are employed in a registrable capacity by this Parliament or by a member. We need to clarify for members exactly what we mean.

Another issue discussed was that of staff going to conferences. Perhaps I do not understand the code of conduct, but if I decide to pay for a member of my staff to go to a conference, that is not a gift or hospitality; that is a duty of their employment. If they are paid to go to a conference by an outside organisation, with associated expenditure, that is registrable, in the same way that it would be registrable for me as a member. I understand people's queries about the £50 limit on hospitality that need not be registered, but to move to £250, which was being suggested in the chamber, makes a nonsense of the rule and would mean that we would not catch anything.

People have to focus on why we felt a register of interests of members' staff was important. If we think back to the first issue that this committee had to deal with, the lobbygate affair, the underlying allegation was that a member of staff was able to influence a member. We need to provide protection for the member of staff and for the member in such circumstances. If we fail to do that, particularly where lobbying organisations are concerned in the receipt of gifts or hospitality, we will not have moved ourselves forward from where we are now.

**Tricia Marwick:** I agree with most of what Karen Gillon said. The only part that I disagree with is the assertion that nobody had made representations to members of the Standards Committee before the register was debated. I received representations from members of staff, and I felt that we needed an opportunity before the debate to explain some of the elements within the document that we produced.

The lack of explanation has allowed some of the misrepresentations to which Karen referred to come out into the open. We must take on board the fact that some of the definitions are far wider than we ever anticipated. We need to produce some clarity, particularly about members' staff. I

suggest that we should make it absolutely clear that members' staff are those paid for from members' allowances and signed up through the parliamentary payroll. Anyone on the payroll is a member of staff.

**The Convener:** Those are good points for clarification, but the whole purpose of extending the consultation period is to allow us to listen to other points of view and to re-examine the matter. There seems to be a difference of opinion, which was not the case in the report that we produced.

**Des McNulty:** I have two or three points. First, if I had been doubtful about the need for a process of registration of members' staff, the debate would have convinced me of the need for one. A number of contributions to the debate betrayed the fact that people had not read the document properly, which I found worrying, or had wilfully misinterpreted aspects of the report, not just in relation to members' staff interests, but, more broadly, to the code of conduct. We need to underline the fact that people need to read such documents carefully. If we can clarify the situation a bit more, we should.

Secondly, we should not move away from the principle, which is correct. We must convey to members of staff the fact that the issue is not optional or negotiable. As Karen Gillon said, the register is required to ensure the propriety of the Parliament. That was the unanimous view of the Standards Committee and of the Parliament, as far as I am concerned. We have indicated that quite clearly. We need to underline the principle as part of any further consultation process. There may be minor adjustments to mechanisms, but we are not moving from the principle.

The third point, which is an important one, is to decide the role of the Standards Committee in any further consultation. We have been clear throughout that our responsibility relates to the behaviour of members. I am a bit nervous about the Standards Committee consulting members' staff or other interests directly, rather than conducting the process through members. Members should have a role and responsibility. It is also probably legitimate for registered interests, such as the trade unions, to be involved.

There is a danger of us motoring down a route of consultation, which, ultimately, is not appropriate, given our role. Our role is to uphold the standards of the Parliament and to maintain members' propriety. Members' staff are a part of that. We need to think quite carefully about the mechanisms of consultation. We cannot have a consultation process just because some people are concerned.

**The Convener:** Des McNulty is absolutely correct. Not only is the Standards Committee

entirely agreed about the position, but so is the Parliament. We underlined in the paper the fact that there is cross-party support for the principle of a register of staff interests. There is no doubt about that. Clarification is needed on some points.

I want to open for discussion Des McNulty's point, as it is important. We are here to regulate the activities of MSPs. I think that contacting all interested parties is a reasonable approach, but I would like to know what the committee feels about that. It is important that, in a consultation period of a couple of weeks, we receive information from anybody who wants to give it. What are the views of other members?

11:30

**Karen Gillon:** Members of staff can only make informed comments if they have the right information. If the code of conduct is sent out as it is now, without an explanatory note and without options being offered, sadly, there will be the same misinformation as there was at the debate last week.

A number of issues are involved. We should include a note of clarification on point 2(a), which is the need to define the members of staff who will be covered. I do not agree with Tricia Marwick about that, as volunteers in my office could seek to use their position to influence me. Although they are not on my payroll, I use them as I would a member of staff, so I think that they should be covered. I want all members of staff to be covered. A family member who tells an MSP at home that they have made a rubbish decision is not a member of staff—it is their husband telling them to get a grip.

**The Convener:** Or their wife.

**Karen Gillon:** In my case, it is usually my mother. However, if someone works in my office or does a piece of research for me, they are a member of staff. I think that we should provide a note of clarification on that point.

On point 2(b), we should offer options. Should the threshold be £50, as we have suggested, or £125, in line with Westminster, or £250, in line with MSPs? We should set out why we think that the threshold should be £50 and clarify what interests are covered; for example, members of staff do not have to register attendance at a conference to which they have been sent by an MSP.

**The Convener:** At the debate on Thursday, there was a misunderstanding about the £50 threshold. I think that members assumed that they could not do various things if they cost more than £50, but, of course, they are only required to register what they are doing.

**Karen Gillon:** We can provide clarification on that as well as offering options.

Options of seven, 14 or 30 days can be offered on point 2(c), so that we can achieve a consensus about the time scale.

On point 2(d), although there is a debate about “the extent of the burden of responsibility which is being placed upon members for the conduct of their staff”,

an answer to that cannot be reached in discussion with staff organisations; it will arise only from discussion with members. It may be incumbent on members of the committee to hold discussions on issue 2(d) with our parliamentary groups, and to report back to the committee with views.

We need to clarify

“the registration requirements applying in relation to temps and agency staff”,

and we

“need to explain the rationale underpinning the Register”

and to let people know that this exercise is intended to provide them with support rather to hammer them. The purpose is the opposite of what it was portrayed as being last week.

There is a question about individual rights but, unfortunately, if one works in the Parliament, one is in some way responsible to the public, which pays one's wages. There must be a balance between individual rights and preventing people covering up what is in their past or present. It is incumbent on us to publish a register of interests.

**Tricia Marwick:** Karen Gillon has given us a helpful outline of the current situation and how we can develop it. I want to pick up on the issue of staff members and volunteers in relation to points 2(a) and 2(g) on the paper. As Karen said, there is an issue about information being in the public domain. That has been the subject of most of the representations that have been made to me.

We might want to differentiate between people who are paid from the public purse and are on the Parliament payroll and those who volunteer their time. However, regardless of that distinction, the onus is on the MSPs to be responsible for the conduct of those people. MSPs must realise that the Standards Committee will hold them responsible for anyone who is working on their behalf. Perhaps we have not made that clear.

There is a difference between the people who volunteer to help out, but also hold down a full-time job, and those people who are paid. Whether information on the former should go into the public domain is an issue for debate. We must reach a balanced judgment, which is not to say that everyone will be happy about the judgment that we reach. We must get some feedback on that

point.

**Lord James Douglas-Hamilton:** I support the suggestion that we invite written submissions by 7 April. The draft register is not an options paper, but a proposal. The staff would be able to come back to us if they disagree with any points. After the end of the consultation period, no doubt the clerks will kindly make an assessment of all the responses and we will be able to gauge whether they want the threshold changed to £75 or £100, and so on. We cannot judge such matters until we receive the responses.

I imagine that it would be possible to include a clarification note similar to those that were circulated to members of the committee in preparation for the debate. Those addressed some of the misunderstandings that had arisen.

**Patricia Ferguson:** It is necessary and appropriate to provide some explanation of what we are about, not just in terms of specific issues, but in terms of the overall tenor of what we are trying to achieve. The register is being proposed in the context of our code and we must make that clear.

I think, although I am not 100 per cent clear, that Des McNulty was trying to suggest a method for formal consultation with staff. I cannot think of such a method, but I would be happy to discuss that further if necessary.

We have covered the main issues outlined in the debate, but there was another, which we have not really discussed. I do not agree with this point, but we should not leave it out because other people think that it is important. That was the idea of the names of members' staff being made available through the publication of the register of interests. Some people argued against the publication of the register. I think that that is wrong. However, we should refer to that argument, not necessarily as an option, but to clarify our intentions.

**The Convener:** The clerks have made a note of all the points that members have made and the consultation document will be accompanied by an explanation of those points. In response to the point that Des McNulty made, and Patricia Ferguson followed up on, I suggest going through business managers as well, as they should be able to see if staff, trade unions or other organisations have views.

**Lord James Douglas-Hamilton:** In practice, the parties would circulate the paper to members and their staff, unless there was any objection to that.

**Karen Gillon:** If we are serious about consultation, we must consult with the organisations that represent members' staff—the trade unions and the SNP staff association. The

trade unions involved in the Labour group are the TGWU, the GMB and Unison.

**The Convener:** I will ask the clerks to contact those organisations direct.

Are members content for the clerks to show the consultation document to me to check that it reflects the tenor of the committee's discussion this morning?

**Lord James Douglas-Hamilton:** Will responses be sent to the clerk, to give a complete picture?

**The Convener:** What I am trying to get at is that I do not want to bring the consultation document back to the committee before it goes out.

**Karen Gillon:** Will that give the clerks time to prepare a report to be produced after the recess?

**The Convener:** Yes. It would probably be addressed at the committee's first meeting after the recess.

**Des McNulty:** Would it help if members of the committee made themselves available if staff organisations wanted to receive a presentation on the committee's proposals?

**Karen Gillon:** I nominate Des McNulty.

**The Convener:** That is a helpful suggestion. We could state in the document that if they want a presentation from, or discussion with, members of the Standards Committee, we would be happy to do that.

**Des McNulty:** Is the clerk confident that, by the time he has produced his explanatory notes, he will get the consultation document out within a reasonable period so that responses can be made by 7 April?

**Bill Thomson (Clerk Team Leader):** If it is possible to clear the document via the convener, we should be able to produce it by the end of the week, which would leave a fortnight for consultation.

**The Convener:** Are members content that we do that?

**Members indicated agreement.**

**The Convener:** We will have a two-minute adjournment.

**Karen Gillon:** All those breaks. You are too generous, convener.

11:42

*Meeting adjourned.*

11:44

*On resuming—*

## Investigation of Complaints

**The Convener:** Agenda item 4 returns us to our inquiry on models for the investigation of complaints. I welcome the Deputy Minister for Local Government, Frank McAveety, who will be our final witness in this inquiry. Before I call Adam Ingram to lead the questioning, I invite the minister to make a few introductory comments.

**The Deputy Minister for Local Government (Mr Frank McAveety):** I presume that members have received a draft of my speaking notes and have read them. Rather than repeating the core elements of the notes, we should concentrate on two main issues. The first issue is the procedures that we would identify with the chief investigating officer in the standards procedures for local government and public bodies. I have identified some of the key elements that we should deal with.

It is important that the process that is followed is transparent but does not allow for malevolent comments or complaints—as have been made against members who have held public office before—which have no substance, and bear no credibility when proper examination is undertaken. Those in public office deserve some respect, and the public complaints procedure should be followed only when significant issues are identified. Many of us who have held public office have had to undergo such procedures before we were elected to the Parliament. I have identified the stage at which the CIO would be engaged with and the stage at which the commission would kick in to identify where there had been breaches of the code for standards in public life.

As I have stated in my notes, there is flexibility in the model that we are considering, which allows for localised standards committees. My experience of that model was in Glasgow, where it normalised the circumstances of such cases. The great benefit of having a local standards committee, irrespective of whether a new national one is being developed, is that there is at least a port of call for the official, rather than an individual senior member of the council, or the leader of a council, acting as the gatekeeper and conscience of every elected member in that area. It would be untenable for any individual to be placed in that context. There is an opportunity for local standards committees to be developed, and I know that at least two or three authorities are exploring that option even though there will be a national development as well.

The second issue is that some members of this committee have expressed concern over the possible application of the model to MSPs, if we establish standards committees for local authorities, elected members of councils and members of as many public bodies as we could include within the devolved powers of the Parliament. Whenever I have visited councils, I have been at pains to point out that it is the Standards Committee of this Parliament that addresses the conduct of MSPs, rather than the Executive and the ministers. I have put down in the notes some of the procedures that would need to be addressed if people argued that the CIO and the standards commission should deal with MSPs. That would be premature, in the view of this committee, and would not necessarily be appropriate anyway.

Those are the broad points that I want to address, and I am happy to respond to questions.

**The Convener:** Thank you very much, minister. I am delighted that you are here today to give us the benefit of your experience as the former leader of Glasgow City Council.

**Mr Ingram:** Good morning, minister. You took the initiative in Glasgow, where the first local government standards committee in Scotland was established. From your experience, could you expand a little on the advantages and disadvantages of the system in Glasgow?

**Mr McAveety:** I was hoping to keep that for my book. [*Laughter.*] In Glasgow there were already great difficulties, because of the politics of the individuals involved. However, because of the concentration of newspapers and television stations in the city, the news that could be generated was disproportionate to the issues that were raised, which are common to the whole of Scotland. The problems were reported much more and developed anecdotally.

It was important to bring together a number of procedures that existed for regulating the conduct of people in public office. By establishing a standards committee, we were able to distil those procedures into a code that was customised to the area. By and large, the code was an amalgam of existing codes. Each authority needs to develop a code that is appropriate to its circumstances, but one positive aspect of the Glasgow system is that it does not allow any one party to have a majority on the standards committee. That ensures that there is public confidence in the process and that it is not seen as partisan. When the committee was set up, there were four opposition parties, each of which had a representative on it. The majority party on the council also had four representatives. There was a commitment to having a rotating chair, which has led to the Liberal Democrat member acting as convener over the past year or

so. The benefit of such a system is that it allows decisions to be made by a group of equals and ensures that they are based on the information and evidence that has been received.

Following the establishment of the standards committee, the nature of inquiries diminished dramatically in seriousness. I will leave others to judge whether the committee was responsible for that or whether there were other factors. I think that the establishment of the committee reminded folk of their responsibilities. We cannot say hand on heart that individuals will not err, but at least there is now a process to be followed.

For me, the other great advantage of the system was that if anyone raised an issue, I could refer it to an independent standards committee, which took responsibility for it. That was not intended as an abdication of responsibility, but it was unrealistic to demand that someone in my position should make snap judgments in such cases.

I am sure that the system can be refined. We had several folk from outside examine the code: Endell Laird, the former editor of the *Sunday Mail* in Scotland, a senior trade union official, and Alan Alexander, representing the academic side. They gave us general advice on how to set up the committee, which lent the institution credibility during a difficult period of Glasgow's history. The establishment of the standards committee helped normalise the situation and reassured the public. When most complaints are examined, they are found to be exceptionally trivial. However, if substantial breaches of the code are suspected, a process exists for investigating them.

**Mr Ingram:** We are considering the position in Scotland as a whole. How do you see a national standards commission relating to local government and to Parliament?

**Mr McAveety:** It would be premature for me—particularly as a minister—to make any judgments on how this committee should apply the code of conduct for MSPs.

Two issues need to be addressed. First, the general public must be confident that there are institutions that have credibility and clout, should elected members or representatives of public bodies misbehave.

Secondly, the bill has to establish a national standard to reflect the Parliament's new relationship with local government. Although such a perspective should not diminish the responsibility of local standards committees, it is important to establish a national standards commission in case a local standards committee does not have the bravery to make a hard decision. However, I hope that that would be the exception rather than the rule. By and large, once such structures have been set up, the massive

cases that people expect to happen often do not.

**Dr Sylvia Jackson:** Are you saying that the Standards Committee will work within the framework of a national standards commission?

**Mr McAveety:** Do you mean the Standards Committee of the Scottish Parliament?

**Dr Jackson:** Yes. Will it act as an internal self-regulatory mechanism of the commission? Your comments to Adam Ingram seem to suggest that a national standards commission would be quite useful.

**Mr McAveety:** The commission will certainly be useful for the framework for local government and public bodies. I am at pains to make it clear that I am fairly neutral about whether the Standards Committee would be part of the process. However, I imagine that the stipulations in other codes of conduct for members of public bodies will be similar to what is expected of ourselves. The Scotland Act 1998 stipulates that Parliament should determine such procedures. Perhaps Joanne McDougall could expand on that point.

**Joanne McDougall (Scottish Executive Development Department):** Under section 39 of the Scotland Act 1998, the Parliament can decide its own rules about matters such as registers of interests. We realise that the Standards Committee is at a very early stage in its consideration of such matters. Perhaps in a year's time, once the national standards commission has been established, the committee might decide to use certain elements of the commission's structure, and we could help the committee in that respect. However, at the moment, that structure applies only to members of public bodies and councillors, and would not work for MSPs. For example, this committee would need to have much more of an idea about the structures and reporting procedures that it would require.

**Dr Jackson:** How would the system not work for MSPs? I should say that I am here today as a reporter for the Local Government Committee.

**Joanne McDougall:** Ministers will appoint the commission and the chief investigating officer and devise the codes of conduct, although Parliament will have to approve everything. The commission will be able to suspend people, and our solicitors believe that such sanctions could not be performed by any other body. Suspension of parliamentary privileges is not quite the same thing, and the Scotland Act 1998 says that the Parliament cannot disqualify its members. As a result, an entirely new scheme will have to be devised, and we are quite happy to help with that.

However, although the commission could be involved with the committee, we are worried that any demands made on the commission now could

hold our bill back by about a year. We recommend that you let the bill go through and re-examine the issue later if that is appropriate.

**Tricia Marwick:** Does the minister agree that, regardless of anyone's position in public life in Scotland, the Nolan committee's recommendations provide the starting point for any consideration of national standards?

**Mr McAveety:** Yes, and the seven principles of public service are predicated on it.

**Tricia Marwick:** There is quite a difference between the Standards Committee and a national standards commission, but I detect a wee bit of overlap here. I welcome your comment that the method of investigating the conduct of MSPs within the Parliament is the responsibility of the Standards Committee. The Standards Committee of the Parliament has the power to make recommendations on the way in which the conduct of MSPs is monitored and regulated. That is not a matter for the Local Government Committee.

12:00

I ask this question to you, convener, and I would like to hear the minister's response, too. Would it be appropriate for the Standards Committee to make a submission to the Local Government Committee—which is considering the Ethical Standards in Public Life etc (Scotland) Bill—to give our views on whether the Standards Committee of this Parliament should be part of a national standards commission?

**The Convener:** Minister?

**Mr McAveety:** I have enough stushies in my life without adding to them. Whether it wants the two roles to be separated is a question for the committee to address. One of my many responsibilities is to identify the way in which the ethical standards bill should develop for public bodies and local authorities. That is my remit.

**The Convener:** I am certainly willing to put Tricia Marwick's point on the agenda for a future date. Today, however, we have the minister here, and we should pursue our questions with him.

**Lord James Douglas-Hamilton:** The statement put out by the minister says that

"having members subject to a Code set by the Executive and policed by a body appointed by the Executive would be rather odd."

I think that I am correct in saying that the bill is designed specifically to deal with councillors and members of public bodies, and that is in the minister's statement. The statement goes on to say that

"it would be preferable to design a new scheme specifically tailored to the needs of the Parliament."

When you were working on the proposals for the bill, would it be fair to say that you did not have the Parliament primarily in mind?

**Mr McAveety:** Yes.

**Des McNulty:** We heard evidence from Elizabeth Filkin about receiving a series of different kinds of complaints, some of which were well justified and required investigation, whereas others appeared to be spurious. It is not clear to me how a chief investigating officer would deal with the variety of complaints that would be lodged. What kind of filtering process might operate before a full investigation was launched into alleged misdemeanours? Has that been thought through? My question relates to the bill, but it is of interest to this committee as well.

**Mr McAveety:** In local standards committees that have been set up, it is the role of the chief executive or the legal officer of the local authority to look into things. It is fair to say that if there was a proximity between the decision makers and those making allegations against them, that would make for a very difficult situation for any senior officer to be in. One would have to hope that professional judgment and expertise would prevail over any other considerations.

I did not hear the earlier contribution on the experience in Parliament. Those criticisms and concerns will always be there. We need to take great care over who is appointed and the criteria under which they will operate. The process of separating out the genuine concerns from the malicious ones is important. All of us in public life know that if somebody falls out with you, that becomes the substance of the complaint.

Once the standards committee was set up in my former authority, the majority of complaints were about councillors falling out with councillors, rather than because members of the public were concerned about the behaviour of elected members. That perhaps says much more about elected members' behaviour than it does about standards.

We need to get the process and the role of the CIO right. I am happy to take views on how that should be finessed, because it is not an exact science. The review process might provide another opportunity to revisit certain matters. Joanne McDougall might be able to touch on that.

**Des McNulty:** One of the issues is the separation between hearing complaints—in a standards committee or some other context—and the process of investigating complaints. There is therefore a debate about whether there should be a specified person to fulfil that purpose—in our case, a commissioner—or whether the committee should deal with such matters. How do you envisage the role of commissioner in local

government? Will the role of conducting the initial filter or investigation be attached to the role of the chief executive, the monitoring officer or someone else within that framework? Will they determine whether there is any substance to a complaint, which must be responded to, or carry out an investigation on which the committee can then deliberate, having received the evidence?

**Mr McAveety:** We must ensure that we have someone of sufficient weight and independence that they are not coerced by the broader politics at local or national level. That is a concern for anyone involved in investigations. Secondly, to protect individuals, the process needs to be confidential until it is concluded that there has been a breach. That can then become public knowledge and be explored further.

We need to refine the process. Many people feel that they are caught out, because if someone makes a complaint about them, that is the story, rather than the substance of the matter two or three months later. From the Glasgow experience, one of the issues that still needs to be worked through is responsibility. I left in a line about that, because I thought that it was important. Members of the standards committee have a responsibility to respect confidentiality. The temptation in politics is to be a bit more lax than one should be about handling information about someone of whom one is not supportive. If elected members are involved in the role of assessing individuals' behaviour, that must be underpinned by confidentiality.

People have been worried about confidentiality, because there have been cases where information heard privately by a standards committee looking into a case has been made public and could have come only from elected members on the committee. I see that as a breach of code and would have liked people to be dealt with accordingly, but unfortunately that did not happen. Does that explain things?

**Des McNulty:** Yes. It is a difficult issue and I wondered how things were being thought through. The issue for us is that we hear evidence in public.

**Patricia Ferguson:** I am interested in what Frank said about the fact that complaints could be triggered by a written complaint or because the investigating officer decided to act on the basis of something that had already been in the media or a verbal tip-off. What is the reasoning for that? We have been working to the model of complaints having to be made, which was outlined to us as being the Westminster model. Why are you looking at it differently?

**Joanne McDougall:** We have not said specifically that complaints must be written because someone might not want to write in. They might want to make an anonymous phone call to



say that they think that something a bit suspicious is happening and would like it to be looked into. If a complaint has to be in writing, the person who writes in has to be named—although clearly in many cases one would want to know who was making accusations.

If there is something in the papers, the chief investigating officer can decide that something is interesting and may decide to look into it. We have tried to maintain as light a touch as possible, because as soon as we start to set down rules, especially in primary legislation, it is very difficult, if something new and unexpected comes up, to do things differently.

We have tried to keep things flexible and open, and it will be for the chief investigating officer and the standards commission to decide pretty much how they want to work. That is not to say that the system will not be transparent and open, but it is more a case of “suck it and see”. We should wait until we are investigating complaints before deciding on the best method for dealing with them.

**Mr McAveety:** I understand Joanne’s concerns, and am not blind to the process. One potential disadvantage of arguing for solely written submissions—and I understand the superficial attraction of being able to say that at least there is some substance behind things—is that, given the experience of employees, confidentiality is sometimes required to protect the complainer from victimisation and hostility in the workplace.

We are now trying to put a model together. I am not cognisant of everything that Patricia Ferguson said about the Westminster model, and I do not know whether that is predicated on everything being written. Sometimes, information comes from non-written complaints. To take an example from American history, I do not think that there was ever a formal letter about Watergate.

**Tricia Marwick:** I do not want to labour the point too much, but I want to discuss what Mr McAveety mentioned about the need for confidentiality with regard to employees. To my mind, there is a big difference between confidentiality and making anonymous complaints about somebody. Anonymous complaints would be more likely to be trivial. While I accept the need for confidentiality, I think that it is quite different from someone not putting their name to a complaint.

**Mr McAveety:** That is why the process needs to be robust. We would hope that the folk who are dealing with things—the CIO and others—would understand the process of hearings and of investigating complaints. They should be able to separate out legitimate ones from those that are clearly malevolent.

The experience of public life, as Tricia Marwick will know, is that the written letters will be matters

of substance and will be worth considering. If others come in block capitals and green ink, people can work out what the exact nature of such letters will be, but they still have to respond, because if they do not, they will get a letter complaining about that, and a representation can then be made saying, “My MSP has not acknowledged my inquiry.” We know of such cases. We make a judgment on them, and it is the CIO’s role to deal with that.

From my experience, I knew which issues of substance should be addressed by Glasgow City Council’s standards committee. I was delighted when other folk said, “I’ll take that to the standards committee.” I used to welcome such opportunities, because the stupidity of the complaint would often be exposed by virtue of its being examined properly, instead of having wee letters or phone calls behind the scenes.

**Tricia Marwick:** I am comforted by the fact that you seem to get the same kind of letters as I do.

I am not sure where you think the local standards committees fit into the whole structure. You seem to have left that a wee bitty vague. As I understand it, there is a chief investigating officer and a standards commission and you are leaving the possibility of local standards committees. Do you think that all the local standards committees will be drawn up in exactly the same way? Would they all be set up according to the same model, or would they be different? Would they have different roles? How could all those roles fit with the investigative powers of the standards commission and the chief investigating officer?

**Mr McAveety:** At present, councils have the opportunity, in the absence of any legislation on it, to set up their own standards committee. How they arrive at the content, subject matter, procedures and process is all determined locally.

I neither sought nor received advice from the Scottish Office, prior to the establishment of the Scottish Parliament, on how to establish a standards committee. We built on existing material, ranging from the codes of conduct that already govern elected members to the developments and debate at Westminster on the Nolan committee and on standards in public life. We brought those elements together to create the Glasgow code of conduct, which was friendly, welcoming and unthreatening.

12:15

For other councils, the arrangements depend on the size, scale and nature of the council. Two large central Scotland authorities are considering establishing standards committees, but how they do that will probably differ from the way in which Glasgow established its committee. Some councils

may have a different balance of representation. In some parts of Scotland, there are many independent councillors with no party political affiliation. It can be easier to achieve balance in a party political council, but less easy elsewhere. Those refinements can be dealt with locally, and we would support councils and give them advice if they sought it. However, we would expect any arrangements to be accountable, fair and transparent—those are the principles by which public life should be governed.

**Tricia Marwick:** Would a local standards committee have an investigative role, or would that role be only for the standards commission or the chief investigating officer? Would the local standards committees be considering only very trivial issues? I am not sure where they fit in and who would do the investigating.

**Joanne McDougall:** We do not know whether all local authorities will have their own standards committees. With a national code of conduct and national standards, the standards commission that we are establishing should be able to investigate whatever it wants. If local standards committees want to make recommendations to the commission or carry out investigations on something that the commission has decided not to look at, that is fine, but we do not think that local standards committees will have an official role. We would like them to work with the commission, which may give them guidance and help them with certain things, but the standards commission will decide what it wants to investigate. If local standards committees want to become involved in that process, it is probably a good idea, but they are not like a lower court.

**Tricia Marwick:** I am slightly concerned that, although we are talking about national standards in public life, you seem to be reserving the right of local authorities to determine standards for themselves.

**Mr McAveety:** I want to clarify that, as it is important for the local government agenda. Local authorities can set up their own standards committees. There is nothing to stop them doing that at present, nor will there be once the legislation is passed. The chief investigating officer will have the right and discretion to investigate any issue of concern about standards in public life, even if there is a standards committee in the locality.

Councils need to demonstrate that they have a local standards committee to reinforce that commitment to high standards. The public have been concerned about standards, often because of the way in which the media have handled the matter in the past. There must be processes in which people can have confidence. The CIO's role will not be compromised by the existence of any

local standards committee, although local committees have discretion to investigate. If a local standards committee has not conducted an investigation, because it thought that it would not be convenient to do so, but a CIO thought that it was important to do so, the CIO would still have the right to explore that issue.

**The Convener:** We are in danger of drifting from the matter that we are investigating.

**Lord James Douglas-Hamilton:** If somebody does something that is not necessarily a criminal offence, but is clearly in breach of the established procedures and rules of the code of conduct, who will apply the penalty?

**Joanne McDougall:** Do you mean in the bill as it stands?

**Lord James Douglas-Hamilton** *indicated agreement.*

**Joanne McDougall:** It would be the commission that would apply the penalty.

**Lord James Douglas-Hamilton:** The commission would be in a senior position in relation to the standards committee. In contrast, in the Scottish Parliament, the Standards Committee is currently the senior body.

**Joanne McDougall:** I take it that you mean local standards committees.

**Mr McAveety:** I think that Lord James means that the parliamentary Standards Committee has those responsibilities, whereas, under the new bill, the standards commissioner would make judgments about members of public bodies and local authorities. Does that clarify the matter?

**Lord James Douglas-Hamilton:** It seems that the commission that you are setting up would be more powerful than the local standards committees, where they exist.

**Mr McAveety:** Yes. They have power to intervene, to use discretion to examine cases and to make recommendations.

**The Convener:** If there are no more questions, I would like to thank Joanne McDougall and Frank McAveety.

**Mr McAveety:** Thank you for your time, convener.

**The Convener:** That concludes the evidence-taking stage of our inquiry into models of investigation. On behalf of the committee, I thank today's witnesses. I will ask the clerks to prepare an issues paper, based on a summary of the evidence that we have heard, for discussion at our next meeting on 5 April.

**Tricia Marwick:** When we were talking to the minister, I suggested that the Standards

Committee should pass on its views about the investigation of MSPs to the Local Government Committee, which is considering the Ethical Standards in Public Life etc (Scotland) Bill. Perhaps we can have a paper on those issues and take a view on that at our next meeting.

**The Convener:** Absolutely. The clerks have noted that. I am not sure of the timetable of the Local Government Committee, but we will certainly consider that matter at our next meeting.

**Dr Sylvia Jackson:** I will give the Local Government Committee feedback on today's meeting, but any further information would be helpful.

**Tricia Marwick:** It would be better for the Standards Committee to present its views, rather than someone from the Local Government Committee doing it. The Standards Committee must take its own view and feed that into the current process.

**Dr Jackson:** I was not suggesting otherwise; both my feedback and a representation from the committee will be useful.

**The Convener:** Thank you.

*Meeting closed at 12:22.*



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