

STANDARDS COMMITTEE

Wednesday 5 April 2000
(*Morning*)

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STANDARDS COMMITTEE

7th 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

CLERK TEAM LEADER

Bill Thomson

SENIOR ASSISTANT CLERK

Jim Johnston

ASSISTANT CLERK

Alastair Goudie

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 5 April 2000

(Morning)

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

The Convener (Mr Mike Rumbles): Welcome to the seventh meeting this year of the Standards Committee. I have received apologies from Karen Gillon.

Before moving on to our agenda, I suggest that we decide on the manner in which we intend to deal with item 4, which is a complaint against Tricia Marwick.

Tricia Marwick (Mid Scotland and Fife) (SNP): I should say at this point that when the committee reaches item 4 on its agenda, I will withdraw from the meeting.

The Convener: Thank you. The present arrangements for dealing with complaints are set out in the code of conduct. It states:

"The Standards Committee will normally meet and take evidence in public but reserves the right to decide, on a case by case basis, to deliberate in private."

In my view, there are good reasons for distinguishing the committee's consideration of whether a complaint against a member is valid from any subsequent formal investigation. The code of conduct also states:

"The Standards Committee, or its Convener on the advice of the clerks, will decide whether a complaint is within the competence of the Committee, whether it is merely trivial or frivolous or whether it merits consideration".

In considering the complaint against Tricia Marwick, we are initially required to decide whether to proceed with any investigation. I suggest that we agree to do that in private. If we find that the complaint merits consideration, we can further decide whether any or all of the subsequent investigation should take place in public. Do we agree that we should deal with item 4 in private session?

Members *indicated agreement.*

Models of Investigation

The Convener: Our first agenda item is a continuation of our inquiry into models of investigation of complaints. The clerks have prepared a paper, which you all have, which identifies some of the principal themes that emerged from our evidence-taking sessions over

the past few weeks. Annexe A is a copy of a paper that members received previously outlining the different models for the investigation of complaints, and is provided for ease of reference.

The aim of this morning's discussion is to consider the evidence that we have heard in the context of the models that are available to us. That should allow us initially to consider our preferred model, which will form the basis for a further paper from the clerks for discussion at our next meeting.

It might be useful to go through each of the 12 points in the paper. The first is the question whether a distinction can usefully be made between trivial and serious categories of complaint. Are there any comments?

Lord James Douglas-Hamilton (Lothians) (Con): The best option is to have one clear, simple procedure that can be used in all cases without any obvious distinctions. The reason is that the Parliamentary Commissioner for Standards at Westminster said that all complaints need to be taken seriously, because before a matter is investigated, one cannot weigh up whether there is any substance to it. The sifting of complaints could be the task either of a legal adviser or of a commissioner. We can come to a view on that later.

Mr Adam Ingram (South of Scotland) (SNP): I tend to agree. I was impressed with Elizabeth Filkin's evidence. She said that at first glance a complaint might look trivial, but it can become more serious when it is investigated. The converse is also true. It is important that we establish a process to deal with any complaint.

Tricia Marwick: I agree with my colleagues. It is important that the starting point in any investigation is the same. We differ from the Westminster system described by Elizabeth Filkin because of the Scotland Act 1998. She categorised complaints as frivolous, non-contested and so on, but we have a different standard, because if upheld, some complaints would comprise breaches of the Scotland Act 1998, and would be criminal offences. We have to be clear that while all our investigations should have the same starting point, there is a difference, and that is that in Scotland the more serious complaints could result in criminal charges and would need to be dealt with by the police.

The Convener: Does Patricia Ferguson have a comment to make?

Patricia Ferguson (Glasgow Maryhill) (Lab): No. I was going to make the point that Tricia Marwick just made.

The Convener: That was useful. We will move on to the second item, which is the need to establish different stages of investigation. Who

would like to start off?

Lord James Douglas-Hamilton: In the absence of any other volunteers, I will have a go. First, one individual should have the task of getting all the necessary, relevant facts, which could then be put before the committee. Evidence shows that it is easier and more effective for one person to do that than to have a committee do it.

Secondly, the investigator should report to the committee, but we can arrive at a view on who the investigator should be later.

Thirdly, the section on who should take a decision argues that those of us who have taken decisions in the committee should not vote in the Parliament. I do not think that that is the procedure in the House of Commons, but I have no objection in principle if it is thought, from the point of view of natural justice, that it is better that members of the committee should not vote in the Parliament.

However, if the final decision is to be made by Parliament, it is important that members are entitled to put the committee's case. The likelihood is that, if the committee made a unanimous recommendation, the Parliament would come to the same view on the first three points, unless there were very strong grounds for doing otherwise.

Mr Ingram: The Ethical Standards in Public Life etc (Scotland) Bill provides for the appointment of a chief investigating officer to handle complaints in local government and in other public agencies. The chief investigating officer would conduct the first stage of a complaint. We need to move towards something similar for ourselves. I note that the Executive is not in favour of bringing MSPs under the same legislation, but we should consider a similar model.

Patricia Ferguson: I agree with Lord James Douglas-Hamilton that we should have one individual whose job it is to sift through the complaints and to operate as Elizabeth Filkin does. Perhaps we could discuss the specifics of that later on.

The Convener: The same theme is emerging, is it not?

Patricia Ferguson: Yes, it is. However, I disagree with Adam Ingram. After the evidence that the committee heard at our previous meeting, we agreed that it was not appropriate for members of this Parliament to be subject to the same process as those appointed to local authorities or to other public bodies. There were distinctions, particularly because of the differences contained in the Scotland Act 1998. I would like to see those distinctions maintained.

The Convener: Correct me if I am wrong, but I think that Adam Ingram was talking about the

model.

Mr Ingram: I was talking about the model. I was not suggesting that we should come under the aegis of the Ethical Standards in Public Life etc (Scotland) Bill. The procedure that is laid down in the bill would be a sensible procedure for us to adopt.

The Convener: This leads us to the next point. Question 3 asks:

"Is it necessary and/or desirable that the functions of investigation and decision-making should be separated?"

Are there any comments on that?

Mr Ingram: A committee of investigation can be clumsy. If we had an individual gathering the evidence who could talk to people in private, that would be a more effective way of gathering evidence. All the evidence could then be marshalled and put before the committee. That is the most sensible model.

Tricia Marwick: It is desirable that the investigation and decision making should be separated. Although we will not reach conclusions about that at this meeting, most of us are agreed that we would like an individual to take part in the original investigation and then to report to the committee.

I was concerned that the role of Elizabeth Filkin, the Parliamentary Commissioner for Standards at Westminster, was both to advise MPs and to investigate their conduct if they did not take that advice. Although I agree that we need to separate the investigation and the decision making, I would be concerned if the individual whom we might consider appointing was also responsible for giving advice to MSPs about what they needed to do to comply. That was a real weakness in her evidence. I want to highlight that, because I would not want us to drift down that route; it is inherently wrong.

The Convener: While we are going through the 12 points, I remind members of the four options that have been at the back of our minds. I would like the committee to narrow them down to two options, so that the clerks can prepare the papers. It would be useful if members could bear that in mind as we are progressing through the 12 points.

09:45

Lord James Douglas-Hamilton: It should be the role of the clerks to give members clear advice as to what to declare in the "Register of Interests of Members of the Scottish Parliament".

Sanctions should be for the committee, not the investigator. The recommendation and report should come to the committee unless the complaint was frivolous, in which case the

committee would not need to be concerned with it.

The Convener: We will move on to the fourth point:

"The relative importance of an 'independent element' in the investigation of complaints."

Tricia Marwick: The Neill committee report said that it had no doubt that the establishment of a Parliamentary Commissioner for Standards

"has made a significant contribution to the promotion of, and public confidence in, standards in the House of Commons."

However, the House of Commons started from a low ebb, which is not the situation in Scotland. What is important in Scotland is that we put in place our own system, in which the people of Scotland will have confidence. I believe that there should be some independence within that, as it would help public confidence in the way in which we regulate ourselves in this Parliament. We are subject to regulation outwith the Parliament vis-à-vis the Scotland Act 1998.

While it is not a legal requirement that there must be some independence, I believe that in the climate that we are in, we must have an independent element—perhaps for public confidence rather than the confidence of MSPs. Whatever we do should have an independent element, but the final decision making should be for this committee or the Parliament.

Lord James Douglas-Hamilton: It is important to maintain the highest public confidence in the Parliament. In some ways, Scotland can be perceived to be rather like a village, as all the MSPs know each other well. Therefore, if there is an independent person at arm's length, there is the guarantee of impartiality and the belief that the matter will be examined impartially according to the rules and dealt with professionally according to the principles of natural justice.

The Convener: We will move on to point 5:

"Is there a mechanism to protect individuals from exposure to loss of reputation during an investigation?"

Patricia Ferguson: I should like to mention one of the points that concerned me about Elizabeth Filkin's evidence at the previous committee meeting. I gathered from what she was saying, and from press reports that I have read, that the investigations that she conducts are known to the public before a decision is made on whether the matter will be taken forward following her investigation. I do not want that to be the way in which we operate—the matter should be investigated first and then, if there is a case to answer, it will become a public matter. We all know the kind of malicious cases that could arise; MSPs must be protected from them.

The Convener: That is a good point.

Mr Ingram: In relation to MSPs broadcasting to the press prior to their making a complaint, there should be a ruling from the committee to MSPs on that.

The Convener: The code of conduct forbids it.

Mr Ingram: We should emphasise that when we produce our final model.

Patricia Ferguson: I would like to pick up Adam Ingram's point and say that that should be emphasised to anyone—and not just MSPs—who wishes to make a complaint.

Mr Ingram: I agree.

The Convener: Our powers are limited to MSPs, and I would like to hear members' views on that. I am not sure what our locus is if a member of the public complains about an MSP. What is our locus for saying that they should not talk to the press? We do not have any authority over them, whereas we do have authority over MSPs. I take Patricia Ferguson's point, but we may not have the authority.

Bill Thomson (Clerk Team Leader): If there were a lot of publicity that was based not on facts but on suggestion or guesswork, it might make it very difficult for you to investigate properly. It might be difficult to discourage publicity at the outset, because you have no authority over the way in which members of the public submit complaints. However, if it became apparent that you were impeded in your investigation by adverse publicity at the outset, that might help to discourage others from using such means.

The Convener: That is a useful point.

Patricia Ferguson: We will have a more detailed discussion later, but I would have thought that if there were a case in which we were considering a sanction, and if the case had already been all over the papers, we might take that into account when deciding the sanction to apply to a member. We might consider that, in a sense, a sanction had already been imposed.

Mr Ingram: A double jeopardy.

Patricia Ferguson: Exactly. Bill Thomson's point is absolutely correct. It would be a good thing if the public noted that we would take publicity into account. It would not be in the best interests of the working of the procedure if things happened in that way.

The Convener: That is a very good point.

Lord James Douglas-Hamilton: I do not think that we have any control over the press. I am reminded of Emile Zola's headline, "J'accuse". His accusation was against the Government, and it later proved to be well founded. However, we do have control over MSPs as regards the

appropriate ways of dealing with these matters.

The Convener: The next point in the paper is point 6, entitled:

“Should an investigation be wholly public?”

Tricia Marwick: I feel that the initial sift or investigation should be carried out in private. After that, there is a case for the committee's deliberations to be carried out in public. That contrasts with Elizabeth Filkin's view that it is easier to get to the truth by carrying out investigations in private. However, that would rather undermine public confidence in the procedure. During the lobbygate inquiry, this committee questioned the witnesses in public. We were able to do that. However, some of the initial investigation should be in private, with subsequent oral evidence taken in public.

The Convener: Can you clarify a point that, I think, gets to the nub of the matter? At the end of this meeting, we may have narrowed things down to, say, a choice between having a commissioner and having an investigating officer. As far as I understand it, both those choices would involve investigations being carried out by an individual. Are you suggesting that—after the initial sift—the investigation by that individual should be in public or in private?

Tricia Marwick: I am suggesting that, if this committee calls people before it to give evidence, that evidence should be given in public. As well as monitoring the behaviour of MSPs, we need to offer some level of protection to MSPs. That is why the initial investigation should be in private—to determine whether there is a case to answer.

I am firmly of the view that when witnesses come before us to give evidence, that should be heard in public. That contrasts with the situation at Westminster, where the whole investigation, including the hearing of oral evidence, takes place in private. If we were to adopt that model, it would send the wrong message. We started off on the right foot, at a time when very few procedures were in place, but I do not think that we went far wrong. It will build public confidence in the procedure if people can be sure that we will not go off into a smoke-filled room—[*Laughter.*] I know that that is a sore point in this Parliament. A private investigation would not serve anyone well, not least an MSP whose name has been bandied about. It would be far better for it to take place in public.

Patricia Ferguson: I hope that we will retain the option of deliberating in private.

Tricia Marwick: Absolutely.

Patricia Ferguson: However, I think that Tricia Marwick's point is valid. It illustrates the contrast between the procedures at Westminster

generally—not just on this issue—and the way in which we are trying to operate in this Parliament.

Lord James Douglas-Hamilton: I do not think that what Tricia Marwick is saying is inconsistent with what is said in the paper. The taking of evidence before the committee should be in public, but the initial investigation of whether there is a case to answer would be carried out by an investigating officer. In the lobbygate inquiry, we did not know at the outset whether there was a case to answer, as we had not had time to investigate the subject in depth.

Mr Ingram: I concur with other members. The committee should have the ability to call witnesses, and that process should take place in public.

The Convener: Question 7 is:

“What powers of investigation are required?”

Are there any comments?

Lord James Douglas-Hamilton: I understand that a commissioner has statutory powers given by act of Parliament, whereas an adviser has not. A commissioner would, therefore, be perceived as a more powerful figure than an adviser. If we were to opt only for an adviser, that might have the unintended effect of downgrading the Parliament. We must ensure that the most effective procedures are put in place; I understand that a commissioner can, under threat of imprisonment, get access to papers if he or she meets with non-co-operation. I am not sure that that would be the case with an adviser. This committee should have clout if it needs it.

The Convener: If we decided to go down the road of appointing a commissioner, that might require an act of Parliament, which would allow us to give the commissioner the powers that you describe.

I should inform Des McNulty that we are going through the paper and attempting to reach conclusions on each of the issues that are raised. It is intended that at our next meeting the clerks will present a paper outlining our thoughts. This morning I would like the committee to narrow down the four options with which we have been presented to two. That would give the clerks a better steer.

We move on to question 8:

“Is there a need for an appeals procedure?”

Are there any comments?

Lord James Douglas-Hamilton: My understanding is that there is already an appeals procedure on a point of law to the Court of Session, for any individual who comes before this committee against whom a sanction is proposed to

the Parliament, which the Parliament applies. I hope that we would never put ourselves in a position where legal grounds for appeal could be sustained, but such grounds exist and an individual could put his or her case to the Parliament before the Parliament ratified the sanction.

10:00

Tricia Marwick: That is one of the areas which we have tried hard to grapple with. Some of us felt that some sort of appeals mechanism should be built in. We need to refine where that would be. Would the appeals mechanism be before the whole Parliament? Would the Standards Committee make a final decision, and the Parliament would be the appeal body, or would we ask the Parliament to endorse the Standards Committee's recommendation? Perhaps we need to think about the issue a bit more carefully. My feeling is that there must be an appeal mechanism; I am just not sure where that would come in.

Des McNulty (Clydebank and Milngavie) (Lab): There should be a principle of appeal. The mechanism depends on the mechanism that we adopt for the investigation of complaints. If we were to go down the route of having a commissioner, the Standards Committee would, at one level, be dealing with a report that had already been done and would consider procedural issues in that context. One could argue that the appeal should be on the recommendation of the committee to the Parliament. If the committee adopted more of an investigative role, we would need to consider an appellate mechanism in that context, because the committee would have more of a procedural role.

Mr Ingram: We need to build in an appeal process, but we need to tackle that further down the road—we cannot do it now. We need to decide the model that we are going for first, and then come back to the subject.

The Convener: Yes. That is a fairly sensible approach.

What do members feel about whether the Standards Committee could deal with complaints on its own? Already, there is a general feeling that there should be an investigatory element to the committee, but I do not want to be presumptuous.

Patricia Ferguson: I would rephrase the question. I think that we could, but I am not sure that we should. I would be much happier if there was someone who looked into the minutiae of each case and brought the details to us.

Lord James Douglas-Hamilton: Yes. I strongly support what Patricia Ferguson said. We certainly

could deal with complaints on our own; in fact, we did, in the lobbygate inquiry. However, I take Elizabeth Filkin's point that inquiries can be complicated and require prolonged examination. Her assertion was that it was too time-consuming for a committee to ferret out all the facts in relation to one case over a prolonged period. She has many cases. While there would be a smaller number for this Parliament, it does seem that several hours of the week could be taken up with inquiries, which has implications for the clerks to the Standards Committee. In such circumstances, the assistance of an outside person would be of great help.

The Convener: We move on to question 10, which is whether MSPs should be self-regulating. That relates to the local government issue. Are there any comments?

Des McNulty: MSPs are subject to regulation in a unique way, in that they are subject to election. We should highlight the fact that we are all responsible to the public in our areas or constituencies for our conduct as representatives in the broadest sense. What is specific about standards is adherence to the code of conduct and to the rules of procedure of the Parliament. In relation to those issues, members are answerable to their parliamentary colleagues through the Standards Committee, which is responsible to the wider public for the maintenance of behaviour in relation to the code of conduct.

It is also important that members of the Scottish Parliament should be fully accountable in all aspects of the law. They must be accountable to the courts for the aspects of their behaviour that are covered by law. There is no protection for MSPs other than the privilege that attaches to speaking in the chamber, which is less extensive than it is at Westminster.

The question in point 10 may be wrong. We are subject to regulation by the press, by the public and by our constituents in a unique way. The Standards Committee's role is to ensure that members' behaviour in relation to the code of conduct is monitored. The proposal is that we should generally do that in public and that evidence should be taken and dealt with in public. That is probably a good procedure, and the legal factor comes into it as well. We should phrase this section to emphasise that this is not a special privilege for MSPs. We are uniquely accountable for what we do.

The Convener: I would like members to comment on the suggestion that there should be an independent commissioner, as is being set up for local government.

Tricia Marwick: Des McNulty talked about whether MSPs should be self-regulating. We are

not self-regulating. We might set standards in this committee and we might eventually carry out investigations, but we are not self-regulating. Most of the rules regarding disqualification of MSPs are set out in the Scotland Act 1998, under whose terms we are probably the most regulated group of elected representatives. We are regulated and I do not want the idea to get abroad that we will be self-regulating, particularly when I come to comment on the Ethical Standards in Public Life etc (Scotland) Bill.

I firmly oppose the suggestion that there should be a commissioner who would be responsible for MSPs' conduct along with that of councillors and other public appointees. I accept the points that Frank McAveety made when he gave evidence to the committee. It would be extremely difficult to argue that the chief investigating officer and members of the commission would be appointed by ministers and that the code would be set by the Executive and policed by a body of the Executive. That is not what this Parliament is about. We hold the Executive to account in the Parliament, and we are in danger of going round and round in circles if we try to go down the road of arguing that the commissioner should also take into account the behaviour of MSPs.

It is for this Parliament to decide what our standards are, and it is for the Standards Committee to carry out what we are charged with, which is to look into the conduct of MSPs. It is true that one of the arguments against including MSPs in the bill is that it would be difficult to redraft the bill. I do not care how difficult it is to redraft the bill: that is not an argument for not including MSPs. On principle, MSPs should not be regulated through one public body or one public commissioner for Scotland. That is the wrong road to go down, not because we are being precious, but because we are already regulated in a way that nobody else is.

Patricia Ferguson: Tricia Marwick's last point is the most relevant; for example, disqualification is laid down in the Scotland Act 1998, so it would not be appropriate to pass that power to a commission. For that reason, we have to retain that right to disqualify.

Lord James Douglas-Hamilton: I strongly agree with Tricia Marwick. It is important that we act in accordance with the same principles as the commission, and my understanding is that there is consistency on the basic principles. Frank McAveety said clearly in his evidence that when the legislation for the commission was worked up, the proposals did not have the Scottish Parliament in mind.

The Convener: There is consensus on that point. We move to point 11:

"What if criminal charges do not lead to prosecution?"

Are there any comments?

Lord James Douglas-Hamilton: The notes are clear that a case would have to have run its course before the Standards Committee could express a view. Obviously, if somebody is in prison they cannot continue as an MSP, but one hopes that that situation would not arise.

Des McNulty: May I express a wee note of caution? The paper refers to "full legal process". That could include appeals to whatever level; we might want to consider that. When has a legal process ever entirely run its course? We should ask that question, because people can contest decisions, and there are always higher courts to go to.

Another dimension is that no investigation into a possible breach of the code of conduct should be done in such a way as to jeopardise or prejudice legal proceedings. That is how such issues should be handled.

Tricia Marwick: Des McNulty's last point is correct. Because of the regulations, and because MSPs can be charged with breaking the criminal law, complaints may be a matter for the law in terms of the Scotland Act 1998, but not necessarily a matter for us. The Standards Committee is concerned with whether there has been a breach of the code of conduct. We need to focus on that. We must wait for the outcome of legal proceedings before we instigate our own investigations into possible breaches of the code of conduct. An MSP who is found guilty may also have breached the code of conduct, but we could not possibly hold an investigation while a legal investigation is going on.

The Convener: We will move to point 12:

"What impact could the ECHR have on the procedures adopted by the Scottish Parliament?"

Des McNulty: We should say only that it would be our intention to operate in full compliance with ECHR. That is a requirement anyway, but we should state explicitly that that is our intention.

10:15

The Convener: Thank you. Before I move to a close on this item, we must help the clerks to work up a paper for our consideration in the summer term, as it were. The four options are: investigation by the Standards Committee; investigation by an independent commission; investigation by an independent commissioner; and investigation by a standards officer or standards adviser. I would like to reduce the options to two, to give us a paper that we can discuss well next time.

It might be best to say not what we would prefer, but what we would eliminate. Could one of the four options be eliminated straight away?

Lord James Douglas-Hamilton: From what has been said, we can eliminate the independent commission.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: It would be helpful if we could also eliminate one of the other three options today. What do members think?

Lord James Douglas-Hamilton: I would be in favour of the independent commissioner, or a standards officer or standards adviser. That would not necessarily preclude the Standards Committee making an investigation, if it felt that a commissioner or legal adviser had not given sufficient information and that there were further questions to be answered. If we recommend an independent commissioner, or a legal adviser in some form, that would not prevent the committee from taking further action if it deemed such action necessary. However, it would help the committee enormously if it had an independent commissioner, or a standards officer or legal adviser, just to process and sift the complaints and inquiries that may come in.

Mr Ingram: I tend to agree with Lord James's analysis. To be honest, I am not sure of the difference between the independent commissioner and the standards adviser, and the advantages and disadvantages of either. I was struck by Elizabeth Filkin's evidence about the clear role of a parliamentary commissioner. The only question mark over the appointment of such a commissioner would relate to the fact that, in this establishment, we have only 129 MSPs, whereas Westminster has 650-odd MPs; I imagine that the commissioner is kept rather busy there. I wonder about the work load of an independent commissioner.

The Convener: In my mind, the difference between the two is that it would require an act of the Scottish Parliament to give an independent commissioner the same powers as Elizabeth Filkin has at Westminster, whereas the position of investigation standards officer or adviser could be set up almost immediately. Whether we think that that person needs more power—

Mr Ingram: It could be developed.

The Convener: That could be developed later. That is the option that faces us.

Des McNulty: One option is to have an independent commissioner. We have a clear model for that at Westminster. An alternative model that we might want to consider would be a standards officer or legal adviser who would operate in a way that would be, at least in the initial stages, akin to the way in which the standards commissioner would operate. That

might give us more of a role in the second phase of investigation. The hearing process might be more likely to be carried out through the Standards Committee than would be the case if we simply received a report from the independent commissioner. The real options are 3 and 4, but option 4 would involve more of a role for the Standards Committee in conducting elements of the investigation. Once we move beyond the preliminary stage, option 3 might be envisaged.

Elizabeth Filkin's arguments about the work load for politicians who were conducting investigations on a committee were utterly convincing. We would have to consider the plight of individual committee members if we dealt with every investigation as a committee. The two realistic options are either to remit key elements of our responsibility and our powers to an independent commissioner, or to retain the committee's powers but allocate part of its role and advice element to a legal adviser.

The Convener: As Des has outlined, we are considering only options 3 and 4, but we could keep reserve powers for a Standards Committee investigation if we felt that that were necessary. What do members think about that?

Des McNulty: I appreciate that investigations have to be thorough, but I am nervous about Elizabeth Filkin's comment that it takes eight or nine months to investigate a particular case. We should aspire to deal with complaints as speedily as possible and I hope that any agreed arrangement will contain a fast-track reactive approach that is nevertheless consistent with proper procedures. Perhaps we should highlight that aspect for the clerks.

Tricia Marwick: Des McNulty is absolutely right; I, too, was struck by the length of time that Westminster investigations take. In contrast, it took 27 days to conclude the lobbygate investigation that we undertook almost at the start of the Scottish Parliament. We needed to work quickly, because long delays and investigations would have only undermined people's confidence in parliamentary procedures and the Parliament itself. Any arrangement that we agree needs to have the flexibility for speedy but thorough investigations. I am not saying that speed is everything; however, we must ensure that complaints are dealt with as timeously as possible, because we are all aware that the Parliament's reputation should not be damaged. I would be concerned if complaints were not dealt with more quickly than in eight or nine months.

The Convener: Those points have been well put and are well understood. I want to confirm that the options that we are considering are either an investigation by an independent commissioner or an investigation by a standards officer or standards adviser.

Members indicated agreement.

The Convener: The clerks will produce a paper that we will examine at our next meeting.

Cross-party Groups

The Convener: The second item on the agenda is consideration of applications for recognition as cross-party groups. There are five applications for consideration; members have copies of the application forms. We will take the applications in order. Do members have any comments on the proposal for a cross-party group on sports?

Tricia Marwick: The proposal appears to conform with the rules on cross-party groups; we should endorse it.

The Convener: Are members agreed?

Members indicated agreement.

Des McNulty: The group will build on Scotland's success in the recent rugby international.

The Convener: We will move on to the second application.

Tricia Marwick: I suggest that we return to the second application after we have dealt with the other three.

The Convener: I am happy to do that.

Tricia Marwick: We may well want to discuss the second application.

The Convener: Do members have any comments on the proposal for a cross-party group on renewable energy?

Des McNulty: It is absolutely in order.

The Convener: Are members happy with that?

Members indicated agreement.

The Convener: Do members have any comments on the proposal for a cross-party group on pluralism in education?

Des McNulty: I have one concern, which relates to an issue that I flagged up in relation to a previous group. Groups should be of general application and interest, rather than tied to specific campaigns. To be blunt, the proposal seems to be too closely linked to Steiner Waldorf schools; it could be seen as part of a campaign on behalf of one grouping. I would need to be convinced that the group had a genuinely broad-ranging remit, and that it was not simply the vehicle for taking forward a campaign, before I would be content for it to proceed.

Lord James Douglas-Hamilton: I have no objection to the application. It states:

"The main purpose of the group is to achieve pluralism in state education through including Steiner Waldorf school within the maintained sectors."

The emphasis is on achieving pluralism, which

would involve there being many different types of school to meet different needs.

Tricia Marwick: I have a niggling concern about the application. The proposed title of the group is fine, but the application states that the group's main purpose

"is to achieve pluralism in state education through including Steiner Waldorf school within the maintained sectors."

That seems very close to a campaign that is centred on a particular kind of school. I suggest that we ask the proposer to spell out more clearly what is intended. Perhaps the application has just been badly worded. When we have been given an explanation, we can return to the item at our next meeting.

The Convener: Members would be happy with the wording, "The main purpose of the group is to achieve pluralism within the state education system." Our problem is that the group seems to focus solely on Steiner Waldorf schools.

Lord James Douglas-Hamilton: Can this application be considered again at a future meeting?

Des McNulty: That is what I suggest. The application also raises a policy issue. In my view, cross-party groups should be sufficiently general in scope as not to be associated with a particular local campaign. We must avoid a situation in which local campaigns come to see cross-party groups as an effective vehicle for taking the campaign forward. If we do not, we will end up in the same position as the Public Petitions Committee.

Mr Ingram: To be frank, I do not see what members are objecting to. There is, for example, a cross-party group on Borders rail, of which I am a member. If an issue is of major concern to a significant community in Scotland, it seems rather restrictive to introduce a rule that says there cannot be a cross-party group because it is a campaign issue. The main reason for putting together cross-party groups is to allow MSPs and others to come together to consider issues that may or may not be the subject of campaigns now or in the future. I think that Des McNulty is trying to be too restrictive in his definition of what cross-party groups are about.

10:30

Des McNulty: Borders rail is another issue. I am not sure which way I would jump on that. It raised questions in my mind for the first time. I am fairly clear that if the Steiner group were to deal with a specific school in a specific locality, it would not be in line with what we want to achieve.

I would be open to argument and discussion on the Borders rail group, but let us say, for the sake

of argument, that I proposed setting up a cross-party group on the retention of the Crown post office in Clydebank, which I could do—I attended a public meeting last night and people want to launch a campaign. We could get into a situation where every local issue is elevated to being the subject of a cross-party group; I do not think that that is what we want to see.

We need to develop a way of handling such matters, which does not prevent legitimate issues from being dealt with in cross-party groups. I am not saying that the fact that an issue is purely local is necessarily a reason for debarring it, because it could be argued, for example, that a group on fishing would reflect the interests of only a few constituencies in Scotland rather than of Scotland as a whole, although in my view, such a group would be perfectly legitimate.

When we consider applications, we have to safeguard the position of cross-party groups to ensure that they are used as a vehicle for what most of us would expect them to be used for—to broaden out issues and provide a vehicle for people to contribute and so on.

Some of the applications raise questions in my mind. The decision to go back and speak to the proposers is correct. I do not want to say that they cannot form such a group, but there needs to be more definition. We will also have to confront the policy issue, whether in relation to this application or to a subsequent application.

Tricia Marwick: Des McNulty is right; we need to have a longer discussion about the matter. At the risk of sounding as if I am putting in my tuppence worth, it is quite clear to me that a cross-party group on something like Borders rail would deal with an issue that affects a number of regional areas and enjoys wide support from all the parties. There is a difference between that and Des's example of the post office, which affects only a tiny local area. If we set down definitions, we might have to say that, at the lowest level, an issue must affect a whole constituency, rather than a town. We need to consider the matter. With a wee bit of common sense, we should be able to reach a solution.

The Convener: We should refer the matter back to the proposers.

Lord James Douglas-Hamilton: I understand that there is more than one Steiner Waldorf school. The issue is not just local to Edinburgh; there is a school in Aberdeenshire.

The Convener: We will ask the proposers to come back to us.

Let us consider the next application, which is for a cross-party group on shipbuilding. Are there any comments?

Lord James Douglas-Hamilton: Shipbuilding is an important issue.

The Convener: Is everyone happy with that group?

Members indicated agreement.

The Convener: I would like to go back to the application for a cross-party group for the Campaign for Nuclear Disarmament. Members should note that the proposed CND group does not include a member from the Conservative party. The rules on the establishment of cross-party groups state:

"The group's membership must be open to all Members of the Parliament and must include at least 5 MSPs of which at least one Member must be from each of the parties or groups represented in the Parliamentary Bureau. In circumstances where the Standards Committee considers it is merited in relation to a particular group, this rule may be modified or waived."

I have received a letter from the convener of the proposed group, Dorothy-Grace Elder, requesting that we waive the rule because, for obvious reasons, it is highly unlikely that the group will ever include representatives from the Conservative party.

Lord James Douglas-Hamilton: I would be reluctant to waive the rule. It is obviously very unlikely that any member of the Conservative party would wish to be a member of any movement on this subject—unless it were in relation to multilateral disarmament, which I understand is also the position of the official Labour party. If CND wants to hold meetings, it can make arrangements through any MSP, who can book any committee room, and can hold those meetings. There would be no difficulty in that. However, this proposed cross-party group would not cover all the four major parties in the Parliament.

Tricia Marwick: This is the one cross-party group for which the Standards Committee should modify or waive the rule that the group has to have somebody from every political party that is represented on the bureau, because it is impossible that any member of the Conservative party will ever join it. We have raised the concern that situations might arise where one party, for whatever reason, might decide that it did not wish to take part, and that that might effectively scupper the cross-party group. That is why we have the fall-back position that the Standards Committee can modify or waive the rules.

It is significant that, in addition to the parties on the bureau—with the exception of the Conservative party—we have representation on the group from the Scottish Socialist party and the Scottish Green party. I think that it would be daft for us not to waive the rule and not to approve the

application.

Mr Ingram: When we were establishing the rules for cross-party groups, we discussed the possibility of one of the parties not participating in a group. We specifically discussed the possibility of a group being scuppered because one particular party did not believe in the subject matter. It was because of that that we introduced the possibility of waiving the rule. This CND application is a classic example of a case where we should do that. The rule should be waived.

Des McNulty: There is a case for waiving the rule for this application, but I feel that we should ask the group to set out its purpose in more detail. It has established a principle on which it is based, but we are looking for more under the purpose heading.

I would quite like to ask the group for more information about what it would see as its purpose and mode of operation. I would like to wait until it gives us more about its purpose. I see no reason for waiving the rule.

The only other issue that I would highlight is that in Dorothy-Grace Elder's letter, she mentions "three Conservative party"; one is quite enough.

The Convener: Dorothy-Grace Elder's letter makes a statement, but I do not see any evidence that it is correct. We must be careful that we have all the evidence before us when we are asked to waive a rule. She states:

"The proposed cross party CND group will, for very obvious reasons be highly unlikely to ever include representatives"

from the Conservative party. It would be a different kettle of fish if she were able to say that she has approached all 19 Conservative MSPs and each has refused. Her statement is an assumption. On that basis I would not be happy to approve the establishment of this group at this stage.

Des McNulty: If the group is to discuss nuclear disarmament, is there a way in which it could frame that activity that would lend itself to Conservatives participating? If the group cannot do that, that is fine, but we should give it the opportunity to try.

Lord James Douglas-Hamilton: If some members of the committee were minded to approve this as an all-party group, I would feel bound to vote against it on principle because it does not include one of the four major parties in the Parliament and is unlikely to do so.

It is the democratic right of CND and MSPs who are that way minded, which I understand excludes the official Labour party, to pursue their aims through booking committee rooms and having meetings in the Parliament. There is no reason

why they should not do that, but it would not be a genuine cross-party group.

Mr Ingram: Perhaps Lord James Douglas-Hamilton is making assumptions about members of his own party. I am sure that a number of Conservatives believe in unilateral disarmament and would be happy to get rid of our nuclear weapons. I am more minded to take up the convener's suggestion to ask Dorothy Grace-Elder to ask Conservative members whether they would like to join the group. Perhaps we could then consider this matter at our next meeting.

Des McNulty: Dorothy-Grace Elder must show that she has made efforts to make the group genuinely cross party. I would direct her to the framing of the purpose, because of its lack of detail and baldness in that regard.

The Convener: If members are content, that is how I will phrase my reply to Dorothy-Grace Elder.

I will also write to the individuals whose requests we have approved to inform them that that is the case.

Item 3 is the post-registration monitoring of cross-party groups. At our previous meeting it was suggested that consideration be given to developing a mechanism—at Des McNulty's instigation—for monitoring cross-party groups once they have been registered. The clerks could produce an issues paper for discussion at the next meeting, or the one after. We will leave it to the clerks to produce that paper if members are content.

Des McNulty: That would be helpful, but I suggest that local campaigns are part of the same issue. We could therefore consider the matter formally and generally—and not in the context of a particular application.

The Convener: We now move on to item 4 of the agenda, which we will consider in private.

10:45

Meeting continued in private until 11:03.

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