STANDARDS COMMITTEE

Wednesday 3 May 2000
(*Morning*)

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STANDARDS COMMITTEE
8th 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

HEAD OF CHAMBER OFFICE

Bill Thomson

SENIOR ASSISTANT CLERK

Jim Johnston

ASSISTANT CLERK

Alastair Goudie

LOCATION

Committee Room 4

Scottish Parliament

Standards Committee

Wednesday 3 May 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:31*]

The Convener (Mr Mike Rumbles): Good morning, and welcome to the eighth meeting this year of the Standards Committee. I have received apologies from Karen Gillon, who cannot be with us this morning.

Before we begin, and following our consideration of the complaint against Tricia Marwick, which we discussed at our previous meeting, I want to confirm to members that I wrote to Mrs Bell on 6 April to inform her of our decision that there is no evidence that Tricia had breached the terms of the code of conduct.

Models of Investigation

The Convener: At our previous meeting, on 5 April, we agreed to reduce to two our options for a model of investigation of complaints: we will have either a standards commissioner or a standards officer or adviser. The clerks have produced an issues paper that you should all have in front of you.

I suggest that we begin our discussion by considering the procedural issues that have emerged from our earlier considerations—in particular, the four investigative stages that are proposed in the paper. We will also have to consider whether there should be provision for an appeal mechanism. I suggest that we then proceed to a final decision on whether to recommend the appointment of a standards commissioner or adviser/officer to conduct the initial investigation of complaints. Whichever option we favour, we will also have to clarify the range of powers to be exercised by that individual.

In case there is any confusion, I have been asked to point out that if the appointment of a standards commissioner were the preferred option of the Standards Committee, that could be done by a specific act of the Scottish Parliament. That is alluded to in paragraphs 32 and 33 of the discussion paper. Procedurally, it could be done by way of a committee bill, with the committee instructing the drafting of the bill. Equally, the Executive would have the option of taking it forward if the Parliament endorsed our proposals—if that was the route we took.

Before we consider the paper in detail, are there any general comments? If not, I suggest that we consider the procedural conclusions and then the four investigative stages.

Des McNulty (Clydebank and Milngavie) (Lab): I have a general comment. Some of the format of the report misses the point. It should be constructed to focus on the process of reporting at each stage. The initial consideration is a sifting process that produces a report that is pursued at the second stage by an independent person. The report that is produced at the second stage is submitted to the committee, which can decide what to do with it. I think we should examine the reporting process and the options for handling reports.

You have focused on the stages rather than on the outcome of each stage. I think the drafting should highlight the outcome of each stage. Maybe I can illustrate that point as we go through the detail. I am not happy with the format of the paper as it stands.

The Convener: You should bear it in mind that this is an issues paper rather than a report.

Des McNulty: I understand that, but the paper is halfway between a report and an issues paper. It sets out a draft procedure. I think that it could be tightened up.

The Convener: As we go through the paper, you can highlight instances of the point that you make.

Tricia Marwick (Mid Scotland and Fife) (SNP): The paper draws together all the outstanding issues and the issues on which we agreed. It is a good starting point for our discussion.

The Convener: Are there are any other general comments before we consider the detail of the paper?

Des McNulty: Perhaps we should take into account the debate on the Ethical Standards in Public Life etc (Scotland) Bill. If there were to be some linkage between the standards commissioner and the mechanisms here, we would need to consider how that might be done. We need to consider that issue, but the paper avoids it.

The Convener: The paper avoids it because we ruled out the option of a standards commissioner. We had four options and then ruled that one out. We have two options to examine today. I am keen that we narrow those down to one today rather than open the issue up again.

Des McNulty: I will return to that point.

The Convener: Please do.

Are there any other general points?

Lord James Douglas-Hamilton (Lothians) (Con): There is sufficient information in this paper to allow us to reach conclusions on the major issues.

The Convener: Let us press on.

Is everybody happy with the procedural conclusions, which are given on page 1? Whatever we decide to do,

"The Committee reserves the right to conduct any investigation itself.
It is necessary to have one clear, simple procedure which can be used in all cases.
The job of sifting complaints should be the role of a single individual."—

please stop me if you think it is not right—

"Sanctions should be recommended by the Committee and not by the investigator.
There should be an independent element in the investigative process.
Initial consideration of complaints should be conducted in private."—

I emphasise the word initial—

"Oral evidence-taking by the Committee at a later stage should normally be in public but the Committee should retain the option to deliberate in private.
Investigations should be conducted as expeditiously and as thoroughly as possible."

Those are the conclusions we reached. I wanted to highlight them before we considered the investigative process.

I understand what Des McNulty said about the process, but I am still not quite sure what exactly he is alluding to. We have decided that stage 1 will be an initial consideration of any complaint. That investigation will arrive at one of three conclusions: that a complaint is unwarranted; that it is genuine but not of a criminal nature; or that it is genuine and might, if proven, constitute a criminal offence.

Des McNulty: It was not clear to me whether all complaints would come to the committee for initial consideration or whether a sifting process would take place that might involve a standards adviser or commissioner. That was not made explicit and we have to find out whether there is a mechanism that deals with the first stage of complaints. It might be appropriate for the independent person to deal with that stage entirely and for the first point at which this committee becomes involved to be when reports are received saying that there is a case that we have to consider.

The Convener: We have to sort out two elements this morning: the four stages of investigation and the three factors in the assessment of whatever options we choose. Des has identified the problem of the degree of independence the investigator—whatever we might call them—would have. Page 11 of the issues paper quotes Elizabeth Filkin and is relevant to that matter.

Mr Adam Ingram (South of Scotland) (SNP): We agreed that one person should field the complaints. We need to decide whether that person is given the level of independence Elizabeth Filkin has or whether the committee wants to review the complaints and discuss the matter in more depth than happens at Westminster.

Des McNulty: That is the confusion at the heart of this matter. It is important that we have a robust mechanism for handling malicious or malevolent complaints while ensuring that complaints that ought to be investigated are handled appropriately. I think that the sifting process should be done by an independent person. In a sense, I am suggesting that stage 1 and stage 2 be merged.

The sifting process would result in one of three conclusions: that the allegation is unfounded; that there is prima facie evidence of breach of the rules; or that the investigation raises issues that the committee might be asked to consider. That process would mean that the committee would receive only those complaints that it has to deal with.

That is how Elizabeth Filkin says she operates south of the border. When she conducts an investigation, she provides the Standards and Privileges Committee with information about complaints that she thinks she has to investigate before she continues, then she reports on the outcome. The complaints that are not substantial never come to the committee. That is not clear in this document.

09:45

Patricia Ferguson (Glasgow Maryhill) (Lab): I think I agree with most of what Des McNulty has just said, but I disagree with the idea of stages 1 and 2 being collapsed. There is a difference, for example, in the case of a malicious complaint. The investigator would often not have to do much in the way of investigation, so it is important that we have the opportunity to have the initial consideration and then opt for the investigation or otherwise.

I am looking for clarification from Des McNulty. I understood Elizabeth Filkin to say that she advises the committee of the outcome when she has made her investigation and of whether she thinks there is a case. It is then up to the Standards and Privileges Committee to decide what sanctions should be applied if the case is proven. Unless I picked him up wrongly, Des was suggesting something slightly different. I would like to know what he meant.

Des McNulty: I am suggesting that the initial process is a sift to see whether an investigation is warranted. There is a report to the committee that an investigation is under way—when it is decided that there is a requirement for a more detailed investigation. The committee would receive a report at the end of that investigation. I see three possible conclusions: no evidence to support the view that a breach of the rules has taken place; evidence of a breach of the rules; the presence of issues that the committee might wish to investigate, whether they be issues of principle or of practice. That would leave it open to us to decide whether we wished to undertake a hearing.

The Convener: That is what we are proposing.

Des McNulty: I do not think the paper says that.

The Convener: Paragraph 7, at the end of the section on stage 1, states:

"The Committee will want to consider what role it has at this stage of an investigation."

Of course, that is what we are doing now.

"On the one hand, the Committee could require that a Standards Officer or Adviser"—

or commissioner—

"would be required to prepare a brief report to the committee on all complaints that he or she received . . . On the other hand, the Committee could delegate greater autonomy to the investigator, in the interests of emphasising the independence of the process"

to deal with the initial sifting of complaints. That is exactly what we are proposing. At stage 2,

"Where a complaint is found by the commissioner or adviser, or agreed by the Committee, to be genuine"—

in other words, the sift has been completed—

"the commissioner or adviser would be required to conduct an investigation."

We should bear in mind, as we said at the beginning, that we always reserve the right to conduct any investigation ourselves. The paragraph continues:

"The investigation would be carried out independently of the committee."

We would still reserve the right to do it ourselves.

"The purpose of this investigation would be to establish the facts."

The commissioner or adviser would then present a report to this committee.

Lord James Douglas-Hamilton: There is a problem. There is no evidence that Miss Filkin ever was required by the Standards and Privileges Committee to go back and investigate a matter that she had failed to investigate, but the powers exist. If somebody sends in a frivolous complaint, saying Joe Bloggs was not present at the vote because he happened to be attending his grandmother's funeral—

The Convener: Such complaints do occur.

Lord James Douglas-Hamilton: That should not come before the committee, because we have more important legitimate issues to consider. Giving a degree of discretion to an independent element is the most efficient way of dealing with these matters.

Tricia Marwick: I do not think that we disagree with each other. There is a great deal of agreement around the table. We are trying to tease out the fine detail so that we are all clear where the standards commissioner or adviser and the Standards Committee fit into possible investigations. My concern is that the four investigative stages, as laid out on page 2, may give a bit too much power to the independent standards adviser, commissioner or whoever.

I see stage 1—the initial consideration—as the sift to determine whether a complaint is trivial or whether there is a case to answer. I would like the independent adviser to submit to the committee between stage 1 and stage 2 a report on whether there is a case to answer and the investigation to be under the direction of the Standards Committee. The committee would set out to the commissioner or adviser the parameters of the investigation we wish him or her to carry out. The report would come back to the committee and it would be for us to decide whether we want to call members to give evidence. The committee would make a recommendation to the Parliament.

We are not a million miles away from that; we are grappling with how much responsibility for investigations the committee retains and how much responsibility we give to the independent adviser or commissioner.

Mr Ingram: I tend to agree with Tricia. At one stage, the committee should be involved more than is the case at Westminster. This smacks of an English public school approach—matron knows best. We are a wee bit more disputatious up here. After their initial investigation, the commissioner or whoever comes back to the committee with a report. Ms Filkin states that she just notifies the committee of her decision. At that point, this committee should cross-examine the adviser or commissioner to tease out why they feel complaints are unwarranted or further investigation should be carried out.

Patricia Ferguson: I am not sure that I agree with what Tricia Marwick is outlining. If we had had someone in this role at the time of the lobbygate inquiry, for example, and we had set out in advance the kind of inquiry we wanted to be carried out on our behalf, the process would have taken considerably longer than it did.

We have to safeguard members from protracted investigations as well as malicious ones. My concern is that once the investigator starts to investigate something, they might come across other issues that are germane to the initial complaint but are not within the scope of the investigation as it has been outlined. The investigator should have a little more autonomy than Tricia suggests.

Des McNulty: There are two issues here—I agree with Tricia on one, but not on the other. As far as the sift process is concerned, we require—as is said in the principles at the start—a single process for dealing with all cases. The initial process has to be to decide whether there is something that should be investigated.

I would have thought that, if we appointed an adviser or commissioner to do the initial sift on our behalf, we would effectively have to allow them to control the process for doing that. Through that process, frivolous complaints would be weeded out. I do not want a detailed report on that; I may want a summary report of how many complaints were made during the year.

What concerns the committee is non-frivolous complaints, which we would want to examine. Once the sift separated the frivolous from the non-frivolous, we would want an investigation into the non-frivolous complaints. That investigation could have three possible outcomes: that there is no case to answer; that there has been a prima facie breach of the rules, which should be considered by the committee; or that the commissioner or adviser wants to lay before the committee information that raises an issue of principle or practice that the Standards Committee should examine regardless of whether it involves a breach of rules by a member. There may be circumstances in which the third type of outcome could arise.

That is the point at which the committee should become involved and that is where I disagree with Patricia Ferguson. We are now becoming part of a quasi-judicial procedure; we will have to sit in judgment on those matters. We cannot at the same time oversee the assembly of the prosecution case and sit in judgment on the evidence that is brought before us. We must receive the report from our adviser or commissioner and then consider the evidence in the report.

We may be able to deal with a case without calling for further evidence if the written report satisfies us and we can deal with it on that basis. Alternatively, we may require to hear evidence. That would undoubtedly be the case for contested cases in which facts are disputed. There may be other circumstances in which we would want to take evidence from people, as other committees do.

We need a sift to sort the frivolous from the non-frivolous. The non-frivolous cases could then be investigated in a preliminary way and a report sent to us. Once we had that report, we could undertake our investigatory or quasi-judicial process, on the basis of which we could make our recommendation to the Parliament. That is how I see a legitimate set of procedures.

The Convener: Paragraph 7 on page 4 says that

"the Committee could require that a Standards Officer or Adviser would be required to prepare a brief report to the committee on all complaints that he or she received with a recommendation as to the nature of each complaint. On the other hand, the Committee could delegate greater autonomy to the investigator".

As Des said, frivolous complaints do not really need to be brought before the committee. I have tended not to use the word "frivolous", and I asked the clerks to change it to "unwarranted". To the complainant, a complaint may not be frivolous; I think "unwarranted" is a better way of describing that type of complaint.

Patricia Ferguson said that we went through the four stages of investigation when we considered the so-called Lobbygate affair. Stage 1 was the initial consideration when the complaint was lodged with us; stage 2 was when the special adviser came in; stage 3 was when we conducted the inquiry ourselves; stage 4 was when we issued the report to Parliament. It was a four-stage process. The process can be as short or as long as we decide. When the commissioner or officer reports to us after the initial consideration, I imagine that we could suggest a speed. I do not think that having four stages is necessarily an indication of—

Patricia Ferguson: That is not really the point I was making. The point I was making was that if you give someone a remit and they subsequently say that the investigation has to go wider and they need a wider remit, the process could become protracted. That is why I do not quite agree with Tricia Marwick on that point. I would like to give the investigator more autonomy so that he or she would not have to refer back to us.

10:00

Mr Ingram: The way I see it, the Westminster system, in which the commissioner is given a great deal of autonomy, is at one end of the spectrum, and the Welsh Assembly system, in which every complaint is notified to the members, is at the other end. We should be looking for a more flexible arrangement, whereby the commissioner or adviser sifts the complaints and then recommends to the Standards Committee

whether a complaint can be dismissed or whether it must be taken further. At that stage, the Standards Committee could discuss the recommendations with the commissioner and decide whether to go with the recommendations. That approach would be simple and flexible and would not box us off or commit us one way or the other. It would give us the maximum leeway and would be the most sensible way of going from initial complaint to actual investigation.

Lord James Douglas-Hamilton: In practice, it would be difficult for any fair-minded committee to investigate a case in which there was no case to answer. If further facts came to light, or if the committee felt that the commissioner or adviser had not taken some facts into account, it could legitimately remit the case back. However, it would not be right to have a public examination into cases in which there was no case to answer—for example, if a constituent objected to the way in which an MSP had voted, which is not unknown.

The Convener: No, it is not unknown.

Mr Ingram: I hope that we will build in an appeal mechanism to ensure that natural justice prevails. However, if we give autonomy to the investigator, so that the investigator can decide whether to drop complaints, we will not have a check on that. At some stage, we will need to have an input, because ultimately these matters are our responsibility.

The Convener: That ties in with the view of the committee that we should reserve the right to conduct the investigation ourselves, as Karen Gillon has mentioned.

Tricia Marwick: I agree. I am concerned about stages 1, 2 and 3, because the committee does not come into the process at all until stage 3. Where there is a case to be answered, the committee should receive a report at stage 2, otherwise the first that the committee will hear of any investigation will be when the commissioner or adviser recommends which cases need to be answered.

The Convener: We have discussed whether we should have a report at the end of stage 1—after the initial sift. The paper asks whether we need such a report. Whatever we decide about stage 1, we must have a report at stage 2, after the investigation by the commissioner. Do we want the commissioner or the investigator—whoever we decide to appoint—always to present us with a report on all the issues at the end of the initial sift? I think that Adam Ingram was requesting that.

Mr Ingram: I think that we need a report from the commissioner at stage 1, which would include recommendations. The Standards Committee should have an input at that point.

Des McNulty: If an investigation is under way on a complaint that has been received, the committee should know that such an investigation is taking place. What we require following the sift process is an indication from whoever is conducting the investigation that an investigation is under way. However, I do not think that we should discuss that process; a paper report indicating that an investigation was under way might be sufficient. We will receive a report on the investigation once it has been conducted. If we are unhappy with the way in which the investigation has been carried out, we can ask further questions once the report has been received. However, we must allow the independent commissioner or adviser to decide which complaints are warranted and which are not, to indicate to us when there is a matter for investigation, to conduct the investigation and to provide us with a report on that investigation. That is the correct way in which to proceed.

The Convener: I will suggest a compromise, which may bring all members on board. It was always envisaged that stage 1, the initial consideration of cases, should be conducted in private, to protect people from unwarranted investigations. The fact that such an initial investigation of a complaint that has proved unwarranted has taken place should not be made public. However, if after the initial consideration the standards commissioner or adviser finds that there is a prima facie case to answer—

Des McNulty: Or a matter that requires further investigation.

The Convener: If the commissioner or adviser finds that there is a prima facie case to answer or a matter that requires further investigation, they should report that fact to us, so that we can approve an investigation.

Des McNulty: The commissioner or adviser should report to us if there is a matter that requires investigation. The purpose of the investigation is to establish whether there is a prima facie case that we need to consider.

The Convener: So after the commissioner or adviser has reported that there is a matter that requires investigation, he or she should launch that investigation.

Des McNulty: To be honest, I do not think that we need to approve that process. If someone whom we have appointed is telling us that there is a matter that requires investigation, I doubt that the committee would oppose that. What we require is notification.

The Convener: Are members happy with that?

Lord James Douglas-Hamilton: Is Des McNulty suggesting that there should be

notification at the first stage and a full report at the second stage?

Des McNulty: I am suggesting that there should be notification where there is a matter to investigate.

The Convener: We are suggesting also that complaints that do not warrant investigation should not even be brought before the committee. Is everyone happy with that?

Members: Yes.

The Convener: We now move to stage 2. Let us assume that a complaint has been made and an investigation by the commissioner or adviser is under way. Under the heading "Stage 2", on pages 4 and 5, paragraph 8 begins:

"Where a complaint is found by the commissioner or adviser"—

we will delete the words

"or agreed by the Committee",

as we will employ the commissioner or adviser to do that job—

"to be genuine".

Perhaps we should change "genuine".

Tricia Marwick: "Genuine" is not the right word. Perhaps we should use the word "warranted".

Des McNulty: Or "to require investigation".

The Convener: So, the investigation would be carried out independently of the committee. The purpose of the investigation would simply be to establish the facts—what has happened or not happened.

Des McNulty: I suggest that we make it clear that the investigatory process does not necessarily end at stage 2. The paragraph should state that the process of investigation at stage 2 would be carried out independently of the committee.

The Convener: Yes, because stage 3 involves us very closely.

I am reminded that this is not a report, so it does not need to be checked line by line. We are seeking just the general gist of what members feel.

Is everybody happy with paragraph 9? It states:

"To establish the facts the commissioner or adviser might need to:

interview the Member;

interview the complainer and other persons holding relevant information;

identify and investigate any relevant documentary evidence.

Again, the Committee may consider that this stage of an investigation should be carried out in private and as speedily and thoroughly as possible."

Paragraph 10 continues:

"Once the investigation was complete the commissioner or adviser would be required to report to the Committee with a conclusion as to whether there had been any breach of the rules. At this stage, the Committee would review the report of the commissioner or adviser and assess the conclusions in private."

Des McNulty: I repeat what I said before. There are three possible conclusions. First, there may be no evidence with which to pursue a complaint, although an investigation would be undertaken. Secondly, if there is prima facie evidence of a breach of the rules, we would be required to investigate. Thirdly, a report from the commissioner or adviser might invite the committee to consider issues that had been raised in the investigation. Those are the three possible outcomes of the process, which will keep the committee in position.

The Convener: Are there any other comments on that?

Lord James Douglas-Hamilton: In the—I hope—unlikely event that a criminal element had appeared, the case would go to the fiscal before we could consider it further. When the case had been dealt with, the matter would be returned to us.

The Convener: Yes.

Tricia Marwick: Paragraph 10 begins:

"Once the investigation was complete"—

although the whole investigation is not completed at that stage—

"the commissioner or adviser would be required to report to the Committee with a conclusion as to whether there had been any breach of the rules."

The conclusion as to whether there has been a breach of the rules should rest with the committee, not necessarily with the investigating officer. He can put forward the facts, but it should be for this committee to examine those facts and to determine whether there has been a breach of the rules.

The Convener: That is a valid point. Are there any other comments?

Des McNulty: I do not see how that differs from my point. This cannot be a matter simply of the rules; there is a third dimension that is important. An issue about lobbying may be raised, for instance, which the Standards Committee might want to consider although there may have been no breach of the rules.

The Convener: The committee would raise it, but not in response to the complaint.

Des McNulty: No.

The Convener: Nevertheless, it may be a legitimate issue.

Des McNulty: Yes, absolutely. That is the point. The committee might be invited to comment on issues that had arisen, even if there was no evidence on which to pursue a complaint. I presume that we would conduct a stage 3 investigation if there was prima facie evidence of any breach of the rules, and that we would also consider any matter that was brought to our attention by the standards commissioner or adviser. There might be three different outcomes.

Patricia Ferguson: Or a combination.

The Convener: I accept that. So a conclusion is not presented to us at the end of stage 2.

Tricia Marwick: No—just a report of the facts.

10:15

The Convener: Do we want the independent standards commissioner or adviser to present us with recommendations or just a report of the salient points of the case?

Tricia Marwick: At that stage, all we want is a report of the facts. The commissioner or adviser will establish the facts of the case. However, although he might make recommendations, the committee will determine whether there has been a breach of rules. It is up to us to make recommendations in the public domain.

The Convener: I just want to bring Bill Thomson into the discussion at this point.

Bill Thomson (Head of Chamber Office): To suggest that an investigator should simply report on the facts is to adopt quite a pure approach. As the facts may be ambiguous, the investigator may have to comment on the interpretation of information; no matter how hard they try, they will inevitably come to some conclusion. Although that conclusion might not be final, the committee must allow the investigator the scope to work towards conclusions or recommendations of some sort. However, the decision is obviously the committee's.

Lord Douglas-Hamilton: I agree with that. If an allegation is made against an MSP about breaching this or that part of the conduct and that breach is listed in the complaint, the commissioner or adviser will need not only to set out the facts but to make clear his or her professional judgment on whether the facts amounted to a possible breach of the rules. The committee can then cross-examine the independent investigator.

The Convener: That brings us to stage 3. Are all members happy with that interpretation of stage 2?

Des McNulty: The investigator will also need to identify which rule has been breached and provide his or her interpretation of the rule.

The Convener: On stage 3, the paper on models for investigation of complaints says:

"The Committee might be able to conclude"

when the commissioner or adviser presents the report

"that there was no evidence of any breach of the rules. Alternatively, the Committee might wish to hear from the commissioner or adviser, to seek clarification . . . of their report."

Paragraph 12 of the paper says:

"The Committee might also wish to carry out its own investigation"

having received the report of the commissioner or adviser.

Paragraph 13 states:

"It is envisaged that this stage of an investigation would normally be conducted in public. However, the Committee would also retain the option of meeting in private if there were good reasons for doing so."

Are members happy with the draft stage 3?

Des McNulty: I want to be clear about several things. Will the member against whom the complaint is made be notified at stage 2?

The Convener: Yes.

Des McNulty: Will the member be notified when we are notified?

The Convener: I imagine that the member will be notified at both stage 1 and stage 2. Under the principles of natural justice, as soon as a complaint about an individual is received, that individual must know about it

Des McNulty: At what point might a member legitimately ask for legal representation as part of the process? Would that happen at stage 3?

Tricia Marwick: It is open for a member, at any stage, to be legally represented. We must accede to the request when a member says, "I do not want any investigation to be carried out outwith the presence of my legal adviser." That is only right and proper.

The Convener: I would extend that to cover any legal or professional adviser of any description. It is natural justice that one should be able to be represented. During the one investigation that we have conducted, people were legally represented. They had no right to speak to us directly, unless called to do so. We were investigating the individual as the independent investigator would be investigating the individual. We must be wary of any delaying tactics that people might employ, but in terms of natural justice we must be seen to be

ensuring that everybody has access to all the assistance that they require.

Lord James Douglas-Hamilton: The recognised procedure in other Parliaments is exactly as you said, convener—the member who is the subject of the complaint is notified at the outset.

The Convener: Are you happy with that, Des?

Des McNulty: We need to be clear about this. For what it is worth, my feeling, which comes from my limited understanding of procedures in a more general legal setting, is that people have the right to have a legal adviser present if they are being questioned. That may, for example, be at stage 2. They would certainly have the right to legal representation at any hearing, which would presumably be at stage 3. We will probably have to highlight this issue.

The Convener: I think that I am on safe ground, as I am not being intervened on by the legal adviser. We are assuming that it is best practice to allow any MSP who comes under investigation to have legal or professional advice when they are being investigated.

Patricia Ferguson: We have to be specific about what we mean by representation. I presume that you are referring to what happened in the so-called lobbygate case, where people had the right to have a representative with them when they were being heard before this committee; I presume that that is what is meant in the paper. I do not think that we want solicitors conducting cases on behalf of clients, which is what we could end up with if we are not careful about how we word the paper.

The Convener: Are we all agreed on that?

Members *indicated agreement.*

The Convener: We will move to stage 4. Page 7 of the issues paper states:

"Once the committee has completed its investigation of a complaint, it will require to report to the Parliament. This report will set out the committee's findings. If the committee decides that any rule has been broken and that sanctions are appropriate, the committee's recommendations will be debated and decided upon by a meeting of the full Parliament. It is the Parliament, on a recommendation from the Standards Committee which decides whether to impose sanctions on a Member or not."

Are members happy with that last stage of the process?

Des McNulty: We need to be specific about this. When the committee recommends imposing a sanction, that should be reported to Parliament. The committee should have the right to bring an issue to the attention of the Parliament, where it feels it appropriate, even if it is not recommending a sanction. The paper does not quite say that.

The Convener: I think that it does say that. It states:

"Once the committee has completed its investigation of a complaint, it will require to report to the Parliament. This report will set out the committee's findings."

Des McNulty: If we find that there is not the basis—

The Convener: Then we say so.

Des McNulty: Will we report all the not guilty cases to Parliament?

Tricia Marwick: Only when we have got to stage 2. We certainly would not report to Parliament on the initial cases, because they would not have even come before the committee. Where the committee has agreed that an investigation should take place and where an investigation has taken place, it will be for the committee to make a report to the Parliament about the investigation. As part of that report, if we have found that there had been a breach of rules, we should say so. We should also recommend what sanctions we thought appropriate. Equally, when we have conducted an investigation and found no breach of rules, we should report that to the Parliament.

The Convener: I remind members that that is exactly what we did in the one investigation that we have conducted, the so-called lobbygate case.

Lord James Douglas-Hamilton: There is a distinction between reports that are published and then go to the Scottish Parliament information centre and those that would lead to a debate in the chamber. The reports that lead to parliamentary debates should be on those cases where there has been a breach of the rules.

Des McNulty: The situation could also arise where we felt that the Parliament should have the opportunity to discuss recommendations or issues in our report. We are required to have a debate in the chamber when we are recommending a sanction.

The Convener: Without a doubt. I think that that is the intention.

Des McNulty: The wording does not make Lord James's suggestion explicit.

The Convener: I am sure that the clerks have taken that on board, but it is not for the committee to take action; we are presenting the findings of the investigation to the Parliament with a recommendation for sanctions—or not, as the case may be—and it is up to the Parliament to debate that. I am sure that, when we produce the report, Des's comments will be taken on board so that we can make the point clearly.

We will now move on to the important issue of

the appeals mechanism, which might pose some difficulty. The evidence that we have heard showed that, technically, an appeals mechanism is not required by law, but in human resources and employment law, it is regarded as an important element of natural justice. We have to decide whether we want an appeals mechanism here. If so, what form should that appeals mechanism take?

There is also the issue of timing. On the appeal mechanism, paragraph 16 of the options paper says:

"As to timing, it would be best incorporated after the Committee's report has been published and before it is debated in Parliament."

If we follow that guidance, perhaps an appeal should be made on the facts or the interpretation of the facts before the parliamentary debate. This is a difficult issue, and I would like to know members' views.

Tricia Marwick: I have grappled with this for a long time and, frankly, I have not come to any conclusion. However, I am persuaded by the argument that the Parliament itself is the appeal body and that, once the committee has made its recommendations to the Parliament and we have published the report, and if we recommend sanctions, it will indeed be for the Parliament itself to decide the action to be taken.

If the Parliament were allowed to take the final decision, that would involve many more members than the seven who are on the committee. If the member about whom the complaint was made did not agree with the conclusions of the Standards Committee, that member could make their case to the Parliament. The Parliament would take a decision on whether it accepted the recommendations of the Standards Committee or agreed with the member that there had been no breach. In having the debate, the Parliament acts as an appeal mechanism. Do members think that that is too convoluted?

10:30

The Convener: The issue is that Parliament should not be regarded as a rubber-stamp.

Lord James Douglas-Hamilton: I support what Tricia Marwick has said. The simplest course of action is to have Parliament as the appeal body. The members of the committee would make their recommendations to it, but would not vote. Applying sanctions is a serious matter. If we were to establish a supreme appeal body, it would have to be a group that was drawn from within the Parliament. The committee will build up sufficient experience and knowledge on standards to deal with these matters by making recommendations. If the Parliament feels that we have made a mistake—that we have been too harsh or too lenient—that will become apparent during the debate. That debate would also give person who is charged an opportunity to present his case.

The Convener: I feel some sympathy with the views of Tricia Marwick and Lord James Douglas-Hamilton, but I would like to hear the views of the other three members who are present.

Mr Ingram: I agree with what James and Tricia said. What alternatives are available? The only alternative that might be available would be to have an appeal body whose members were not MSPs—they might be judges. However, I do not think that that is a legitimate option. James is right that the supreme appeal body in the Parliament is the Parliament itself. Therefore, we are driven to these conclusions.

Des McNulty: I am broadly in agreement with Tricia Marwick that the argument needs to be put in such a way that the Parliament makes the final decision. An appellate procedure is difficult to reconcile with that.

I understand that many appeals are against procedures rather than against decisions. I would like clarification on whether there could be recourse to a procedural appeal before the Parliament made the final decision, if it is felt that the investigation had not been conducted according to procedures. Perhaps the Procedures Committee or the Presiding Officer could deal with that.

The Convener: You are right to raise that point. I have been advised that, because we are subject to the Scotland Act 1998 and are not a sovereign parliament, procedures could be subject to judicial review; if someone felt aggrieved about the procedure, they would have immediate recourse to judicial review.

Patricia Ferguson: The Parliament has to be the final appeal body. There is no other body that can deal with appeals.

The Convener: Thank you. We have a unanimous view. The appeals mechanism will be a debate in Parliament, in which the individual member can state his or her case directly to the full Parliament.

We have made a great deal of progress on the stages of investigation and we now have to discuss whether we want to recommend to Parliament that we have a standards commissioner or a standards adviser. I want to hear members' views on the issue as set out in the paper. We have to think about the nature of the investigation, the degree of independence that is required and the urgency of proceeding to an appointment. We must bear in mind the fact that a standards adviser could be appointed almost

immediately, whereas the appointment of a standards commissioner would probably require the Scottish Parliament to pass an act.

Tricia Marwick: Before we come to a decision on whether to have a commissioner or an adviser, I must raise a concern. Elizabeth Filkin is responsible for more than 600 MPs. The Scottish Parliament has only 129 members and this committee has dealt with just two complaints of some substance in the nine months that we have been here. I do not think that there will be a requirement for a full-time parliamentary standards commissioner or adviser. Would it be possible to appoint someone as a standards adviser on a part-time basis, who could advise us when we needed advice?

The Convener: I think that that is one of the options that we are discussing.

Lord James Douglas-Hamilton: Elizabeth Filkin says, on page 10 of the document, that the powers that she has are useful when a person feels unable to give information because they have understandable loyalties elsewhere and know that their evidence will demonstrate that someone has been lying or because they have commercial confidentiality arrangements. Elizabeth Filkin's powers allow such people to tell the truth; her powers are sufficient to ensure that she can get to the bottom of the issue.

I worry that an adviser might not be seen to be sufficiently independent and, even if that hurdle could be got over, would not have sufficient powers. It would be a pity to downgrade the Parliament by having a lesser office than is necessary. Tricia made a legitimate point: there may only be a limited number of cases and the job specification will be less than that of a parliamentary commissioner at Westminster, which will mean that the professional salary will be considerably less than that of a parliamentary commissioner in Westminster.

The Convener: I will clarify what we are talking about. Paragraphs 34 to 36 on page 14 of the issues paper make clear that, whatever route we go down, the post will inevitably be part time. That is not the issue.

The issue is whether we should go down the route of appointing a standards commissioner, with great powers—similar to those of Elizabeth Filkin—for which we would need an act of the Scottish Parliament, or whether we should appoint an adviser or investigating officer, who could be appointed relatively quickly, without the need for an act of the Scottish Parliament. One option is time based and the other is power based, but both posts would be part time.

Mr Ingram: I am totally convinced of James's argument that we need a commissioner with powers conveyed by an act of the Scottish Parliament. The problem is that that would take some time. That is the route that I would prefer, not least because those are the powers that a real Parliament would have. We would be downgrading the Parliament if we did not have the power to call witnesses. Perhaps we could consider an interim arrangement, under which we appoint an adviser—who could become a commissioner in due course—until we can present appropriate legislation to the Parliament.

Des McNulty: I am coming at this from a different angle. Paragraph 22 of the options paper states that

"the Parliamentary Commissioner is supported by the powers of the Committee of Standards and Privileges to compel witnesses and evidence."

I do not think that the issue is in the name, but in the powers that we give to the individual, whatever their job title, to conduct that phase of the investigation on our behalf. The powers belong to the committee, rather than to the commissioner or the adviser. I do not like the name commissioner in any context. However, we need someone to act for and report to the Standards Committee. The name is secondary. We must ensure that the individual has the powers to conduct such business on behalf of the committee.

There are a variety of mechanisms available to us. As Lord James has suggested, we could retain an ex-High Court judge, or someone with a different kind of expertise—perhaps someone who has worked as a prosecutor. If we use that model, and if there is to be a standards commissioner for the rest of public service in Scotland, we could contract out that element of the investigatory process to someone who works for that commissioner, on the understanding that the work was done on our behalf. I am not suggesting any of those mechanisms; I am simply saying that there are many options. The important thing is that we decide that the committee hands its powers over to the individual who is carrying out that function on its behalf.

The Convener: Can Bill Thomson give us some advice on that?

Bill Thomson: This is the nub of the whole issue. There is much force in the argument that a commissioner—or someone with a different title who is appointed to that role—under an act of the Scottish Parliament would have independent powers. That is quite different from someone who has powers that are delegated from the committee. The committee's powers are set out in section 23 of the Scotland Act 1998, which has some limitations, as Professor Colin Munro pointed out in his evidence to the committee.

The question of contracting out investigation is

problematic. One must be clear about the powers that the contracted person is using. If their powers derive from a statute such as the Ethical Standards in Public Life etc (Scotland) Bill, those powers would not necessarily apply to the investigation under contract of matters referred by the Parliament or its Standards Committee. That is complex.

10:45

Tricia Marwick: As Bill Thomson says, that is the nub of the whole argument. I am concerned that there was some dubiety in the evidence that Professor Munro gave us about the extent of our powers under section 23(1) of the Scotland Act 1998 to require people to do things. Even if we appointed a standards adviser, as things stand we may not have the powers to require people to come to see us or to produce documents. First and foremost, that must be sorted out, whether by the Standards Committee or someone else. Our powers must be clearly defined. If section 23 of the Scotland Act 1998 is inadequate, we will need to find ways of dealing with that.

As for a committee bill to appoint a standards commissioner, I am not persuaded by the argument that the Standards Committee should give over all its powers to a standards commissioner to carry out all investigations on our behalf. We had a long discussion about that at the beginning of the morning, but perhaps we should have had this discussion first. We were quite clear at the beginning that the standards commissioner or officer would work under the direction of the committee. Having taken those decisions, it seems to be a complete U-turn to argue that we should appoint a standards commissioner under a bill that would allow that commissioner to have the statutory powers of investigation that the committee itself probably requires. The question is whether we delegate powers to a standards adviser or whether we allow the standards commissioner to be the Standards Committee by default.

Patricia Ferguson: I may have picked this up wrongly, but some alarm bells are going off in my head. If we appoint someone, whatever their title, under an act of the Scottish Parliament who has the power to summon witnesses, as Elizabeth Filkin does, would we be setting ourselves up for problems further down the line? This committee does not have such powers to ask or to compel anyone to come before us, so we could not go back into an investigation that a commissioner had conducted and ask someone who had already given evidence to speak to us again.

The Convener: Regardless of whether we have a commissioner or an adviser, there is another issue—as Tricia Marwick and Patricia Ferguson have indicated and as we heard in evidence—about the inadequacy of powers. It is clear that we need to seek approval, through the Westminster system, to amend the powers that were given to us to ensure that we have full powers. Interpreting any area under the control of the Executive can lead to difficulties. We may not have such powers, because members' conduct comes under the responsibility of the Executive. We need to take advice about the separate issue of amending section 23 to ensure that we have full powers of investigation.

Patricia Ferguson: That is a huge issue.

The Convener: I agree.

Patricia Ferguson: We should perhaps ask the clerks to get some legal and other advice and come back to the subject at a future discussion.

The Convener: That is why I was keen for the issue to be raised. I had already flagged it up with the clerks and wanted to bring it to the committee's attention. It is now minuted that we want to return to the issue.

Lord James Douglas-Hamilton: My understanding is that, for a commissioner and this committee to have the necessary powers, a statutory instrument is required under the Scotland Act 1998. If it were the recommendation of the committee that we and a commissioner—or officer of some kind—should be given those powers, I am sure that the First Minister and the Secretary of State for Scotland would respond positively. I believe that the First Minister is on record as saying during the lobbygate inquiry that he supports the idea that the Parliament should have a commissioner. If we were to make a strong recommendation on the issue of powers, I feel sure that the Secretary of State for Scotland would respond. The other point is that an independent element increases public confidence in the committee.

The Convener: We have flagged up the issue of the statutory arrangement to ensure that the committee has full powers. That is a separate issue. I want to go back to the discussion about whether we should proceed down the route of an act of the Scottish Parliament to give powers to a standards commissioner, or whether we should consider establishing an independent adviser.

Lord James Douglas-Hamilton: I believe that there may be a procedural problem, which Bill Thomson will be able to clarify. I thought that there had to be a statutory instrument from Westminster, because the office-holder's powers have to be conferred under the Scotland Act 1998. I do not think that the matter is devolved to this Parliament.

The Convener: The advice that I have been given is that it could be done through an act of the

Scottish Parliament. Perhaps Bill Thomson will clarify the situation.

Bill Thomson: The situation is slightly murky. To amend section 23 of the Scotland Act 1998 would involve orders approved by Westminster as well as this Parliament. As far as I understand it, there is nothing to prevent this Parliament from appointing a standards commissioner by an act. The question of that standards commissioner's powers raises the same political issues as adjustment of the powers of the Parliament and its committees under section 23—the same issues will have to be tackled, even though the end is reached by slightly different routes. Of course, both routes may have to be followed, depending on the committee's decision.

Tricia Marwick: Our priority is to sort out section 23(1) of the Scotland Act 1998. Until we do that, we cannot make an informed judgment about whether we should have a standards officer or a parliamentary commissioner. For example, we may want to appoint a standards adviser who works under the direction of the committee, but this committee will not have the powers to delegate to the standards officer the complete role of investigation until section 23(1) is sorted out. I understand what is being said about the appointment of a parliamentary commissioner by an act of this Parliament, but even if we followed that route we would still be grappling with the question whether this Parliament can appoint a standards commissioner with powers well in excess of those under section 23(1) of the Scotland Act 1998.

Come what may, it is my view that we cannot make a final decision on what type of appointment to make until we establish the range of powers that this committee has under section 23(1). We need advice—and quickly. The committee and the Parliament need to move to ensure that the powers that we thought we had to carry out our work—and need to have if the Parliament is to retain public confidence—are sorted out.

Patricia Ferguson: Although I do not disagree with Tricia, I believe that we must make an earlier decision about whether we want more powers. It may be that we do, but I am conscious of two facts. First, during the lobbygate inquiry, we seemed to be able to do what we needed to do with the powers that we had. Secondly, Elizabeth Filkin was clear that she has never had to use her powers—threatening to use those powers is usually enough.

Tricia will tell me that we cannot even threaten to use such powers, but we must consider whether we should have those powers in the first instance, so that we know exactly what we are thinking about delegating further down the line. There are a number of stages to this process, and I would like written options to be provided quickly so that we can see how they would translate into the scenarios of having either a commissioner or an adviser.

The Convener: We could get a paper on that and put on hold the decision whether to have a commissioner or an adviser.

I am keen to establish whether we could appoint an adviser, even on a temporary basis—as we did during our lobbygate inquiry and as spelled out in the paper before us—before we consider going down the road of appointing a commissioner. Would that be possible?

Lord James Douglas-Hamilton: On a temporary basis?

The Convener: Yes.

Tricia Marwick: It would be sensible to appoint a temporary standards adviser to advise the committee and, more important, to become involved in the initial sifting of complaints. For our next meeting, I would like a paper about all the issues that we have agreed today, because we have made substantial progress. We have clarified a lot of points and there is no reason why we cannot go ahead with implementing some of them. If we have a paper for the next meeting, we can rubber-stamp those agreements.

However, I am exercised by the limitations of our powers. I accept Patricia's point that we managed to get away with lobbygate, but that was at the beginning of the Parliament and we did not know about the limitations.

The Convener: To be fair, we were advised that we had the powers to take the action that we did.

Tricia Marwick: Exactly—we were not fully acquainted with one of our powers and conducted an investigation on the basis that we were allowed to do so and that we were going to do it anyway. Now that it has become public knowledge that we do not have the powers that we asserted we had during the lobbygate inquiry, we might find it more difficult to persuade people to appear before us. I doubt that that would happen, as I think that people will be willing to come before us, but I would like to have powers to back us up, as Elizabeth Filkin said.

The Convener: As a point of information, I understand that the advice that we received was technically right, because the investigation was conducted under the ministerial code of conduct, which relates to Executive power. As for the specific circumstances of the lobbygate inquiry, the advice that we were right to conduct an investigation under the ministerial code of conduct still stands. However, that is simply because the people whom we were investigating were ministers. Let us just say that the situation is

problematic. I am not sure that we received inadequate advice; I still believe that we were given the right advice about the brief, the standing orders and our general remit.

Des McNulty: I am not sure that I agree with all your comments, convener. We have identified a gap between the remit of the Standards Committee, which is broadly correct, and the mechanisms that exist for obtaining documents. We should not blow the problem completely out of proportion. The Standards Committee can, and will, continue to do its work of maintaining the probity of the Scottish Parliament. However, we need further advice on the process of conducting investigations.

The Convener: I want to place on the record the fact that section 23 of the Scotland Act 1998 states:

"The Parliament may require any person—

(a) to attend its proceedings for the purpose of giving evidence, or

(b) to produce documents in his custody or under his control,

concerning any subject for which any member of the Scottish Executive has general responsibility."

I stress that the Parliament is given that power, and the Standards Committee is a committee of the Parliament. One might say that we were lucky—lucky is perhaps the wrong word—with the lobbygate inquiry, given the terms of that section. In a way, we were fortunate that the powers exercised were—

Des McNulty: I do not agree with you, Mike. I think that you are wrong.

The Convener: That does not really matter. [*Laughter.*] The points that we have raised are important. We have flagged them up and we accept that we must change the process.

Are we happy to appoint someone on a part-time, temporary basis? I would like some guidance on costs—we will take further advice on this matter. The paper gives members general information about the costs and so on of the system used by the National Assembly of Wales. We will come back to this issue at the next meeting.

Members *indicated agreement.*

Lord James Douglas-Hamilton: As we want a speedy outcome, rather than letting the matter drag on for a long time, there might be no harm in our informing the Administration that concern has been expressed about the fact that the powers are not great. That applies both to the committee and to the officer who will work for and independently of the committee. We should ask the Executive whether, if we were to recommend greater powers, it would introduce a statutory instrument to that effect, should such action be necessary. If the Executive's mind is focused on the possibilities, it might hasten this matter along when we make our recommendation.

The Convener: The clerks will produce papers for our next meeting, which would be the appropriate time to address that point.

Before we move on to item 2 of our agenda, we will have a short adjournment.

11:02

Meeting adjourned.

11:07

On resuming—

Register of Interests (MSPs' Staff)

The Convener: The second item on our agenda is the consideration of the results of our consultation exercise on the register of staff interests. The clerks have provided a summary of the responses that we have received.

I suggest that we consider the options set out in the conclusion of the paper. I wish to go through those options one at a time and hear what members feel about the results of the consultation.

Paragraph 1 asks whether the register should be available to the public, whether it should be in hard copy in the chamber office and whether it should be published on the internet. The committee will wish to note that the clerk has received legal advice that requirement for new staff to register would not be a breach of the European convention on human rights. However, the committee may consider whether it is appropriate for staff to be open to the level of exposure that the internet provides.

Mr Ingram: We have received representation from various staff associations. I am sympathetic to their comments, especially on the availability of names and addresses on the internet. They have legitimate concerns. The proposal that the register should be available in hard copy at the chamber office would be sufficient for the purpose that we intend.

The Convener: Are there any other comments? Are members happy with that?

Lord James Douglas-Hamilton: I strongly agree with Adam Ingram.

The Convener: We will note those comments.

Paragraph 2 states:

"Whether the threshold for declaring gifts and hospitality should be: £50 as recommended in the report; increased to the Westminster level of £125; set at £250 to match the requirements on MSPs; or some other figure?"

I felt that there was some confusion in the debate that we had on this. It is not the case, as we all know, that you cannot attend something outwith that limit. That just makes the system more open.

Tricia Marwick: This is one of the areas where there has been a great deal of confusion. We need to make the position clear, as you have done, that staff are being asked to register work-related activities only when the value is greater than £50, as recommended in the report. There was some argument that staff were being treated differently to MSPs, but there are statutory requirements on MSPs to register every gift valued at more than £250, regardless of where it comes from, whether it is from husband, spouse or anyone else. We were never comparing apples with apples. It was more like comparing apples with pears. There is a legitimate view that the level of £50 should be increased to the Westminster level of £125, which would keep the staff groups in both Parliaments the same.

Lord James Douglas-Hamilton: I agree with Tricia Marwick that £125 would be a more appropriate level.

Patricia Ferguson: I still think that £50 is an appropriate level.

Des McNulty: Two organisations are content with that level, and a third is suggesting changing it. Provided we clarify the definition of the term "hospitality", we should go with our initial recommendation, and adjust it if it causes problems. I see no need to change the figure at this stage.

Mr Ingram: Could you articulate why the figure should be £50 as opposed to a higher figure? Why did we set it at £50? I cannot remember the discussion.

Patricia Ferguson: I do not recall the discussion about the level, but at the end of the day, as much as anything else this is about safeguarding staff. We have statutory rules surrounding our activities and the way in which we operate. All that staff will have is what we lay down in the code. I would have thought that most staff, in their day-to-day working lives, would not be offered much in the way of hospitality. I certainly do not think that it is a road down which we wish staff to travel. For that reason, the £50 limit should be set. Remember, this is about declaring, not receiving, gifts and hospitality. Nobody is saying that they should not receive hospitality. All we are saying is that if it is above £50—and that is a cumulative figure—it should be registered. It is cumulative in respect of one individual giver of hospitality as well. A limit of £50 provides staff with a better safeguard.

The Convener: Are you convinced, Adam?

Mr Ingram: Not entirely.

Des McNulty: We could go with the £50 now, and see in a year's time whether we need to amend the figure upwards. The problem is that if we set the figure too high just now, we will not get the information on which we can make that judgment.

Tricia Marwick: I am happy to go along on the basis that Des McNulty suggested, that we set the level at £50 now, and if we have huge long lists of declarations because the limit has been set too

low, we can come back and review the limit in nine months' or a year's time.

The Convener: When we debate this in Parliament again, I will make that point. Would that satisfy members?

Members *indicated agreement.*

The Convener: We will leave the figure at £50, on the condition that I make that point clear in any debate in the Parliament.

Paragraph 3 asks:

"Whether the register should cover both paid and unpaid staff or be limited to paid staff? If the register should be limited to paid staff, should the text following bullet point 3 in paragraph 2.2 of the Report be simply deleted? However, the Committee may consider that although it is less likely that volunteers and interns will be in a position to influence MSPs it cannot be ruled out."

Are we going to draw a distinction between paid and unpaid staff?

11:15

Tricia Marwick: I do not think that we can make that distinction. The distinction should be between those who are doing core work for the MSP and those who are not. It does not matter whether they are being paid or whether they are doing it voluntarily. If someone is working for an MSP in the Parliament or in the constituency—if they are answering telephones, answering mail from constituents, doing the kind of work that I would define as core work—they should be registered. On the other hand, if they are helping the MSP only in the political side of their work, they should not have to be registered. Jobs on the periphery, such as putting up leaflets to advertise a surgery, would not be what I would term core work.

Mr Ingram: The onus is on MSPs to indicate which of their staff require to be registered; but definitions are difficult. For example, how do you define core constituency work? It is a grey area. I think it was Richard Simpson who said that he had 50 people he could classify as volunteers. However, those are not the people we should be considering. We should be considering, I presume, people who can influence the MSP. The MSP should be responsible for ensuring that such people are registered. We need better definitions.

Patricia Ferguson: I agree that better definitions are a key part of this. As Adam Ingram says, it is the responsibility of MSPs to indicate which members of staff should be registered. I was going to mention the case of Richard Simpson myself. Perhaps because we had not explained things clearly enough, or because MSPs had not understood the explanation, there was a failure to distinguish between people who were working for MSPs in the constituency or in the Parliament and people who were engaged as political volunteers. That is an important distinction, and I am surprised that MSPs do not find it easier to make than some of them do.

Des McNulty: Specific categories of parliamentary work and constituency duties are identified in the allowances resolution. In the Scottish Parliamentary Corporate Body, we have drawn real distinctions between the constituency operation of MSPs and their party political activities. We should be interested in people who are using parliamentary facilities and equipment, or who are carrying out the core parliamentary or constituency duties of any MSPs. Whether those people are volunteers, interns or paid staff, it is appropriate that that is recorded by the Parliament. If, aside from that, people are handing out leaflets on behalf of Tricia Marwick or whoever, the Parliament would not be interested in that matter, nor should it be seen to be.

The Convener: I think that the nub of the issue is the definition of what we are trying to achieve. From this short discussion, it is obvious that members feel that volunteers should be included with the paid staff. There is a clear locus. Anyone who is paid through the MSPs' allowances scheme should be registered, but I take the point that Des McNulty makes: so should anyone who uses parliamentary facilities regularly. If we joined those two definitions, would that provide a useful definition of who we are trying to include in this register?

Des McNulty: Instead of "parliamentary facilities", we should say "facilities that are provided by the Parliament".

The Convener: Yes. Would that be a useful definition? People want a definition.

Tricia Marwick: We need to return to first principles and remember that this is not about the staff; this is about the MSPs and their responsibilities, and about whom the MSPs are responsible for. It is not about trying to trawl and draw in a huge number of volunteers who might be helping; it is not about who might be stuffing a couple of letters in an envelope. It is about ensuring that the MSPs are responsible for the operation of both their parliamentary and constituency offices. It is up to the MSPs to determine who they are responsible for, and to ensure that people are registered if necessary.

Des McNulty makes a fair point in saying that allowances and equipment are provided for certain purposes, to allow us to carry out our operations. If people in constituency or parliamentary offices regularly use that equipment, and are therefore carrying out core work for the MSP, it is up to the MSP to register those people.

The Convener: Members should remember that the purpose of this committee, especially in drawing up a code of conduct for MSPs, is to give MSPs a practical guide to help them. I thought that there was genuine concern, during the debate, that we were not giving that guidance. MSPs are responsible for registering their staff, but it is our responsibility to help to define for them who those people should be. We must give some form of definition to people. Is the committee happy for the clerks to go away and draw something up on that basis, linking the definition in with the regular use of parliamentary facilities, whether in the constituency office or here?

Members *indicated agreement.*

Lord James Douglas-Hamilton: I am happy with your suggestion. However, it should include only volunteers who are engaged in substantial parliamentary work—Tricia Marwick used the phrase "core work"—in service to the constituents of the MSP concerned.

The Convener: Would not "regular" be a more appropriate term than "substantial"?

Lord James Douglas-Hamilton: Yes.

Des McNulty: "Parliamentary" and "constituency" are defined for allowances, so we need to include and define parliamentary and/or constituency duties.

The Convener: I agree that it is important to give that definition.

I think that the other paragraphs are fairly straightforward. We should look at paragraph 5, however. It reads:

"Whether the number of days worked by temporary or agency staff should be increased from 10 to 30 days in any calendar year before they are required to register".

Patricia Ferguson: There is also paragraph 4, about

"Members with a dual mandate".

The Convener: Did you want to comment on that paragraph, Patricia?

Patricia Ferguson: Sorry, convener. I thought we were going through this paragraph by paragraph.

The same applies: if someone is paid by or is working for an MSP and contributes to that MSP's function, they have to be registered, even if they are shared with an MP or are working with someone with a dual mandate at another time. We have to be clear about that.

The Convener: Are there any thoughts on paragraph 5? Should we make a change from 10 to 30 days? Agency staff can be in and out quite regularly, and some of my colleagues use agency staff more often than others. Some of them are in and out quite quickly.

Des McNulty: I would be inclined to go for a threshold of 25 days. That means that anyone working for a month will show up on the register; anyone working less than a month will not. That may be a reasonable compromise.

Tricia Marwick: I am uncomfortable about the issue of agency staff. We are requiring them to register everyone that they have previously worked for. We have perhaps gone beyond what was necessary in requiring agency staff to be registered in the same way as other staff.

The Convener: Do members therefore think that we should remove any reference to agency staff? They are not members of staff of MSPs as such.

Tricia Marwick: It seems that the MSP is going to the agency, and unless the MSP says to the agency, "I want Mrs X, because she is quite good and has worked for me before", they could get quite different staff. I think that it helps to increase the threshold to 25 days.

I am concerned about this because we are contracting an agency to provide work, and that is not quite the same as employing individuals. MSPs could get anybody from an agency. They might not get just anybody if they employ an individual on a temporary basis.

The Convener: I personally think that we should up the threshold, and I prefer 30 days. Remember that most MSPs employ staff directly through the allowances scheme, but that MSPs may use agency staff who are not covered for quite a long time if we remove reference to them altogether. We could have two categories of staff—one covered and one not covered at all—if we remove all reference to agency staff. I am keen to up the level to 25 or 30 days.

Des McNulty: There are issues attached to the use of agency staff that emerge when working out the allowances scheme. I cannot remember the exact parameters, but I think that the simplest thing to do is to take out the words "or agency staff" in paragraph 5, and refer to temporary staff. In reality, that means that if someone is employed for more than 25 days or whatever the agreed time is, they have to be registered. If a number of different people are being employed, the requirement does not apply. There are other boundaries on MSPs' capacity to use agency staff, but those are not matters for the Standards Committee.

The Convener: So we will leave "temporary staff", which will cover all temporary staff of whatever nature.

What about the number of days after which temporary staff would be required to register? How

about 25 days?

Lord James Douglas-Hamilton: I would be quite happy with 30 days.

The Convener: That is my preference—that is a month.

Tricia Marwick: That also takes it beyond the holidays that people get. Most folk are getting 25 days a year, plus public holidays. If people are being drafted in just for holiday cover, they need not necessarily be registered. I therefore think that 30 days would be a bit more comfortable.

11:30

The Convener: Would that be all right, Des? You proposed 25 days.

Patricia Ferguson: Can I be really pedantic, convener? If we are thinking of agency staff being used to cover absence by other staff members, it might be more comfortable to say 25 working days.

The Convener: That is fine.

Are there any comments on paragraph 6? We can now continue to go through the register of interests document paragraph by paragraph. Paragraph 6 covers items that we have already discussed.

Tricia Marwick: Yes. I think that we covered paragraph 6 in our previous comments.

The Convener: Paragraph 7 refers to

"the phrase 'reasonably practicable steps'"

for current members of staff. However, the code would only apply to new members of staff. Do we need to make that more clear?

Members *indicated disagreement.*

The Convener: Do we need to rewrite the report? There is an option to incorporate these changes in the motion that we put to the Parliament. Would members prefer a rewritten report? The changes are not huge, but there are some, and I think that we could incorporate them in a motion. Is that correct?

Bill Thomson: You could do, convener, but it might be easier for members to debate a report, albeit a short one.

The Convener: A new report?

Bill Thomson: Yes.

Lord James Douglas-Hamilton: I think that it would be considered more professional to do a new draft report.

The Convener: Is everyone happy with that?

Patricia Ferguson: Could we also summarise our discussion around the substantive points that were raised by the trade unions and staff associations? They have been part of the consultation process, and it would be a good idea to go back to them with the outcome of that process.

The Convener: Yes. That will be done.

Bill Thomson: Separately from the report?

Patricia Ferguson: Perhaps in tandem with the report. Alternatively, we could submit the report with an annexe explaining the discussion.

Bill Thomson: The *Official Report* will, obviously, set out the discussion.

The Convener: Did you want something extra to go to the unions and associations, Patricia?

Patricia Ferguson: I would just like such an explanation of the discussion to be officially submitted to them, so that they feel that they are participants in the process, rather than just people who have given us information.

The Convener: I think that everyone who has responded to the consultation exercise should be given a copy of the report—obviously embargoed until it is published.

Tricia Marwick: I have two requests. The first is that we have a further discussion in the Parliament, but without rushing into it. That will give people a chance to consider the report. Secondly, if we are to produce a new report, I ask that we be explicitly clear, at the front of the report, why we are doing it in the first place. We should make it absolutely clear to staff that this is not about trying to drag them in or trawl them.

We should make it abundantly clear right from the beginning that this is about MSPs, their responsibilities to staff and the way in which MSPs behave during the conduct of their duties, rather than being about staff. Some staff may have the idea that that was not the purpose of a register of interests for MSPs' staff, and that may have caused some of the concerns that have arisen.

The Convener: Okay.

Cross-Party Groups

The Convener: We will now move on to agenda item 3, which is the consideration of applications for recognition from cross-party groups. We have received three applications. Members have copies of the forms that have been submitted. We shall take the applications in order. The first is an application for a cross-party group on women.

I should point out that although only women are identified as members of the proposed group, members will wish to note that membership of the group is open to men and women. Therefore, it fulfils the criterion of being open to all members.

Are there any comments on the proposed application?

Patricia Ferguson: I advise members that although I indicated that I wished to be a member of the group, my name was not included on the application form.

The Convener: If no one else is rushing in, I will make a comment. I want to ensure that the group is open to men and women—as it should be. The last bullet point under "Purpose of the Group" reads:

"to act as a forum for networking and support led by women MSPs".

I want to focus on "led". Are you a member of the group, Patricia?

Patricia Ferguson: Technically, no, as I have not been included in the list.

The Convener: In the spirit of the group being open to all members, I make the observation that to have it led by women means that men cannot lead it. Whether that is the case or not, the application form seems to imply that men cannot lead the group.

Patricia Ferguson: The inaugural meeting took place last June, but members of the group were waiting for clarification of the Standards Committee's procedure on cross-party groups. I remember that at least one male MSP attended that meeting—I recall that Richard Simpson and his beard were present. I do not think that the group intends to exclude men at all, but if it is to consider issues relating to women specifically, it is not particularly unfair that women should lead it.

The Convener: It is important that we stick to the spirit of cross-party groups being open to all—that people are not excluded.

Tricia Marwick: I note that members of all parties are listed in the application form. This is an application for a cross-party group—we are not discussing a cross-gender group. I am quite sure that the group would encourage men to come to its meetings and to listen to the issues in order to obtain a greater understanding of them. The group meets all the requirements set out by the committee and I am happy to support it.

Lord James Douglas-Hamilton: Convener, my only concern is the issue that you described as being discriminatory against men. Everyone knows that the group will be led by women and it appears that it is impossible for men to be considered for such positions in any circumstances. When the Executive gives grants to ethnic groups, for example, it does so on the basis that the facilities should not be exclusive to one particular ethnic group. Is the committee entitled to ask that the last six words be deleted from that bullet point, even if it automatically happens that women lead the group?

The Convener: I agree with Lord James. I asked the staff to check this application against our rules, which say:

"The group's membership must be open to all Members of the Parliament".

I am not trying to be pedantic, but I think Lord James has made a valid point. I am not sure where we go from here. Could we request that the group resubmit the application with a changed form of words? Perhaps we could approve the group, with a request that it review that last bullet point.

Patricia Ferguson: I do not understand your problem with the bullet point saying that women will lead the group. That is only natural and in the nature of the group. There is absolutely no indication anywhere in the application form that men will not be welcome to be part of the group.

The Convener: Under "Purpose of the Group", the group makes the statement that men shall not lead it part of its constitution.

Patricia Ferguson: No—women will lead the group's activities of supporting and networking.

The Convener: That is why I suggest that we approve the group and, in the spirit of the all-encompassing rules, simply make that request.

Patricia Ferguson: I think we would be acting outwith our powers if we did, convener. I agree with Tricia Marwick: the group is meant to be a cross-party group, which, patently, it is—it is not meant to be a cross-gender group.

Lord James Douglas-Hamilton: It would be in order for us to approve the application, but we should express the hope that the words "led by women MSPs" would not be used in any discriminatory way against men.

The Convener: I do not think that that is possible, because, without doubt, those words are

discriminatory.

Patricia Ferguson: Not at all, convener.

Tricia Marwick: I do not think that they are at all discriminatory.

Patricia Ferguson: The bullet point says:

"to act as a forum for networking and support led by women MSPs".

The Convener: That is patently discriminatory.

Tricia Marwick: I am entirely at one with Patricia. I can see no reason why women MSPs should not lead a cross-party group of women. Of course male MSPs will be welcome to join the group, if they want more information and expertise on women and women's issues. I am sure that we would welcome you, convener, Lord James and Des McNulty to the next meeting, and we would hope that you would sign up to the group. I see absolutely no reason why we should not approve this application. It meets all our requirements—we should approve it.

Mr Ingram: I agree with Tricia. The fact is that every member of the group happens to be a woman. On that basis, we should just approve it and move on to the next item of business.

The Convener: I would like to record my comments. Our rules are quite specific. They say:

"The group's membership must be open to all Members of the Parliament".

That is why I think we should approve the application. However, under the "Purpose of the Group", the group quite clearly includes a discriminatory sentence, which says:

"to act as a forum for networking and support led"

by one section of MSPs, to the exclusion of another. That is discriminatory and should be brought to the attention of the group.

Des McNulty: The Campaign for Nuclear Disarmament group allows only members who are opposed to nuclear weapons to become involved.

Patricia Ferguson: Convener, all cross-party groups are self-selecting. Members join because they have a particular interest or expertise in the remit of a group. It is like saying that someone with a particular expertise in today's electronic technology—sorry, I am so old fashioned that I do not know what to call it—should not be in the post of convener of the cross-party group on information, knowledge and enlightenment. That should clearly not be the case. We would overstep the mark if we tried to influence an all-party group in that way.

Tricia Marwick: We obviously have a slight difference of opinion in the committee. Why not put it to the vote?

The Convener: Oh, no—not the first vote of the Standards Committee.

Tricia Marwick: I am sure that, like me, convener, you have done the arithmetic and you know that you are going to lose. The discussion is going round and round.

The Convener: It is. That is why I think there is no need for a vote. Objections will have been noted in the *Official Report*. Lord James, do you want to push it to a vote?

Lord James Douglas-Hamilton: No. I think that there should be a cross-party group on women and that, almost automatically, women MSPs will lead that group, but I have grave reservations about the last four words, which could be interpreted as discriminatory. The group should be given the opportunity to change them.

11:45

The Convener: Is everyone agreed that we approve the application?

Members *indicated agreement.*

Des McNulty: I suggest that you, convener, and Lord James go along to the meeting to make your case.

The Convener: The next application is less controversial. The second application is for a cross-party information, knowledge and enlightenment group. Do members have any comments on the application?

Are members happy to approve the proposal for the group?

Members *indicated agreement.*

The Convener: The final application is for a cross-party Campaign for Nuclear Disarmament group. At our previous meeting, we agreed that I should write to the convener of the proposed group requesting further information about the purposes of the group and details of the steps taken to secure Conservative representation on it. Members should have copies of my letter and Dorothy-Grace Elder's response, in which she states that she has personally issued an invitation to every MSP to join the proposed group. Do members have any comments?

Lord James Douglas-Hamilton: Convener, if the committee is minded to approve the application, I would like to put on record my opposition. One of the larger parties will not participate in the group. The group gives as its purpose:

"To oppose nuclear weapons in principle and their presence in Scotland"

Other groups that have been set up give lengthy

descriptions of their purposes, which they propose as a form of discussion to take matters forward. In this case, it is not clear what subsidiary purposes the group has; the purpose is stated in very bald terms. I have no objection to CND having meetings with MSPs of different parties whenever it wishes—that is a democratic right. However, if the group is called a cross-party group, it will be assumed that it has the same sort of authority as an all-party group. I do not believe that this group would have such authority.

Patricia Ferguson: The group has a fundamental problem, because it will never persuade anyone from the Conservative group to join. However, it has made an attempt to encourage and invite members of that party to join, although those efforts have been rejected. It has taken all reasonable steps. Although the group does not have members from all the parties represented at the bureau—which is strictly what our rules require—the fact that it has representatives from every party in the Parliament apart from one means that it should be given approval.

The Convener: Are there any other comments?

Mr Ingram: I agree with Patricia. The group has done what was asked of it, according to our decision at our previous meeting. We have the power to waive the rule about every party being represented on the group and I think that that is what we should do in this case.

The Convener: Our rules say that a cross-party group should have representatives of each of the parties represented in the bureau. That is clearly not true of the proposed group. However, there are exceptional circumstances and five out of the six political parties are represented on the group. Every case should be taken on its merits. The group has made an attempt to bring on board members of all six parties of the Parliament, which has been unsuccessful. On this occasion, because of the extra efforts that have been made, I think that we should accommodate the request.

Lord James Douglas-Hamilton: For the reasons that I have already given, I would vote against that.

The Convener: In that case we should have a vote.

Patricia Ferguson: There is more to it than that. I have given my opinion on one point raised by Lord James. However, I agree with his point about the proposed purpose of the group. Perhaps we should ask the group to amend that purpose, which should be parliamentary in nature. I am not sure that

"To oppose nuclear weapons in principle and their presence in Scotland"

is parliamentary. It does not seek to promote discussion of the issue in Parliament.

I am sure that that is part of the group's intention, but it has not been explicit enough. Given that there is controversy about the application, it might be worth asking the group to clarify that issue.

The Convener: That seems a reasonable point.

Des McNulty: I agree with Patricia. There is also the issue of the letter from the group's secretary, which is in the papers that were circulated. Although Dorothy-Grace Elder signs it, Adrian Rennie's name is on the letter, which is written on parliamentary notepaper. I wonder whether that is appropriate according to our rules.

The Convener: That should not be the case, because the Standards Committee has not approved the group. It is supposed to be a proposed group and it is not allowed to use the notepaper. I will bring that to the attention of Dorothy-Grace Elder.

In that case, I suggest that we do not approve the application today, but that I write to Dorothy-Grace Elder on the basis of the comments that have been made on the two major issues.

Tricia Marwick: I suggest that we let Dorothy-Grace Elder know that we are inclined to support the application, although we are concerned that the aims of the group are not parliamentary in nature. We could ask her to come back with a revised set of aims. We could also make the important point about parliamentary stationery.

The Convener: Okay.

The next item on our agenda is consideration of proposals for the post-registration monitoring of cross-party groups. The clerks have produced an issues paper that lists several options for our consideration. The paper reads:

"At present, Cross-Party Groups in the Scottish Parliament are required to elect their officers every 12 months but not necessarily to hold an AGM. The Committee may consider whether it is appropriate to introduce regulations on any or all of the following"

and goes on to list five bullet points. Are there any comments on the five bullet points?

Mr Ingram: They seem to be very reasonable. Although we do not want to snoop on what groups are doing, be a policeman or over-indulge in monitoring activity, in the spirit of providing a bit more guidance on good practice, I have no objection to the introduction of the regulations.

Lord James Douglas-Hamilton: There is a danger of being too prescriptive. Some groups may not wish to meet very often, but if circumstances arise that give great topicality to a subject they may want to meet immediately and

make representations. Are regulations the most appropriate way in which to deal with this? I wonder whether guidance could be given instead. Groups may not want to be put in a straitjacket.

The Convener: Adam Ingram used the words "guidance" and "good practice". I think that that would be appropriate.

Des McNulty: I think that some of these points are duplicates. It is sensible that every group should be required to hold an annual general meeting. Each group should

"submit an annual return that updates its membership".

There should be a financial report, which should give details on

"any donations amounting to more than £250 in a year",

but it should be up to groups whether they submit an annual report.

One of the points is:

"keeping a record of every meeting".

What we should say instead is that at the AGM there should be an indication of how many meetings have taken place during the year. The requirement to keep a record of every meeting could be taken to imply that there should be a secretarial note of what happens at every meeting. It is not for us to determine how many times a group should meet.

The Convener: Rather than approach this matter in a regulatory way, would it be appropriate to issue this document to all groups when they are approved as guidance on good practice that the Standards Committee would like to be observed? As Des McNulty suggests, groups should submit a financial return that includes details of

"any donations amounting to more than £250",

should update their membership and should hold an AGM at which they should indicate how many times they have met during the year. We should keep it simple.

Members *indicated agreement.*

Tricia Marwick: We need to be careful with the wording. We should say that the groups "should", rather than "must", submit a financial return.

The Convener: To whom should they submit it?

Tricia Marwick: To the clerk of the Standards Committee.

The Convener: Are we agreed? We will move on.

Des McNulty: I wish to address another issue that I raised. The question is whether at some point we should review the groups that we have approved in the context of other groups that are formed and the processes that we have gone through, so that we ensure that groups maintain their parliamentary character and are not purely vehicles for local campaigning. How would we handle complaints about cross-party groups? We can formally require that they hold an AGM and submit a financial report and so on, but is it the case that once a group has been approved by the committee we no longer have a locus? Could there be circumstances in which we could ask questions or be asked questions as a result of complaints about a group's activities?

12:00

The Convener: If we find that a complaint that has been raised is justified, it is a simple matter for the committee to withdraw a group's registration. I understand that there is no review procedure in the Westminster system—although I do not always favour the Westminster model. If there were a problem, it would be brought to the committee's attention and we would deal with it and, if we thought that the problem was serious, withdraw recognition.

Des McNulty: I think we need a catch-all phrase in the requirements to say that the Standards Committee will keep the operation of cross-party groups under review and that, if there are complaints about a group or if a group no longer seems to be carrying out an appropriate parliamentary process, the committee will take action.

The Convener: The advice that I have received is that it would be difficult to devise a mechanism to do that. We have to be approachable if there is a problem, but I do not think that we should look for problems.

Tricia Marwick: I agree with you, convener. Once committees have been set up, they are essentially parliamentary in nature. Some of the office-bearers have to be MSPs. It is a step too far to talk about monitoring or regulating the operation of groups. If there are problems with groups, it is open to members of the groups to make representations to us. It is sufficient that we receive information once a year about AGMs, the financial status of groups and donations that are received. MSPs are all grown-up, intelligent people and do not need Big Brother, in the shape of the Standards Committee, watching everything they do. That is not our purpose and it would not go down well.

The Convener: Are there any other comments? We should proceed on the basis that has been outlined.

Des McNulty: We will see how we go.

Lobbying

The Convener: We will move on to item 5, which is consideration of our proposed inquiry into lobbying. The purpose of today's discussion is to give initial consideration to the mechanics of the proposed inquiry, including some of the principal themes that we may address.

Tricia Marwick: May I interrupt? This is a very big discussion, but it is now 5 past 12 and we have been in here since half-past 9; I do not think I can give this matter my full attention, which it deserves. I suggest that we hold this item over until the next meeting.

The Convener: What do other members think?

Mr Ingram: I agree with Tricia Marwick.

The Convener: We will hold item 5 over until our next meeting.

Date of Next Meeting

The Convener: The final item is the date of our next meeting. As the Parliament is moving to Glasgow for three weeks, our next meeting has had to be rearranged from our usual Wednesday morning slot to the afternoon of Tuesday 16 May. As some members may not be able to attend at that time and a substantial work load for the clerks has now arisen from our lengthy discussion about the powers of the committee, I ask members to agree that we next meet on 31 May.

Members *indicated agreement.*

Meeting closed at 12:04.

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