

STANDARDS COMMITTEE

Wednesday 14 June 2000
(Morning)

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STANDARDS COMMITTEE **10th 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

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 14 June 2000

(Morning)

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

The Convener (Mr Mike Rumbles): Good morning. Welcome to the 10th meeting this year of the Standards Committee. I have received apologies from Adam Ingram.

Before we move to agenda item 1, I suggest that we decide the manner in which we will deal with item 5, which is consideration of a draft report on the register of members' staff's interests. As we will be considering the content of a draft report, I propose that we move into private session to discuss that item. Is that agreed?

Members *indicated agreement.*

Models of Investigation

The Convener: Item 1 on the agenda is the conclusion of our inquiry into models of investigation of complaints. At our previous meeting, we agreed to delay a decision on whether to appoint a standards commissioner or a standards officer/adviser, to allow members to take soundings on the options. I suggest that we make a final decision this morning. The clerks will then complete a draft report on the inquiry for consideration by the committee.

I open the floor to members, who may refer to the briefing paper. I want to hear members' views. It is important that we reach a decision today.

Lord James Douglas-Hamilton (Lothians) (Con): Elizabeth Filkin, the Parliamentary Commissioner for Standards, stressed in her evidence one of the advantages of having a commissioner. She said that if someone wants to suppress evidence, they are more likely to respond to an office that commands respect in the community, than if they have to deal with someone who is seen as a relatively junior official. An adviser or clerk would not automatically assume the same clout in the public mind as a commissioner. That is important.

Secondly, a commissioner would have statutory powers of investigation. If there were an inquiry in which confidential documents had to be obtained, the committee has been satisfied, having examined the legal advice carefully, that sufficient powers would exist for the commissioner to go

through with the inquiry effectively. I am not at all sure that the powers would be sufficient if we had an adviser. Thirdly, a commissioner would command more public confidence. It will enhance the stature of the Parliament if we are seen to do this properly, rather than in a lesser way.

Patricia Ferguson (Glasgow Maryhill) (Lab): I agree with Lord James. We should take the option of a commissioner for two reasons in particular, although they are not the only reasons. First, the fact that we need to pass an act of Parliament to appoint a commissioner is important. It sends out the right signals about the seriousness with which the Parliament wants to proceed and about our commitment to being as open and transparent as we can be. Secondly, it has been demonstrated to us that the role of a commissioner is seen as far more independent than the role of an adviser. That fits in with the standards that the Parliament and the committee want to set.

Des McNulty (Clydebank and Milngavie) (Lab): I am inclined to agree with the notion of a commissioner, but with one or two caveats. I am concerned that the commissioner should remain the servant of the committee. The committee has to maintain a role in the process. There is a definite role for a commissioner in undertaking the sifting of complaints and preliminary investigations, but if we go down that route, there are one or two areas in the briefing paper where we will need to clarify the respective roles of the commissioner and the committee, to ensure that we get the correct balance. I will detail some of those points, if you like, but I am aware that you are taking a trawl around the table.

The Convener: It would be helpful to get those details, Des.

Des McNulty: I can give those details, but do you not want to hear from other members first?

The Convener: I will hear Tricia Marwick's views on a general point first.

Tricia Marwick (Mid Scotland and Fife) (SNP): I have argued consistently that we need an adviser, not a commissioner. Although I understand other members' comments, part of the problem is that we are focusing on issues such as names and whether a commissioner has more status than an adviser. As Patricia Ferguson rightly said, having a commissioner will need an act of the Parliament.

The committee is very aware that it must be seen as open and transparent, and must enable the Scottish people to be confident that the Scottish Parliament will be different. If we are to have a commissioner—which seems to be the feeling around the table—I agree with Des McNulty that the respective roles of the commissioner and the committee must be outlined

in some detail; I do not want to go down the road of the Westminster commissioner model, which puts far, far too much power in the hands of one person. The model of a standards commissioner in Scotland should reflect the Scottish Parliament's needs, and should not be based on another Parliament.

The Convener: Karen Gillon has just arrived. Karen, we are just getting views round the table about appointing a standards commissioner or adviser. So far, Lord James Douglas-Hamilton, Patricia Ferguson and Des McNulty have come out in favour of a commissioner and you will have heard what Tricia Marwick has just said. I am keen to hear what you have to say.

Karen Gillon (Clydesdale) (Lab): Sorry I was late, convener.

As the committee will know, I was one of the more sceptical members of the committee about commissioners and advisers. However, after our experience in October and the evidence that we have heard, I have come round to the view that the Parliament should have a standards commissioner, because we need someone who can maintain political independence. If we are honest, even with the best will in the world, all of us come with some baggage. It is best that the investigation role is carried out by someone who is independent of the committee. If we are serious about our Parliament, that person should have the authority and the status that goes with working for a Parliament. I was very much swayed by the legal team's evidence that the committee could be open to legal challenge if it had the investigation role and also decided on sanctions, even though such decisions would be referred to Parliament.

Furthermore, during the lobbygate inquiry, I became very aware that we are not professional lawyers—my good colleague Lord James excepted. If people do not have the skills to cope with the investigative nature of an interview or interrogation—or whatever you want to call it—often it is difficult to follow the right line of questioning. Points might be missed that would not be missed if there were more time to go through all the detail and to pull things back and forth. I have become convinced that we should have a commissioner. I understand that that will require an act of the Parliament, but we should proceed urgently down that road.

The Convener: There seems to be a clear majority on the committee in favour of a standards commissioner. However, having heard the points that were raised by Des McNulty and Tricia Marwick, I think that it would be worth spending a bit of time considering the detail of the powers of the commissioner vis-à-vis the committee.

09:45

Des McNulty: Having arrived at the view that it would be best to appoint a commissioner, I have gone back through the procedures that are outlined in the paper on models for investigation of complaints, and found that some areas need to be clarified.

The briefing note talks about stage 1 and stage 2 of the investigative procedure. We must make it absolutely clear that every time stage 2 is mentioned, the investigation will be a detailed investigation of the facts. That reference to the facts is missed out from time to time.

It might be helpful if I go through the paragraphs of the report. For example, I suggest that, in the third paragraph of the section on stage 2, we insert the phrase “an investigation of the facts by the commissioner”.

The Convener: I should point out to members that this is not a report, but a briefing paper.

Lord James Douglas-Hamilton: Any investigation by the commissioner should not simply investigate the facts, but should establish the facts with a view to finding out whether there has been a breach of the rules.

Des McNulty: I would be happy with that wording. I just think that the roles of the commissioner and the committee at stage 3 need to be made more explicit.

The paper refers sometimes to what the committee would receive from the commissioner as a “recommendation” and at other times as a “report” with conclusions. We should actually receive a report with conclusions based on recommendations from an investigation of the facts. We need to be clear about what we should expect; we want to know from the commissioner whether there is evidence of a breach of the rules, which the committee will then decide how to deal with.

I want to deal with paragraph 5(c) of the paper, which describes one of the principal options after an initial investigation:

“A complaint discloses information that might, if proven, constitute a criminal offence”

If we received such a report from the commissioner, which should presumably be referred to the appropriate authority, what would we do with it? Presumably, the commissioner would have found a matter that should be referred on to someone else. Would that report be put into the public domain? I have some reservations about that.

The Convener: I have received advice that such a situation would become apparent relatively quickly. At that point, we could ask the

commissioner to report to the committee for us to refer the matter to the appropriate authority—such as the procurator fiscal—or the commissioner could have the power to refer it automatically; it is up to us to decide.

Des McNulty: That is an important issue, which we must sort out.

Karen Gillon: We should get some legal advice on the appropriate course of action. My initial position is that we should refer the matter to the appropriate authority. However, that might not be the most appropriate step in legal terms.

Lord James Douglas-Hamilton: There is a degree of personal responsibility. If an individual were given evidence of a serious crime—we hope that this will never happen—he or she would be under a duty to pass on the information. However, if that person were the commissioner, they would also be under a duty to inform the Standards Committee.

Des McNulty: My concern is that a matter might be made public before the appropriate authority had investigated it.

Karen Gillon: With due respect, matters that are referred to the procurator fiscal are often public before they are subject to full investigation. If someone has been murdered, the case will be referred to the procurator fiscal and people will know that. I have been referred to the procurator fiscal and it was made public that that was happening.

With the best will in the world, if we tried to conceal the fact that something was being referred to the procurator fiscal we would probably find it in the pages of the press before we knew it. In the interest of transparency, it should be open and above board. If something comes out in the newspaper, people often think that there is more to it than if it comes through the deliberations of a commissioner or a committee.

Lord James Douglas-Hamilton: It is virtually unheard of for a commissioner or a committee to refer a matter to a procurator fiscal. I was an interim procurator fiscal and, happily, no complaints against elected representatives ever came anywhere near me. However, if it happened and there was evidence of a serious criminal act, the individual who was the recipient of that information would be under a duty to pass it on.

The Convener: We are highlighting our concerns so that we can get the appropriate legal advice. We can draft a report and return to it later, but it is important to raise any areas of concern.

Des McNulty: There are certain matters on which we need to make decisions. For example, paragraph 7 highlights such a matter.

The Convener: If we gave the status and authority to a commissioner, rather than appointing an adviser to the committee, that would suggest that the commissioner should carry out the investigation at stages 1 and 2 without necessarily reporting back to us at every turn. I would be interested to hear members' views on that.

It is suggested that, under the model that we have already chosen, in stage 1, when the commissioner carries out the initial investigation to determine whether there is case to answer, he can reject complaints and notify the Standards Committee that a complaint warrants further investigation. The commissioner can inform us that he is now investigating the complaint.

Lord James Douglas-Hamilton: If someone writes to say that they do not like the way in which their MSP has voted on a particular subject, that is a matter for the electorate to address at the next election; it is not a complaint to the committee. MSPs are entitled to vote according to their conscience and their beliefs, after weighing up the merits of each issue. Such complaints need not come before the Standards Committee.

The Convener: That is correct. The briefing paper suggests that the commissioner would carry out an initial investigation and determine whether there was a case to answer. The commissioner would reject a complaint such as the one that you suggested without needing to inform us. When the commissioner was about to launch an investigation, he would inform us that that was what he was going to do. He would then carry out the investigation and produce a report with recommendations.

Karen Gillon: There might be a caveat to that. If something appears in the public domain before an investigation has taken place, the Standards Committee needs to be informed what happens subsequently. We do not want a complaint to be reported in the press, the commissioner deciding not to proceed and the matter floating about in the press for some time before anything happens. We cannot leave things up in the air. If something is in the public domain, we should know that it has been deemed frivolous and unworthy of investigation. If not, there will be a shadow over the member concerned and that is not how we want to proceed.

The Convener: That is an important point. It would be helpful if we could address that in the report.

Des McNulty: The wording of paragraph 5(b) might cause problems:

"A complaint is considered to be genuine but not of a criminal nature."

I am not sure about “genuine”. We are referring to a complaint that warrants further investigation as a potential breach of the code of conduct.

The Convener: We can change that to read either “warranted” or “well-founded”. We have already referred to unwarranted.

Karen Gillon: I prefer warranted to well-founded; well-founded is somewhat presumptuous.

Bill Thomson (Head of Chamber Office): I had envisaged that if the initial investigation disclosed an allegation of criminal behaviour, the commissioner would refer the matter to the procurator fiscal. It would be fairly unlikely that potential criminality would come out at stage 2 without having been anticipated at stage 1.

Karen Gillon: That is an important distinction. If someone alleges something of a criminal nature, as an MSP I have a duty to pass that on to the police. It is for the police to investigate criminal matters. I assume that the same would apply to a commissioner and the Standards Committee; we are not in the business of being a criminal investigation service. Anything of a criminal nature would come up at stage 1 and it would be inappropriate for us to decide whether a criminal allegation was founded. That would be a matter for the appropriate authorities to decide.

Des McNulty: If a complaint merited criminal investigation, all that the committee would want to hear would be that the matter had been handed over to the relevant authorities. We would not need to know more than that.

The Convener: Do members feel that the clerks have sufficient guidance to produce the draft report?

Karen Gillon: Do the clerks feel that they have sufficient guidance to produce the draft report?

Bill Thomson: Yes.

Patricia Ferguson: There was one aspect of Elizabeth Filkin’s role at Westminster—the job of giving advice to members—that I was not 100 per cent sure we would want to give to the commissioner in Scotland. That is covered in paragraph 29 of the paper. I have reservations about that; I do not think that it would be appropriate for the commissioner to give advice on such matters.

The Convener: I would like to hear everyone else’s views on that.

Tricia Marwick: I concur with Patricia Ferguson. When Elizabeth Filkin gave evidence to the committee, I was concerned by the fact that she gave guidance to MPs as well as having an investigatory role. I have raised previously the fact that a commissioner should not be an adviser, in

any shape or form—that should be left to the clerks to the committee, or whoever. There is an inherent contradiction in Elizabeth Filkin’s role, which we cannot have.

10:00

The Convener: Everyone is nodding.

Lord James Douglas-Hamilton: The normal route would be to take advice from the clerk, who gives very good advice. However, if there were a complaint, I can envisage a situation in which deciding whether a member had broken a rule would be a grey area. The commissioner would ask to see the MSP and ascertain the facts. The MSP might ask how he or she should act to bring him or herself back into order, and the commissioner should not necessarily be barred from giving an answer to that question. By that time, the acts that had been complained about would have happened. That is what Elizabeth Filkin does.

The Convener: There is a distinction, is there not, between that situation and an MSP being referred automatically to the commissioner for advice.

Lord James Douglas-Hamilton: Yes. In those circumstances, the clerks would give the advice.

The Convener: Is everybody happy with that?

Karen Gillon: If someone has failed to register an interest and a complaint is referred to the committee, I do not have a problem with the commissioner at the same time recommending that the member register the interest. That is appropriate and would save subsequent complaints about something that perhaps happened because the member did not know. I recall that we gave advice to Mike Watson, through the clerks, that he should change his register of interests.

The commissioner should not give advice on how someone should act to avoid a complaint being made—that is the role of the clerks—but once a complaint has been made, it would be a bit daft if the commissioner had to say, “Sorry, I cannot tell you. Go and see the clerks and they will tell you how to put it right.” That would be stupid.

The Convener: That is an important point. I think that we accept that there is a distinction between the usual avenues of advice, which would be through the clerks, and the activities of a commissioner in the performance of his or her duties, when they would, of course, be free to advise members who came before them or who were being interviewed.

Patricia Ferguson: Two things concern me.

First, the Standards Committee might want to recommend to a member, as part of its finding on a specific case, that he or she put his or her register of interests in order. We need to be clear that we could do still do that. However, Karen Gillon has pointed out to me that, unlike now, when we meet every two weeks, we may meet only monthly, so there may be a gap during which the member would be vulnerable. We do not want that to happen, but we need to be careful about where responsibility for giving advice falls.

The Convener: We are drawing a distinction. We are not prohibiting anyone from giving advice; we are saying that the normal avenue of advice will be through the clerks to the committee. Is everybody happy with that?

Patricia Ferguson: No. My concern about Elizabeth Filkin's role is not just that she gives advice. She may have been being particularly careful and diplomatic when she explained her role to us, but I felt that there was a contradiction in that she may be called to investigate a member to whom she has previously given advice. That is a real contradiction. Can someone do that without being prejudiced about the outcome, given that the member followed that person's advice?

Tricia Marwick: Or did not.

Patricia Ferguson: Indeed. I still have concerns.

The Convener: That is generally accepted.

Lord James Douglas-Hamilton: It is a matter of degree. A minor matter might go to the commissioner. However, if it is a serious matter, such as an allegation of corruption—although that would go to the procurator fiscal—Patricia's point comes into play.

The Convener: I am confident that the clerks have got the feedback from members.

Des McNulty: I seek clarification of what constitutes a report. Do the committee's deliberations on cases that have reached stage 3 constitute the basis for a report for stage 4, or will something be published separately following the committee's deliberations? How will that differ from the way in which we will report cases that do not reach stage 3? Is there a different reporting procedure for cases where we recommend to Parliament that sanctions be taken? The word "report" could be used in all three instances.

Bill Thomson: I find it difficult to envisage a situation in which a published report would not be produced after stage 3. Stage 4 would be a report on the particular investigation.

Des McNulty: Would that be separate from our minutes?

Bill Thomson: I think that it would have to be, so that it could form the basis of a debate in Parliament. It would be unusual for there to be a separate report if the case had not proceeded to stage 2. If something is to be dismissed publicly, to come back to Karen Gillon's point, I think that it would be sufficient for that to be done in a public meeting of the committee. There may be exceptions, but that would be the norm.

Karen Gillon: That would be acceptable. I envisage that anything that proceeds to stage 2 of an investigation would be subject to a report to the committee and subsequently to Parliament, regardless of whether any sanction was conferred on a member. If something were referred to stage 2, it would be sufficiently serious to warrant an investigation and there would be significant public interest in the results of that investigation. It would be only right, therefore, that a report on the investigation would be presented to Parliament, as the supreme body in the process. The recommendation may be that the report simply be noted, that no action be taken or that the recommendation be accepted, but if the case got to stage 2, it would be the duty of the committee to refer the conclusion of the investigation to Parliament.

Tricia Marwick: I want to raise one other point before we move on. One of my concerns with Elizabeth Filkin's evidence was the length of time that investigations seemed to take. It took many months from the start of a complaint to the conclusion of her investigation—seven or eight months was not abnormal. That is not a model or a time scale that we want for the Scottish Parliament. I do not know whether we can put some sort of recommendation on good practice and time scales in our report. I would find it unacceptable if investigations here took the same length of time as they take at Westminster. That would not be helpful to anybody. We need to keep a firm grip on the length of investigations.

Karen Gillon: I accept that there is a need for us to keep a tight grip on the length of the investigation. There may be some difficulty in setting a timetable, as the length of the investigation would depend on the complexity of the case and the number of agencies or people that were involved. Sometimes something is opened up that leads to something else, which leads to something else that leads to something else. A time limit cannot be set for that, as we want to ensure that, when a commissioner deals with a case, they investigate it properly. We will not then be open to a legal challenge or a further action in the Court of Session or wherever to overcome a decision of the commissioner that is based on the taking of inappropriate or insufficient evidence.

The last thing that we want is for a member to be cleared by the commissioner only to appear in court the next month because somebody was not happy with the way in which the investigation was conducted. We cannot legislate against that, but we must try to be clear on the matter. We can try to set guidelines but, because of the length of the evidence-giving process, that might be difficult. I do not want an investigation to be precluded by the setting of time limits. We could have guidance, but not time limits that are set in stone.

Des McNulty: I want to be absolutely clear about the status of our reporting. I presume that we might consider three levels of reporting. In a case that reaches only stage 2, we might produce a brief report to say that the matter had been investigated and had been found not to require further investigation. Would that have to be a separate, formal report to the Parliament, or would it be a written note?

The Convener: No, it would not be a separate report.

Des McNulty: For cases that reach stage 3, I presume that we would publish a report on our investigation, and our conclusions would be provided in a written report that would be made available to all members of the Parliament. If a case reached stage 4, I presume that this committee would ask the Parliament for time to deal with it and for sanctions to be taken by the Parliament. Those seem to be the three possible levels of report. Could you clarify the situation?

The Convener: We envisage that we would receive notes for further investigation at stage 1 from the commissioner. The commissioner would provide a full written report for this committee at stage 2.

Des McNulty: The report that we might produce for the Parliament would simply be a note of the outcome.

The Convener: Yes. It would be a note of what we had decided, on the recommendations of the commissioner.

Des McNulty: No, on the basis of the report and the commissioner's conclusions.

The Convener: Yes, on the report and the conclusions.

Des McNulty: It is important to remember that, by stage 3, we will have conducted an investigation.

The Convener: We will also have considered the commissioner's recommendations.

Des McNulty: We will have considered their conclusions and we will have conducted a further investigation. We will then produce a report to the Parliament on that.

The Convener: That is correct.

Tricia Marwick: I understand the role of the standards commissioner in investigating MSPs, but will he or she also have a role in examining the Executive and ministers? We need to be clear about that. There is a separate code of conduct for ministers. If we appoint a standards commissioner for the Parliament, we should make clear the extent of their powers, which should cover not only members of the Scottish Parliament, but ministers and the Executive. We are dealing with two separate codes of conduct: a ministerial code and a parliamentary code. The commissioner should have powers to investigate every member of this Parliament.

The Convener: Our locus, and therefore the locus of the commissioner, is the code of conduct for MSPs. The ministerial code is a matter for the ministers. I think that that is the case, but I would be interested to hear what other members have to say about that.

10:15

Patricia Ferguson: You are absolutely right, convener. The only person who would have any sanction against ministers in the carrying out of their duties is the First Minister, and that is how it should stay. Our concern should be the code of conduct and members' adherence to it. By virtue of being MSPs, ministers will be subject to that code of conduct.

Lord James Douglas-Hamilton: Any MSP can be proceeded against if he breaches our code of conduct. That applies to ministers as much as to any other MSP. The standards commissioner would, therefore, have the power to investigate ministers.

The Convener: Yes.

Tricia Marwick: We, in this committee, have always been aware that ministers are MSPs too. I am not so sure that all ministers recognise that.

The Convener: This matter was raised at the previous committee meeting, and several articles have appeared in the press. I have made it clear to the minister concerned that ministers are covered by the code of conduct for MSPs. There is no doubt about that.

Karen Gillon: I want to return to those press articles when we deal with our future work programme. There is a distinction between what is covered by the ministerial code of conduct—the carrying out of the duties of a minister—and what is covered by the code of conduct for MSPs. We must recognise that that distinction is appropriately a matter for the First Minister's discretion. If the Parliament decides that the First Minister should not have that power and that it should pass to the

standards commissioner, that is the decision of the Parliament—it is not for this committee to decide.

The Convener: Let us move on from that point. Is there anything else that we need to address?

Members: No.

The Convener: In that case, we will bring our inquiry into the models of investigation to a conclusion. I shall ask the clerks to draw up a draft report for us, to be considered at the next meeting.

Cross-party Groups

The Convener: The next item on the agenda is the consideration of applications for recognition as cross-party groups. There are two applications; members have copies of the forms that have been submitted.

The first application is for a cross-party group on refugees and asylum seekers, which is included as annexe A in members' briefing papers. I ask members to note that the title of the proposed group should be the cross-party parliamentary group on refugees and asylum seekers, not, as is stated in the covering note

"The Cross-Party Parliamentary Group on Refugees and Asylum Seekers in Scotland".

Do members have any comments on the proposed application?

Patricia Ferguson: Why did you make that comment, convener?

The Convener: I was asked to point that out because the covering note says that the group is to be called

"The Cross-Party Parliamentary Group on Refugees and Asylum Seekers in Scotland"

but on the application the title is given as

"The Cross-Party Parliamentary Group on Refugees and Asylum Seekers".

Annexe A clarifies that the purpose of the group is to

"provide a forum for the discussion of issues relating to refugees and asylum seekers both in Scotland and abroad; and to promote the welfare of refugees and asylum seekers."

Karen Gillon: I do not have a problem with the group being registered. However, as in other applications, this group seems to be made up of more outside agencies than MSPs. We might bring that to the attention of the group, which may want to recruit more MSPs.

The Convener: The group contains 11 MSPs, nevertheless. Are members happy to approve the group?

Members *indicated agreement.*

The Convener: The second application, which members have as annexe B, is for a cross-party group on strategic rail services in Scotland. Do members have any comments on this proposed application?

Karen Gillon: I want to make a point of information on cross-party groups. We had a considerable discussion at our previous meeting about the group on pluralism in education. I received a calling notice on Thursday afternoon,

from which I understand that the group is now called the group for pluralism for Steiner Waldorf schools in education. The committee might wish to bear that information in mind for future reference.

Des McNulty: It did not state “proposed”.

Patricia Ferguson: That raises another question. We referred that application back to Brian Monteith at our previous meeting and I presume, because it is not on our agenda, that we have not had anything back. What should our next step be?

The Convener: The committee clerks will write to the group and point out that, as is not registered, it is not entitled to use that description.

Tricia Marwick: I suggest that we go further and say that, until it is approved, it cannot continue to use any of the facilities of the Parliament—that includes rooms, stationery and the like.

The Convener: Yes.

Are members happy to approve the strategic rail services in Scotland group?

Members *indicated agreement.*

Lobbying

The Convener: Agenda item 3 is further consideration of the proposed inquiry into lobbying. Members should have in front of them a short issues paper, ST/00/10/3, which proposes an outline of the initial stages of our inquiry. Annexe A contains a draft questionnaire for distribution to all MSPs. I hope that all committee members have had a chance to read through the paper. If members are content, it is proposed that we send out the questionnaire to MSPs straight away, with a view to collecting responses before the summer recess. It is also proposed, if members agree, that the clerks place a notice in tomorrow’s business bulletin to inform members of our consultation exercise on lobbying.

Lord James Douglas-Hamilton: The questionnaire is a good idea. However, it will give a rough-and-ready guide, as MSPs may not be able to remember every approach that has been made to them, especially if they have had thousands of approaches.

The Convener: We decided to make the questionnaire anonymous for several reasons. That was one of them.

Patricia Ferguson: Lord James Douglas-Hamilton is right to say that, when we consider the results of the questionnaire—which is a good idea—we must bear in mind the fact that MSPs will often not be aware that they are being lobbied by lobbying companies, which will not be as clear as the questionnaire might suggest. We must temper our consideration of the results with that thought.

The Convener: That point is well made. The questionnaire will give us a guide; that is all that it will give us. However, it is a starting point.

Des McNulty: I will make two points on the questionnaire. First, it would be helpful if the paragraph on guidance—at the bottom of the first page of annexe A—was printed larger and in bold, because it conditions one’s response to the document. It should jump out of the page. Moreover, we might want to say a tiny bit more in the section on background about why we decided to use the questionnaire, why we want the information and what our processes will be. That might be useful to the member who finds this on his desk.

The Convener: Are members happy with the draft that we have produced for the business bulletin?

Members *indicated agreement.*

Tricia Marwick: In part C of annexe A, we ask about attitudes to lobbying by organised interests.

Question 8 asks:

“Do you perceive there to be any benefits associated with lobbying of MSPs by organised interests?”

What does that mean?

The Convener: What do you think it means?

Tricia Marwick: I do not know what it means. I would like someone to explain it to me.

Karen Gillon: I assume that it is asking about trade unions, voluntary organisations and other clearly identified lobbying interests.

Tricia Marwick: I am concerned about the words

“Do you perceive there to be any benefits”.

The Convener: Members—including you, Tricia—have said that they do not see the need for commercial lobbying organisations. That was a negative approach, however. This question tries to draw out opinions on any benefits that there might be.

Karen Gillon: Lobbying organisations such as Oxfam, Shelter or the GMB might be useful to members.

The Convener: Question 8 asks about the positive side, question 9 about the negative.

Tricia Marwick: Could we make that a little clearer? If I am confused about the point of the question, others will be as well.

The Convener: How could we do that?

Tricia Marwick: I will have a word with the clerks about it.

Patricia Ferguson: Could we ask one question about voluntary organisations and trade unions and another about professional lobbying organisations? They are distinct types of organisation.

Karen Gillon: I suggest that we have a part to ask about organisations that are not professional lobbying firms as well as one to ask about professional lobbying firms.

The Convener: We will include examples of the kinds of organisation that we have in mind. That was a sensible and helpful suggestion, Karen.

Karen Gillon: I am sick of being sensible.

Lord James Douglas-Hamilton: In the list of organisations in question 4 in part B, “other” should be inserted as an option, because there are other forms of lobbying. Newspapers can lobby, for example. They have lobbied MPs to buy cars of which most of the parts were made in Britain. That could be interpreted as a form of commercial lobbying. In America, press campaigns are included under the heading of

lobbying.

The Convener: Under the list of examples, there is a space for people to specify which other kinds of organisations, if any, they have been lobbied by.

Lord James Douglas-Hamilton: That is fine, then.

Karen Gillon: We should make members of our party groups aware that this questionnaire is coming and encourage them to fill it in and send it back.

The Convener: If everyone is happy with the points that have been made, the clerks will adjust the questionnaires appropriately and we will publish the draft in the business bulletin tomorrow. Is that agreed?

Members Indicated agreement.

Work Programme

The Convener: Item 4 on the agenda is on our forward work programme for the period up to the Christmas recess. Are there any comments on the paper?

Karen Gillon: I want to raise formally the issue of leaks from this committee to the press. I am not sure when I should raise the issue, but I assume that it would have some relevance to our work programme.

The Convener: Do you want to have a discussion of the matter?

Karen Gillon: Yes. What happened this weekend was regrettable and has brought the committee into disrepute.

The Convener: I will put the matter on the agenda for our next meeting. It is not on the agenda for today's meeting and it would not be appropriate—

Karen Gillon: If we do not deal with the issue today, we leave ourselves open to criticism. It would be wrong of us not to deal with it today.

The Convener: I suggest that we have an adjournment.

10:31

Meeting adjourned.

10:44

On resuming—

The Convener: We were considering agenda item 4—the forward work programme. I hope that everyone has had a chance to read the programme, as there is a lot of work ahead of us. Are there any other issues that we need to address?

Karen Gillon: Yes, there are. We need to address how we deal with media inquiries in relation to complaints that have been received—or not received—by this committee. I was most concerned to read in *The Sunday Times* the headline “Schools minister reprimanded by MSPs’ watchdog”. I have received no complaint through the committee against that minister and I have not discussed, debated or investigated the issue. I was, therefore, very concerned to read that a

“source close to the committee”

had made a comment. Committee members should not be commenting on our deliberations until they are complete. If the committee has not been deliberating on an issue, that should also be made clear to the press. However, for it to be said in the pages of a newspaper that any member of

Parliament has been reprimanded when the committee has not even discussed the case, is a serious matter that brings the committee into disrepute. If the committee cannot hold its water, the Parliament will not have confidence in it.

10:45

The Convener: I would like to come in at this point, Karen. You have raised an important issue. At the previous meeting of the committee two weeks ago, I referred to a press article and I said to members:

“I have already written to the Executive to indicate that there is no distinction in the application of the code of conduct—it applies to all MSPs, regardless of any other post that they may hold.”—[*Official Report, Standards Committee*, 31 May 2000; c 558.]

I referred a press inquiry to the report of that meeting.

I would like to take this opportunity to say that there is no question that any Scottish Executive minister is being investigated by the committee and that it was wrong for anybody to imply that that was the case. I hope that that clarifies the position. There is no investigation and, as far as I am aware, the matter is closed.

Karen Gillon: The minister concerned has not been reprimanded by this committee.

The Convener: No. Absolutely not.

Karen Gillon: We need to have a strategy for—

The Convener: We will put this matter on the agenda for our next meeting so that we can discuss it in more detail. Moving on to—

Karen Gillon: How—between now and the next meeting—will inquiries by the press in relation to complaints or non-complaints and media articles or non-media articles, be dealt with? It is important that no one is left in any doubt about what will happen between now and the next meeting, when we will have a full discussion.

The Convener: The procedure is that, if a complaint comes in, the clerks bring it to me and we investigate it. The clerks send off for information and if the complaint is unfounded—as most are—the clerks reply with a letter to that effect. More serious cases will be brought before all the members of the committee. If there are any press inquiries of a factual nature, they can be responded to. However, I would like to make it absolutely clear that any correspondence between the clerks, myself and any other MSP is absolutely confidential and should not be released.

Patricia Ferguson: I really did not want to discuss the matter now; but I have to comment on something that you just said. If a matter has been raised with you or with the clerks, and if

correspondence has been entered into, I do not think that any comment about that should be made to the press. The matter would not have come before the committee and the committee would not have taken a view. Until we know what we are doing with a particular case, we should not make it public.

The Convener: Are you suggesting that we should not comment on it at all?

Patricia Ferguson: Yes.

The Convener: All right. I am happy with that.

Patricia Ferguson: There are ways of dealing with media inquiries, but that might be a discussion for another time.

The Convener: It is important that we have that discussion.

I would like to open up the discussion to the wider issue of our work programme.

Tricia Marwick: May I comment on the work programme?

The Convener: Please do.

Tricia Marwick: We have agreed to recommend to Parliament that we appoint a commissioner for standards. That will need legislation. I envisage that we would be the lead committee for handling that legislation, so we must find space in the work programme to cover that.

The Convener: That is a good point. Are there any other comments, particularly about lobbying? Is everybody happy with the proposed route and the time scale for it?

Karen Gillon: We must be realistic about what we are trying to do, and we must do it well rather than quickly. The proposed time scale is appropriate. It will allow us to have all the information before us before we make any further decisions on the matter. It would be appropriate to consider submitting a final report in December 2000 or January 2001.

The Convener: I want also to draw members' attention to correspondence that I have received from the Minister for Parliament, offering the Executive's assistance in replacing the existing Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999.

Lord James Douglas-Hamilton: Are there deficiencies in the present members' interests order that need to be rectified?

Bill Thomson: We have been noting areas of difficulty. We were keen to allow the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 some time in operation before trying to assess it properly. We intend to produce an issues paper for the

committee to consider.

Lord James Douglas-Hamilton: Would there be an update that stresses good practice, rather than a fundamental change?

Bill Thomson: That is a matter for the committee. I do not want to be evasive, but I would not like to prejudge the committee's response.

Lord James Douglas-Hamilton: Rather than delegate the matter to the Minister for Parliament and his officials, cannot the committee know exactly what the issues are?

The Convener: We are not delegating the matter to the Minister for Parliament. He has offered the assistance of the Executive to the clerking team.

Bill Thomson: The policy will have to be settled by the committee. Assistance in following that through into draft legislation will be most valuable.

Lord James Douglas-Hamilton: So a paper will come before us on the issues that need updating, modernisation or clarification, the committee will decide what must be done and the Minister for Parliament and his officials will help with drafting.

Bill Thomson: I will need to explore the matter, but I think that that is the sort of assistance that the Executive is offering.

Karen Gillon: It is useful to have the Executive's help in taking a bill through Parliament and getting it on to the legislative programme. At the conclusion of our deliberations, it would be useful if Executive officials were on hand to help.

The Convener: Subject to a decision about a commissioner—which will involve more work in designing a bill—are members happy with that decision?

Members indicated agreement.

Des McNulty: The committee has been busy in the Parliament's first year and we have done a lot of ground-clearing work. Can we produce a handbook for members to gather together the members' interests order, the registration of members' staff interests and so on? That would provide a comprehensive guide to standards for people coming into the Parliament.

Karen Gillon: Are you expecting a by-election, Des?

Des McNulty: I just think that, at some stage, we could publish that as a package, which would allow us to see whether there are any holes.

The Convener: We now move to agenda item 5, which is discussion of a final draft report on the register of members' staff interests. As agreed at the beginning of the meeting, we shall move into

private session. I ask members of the public and press, official reporters and broadcasting staff to leave the meeting.

10:55

Meeting continued in private until 11:16.

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