

# **STANDARDS COMMITTEE**

Wednesday 31 January 2001  
*(Morning)*

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## STANDARDS COMMITTEE

### 1<sup>st</sup> Meeting 2001, 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)

\*Mr Frank McAveety (Glasgow Shettleston) (Lab)

\*Mr Kenneth Macintosh (Eastwood) (Lab)

Kay Ullrich (West of Scotland) (SNP)

\*attended

#### CLERK TO THE COMMITTEE

Sam Jones

#### SENIOR ASSISTANT CLERK

Jim Johnston

#### LOCATION

Committee Room 3



## Scottish Parliament

### Standards Committee

*Wednesday 31 January 2001*

*(Morning)*

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

**The Convener (Mr Mike Rumbles):** Good morning and welcome to the first meeting this year of the Standards Committee.

I extend a warm welcome to new committee members Frank McAveety, Ken McIntosh and Kay Ullrich. Kay Ullrich sends her apologies. Those new members replace Karen Gillon, Des McNulty and Adam Ingram, for whose hard work over the past year and a half I want to record the committee's thanks.

The committee has achieved a great deal but, as members will see from today's agenda, we have some challenging work ahead of us this year. We have a large amount of business to get through today, but we also have the opportunity to make significant progress on a number of issues.

### Interests

**The Convener:** I invite the new member of the committee who is present to declare any relevant interests.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I have nothing to declare.

### Items in Private

**The Convener:** Agenda item 2 concerns our discussion of items 6 and 7. As those items relate to the investigation of complaints against members, I propose that we consider them in private session.

Do members agree?

**Members** *indicated agreement.*

## Lobbying

**The Convener:** Agenda item 3 is our inquiry into lobbying. As requested at our previous meeting, the clerks have prepared detailed analysis of the responses to our consultation paper. They have also provided a brief summary of the results of our consultation exercise with MSPs. I suggest that we decide this morning how we want to take forward the inquiry.

I will highlight briefly some of the main themes from both consultations. The MSP consultation found that members had little enthusiasm for regulating lobbying. Overall, members were mainly content with the nature of the lobbying process that the interest groups use, as long as the process is always transparent. MSPs were more divided on the subject of professional lobbying companies. Some were completely opposed to dealing with such companies; others felt that such companies were a legitimate component of the democratic process.

The wider consultation exercise, which sought the views of interest groups and lobbying companies, found that a majority of respondents were opposed to statutory regulation. By contrast, the respondents were generally more amenable to a voluntary code of practice for lobbyists.

Before we consider the various policy options that are open to us, which are set out in the paper before us today, I would like members to consider whether they have sufficient information to form a view on the options, or whether further inquiries would be of benefit. For example, do we need to take oral evidence or have we enough information now?

The floor is open for members to give their views.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** The questionnaire that was sent out for the consultation was fairly complicated, and I think that taking oral evidence would be helpful to the committee. That evidence could come from three separate groupings: commercial lobbying organisations, umbrella groups for the voluntary sector—perhaps the Scottish Council for Voluntary Organisations—and organisations such as the one from Stirling—

**Mr Macintosh:** Stirling media research institute?

**Tricia Marwick:** Yes. Some of the information that the institute provided is really important. If we concentrate on those three separate groupings, rather than work from the brief sheet of questionnaire responses that we have been given, we will have an opportunity to pick out some of the more important factors. That would be a helpful

way forward and could be done in one evidence session. We must examine lobbying in Scotland as fully as we can.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** I do not disagree with anything that Tricia Marwick said. Lobbying presents us with complex issues. I have not come to a clear decision and would like some more information. To hear oral evidence and to be able to probe for further information would be helpful.

In addition to the people whom Tricia Marwick suggested that we might see, I suggest that we ask the Convention of Scottish Local Authorities to give evidence. COSLA has already responded and obviously has a major interest in the work that is done in the Parliament. I also suggest that, as at least one trade union has responded, we should ask the umbrella organisation for trade unions, the Scottish Trades Union Congress, to give evidence on behalf of its members. In that way, we would get a rounded picture, on which we could come to a considered judgment, from the various voluntary and professional interest groups.

**Lord James Douglas-Hamilton (Lothians) (Con):** There is a case for having not just a brief summary of respondents, but a précis of the responses to the lobbying consultation paper. That would include the key points made by SCVO, Disability Agenda Scotland, the Educational Institute of Scotland, the Association of Professional Political Consultants or COSLA, for example. A range of bodies has responded and we need to know the key points that each has made. The clerks could help by informing us how many people each body represents and how significant each body is, and by advising us which bodies should be called to give evidence. We should take evidence from the bodies that responded, because the subject is important.

**Patricia Ferguson:** One aspect of the paper that interested me was the comments that were made about the Parliament's accessibility. Some organisations raised issues that are of concern to us. Could we probe those issues further? I do not know whether that would be a separate exercise. Some of those issues might not be in our remit, but there would be nothing to stop us liaising with the Procedures Committee or others in the Parliament. That would ensure that we could find out exactly what the issues are and that we have done our bit to make the Parliament more accessible.

**The Convener:** That is a good point.

**Tricia Marwick:** I agree with Patricia Ferguson's suggestions of organisations to invite and with Lord James that we need a précis of the views of each of the organisations that has contacted us. However, I am worried that we seem to be

planning not to consult the public, but to take evidence from only interested bodies. That probably touches on Patricia Ferguson's point about accessibility.

I do not know how we would consult the public—perhaps through a focus group, or by some other means—but I am worried that we have not had responses from members of the general public. Is that because they are not interested, or because we have not reached out to them enough? Do they know that the consultation is happening? Perhaps, over the next couple of weeks, we could turn our minds to how we can engage with the public a wee bit better in the consultation and, as Patricia Ferguson said, in the Parliament more generally.

**The Convener:** One option would be to ensure that the clerks put the consultation paper on the Parliament's website and invite individuals throughout Scotland to contribute.

**Patricia Ferguson:** One of the problems that was highlighted by some of the respondents was that not everyone has access to the website. I suspect that members of the public are least likely to have access to the website.

In addition to putting a paper on the website, we could place a questionnaire or information sheet in the public gallery or in the visitor centre. It might also be useful to ask the civic forum for its co-operation. I realise that the civic forum represents civic organisations in Scotland, but its membership is made up of individuals too.

**Lord James Douglas-Hamilton:** There seems to be a powerful case for registration of lobbyists so that such shadowy figures are out in the open and known about. Registration would enable us to be certain that the Parliament is sleaze free.

It would be useful to know how many respondents were in favour of registration, and how many expressed reservations and on what grounds.

**Mr Macintosh:** We agree that further evidence needs to be taken. I was not sure how much we would go into the issue today. The material that we have in front of us has raised a lot of questions.

As well as the crucial questions of whether lobbyists should be registered, and whether there should be a statutory or voluntary code, the definition of lobbying needs to be examined. If we decide to invite people to give evidence, perhaps we should frame a series of questions for them to answer before they come to give their evidence. Such questions could include: how do you define yourself as a lobbyist? How do you see your role as a lobbyist? Would you agree to a voluntary or a statutory code? What should be in the code? We could put such questions to all potential witnesses

and possibly to people in the public gallery, although some of the people whom we are talking about do not, by their very nature, have access to Parliament.

**The Convener:** I should draw the committee's attention to the legal advice, which is that our remit focuses clearly on MSPs. There is absolutely no doubt that we have jurisdiction—if I can put it that way—over the activities of MSPs.

We can take a view on lobbying, which may lead us towards recommending statutory regulation. At the end of our deliberations, under our current remit as set out in standing orders, we cannot take that recommendation further. We could recommend that the Minister for Parliament, or perhaps another committee, take up the matter, or that the remit of the Standards Committee be changed.

We can discuss those issues at the end of our investigation. I do not want to start forming opinions now, as we have just decided to take further oral evidence, but it is important to bear in mind the legal advice.

09:45

**Tricia Marwick:** The convener has made some good points about the committee's remit. We have discussed that before and it is important that we explore ways of expanding the committee's remit to allow us to do all that is necessary.

I want to return to what Patricia Ferguson said in her useful contribution about how we can engage with the public. It occurs to me that the Parliament has partner libraries throughout Scotland. We should be paying a bit more than lip service to our partnerships and I cannot think of anywhere better than the partner libraries to have, perhaps, an issues paper—along with the questionnaire—and to ask the public for responses. We need to engage with the public on what they expect from their Parliament, and using the partner libraries would be a possible way of doing that. We can sit here and say that people expect the Parliament to be open, transparent and sleaze free, but we need to get those opinions directly from members of the public.

**The Convener:** That is a good point.

**Patricia Ferguson:** I want to return to the convener's point about our remit not allowing us to do what we might want to do, once we have made up our minds. That is why accessibility is so important—if we were as accessible as we all want and aim to be, lobbying would not be necessary. The two things are inextricably linked. That is why I am keen to explore the accessibility issues further.

**The Convener:** I had thought that it would be

good to take evidence in one session, as Tricia Marwick suggested. However, the clerk has advised me that, given the number of suggested witnesses, it might be more appropriate to take evidence over two sessions.

As of today, we revert to a regular fortnightly meeting schedule, so I propose that we invite witnesses to our meeting in a month's time—that is, not to our next meeting, but to the next two meetings after that. At our next meeting, in a fortnight's time, we can consider the issues paper for the public and the proposed questions for witnesses. Are members content with that proposal?

**Members indicated agreement.**

**Patricia Ferguson:** Will we not be in recess in a month's time?

**The Convener:** No. The meeting will be a week after the recess.

## Standards Commissioner

**The Convener:** We move on to agenda item 4. At our previous meeting, we agreed that we wished to progress our proposals to establish a standards commissioner by way of a committee bill. We also agreed that work should commence on drafting instructions for the bill. I am advised that that work is now well advanced. As members noted at the previous meeting, we need to take a view on a number of outstanding policy issues. Our objective this morning is to try to provide guidance on those issues so that the drafting instructions can be completed.

We have three papers to consider. The first asks us to agree a remit for the committee reporter. At our previous meeting, the committee nominated Lord James Douglas-Hamilton to work with me as a reporter in resolving what I stress are minor policy issues with the non-Executive bills unit as it finalises the drafting instructions. Any matters resolved in that way would be brought back to the committee for members' agreement before drafting of the bill commences. The paper sets out the remit. Is Lord James Douglas-Hamilton content to act as a reporter?

**Lord James Douglas-Hamilton:** Yes.

**The Convener:** Do members have any comments on the remit that is set out in the paper?

**Members:** No

**The Convener:** Are members content with the remit?

**Members indicated agreement.**

**The Convener:** The second paper looks at the options for the appointment and removal of the commissioner. The paper describes briefly the procedures that are used by other parliaments and assemblies, and asks us to take a view on a number of points that are set out in paragraph 11. I suggest that we run through those points now:

"Who should appoint the Commissioner? The legal advice that we have received is to the effect that it would be necessary for the Commissioner to be appointed by a 'legal' person. This could be the Queen or alternatively the Commissioner could be appointed by the SPCB."

**Tricia Marwick:** That is the one area that I am concerned about. If the Queen is to appoint the commissioner, she will not just sit down and say to someone, "It will be you"; she will get advice. In the scenario that we have, I imagine that that advice would come from the First Minister or the Executive. There are real problems in the Executive—or anyone else—recommending to the Queen that X or Y should be appointed. At some point, the commissioner might be asked to

investigate those who appointed him or her. We need to look carefully at the appointment system and be clear in our own minds how it will go forward.

**The Convener:** I thought that that might be a problem, and I discussed the issue with the clerks when they produced the paper. My own view is that it is important that the Standards Committee does not lose its locus in the appointment of the standards commissioner. Parliament is the appropriate body to appoint the commissioner. In reality, however, as far as we are concerned, the issue is a technicality, since the employer, if I may put it that way, would be the Scottish Parliamentary Corporate Body. The procedure would probably be that the Standards Committee would make a recommendation to the full Parliament to appoint the commissioner. The advice that I have received from various legal sources, and from the clerks, is that there would be nothing wrong with that procedure. Does that help clarify the situation?

**Patricia Ferguson:** The SPCB is the legal corporate entity for the Parliament. I have no qualms about the SPCB being the body that, after consultation with the Parliament, and based on recommendations from the committee, formally makes the appointment.

**The Convener:** I think that that is how it would run. A motion would come from the committee recommending the appointment to the Parliament and the Parliament would then ask the SPCB to appoint.

**Lord James Douglas-Hamilton:** Am I right in thinking that the selection would be within the competence of the committee, that the recommendation would then go to the SPCB, and that once the recommendation was cleared, it would go to the Parliament as a whole?

**The Convener:** The route would be from the Standards Committee to the whole Parliament to the SPCB. Does that clarify the matter?

**Lord James Douglas-Hamilton:** Yes. The point that you made—about it being a parliamentary appointment, not an Executive appointment—is important.

**The Convener:** Are members content with that?

**Members indicated agreement.**

**The Convener:** Let us look at the other questions. Should the bill render certain individuals, for example MSPs and SPCB staff, ineligible for appointment? That seems obvious.

**Mr Macintosh:** Discrimination.

**The Convener:** Yes. Can I take it as read that members are content that such people should be ineligible?



**Members indicated agreement.**

**The Convener:** Should the commissioner have an unlimited term of office, or should the term of office be for a fixed period? If the term of office is to be for a fixed period, should that be set out in the bill or determined in the terms of appointment?

**Mr Macintosh:** I would prefer that the term of office be for a fixed period and that it be determined in advance. Although it can sometimes be necessary to renew such appointments, they should usually, I think, be for a fixed period and the expectation should be that the appointment would not be renewed unless special circumstances arose. That should all be laid out in the bill.

**The Convener:** Do you recommend a particular time period?

**Mr Macintosh:** No. The paper suggests three to five years.

**The Convener:** That sounds like a sentence.

**Mr Macintosh:** It certainly does.

I do not feel strongly about the time period. It should probably not be same as the parliamentary session—I am not sure why I think that.

**Lord James Douglas-Hamilton:** Assuming that the appointment was for a fixed period, would it be subject to review or to retendering? We should allow maximum flexibility, because, if the commissioner operates entirely to the satisfaction of the Standards Committee, we might not wish to go through an unnecessary retendering process. The drafting of the terms of appointment will be important.

**Patricia Ferguson:** The appointment should be for a fixed period. I agree with Kenneth Macintosh that that period should not be coterminous with the parliamentary session, so it should probably be for an odd number of years. I am not too concerned whether it is three years or five years; perhaps it should be three in the first instance.

To be honest, I am not sure whether we would want the period to be as flexible as Lord James suggested. I wonder whether we have much control over that. There might be a legal problem with such a flexible procurement process, even one that was set down by an act.

**Tricia Marwick:** I agree with both Kenneth Macintosh and Patricia Ferguson. I think that the appointment should be for a fixed term but I am not fussed whether it is for three or five years. I am not sure how to proceed. I would not want to give the impression at the outset that the appointment would be for either three or five years and could just be continued. We might not need to go through the whole tendering process again if we want the standards commissioner who has already

been appointed to continue beyond the three or five years, but we need to find a mechanism that would enable that. Perhaps the clerks could consider that.

**The Convener:** We could bring that back for discussion. A good guide from the committee will be necessary when we finally come to the appointment. It seems to me that we are not quite sure. [*Interruption.*] The clerk advises me that such detail could be included in the terms of appointment rather than in the bill.

I welcome Frank McAveety, who has now arrived, to the committee and thank him for agreeing to serve on the committee. We have a busy schedule in front of us. I invite Mr McAveety to declare any interests that are relevant to the committee's work.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** I am a member of the Educational Institute of Scotland and the Transport and General Workers Union. I am also board director of the Arches Theatre Company.

**The Convener:** Thank you.

The next question in the paper asks who should be responsible for removing the standards commissioner. Normal practice would be for a public appointee to be removed from office by the same body responsible for appointment.

**Patricia Ferguson:** That would be the SPCB on a resolution of the Parliament.

**Lord James Douglas-Hamilton:** Could the phrase "removal by the Queen" be removed? It might be misinterpreted.

**The Convener:** Yes. The guidance is that the appointee would be removed by the SPCB on recommendation of a motion in Parliament, which should originate from the committee.

Should the grounds for removal of the commissioner be specified in the bill or should they be left for the terms of appointment?

**Tricia Marwick:** They should be left for the terms of appointment. To put them in the bill might be to provide more information than is necessary.

**The Convener:** Are members content with that?

**Patricia Ferguson:** I have one concern with that approach. Initially, I agreed with Tricia Marwick, but as she was speaking, something else came into my head. I am conscious that the Parliament threw back at us our report on the register of interests for members' staff. That happened because the report did not make explicit everything that we wanted to happen and members did not fully understand everything that we had discussed.

One of the questions that will obviously be asked during the debate in Parliament is how the commissioner would be removed if a problem were to arise. Explicit information on that aspect of the paper would help the debate. We might be able to do that by an explanatory note or by additional guidance that is given out at the time. We should be careful to provide that information. I am not too concerned whether it is in the bill, just that the information should be available when Parliament debates the bill.

10:00

**The Convener:** That is an important point, and one that is well made. Our first report on members' staff interests was not fully understood by members when it hit the Parliament, if I can put it that way.

**Lord James Douglas-Hamilton:** In practice, if the Parliament was dissatisfied with the conduct of any employee, it could bring the employment to an end, on the recommendation of the Parliament.

**The Convener:** The question is whether that provision should be included in the bill, or in the terms of engagement.

**Lord James Douglas-Hamilton:** I have a question for the clerks, which I will ask through the convener, if I may. Am I correct in thinking that, for commissioners who are appointed by the United Kingdom Parliament, it is laid down in statute that any misbehaviour or criminal conviction would make holding that office invalid?

**Sam Jones (Clerk):** Offences of a criminal nature and bankruptcy are specified in the legislation that set up the post of Parliamentary Commissioner for Administration—

**Lord James Douglas-Hamilton:** I understand that there are standard grounds for that.

**Sam Jones:** Yes; they are outlined in the paper.

**Patricia Ferguson:** The paper says that standing orders do not set out the grounds on which the commissioner may be removed.

**Sam Jones:** That is the case with the Parliamentary Commissioner for Standards.

**The Convener:** I am still not quite clear whether members want the grounds for removal of the commissioner to be included in the bill.

**Mr Macintosh:** There should not be too much discretion. The grounds for removal should be made clear to the person when the appointment is made. As long as the grounds for removal were made clear, it would not matter to me whether they were in the bill or open to change at a future date.

**Tricia Marwick:** Do we need to decide today, or can we have a chance to think about it? Having

listened to what Patricia Ferguson said, I am not in favour of any one option, and I would prefer time to mull over the question for a couple of weeks.

**Lord James Douglas-Hamilton:** It would be helpful to look at the wording of other statutes, and see what the standard way of treating the question is elsewhere.

**The Convener:** We will bring a paper forward on that issue for the next meeting.

The third paper draws together some of the outstanding policy issues and sets out a number of questions for the committee. We will look at them briefly in turn. The first issue is whether the draft bill should contain provision to impose a time limit for the submission of complaints. In paragraph 4 of the paper, members will see that we are asked for our views on four questions. I propose that we look at them in turn. Should complaints be time barred?

**Mr Macintosh:** There is one example, I think, where a complaint had to be made within a specific time scale—I think it was seven years, which is quite long. However, certain circumstances could overrule that, with the result that a direct appeal could be made to the committee, which would consider the complaint if it was of a serious enough nature. I agree that a time bar would be a useful mechanism to have in place, as we do not want to encourage vexatious complaints.

**The Convener:** Perhaps we should look at all four bullet points at the same time. Should complaints be time barred? If so, should the time limit run from when the complainer first became aware of the matter or from when the alleged event took place? What time limit should be set? Should the commissioner have the discretion to take on complaints outwith the time limit? To those we can add Kenny Macintosh's suggestion that complaints to the commissioner can be made directly through this committee. What do other members feel?

**Tricia Marwick:** There should be a time bar and, logically, it should be from the time that the alleged event took place. We should not rely on someone's view of when they became aware of the event, as someone may not be aware of an event for five years. If we accept a time bar, we have to move forward from when the alleged event took place.

To return to the time limit, there must be discretion either for the commissioner or for this committee to agree that, in special circumstances, it would be reasonable for us to consider matters that are effectively time barred. Anomalies will always arise and we need a fallback position in which we are not prevented from doing something that is clearly in the public interest.

**Lord James Douglas-Hamilton:** I agree with that. The time bar should be calculated from when the event took place. However, if new evidence comes to light, for example of a crime—an obvious example would be pensioners who find that their pension fund has gone broke or that someone has stolen from it—we should be able to return to the matter.

**Patricia Ferguson:** I wonder whether that would be appropriate, as a case such as that would go to the courts.

**The Convener:** Yes, a criminal offence would go to the procurator fiscal's office.

**Patricia Ferguson:** There should be a time bar and the period should run from the date of the event or incident. There should, however, be discretion to take on cases outwith the time limit. On balance, the case should come back to the Standards Committee. Recommendation for such decisions should come from the commissioner to the committee, otherwise the process could get a bit unwieldy.

The time limit itself is more problematic. It might become impossible to investigate a case because it is so old. Westminster seems to be able to work with a seven-year time limit, although the commissioners in Scotland for local government and the health service, for example, seem to work with 12-month limits. I am undecided about the time limit, but perhaps we should be consistent within Scotland and keep it at 12 months.

**The Convener:** Remember that the commissioner will deal with stages 1 and 2 of the complaints procedure. The Standards Committee has always retained the right to conduct an investigation itself at stage 3, so there will be flexibility in the system.

The committee should focus on whether it wants, in the bill, to give the commissioner flexibility at stages 1 and 2 of the complaints procedure. Do you see what I mean?

**Patricia Ferguson:** Yes, but not when the procedure is time barred.

**The Convener:** Some members seem to feel that the commissioner should have flexibility and some that he or she should not.

**Tricia Marwick:** We need the flexibility to decide whether an issue that has been time barred can be investigated.

**The Convener:** We already have that discretion.

**Mr Macintosh:** Have we?

**The Convener:** Yes. At stage 3 of the process, we can decide—

**Tricia Marwick:** We need to be explicit. Stage 1

of the complaints procedure concerns whether to have an investigation. If there is a time bar at stage 1 on the commissioner to investigate, the case would not necessarily get to stage 3, at which point the committee would have the right to investigate. If there is a time bar at stage 1, the committee should be able to say at stage 1 that there are abnormal circumstances and that it is proper and reasonable for the committee to instruct the commissioner to carry out an investigation.

**The Convener:** The clerk will make a couple of points that might clarify the issue.

**Sam Jones:** When the committee considers whether the time limit should start from when the incident took place, it might want to bear in mind that other complaints procedures have shown that aspects of a case that may infringe the code of conduct, for example, might not come to light until several years after the incident took place.

If the committee wanted to define the time limit as running from the event itself, therefore, it might want to consider quite a generous time limit. I think that that approach has been taken at Westminster. That is why the time limit for complaints at Westminster is seven years whereas, for the health service commissioner, for example, time runs from when the complainer first becomes aware that something has gone wrong. That commissioner's time limit is 12 months.

The issue about the evidence going cold is one that the commissioner can consider at stage 1, when he or she is deciding whether the complaint warrants further investigation. There may not always be sufficient evidence to take the complaint to stage 2.

**The Convener:** Can you clarify whether the committee retains the right to conduct an investigation at stage 3?

**Sam Jones:** The committee can do a number of things at stage 3. It can accept or reject the commissioner's report, or send the report back to the commissioner and ask that further inquiries be carried out. It can also carry out its own investigation, for whatever reason—for example, if it was unhappy with the commissioner's report.

However, if the commissioner—having decided for whatever reason that a complaint does not warrant further investigation—does not allow the complaint to proceed beyond stage 1, the committee would not know about that complaint until it received a quarterly or annual report. If the complaint does not go past stage 1, it will not come anywhere near the committee.

**Lord James Douglas-Hamilton:** I support what the clerk has said. A generous time scale would make sense because constituents would not feel

disadvantaged. It would also give maximum flexibility so that, if something very unusual but important came up, we could respond appropriately.

**Mr McAveety:** I agree with Lord James. In many of the cases in Parliament over the past 20 years, there has been an initial concern but it has taken a while to unravel the other issues that go back over a considerable time. A very limited time might debar such thorough investigation.

A session in the Scottish Parliament lasts four years. Would that be an appropriate time period, or should we make the period equivalent to Westminster by going for seven years? I would err on the side of a longer period, but I would like to hear other members' views.

Members have also mentioned the committee's role at stage 1, in particular whether it should be able to intervene to give a judgment on whether a potentially time-barred complaint could still be investigated because of the vexatious or controversial nature of the complaint. In such situations, I feel that the earlier the committee could intervene, the better. Do other members have a view?

**The Convener:** I should make clear, at this point, that it is possible that I have misinterpreted the committee's remit. The legal advice, which has just winged its way to me, and of which we all need to be made aware, is that if the commissioner time bars a complaint, the committee cannot investigate the complaint at stage 3. I apologise if I have misled members.

**Mr McAveety:** My point is that, given our role, we might be better to have the power to intervene at stage 1 since the public might expect that we have a greater role than the commissioner.

**The Convener:** Absolutely.

**Patricia Ferguson:** I am perfectly happy to err on the side of caution on the time limit. Just to be clear, I am saying that I agree that there should be a time bar. The Standards Committee should, as I said before, be able to decide that in exceptional circumstances the time limit could be waived. We should be able to do that at stage 1.

I am quite happy for the length of the time bar to be seven years, but given that our remit concerns only MSPs, would we have any locus if the person concerned was no longer an MSP? Or would any incident that was being investigated have had to have occurred in the same parliamentary session? I ask the question because I genuinely do not know the answer.

**The Convener:** The sanctions relate to when the MSP is serving. Off the top of my head—I will take legal advice—I would say that the complaint would need to be against a serving MSP.

**Mr McAveety:** As a punishment, we could threaten to make them an MSP again if they were no longer an MSP. "Please don't," they would say.

**Patricia Ferguson:** Equally, if the commissioner or the committee could still investigate the complaint, the person accused, being no longer an MSP, would have no right to respond and no right of appeal. That is why I would like to be clear about the time bar.

**The Convener:** I will take legal advice and we will come back to that.

**Mr Macintosh:** I would like some clarification. We have agreed—not entirely, but pretty much—that the time bar will apply from the original event. The bit that I am not sure about is that the commissioner will not be able to break that time bar, but the committee will. Are we saying that if we were to accept a seven-year time bar and somebody complained about an event that took place before that, they would have to complain to the committee and not to the commissioner?

**Mr McAveety:** No, it would be the other way around.

**The Convener:** I would like to take legal advice on the matter. It is a difficult legal issue, about which we need to be absolutely clear. We need to return to the issue in a fortnight's time once we have considered it properly.

It is important that we get across to the clerks the gist of what committee members want. I think that we have achieved that today.

**Sam Jones:** We can come back and say whether what the committee wants is possible.

**The Convener:** There is one more piece of guidance that might be helpful to the clerks. We have discussed a fairly lengthy time bar for complaints. How long do we think that that time bar should be?

**Tricia Marwick:** Patricia Ferguson's points about the committee's remit were germane to the discussion. We can impose sanctions only on MSPs. When the clerks consider the issues paper, they need to consider it in the light of our remit. Perhaps we will have a clearer idea of the length of time that is needed when the clerks have considered the paper.

10:15

**Mr Macintosh:** Would it be possible to find out why Westminster agreed a bar of seven years? There might be a good reason for that, or it might be an arbitrary figure.

**The Convener:** We will do that.

For the next issue, I direct the committee to the questions at paragraph 5 of the policy issues

paper. Should the commissioner be required to produce a regular report summarising his or her investigations over a specified period? If so, on what basis should it be produced—annually, twice yearly or quarterly?

**Mr McAveety:** I think that an annual report would be appropriate. Otherwise, we would have a feast every quarter. There are further aspects of the report that the committee could discuss.

**The Convener:** Are we agreed that the report should be annual?

**Members indicated agreement.**

**The Convener:** Next, we need to look at the so-called investigative fundamentals. The committee would not be able to interfere at stages 1 and 2 of individual investigations. Members will recall that we are able to undertake our own investigation at stage 3 if we are dissatisfied with the commissioner's investigation for whatever reason—that is the advice that I have been given.

However, we might want to lay down certain standards to which the commissioner should adhere in all investigations. Paragraph 6 of the paper sets out some examples, such as ensuring that interviewees are advised in writing that they are entitled to have a third party present. The paper asks whether the bill should ensure that the committee can, for each investigation, require the commissioner to comply with the general requirements that are specified in paragraph 6 and any other general requirements that the committee may think appropriate.

**Tricia Marwick:** That brings us back to the time bar and to stages 1 or 2 of an investigation. We might need to have the power to direct an investigation at stage 1. In special circumstances, it is proper and reasonable for the committee to conduct an investigation. We need to sort out the time bar before we sort out stages 1 and 2. The time bar is really important. We cannot agree one without the other.

I am concerned that the bill as proposed contains an awful lot of information. Do we need it all? Do we need to include all the guidelines in the bill?

**The Convener:** That is what we are asking. Do you think that it is appropriate to include that information in the bill, or should we dispense with it?

**Tricia Marwick:** Could there be some sort of memorandum for the commissioner?

**The Convener:** That is the question that I am posing. Do we need that level of detail in the bill?

**Mr Macintosh:** I do not think so. I am surprised that we are being asked whether the committee should require the commissioner to comply with

the suggested general requirements. I would have thought that the commissioner would always have to comply with them. I would not have thought that we would have to ask the commissioner in each case. I would have thought that guidelines or guidance would exist, which the commissioner would follow when conducting an investigation. I certainly would not expect the commissioner to come to the committee for guidance on every investigation.

**The Convener:** The question is whether the requirements should be in the bill or whether they should be in some form of memorandum or guidance that is issued to the commissioner.

**Mr McAveety:** They should be in guidance. From memory, I am pretty certain that the Ethical Standards in Public Life etc (Scotland) Act 2000 gives guidance on how investigations would be carried out, based on principles equivalent to, for example, a workplace disciplinary hearing. It would be more appropriate to have guidance than to encumber the bill with too much detail.

**The Convener:** The clerks would like a little more guidance on the final part of the paper. Do members agree that we should be able to require the commissioner to provide an interim report to the committee?

**Lord James Douglas-Hamilton:** Presumably, when the commissioner writes an interim report, he would enclose a typed note on the guidance that would be standard for everyone.

**Patricia Ferguson:** I think that we should be able to require an interim report.

**Tricia Marwick:** I agree.

**The Convener:** I thank members for their useful contributions. Today's session has given the clerks a good steer for our next meeting.

## Cross-party Groups

**The Convener:** Under agenda item 5, we have one application for a proposed cross-party group on the Scottish contemporary music industry. Do members have any comments?

**Mr Macintosh:** I am a member of the proposed group, as are Mr McAveety and Lord James.

**The Convener:** I sense that we may be moving towards approving the application.

**Tricia Marwick:** I am not a member, but can I move that—

**Mr McAveety:** There is a new rule that members have to get their record collections vetted by the three of us to see whether they are credible. If you have any Meat Loaf, you are in trouble.

**Tricia Marwick:** I have seen yours. The group seems to meet all the requirements for a cross-party group and I think we should accept it.

This has nothing to do with the new group, but I am concerned about the number of cross-party groups that are being set up. We have talked about the matter before and I am concerned that MSPs do not have time to go to every group that they have joined. I also worry about overlap between some of the groups. It would be helpful to have a note from the clerks, at our next meeting, to tell us the total number of cross-party groups that exist.

**The Convener:** I can inform members that there are 36 cross-party groups.

**Tricia Marwick:** Thank you.

**Mr McAveety:** It would be helpful to have a note of the number of cross-party groups in the UK Parliament and of that number as a proportion of the total number of MPs. It would be interesting to see the terminology that is used for the UK Parliament's cross-party groups. I am not so worried as other members are about the number of groups, but I am concerned about two or three groups that seem similar enough to be merged.

**The Convener:** When proposed new groups come before us, it is within our remit to return the application.

**Patricia Ferguson:** It would be useful, when we are asked to consider applications from new cross-party groups, to have an accompanying list of the established groups. With the best will in the world, we cannot remember them all. Tricia Marwick's point is valid. Knowing just the title of the proposed group is not enough; sometimes we have to delve into its purposes. Having a list would give us a steer.

**The Convener:** I am informed that the clerks

look at the list of established groups when a new application comes in. The clerks assure me that they do not see any overlaps.

**Sam Jones:** We can circulate the current list to members at the next meeting. [*Interruption.*]

**The Convener:** Does Mr McAveety want to say something?

**Mr McAveety:** I am sorry. I was not listening.

**Patricia Ferguson:** He was being facetious about one of Glasgow's premier football teams.

**The Convener:** I can tell that the conversation is wandering off the point. It is my job to bring it back together again. We will write to the convener of the proposed cross-party group to inform her that the group has been approved.

Agenda item 6 is consideration of the standards adviser's report into his investigation of the alleged leak in November last year of the Health and Community Care Committee's draft report. As agreed at the beginning of the meeting, we will move into private session.

10:24

*Meeting continued in private until 11:05.*

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