

STANDARDS COMMITTEE

Wednesday 12 September 2001
(Morning)

Session 1

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STANDARDS COMMITTEE

11th 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 12 September 2001

(Morning)

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

The Convener (Mr Mike Rumbles): Good morning and welcome to the 11th meeting this year of the Standards Committee. I thought that it was important that we meet to progress the substantial agenda that is before us today.

Items in Private

The Convener: Our first item of business is to decide how to deal with agenda items 7 and 8. Item 7 relates to the appointment of a new standards adviser, while item 8 relates to our initial consideration of two complaints. Because both items involve named individuals, I suggest that we discuss them in private. Is that agreed?

Members *indicated agreement.*

The Convener: Before we proceed to the main business, I would like to say a few words in public about item 8. One of the reports that we will consider relates to the alleged unauthorised disclosure of confidential information from a meeting of the Rural Development Committee in May this year. Members will recall that on 9 May the committee agreed to refer the matter to the standards adviser. As I am a member of the Rural Development Committee, I wish to place on record that when we come to consider the adviser's report I will hand over the chair to the deputy convener, Tricia Marwick, and withdraw from the meeting.

Lobbying

The Convener: Agenda item 2 is consideration of paper ST/01/11/2, which summarises the responses to the committee's consultation paper on lobbying. I ask members to note that there is a typographical error in paragraph 47. The last word in paragraph 47 should be "Convention", rather than "Committee".

The consultation paper set out the committee's thinking on a possible statutory registration scheme for commercial lobbyists. The committee's decision to examine that issue was underpinned by the need to ensure transparency and openness in the relationship between lobbyists and those lobbied. We received 37 responses in all. Colleagues will note that there continues to be considerable opposition to our proposals from the commercial lobbyists. There is also substantial opposition to disclosure of information that is viewed as being confidential and commercially sensitive, such as detailed information on fees and on organisations' tactics.

In the voluntary sector there remain concerns that the definition of lobbying set out in the consultation paper could be interpreted to include organisations that provide an information service on the Parliament and that levy subscriptions for membership fees. As that is clearly not the committee's aim, I suggest that we revisit the working definitions of lobbying and commercial lobbyists.

I look forward to hearing members' comments both on the points that I have raised and on the consultation process as a whole. I invite members to comment on the responses that have been received. We can also discuss what next steps should be taken.

Tricia Marwick (Mid Scotland and Fife) (SNP): The committee decided that there would be a statutory registration scheme. On that basis, the consultation paper was submitted to a number of interested organisations. It is a pity that the organisations have not confined themselves to the consultation paper, but have sought to persuade the committee to revisit its original decision. In my view, the decision to have a registration scheme has been taken. I would like the commercial lobbying organisations to work with us to ensure that the statutory registration scheme is all that we would like it to be. Although I understand that it would have implications for such organisations and that they are not very happy about it, I am disappointed that most responses are aimed at trying to get the committee to reconsider the decision that it has already taken.

There are a number of issues to which we

should give careful consideration when taking the scheme forward, not least the definition of lobbying. Perhaps the committee needs to make its thinking on some issues clearer. I am happy to listen to the discussion that has taken place, but I am clear on the fact that the committee has already decided that there shall be a registration scheme. We now need to examine how that scheme can operate.

Kay Ullrich (West of Scotland) (SNP): I concur with what Tricia Marwick has just said. I am keen that we move on from our decision to have a registration scheme to reconsider our definition of lobbying. However, we cannot renege on a decision that we have already taken.

Lord James Douglas-Hamilton (Lothians) (Con): I agree very strongly that there should be registration, so that our procedures are consistent with openness and transparency, which are among the founding principles of this Parliament. As the convener suggested, there might be a case for exempting charitable institutions and voluntary organisations. Perhaps we can tidy that up in the definition of lobbying.

The Convener: Some voluntary organisations were worried that they might fall within the definition of lobbying because they receive subscriptions from their members. That is not the committee's intention.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I agree with what has been said. It is interesting that the response to the consultation has been disproportionate to our intention. That reveals as much as anything else. If we refine the definitions, which are fairly woolly, that might help. We could consider inviting people before the committee to give oral evidence.

The Convener: I was going to ask members about that. The consultation is now at an end and all written evidence has been received. Do members regard that evidence as sufficient to allow the clerks to prepare a final paper on the matter, or do they believe that it would be useful to hear oral evidence from those involved?

Tricia Marwick: I would like the clerks to produce a not-quite-final paper for us that would tie up some of the issues that are causing genuine concern both to those who have submitted evidence and to members of the committee. I am referring to issues such as the woolliness of the current definitions.

Once we get that paper, can we then consider whether we need to call for more oral evidence? If we are going to call for more oral evidence, it should be on the basis that the committee has decided that there will be a registration scheme and that we expect the evidence to be focused on set areas because we are not going to get into

another discussion. The matter has taken many months of consultation in the first place; we are not about to revisit it. Anybody who comes to give us oral evidence should do so within the parameters that the committee sets down.

The Convener: We are therefore focused on the practicalities of implementing a scheme, rather than discussing whether the scheme should be implemented. That is absolutely clear.

Tricia Marwick: Absolutely.

The Convener: If members are content in that case, the clerks have clear guidance—

Lord James Douglas-Hamilton: I strongly support what Tricia Marwick said. The point should also be made that registration is in line with the procedures of other democratic parliaments and that it is not an innovation—it is a well-trying procedure.

Tricia Marwick: I have a final comment to make. I find it disappointing that some of the organisations that have come out so strongly in recent weeks in their responses to the committee's consultation paper did not seek at any time to take part in the initial consultation. Their views might have been influential on the committee. It is disappointing that such responses came afterwards, because the organisations did not seek to engage with the committee when we were considering in the first place whether there should be a registration scheme.

The Convener: I am just about to draw agenda item 2 on the lobbying process to a close. I welcome Kenneth Macintosh, who has arrived slightly late, and offer him the opportunity to comment on the paper. We have decided that the clerks should produce—to use Tricia Marwick's words—a "not-quite-final paper" on lobbying so that we can consider further the definitions. At that point we can decide whether we want to invite oral evidence, not on the principle of a registration scheme, but on the practicalities of implementing the scheme. Do you want to comment on that, Ken?

Mr Kenneth Macintosh (Eastwood) (Lab): No—that is excellent. The paper seems to highlight some of the major concerns, but it also offers a way forward. I am happy with that course of action.

Members' Interests Order

The Convener: Agenda item 3 relates to the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. As members will be aware, one of the major projects facing the committee is the replacement of the order with an act of the Scottish Parliament. Members will have received an issues paper, which provides an overview of some of the issues that we will wish to consider in developing proposals for replacement legislation by means of a committee bill.

The issues paper sets out some areas of the members' interests order that have proved problematic in the past two years. It also provides a flavour of the complexity of the task in front of us. I do not propose that we go through those issues now. However, we need to agree the scope of the review of the order and our approach to policy development.

The last section of the paper—paragraphs 31 to 35—sets out the issues that we need to examine if we are to consider putting replacement legislation in place by the end of the session. In particular, we need to decide how extensive our review of the existing provisions should be. Should we start from scratch and review the members' interests order in its entirety, including those provisions that have not caused any difficulty in the past two years? Should we, alternatively, focus on the aspects of the order that have been problematic, and on the recommendations of the consultative steering group, to which the committee agreed to return when we drafted the code of conduct in 1999? That seems a long time ago now.

I direct members to paragraph 35 of the issues paper and seek their views on the three bullet points that are listed in the conclusion. For the record, I will say what those points are.

The first is:

"whether the review of the members' interest order should be comprehensive or concentrate on agreed problem areas as set out in this overview."

The second is:

"the review should take account of the CSG key principles."

The third is:

"the Parliament should be aiming to strike the correct balance between disclosure in the public interest and the protection of Members' families/associates from unwarranted intrusions in their private lives."

I throw the floor open. I would like to hear what the committee feels.

Lord James Douglas-Hamilton: As I understand it, our rules are much stricter than are those in the House of Commons. For that reason, it would be legitimate to concentrate on agreed problem areas rather than consider rewriting from scratch the whole members' interests order. To take account of the CSG principles is valid and appropriate. We should try

"to strike the correct balance between disclosure in the public interest and the protection of Members and their families ... from unwarranted intrusions into their privacy".

That is a question of balance and judgment.

09:45

Tricia Marwick: I agree with most of what Lord James said. It is important, if we are to review and replace parts of the members' interests order, that we do so before the next parliamentary session in 2003. The priority is that new rules are in place so that, from the beginning, new and old members understand exactly what the provisions are.

However, it would be extremely difficult to revisit the whole members' interests order and go through a huge consultation on it. We should confine ourselves to areas on which there have been concerns, consult on those and try to timetable the new provisions so that they are in place by the new session in 2003.

The Convener: I ask the committee to consider paragraph 33 of the paper. The clerks have in that paragraph produced a programme of work. I run that by the committee so that we can give the clerks a steer as to what to do on the matter. If members are content with the programme or envisage problems with it, I would like to know. The programme has been written in broad-brush terms, but it will allow us to introduce a committee bill before the end of this parliamentary session in 2003.

Tricia Marwick: There is a problem with the proposed stage 4, which suggests that the committee bill be introduced between October 2002 and April 2003. From that timetable, it is perfectly possible that the committee bill might be introduced in April 2003. That would not ensure that the necessary changes to the order would be made by the time the new Parliament is elected in May 2003. It is important that we tie that up. We need the new order for the new Parliament. The timetable needs to be adjusted to take account of that—if the rest of the committee agrees.

The Convener: That is a good point. We need to have a target of September or October next year.

Lord James Douglas-Hamilton: That is a valid point. My understanding is that, unlike in the House of Commons, a bill that is not completed by

the time the next Scottish parliamentary election is held falls. In the House of Commons, a bill that is not completed at the end of each parliamentary year falls and the bill must be started again from scratch. If all the work on the committee bill for the members' interests order had been done, it would be a pity if it did not go through before the elections. Otherwise we would have to start the whole business from scratch again in the next session.

The Convener: That point is well made.

Confidentiality

The Convener: Item 4 relates to the committee's review of the confidentiality provisions in the code of conduct for MSPs. When we met on 19 June, we agreed that I should seek the views of the conveners liaison group on a paper that sets out the procedures for investigating leaks at Westminster and in the Senate of Canada, where the committee that is involved carries out the initial investigation.

The CLG considered the paper at its meeting yesterday and expressed a preference for committee leaks to be investigated by an independent investigator. One convener suggested that in deciding whether to investigate a leak, the Standards Committee should take a view on the seriousness of the leak and whether an investigation would be productive and worthwhile. That is, in fact, the case at the moment. Our methods of investigation make it abundantly clear that members should be named when complaints are upheld against them, although we reserve the right to launch an investigation when that does not occur. The conveners liaison group seems to be suggesting that we should make that judgment when such complaints are received. At the moment, complaints that we have received have been referred for investigation almost automatically.

I open the floor to comment.

Patricia Ferguson (Glasgow Maryhill) (Lab): I am a little unclear about the CLG's intentions. We begin the process when we receive a complaint. Is the CLG suggesting that we should not do that?

The Convener: No. I suggested to the CLG that leaks could, in the first case, be investigated by committees themselves. However, that did not meet with universal approval—to put it mildly.

Tricia Marwick: Perhaps that response should have been expected. The good conduct of MSPs and of the Parliament does not rest in the hands of the members of the Standards Committee; it is the responsibility of us all. Acting as an independent body with an adviser, we have conducted a number of inquiries but have found it almost impossible to find out who was responsible for the leaks.

I have already expressed my disappointment that such leaks take place, but the responsibility lies first of all with members. Committees should be responsible for carrying out an initial investigation. If committees are unwilling to police themselves, they should not expect others to do it for them. The problem is one not only for the Standards Committee but for the whole Parliament. I cannot express my anger enough

that the conveners liaison group seems not to appreciate the seriousness of its position or its responsibility to assist the Standards Committee and the rest of the Parliament to stamp out this practice once and for all.

Lord James Douglas-Hamilton: From my experience in the House of Commons, I understand that the leak of a select committee report is considered an extremely serious misdemeanour and is treated as such. A distinction must be made between relatively minor leaks that involve carelessness—people saying more than they ought—and the deliberate leaking to outsiders of the conclusions of a committee report, when that committee has interviewed people and has acted very much like a select committee. If the matter is minor, the committees concerned should play some part in the sifting process; if the matter is major, the committee concerned should consider it first and the matter should also come to us.

Kay Ullrich: I agree that the committee concerned should be the first port of call for any leak. We have seen the knee-jerk reaction to leaks from past examples, in which the Standards Committee has received a letter from each member of the other committee. Before they put pen to paper, they would be better to consider the leak within their own committee and then, if necessary, the Standards Committee could also deal with it. The conveners should look at the matter again and accept their responsibility.

Patricia Ferguson: I agree. The committees and their conveners are much closer to the issues and understand the politics—with a small p—of their own committee. Because of the scheduling of meetings and so on, they are much more able to act immediately and they really must be involved in the process. I can understand that investigating leaks might be uncomfortable from time to time but, as Tricia Marwick said, leaks are the responsibility not only of the Standards Committee but of everyone in the Parliament.

Mr Macintosh: I share the consensus view that has developed round the table. Apart from the arguments that have already been put forward, it does not do the Standards Committee any good to be constantly investigating committee leaks with little success. A sifting process, through which committees address leaks themselves, would help.

The Convener: What Kenneth Macintosh says reflects what everyone else on the committee has said previously. I made the committee's views quite clear to everyone at the conveners liaison group meeting yesterday. I was a lone voice at the group. You should be aware of the strength of feeling of the conveners liaison group on this point.

Kay Ullrich: To return to what Patricia Ferguson said, conveners and committee members will be well aware of political nuances in a certain report. In many instances, that will narrow down whence the leaks come.

Mr McAveety: It has been suggested that many leaks have emanated from inside committees, rather than from other folk, such as staff. It is funny that committees may feel that leaks could do anything other than contaminate any investigation process that they are carrying out. It should be a matter of winning the debate. I am with Tricia Marwick and the rest of the committee with regard to that and to people taking responsibility for their actions. People may be able to tell me otherwise, but, I do not think that there has ever been a leak from the Standards Committee. That perhaps tells its own story.

Tricia Marwick: There was an accusation of a leak.

Mr McAveety: The issue is whether there can be a review process in which the conveners liaison group, working with you, convener, and the Standards Committee, somehow takes those issues seriously. Otherwise, there can sometimes be a mad flurry of e-mails, saying, "It wisnae me, guv, it was a big guy who broke the windae and ran away."

Kay Ullrich: Or a big, black dug.

Mr McAveety: There is an issue surrounding the independence of a separate committee and its ability to investigate an alleged leak thoroughly.

The other core issue is the quality of investigatory work. If its thoroughness or rigour is not perceived, that could give rise to complacency. However, that will not be the case if we get the quality of investigation right—a couple of bodies might eventually have to be thrown overboard, which might send a message to folk and discipline them about personal responsibility.

Kay Ullrich: On a point of information, I believe that never in Westminster history—and certainly not here—has the identity of the big, black dug been found.

Mr McAveety: Have there not been a few cases over the past few years to do with leakage to ministers at Westminster?

Kay Ullrich: But as far as committees are concerned, the big, black dug has never been found.

Lord James Douglas-Hamilton: Actually, there was one MP—I do not think that there is any need to name him—who was made to make an apology, and stand and be subject to a very substantial rebuke from the Speaker, before the whole House of Commons. It has happened; it is well-

documented.

Kay Ullrich: I stand corrected.

Tricia Marwick: I am not sure how we take this matter forward. Part of the reason for wishing the other committees to be involved is to share the responsibility and to ensure that the committees and their members take responsibility for their own conduct. It is no secret that, in all the complaints that we have had about leaks from committees, we have never found a culprit and are likely never to find a culprit. Frankly, it is not the job of the Standards Committee to find them. Unless they own up, it is unlikely that they will be found. It is an educational process and a culture process.

A number of us have expressed concern from day one that there seems to be a growing culture of leaking within the Parliament. We in the Standards Committee cannot address that on our own. That is why we want the other committees to take on more responsibility. That is the only way in which we can tackle the culture that appears to be growing in the Parliament and has to be nipped in the bud.

The conveners liaison group has no statutory basis in the—

Patricia Ferguson: It is now enshrined in the standing orders.

Tricia Marwick: I stand corrected. Thank you, Deputy Presiding Officer. The CLG, as it is enshrined in standing orders, has some basis within the Parliament. Although I do not think that the Standards Committee should be telling the conveners liaison group what it will do, there comes a point where the CLG needs to be reminded of its responsibilities to the whole Parliament.

As I have said, I am not sure how we proceed with the matter. A discussion in the Parliamentary Bureau might be helpful, but come what may, we must find a way of getting the committees and their conveners to take on some responsibility for the conduct of their committees. That is our aim.

10:00

The Convener: Methods of investigation and related matters fall within the Standards Committee's remit. It is our responsibility to take the lead. At yesterday's meeting of the conveners liaison group, I consulted conveners on the process, which is a process of consultation. We now know the views of the CLG and must take them on board. How far we take them on board is important. In the first instance, we must address the issue.

The clerks have taken careful note of members' comments. I suggest that I ask the clerks to

produce a paper to allow us to make decisions at our next meeting. It is important that we have something written down to suggest how we proceed. Are members content with that?

Mr Macintosh: Indeed. When committee conveners and members see the proposals, they might not be so hostile. Paragraph 9 of our paper recommends that committees follow a standard practice.

The Convener: I want to ensure that you know about the strength of feeling among conveners. They did not want to do the work themselves. We must be clear about that. No matter how the work is done, they do not want to do it. They felt that it was appropriate that someone independent did it.

Mr Macintosh: Perhaps a paper that summarised the Standards Committee's difficulties and the need for other committees, at least initially, to consider matters, would be appropriate.

The Convener: We are talking about initial consideration.

Patricia Ferguson: I have a hope—perhaps pious—that knowing that committees were part of the process and involved in the first sift of information might persuade people not to leak information, because they would know that the person who would look into the leak would be a fellow committee member who would be likely to make a fair guess at the leak's source. Such a procedure would be part of a preventive approach. Perhaps we need to get such an argument across to conveners and explain that we expect them to be not the watchdog, but just part of the process.

Work Programme

The Convener: As members know from this morning's discussions, a busy and challenging programme is ahead of us. In addition to our work on lobbying, the members' interests order and confidentiality, we will introduce our committee bill on a standards commissioner shortly. Are there any comments on our programme or the relative priority of the tasks? We have noted that the committee bill on the members' interests order should be ready for September or October next year.

Patricia Ferguson: I am whole-heartedly behind the standards commissioner bill, but over the weekend I thought about our difficulties with the staff code of conduct. When that was first put to the Parliament, it seemed to have huge opposition, but when it returned, unchanged, it had no opposition. Between the first and second time that it was considered, consultation took place on it. I am slightly anxious to avoid our getting into a similar situation with the standards commissioner bill.

The Convener: I invite the clerk to comment on the consultation process for the bill.

Sam Jones (Clerk): The Parliament has debated the committee's proposals twice. The first time was when the models of investigation report was discussed last November. The second time was when more detailed proposals for the committee bill were discussed earlier this year.

Members have had an opportunity to comment on the matter. The clerks, the non-Executive bills unit and the legal office have in mind that the bill will focus on the appointment of the commissioner and his/her role at stages 1 and 2 of the investigative process. Stages 3 and 4, which involve the committee and the whole Parliament if sanctions are recommended, will not form part of the bill. We will therefore need to ensure that, when the bill is introduced, the whole picture is outlined so that members can fully understand the implications of the process.

The Convener: Such matters should not come as a surprise now to members, although I accept that when we considered the staff issue on the previous occasion, they did come as a surprise.

Tricia Marwick: Patricia Ferguson is right. We should not take members by surprise. The committee will recall our two debates on the staff code of conduct. They took place in the graveyard shift and only members of the Standards Committee attended them. We were very much speaking to ourselves. The other 120 members did not exactly beat a path to our door.

We need a mechanism to inform or advise the rest of the MSPs about such discussions. We are all familiar with those members of the electorate who say that leaflets were not put through their doors when we had actually posted them through their letterboxes ourselves. Similarly, people may say that now is the first time that they have heard of the programme when, in fact, two debates about it have already taken place. We must find a mechanism to ensure that our intentions are explained in relation to not only the bill but the longer term.

The Convener: That is a very good point. I hope that the bill will be ready for our next meeting. Do the clerks have any suggestions about how we can pursue the issues that have been raised and make the bill more user-friendly?

Kay Ullrich: Sexy.

The Convener: Exactly.

Tricia Marwick: Perhaps that is going too far.

The Convener: Yes, we are the Standards Committee.

Lord Douglas-Hamilton: There are a number of options on which it would be useful to have the views of members. For example, if a standards commissioner had to be dismissed for a particular reason, should that be decided by the majority of MSPs or by a two-thirds majority? It would be useful to have discussions on issues of importance before we crystallise our view.

The Convener: Indeed. That is why we are bringing the issue to the committee's attention at the next meeting. We want to discuss options. Lord James and I have reported matters to the committee and we have given our thoughts to the drafters of the bill. The issue will come back to the committee when we can discuss the options.

If everyone is content with the forward work programme, we shall move on to item 6.

Annual Report

The Convener: Our next task is to consider the draft annual report that summarises the committee's work during the past parliamentary year. Do members of the committee have any comments on the draft report before them? It is a factual, short two-page report. Is everyone content with it?

Members *indicated agreement.*

The Convener: As we agreed at the beginning of the meeting, we will take agenda item 7 in private.

10.08

Meeting continued in private until 11:17.

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