

# **STANDARDS COMMITTEE**

Wednesday 30 January 2002  
(*Morning*)

Session 1

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# CONTENTS

Wednesday 30 January 2002

	Col.
ITEMS IN PRIVATE.....	951
MEMBERS' INTERESTS ORDER.....	952

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## STANDARDS COMMITTEE

### 2<sup>nd</sup> Meeting 2002, Session 1

#### CONVENER

\*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

#### DEPUTY CONVENER

\*Tricia Marwick (Mid Scotland and Fife) (SNP)

#### COMMITTEE MEMBERS

\*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

Lord James Douglas-Hamilton (Lothians) (Con)

\*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 30 January 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 09:34*]

**The Convener (Mr Mike Rumbles):** Welcome to the second meeting this year of the Standards Committee. We have received apologies from Lord James Douglas-Hamilton, who is flying back from Brussels and cannot be with us today, and our clerk, Dr Sam Jones, who is ill.

Before we start on the agenda I inform members that Dr Jim Johnston is leaving the committee's clerking team to become clerk to the Social Justice and Equal Opportunities committees. I formally record my thanks to him for his professionalism and hard work in supporting the committee and I wish him well in his future. I am sure that members concur.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** We look forward to Dr Johnston's future journals. We are his Boswell.

### Items in Private

**The Convener:** Our first task today is to decide how to deal with agenda items 3 and 4. Item 3 refers to a draft committee report and item 4 refers to a committee bill that remains in draft until its introduction next week. I propose that we discuss both items in private. Do members agree?

**Members** *indicated agreement.*

## Members' Interests Order

**The Convener:** Item 2 is the committee's work on replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. We have three final papers to consider, which cover various outstanding issues. Once we resolve those issues, the clerks will bring to our next meeting a draft report that will set out proposals for finalisation.

The first paper deals with criminal defences and the mechanics of the register. If we take defences first, the current legislation makes certain breaches of the rules on registration and declaration of interests a criminal offence, but it does not specify possible defences. The question is whether we want to include defences in the replacement legislation. If so, what sort of circumstances do we want to be covered? Paragraph 3 provides possible examples. The floor is open for members' views.

**Mr Kenneth Macintosh (Eastwood) (Lab):** My first reaction on reading the paper was alarm at the realisation that there were no defences. The second bullet point in paragraph 3 states that a possible defence could be that

"the Member was not aware"

of a registrable interest. However, I do not believe that ignorance can be a defence in cases such as this. Therefore, we should accept the first and third bullet points. It strikes me that the first bullet point is appropriate, but I would like legal advice on what is a sensible approach to take on the matter. We are discussing what would, in effect, be a defence in a criminal action, so it would be good to have a legal view on the most sensible approach.

**The Convener:** We can pick that up later—the clerk suggests that the paper will go out for consultation. However, it is important that members give their views now, because we must have the draft report for the next meeting. I want to hear other members' views.

I welcome Tricia Marwick to the meeting and inform her that we are just starting agenda item 2. We are considering the paper on the defences to criminal proceedings in the members' interests order. As Tricia will be aware, there are no defences at the moment. Ken Macintosh suggested that the second bullet point in paragraph 3 is not appropriate. I am asking for other members' views. However, Ken Macintosh wants to come back on that point.

**Mr Macintosh:** The test should be whether a member's behaviour is reasonable. Bullet point one in paragraph 3 seems to capture that concept. However, I want it verified that that is the case.

**Kay Ullrich (West of Scotland) (SNP):** I share Ken Macintosh's problems with the second bullet point, but I feel that it is possible that a member might not have been aware of having a "registrable and declarable interest" and that the member could prove that. The paper is going out for consultation, so I would hesitate to remove that bullet point at this stage.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** It might be better if the second bullet point were clarified. I agree with Ken Macintosh that ignorance is no defence, if we mean ignorance of the rule as opposed to ignorance of the fact. If a member had a registrable interest that someone—perhaps a parent—might have created on their behalf at some stage in their life and the member genuinely had no awareness of that interest's existence, that would seem to me to be a reasonable defence. However, for a member simply to plead ignorance or to say that he or she did not think that an interest would be relevant is not proper. I do not know whether my view fits with Ken Macintosh's concern, or whether it helps or hinders his point.

**The Convener:** From a personal perspective, I think that that would be a useful clarification of the position. On first reading the bullet point, I agreed with Ken Macintosh that ignorance is no defence. However, the point that Susan Deacon made is that ignorance of the rules—rather than ignorance of something that somebody might have done for a member, and which the member might have no knowledge of—is no defence. I think that it is reasonable to keep the second bullet point in.

**Kay Ullrich:** It is possible that someone could buy a member shares without the member's knowledge that they had been bought or what the shares were. Perhaps we need to tighten up the wording, but we should not remove the bullet point.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** I wonder whether the circumstances that have just been described—in which somebody has bought shares for a member, of which the member is not aware—would be covered by the first bullet point, which suggests that the member should take "all reasonable steps". A reasonable step would be for a member not to register an interest if he or she did not know about it. I wonder whether we need the second bullet point, given the test of reasonableness.

**The Convener:** Are you saying that the first bullet point covers it?

**Mr McAveety:** We should consult on the question—we cannot reach a conclusive view. We should hear other views on which we do not have an insight today before we make such a judgment. A member might have a lady friend who is very

generous towards him, but whom he does not yet know.

**Tricia Marwick:** You are pathetic.

**Mr McAveety:** No, I am hopeful.

**The Convener:** I am trying to reach consensus on this. Do members feel that we should keep the second bullet point?

**Tricia Marwick:** We should consult on it.

**The Convener:** Okay. The whole paragraph should go out to consultation.

**Tricia Marwick:** Yes. If we ask questions beginning with, "Do you think that", we will perhaps get responses that will allow us to make a considered decision.

**The Convener:** Okay. Thank you for that.

The second part of the paper considers the way in which the register of members' interests is to be maintained—the mechanics of the register. The current members' interests order provides significant flexibility regarding the way in which the register must be kept. A motion that is before the Parliament sets out the fact that currently the register should be kept in printed form in the office of the clerk to the Standards Committee and on the internet. The flexibility of those arrangements means that we can keep pace with developments in information technology and systems. Do we want to retain that approach?

**Mr Macintosh:** Have there been any problems with the way in which the register currently operates? Is everybody happy with it?

**The Convener:** I invite the clerk to answer that.

**Jim Johnston (Clerk):** There have been no problems that I am aware of.

**Mr Macintosh:** If there are no problems and the system is working, I see no reason to change it.

**Tricia Marwick:** We thought long and hard before we introduced that system of having a rolling register on the internet. That is what we decided—if it works well, we should leave it alone.

**Kay Ullrich:** If it ain't broke, don't fix it.

**The Convener:** Okay. The final question is on the final part of the paper, which deals with ceased interests. Should ceased interests be removed from the register annually, as is the current practice? Should they be removed at once, or should they be removed within a specified period—for example, within three or six months after the interests cease?

**Mr Macintosh:** How is the current register kept and how is the old one kept? I would have thought that interests should be kept for a year from their being registered. If interests were kept on a page-

by-page basis, that would be quite straightforward. If they were listed under members' names and the whole thing had to be printed, the process would be slightly more complicated.

**The Convener:** I invite Jim Johnston to comment, because the clerks run the register.

**Jim Johnston:** The register is live. To make a change when an interest has ceased, a statement is added to the entry below the one that has ceased to explain that that is the case. Ceased entries are removed only once a year—sometime in May—and a line is added to the register stating that a ceased interest has been removed. The process is quite cumbersome because of that. The paper suggests that we should move to a specific length of time for which ceased interests will remain on the register—perhaps three, six or 12 months.

**Tricia Marwick:** When the ceased interest is removed from the live register, is it retained in some way on previous registers? For example, if I had an interest in something, but the interest ceased and was removed, would it still be on my 2001 register for people to look at, in case something came up in the future?

09:45

**Jim Johnston:** We have a hard copy of the historical record. When the annual removal of interests is done, the register for the year is kept on hard copy and is available on request.

**Susan Deacon:** The current situation, as outlined in paragraph 5 of the paper, is anomalous. In practice, a ceased interest could remain on the register for either 50 weeks or two weeks, because the removal of such interests is an annual exercise. It would be sensible for ceased interests to be removed after a set period of time, as long as that is not overly cumbersome from the point of view of maintenance. I do not feel strongly about whether that set period should be six months, nine months or a year.

**The Convener:** Given that Jim Johnston is moving to another committee, he can say that that is a good idea.

**Jim Johnston:** I think that it is a splendid idea.

**The Convener:** Without being flippant, I think that that is a sensible suggestion. If members are content with it, we just need to decide on the period. What do members feel would be an appropriate time—three months, six months or nine months?

**Mr McAveety:** Three months.

**Mr Macintosh:** Three months.

**The Convener:** Thank you very much.

The second paper provides additional advice, as requested, on the registration of shareholdings. We need to decide on three issues. First, should the threshold be the nominal value or the market value of the shareholding? Secondly, if we decide on the market value of the shareholding, should that be updated annually—perhaps at the beginning of the financial year? Thirdly, should we exclude unit trusts from registration on the basis that they are unit trusts and an amalgam of shares?

The floor is open. I hope that members had a good chance to read the paper, because the issue is important.

**Tricia Marwick:** As I recall, we asked for the paper because none of us had a great interest in shares and we really did not know what we were talking about. It seems to me that the threshold has to be the market value rather than the nominal value, but that would be difficult if the market value had to be adjusted every time that the shares went up—or down, as I understand that shares go down as well.

If we agree to ask members to register the market value of shares at a particular date, should there be a fixed point for doing that and should that be at the beginning of the financial year—for example on 6 April? That would perhaps ease the burden on the clerks, because they would not have to update the register continually. It would also reflect better the shareholding and would be better than someone saying that they had 3,000 BT shares at a nominal value of whatever. That means absolutely nothing to most people.

**The Convener:** Jim Johnston has just informed me that the current rules say that even nominal share values should be registered on 5 April, each year.

Lord James Douglas-Hamilton is not here, but he wanted me to make other members of the committee aware of his views on the matter. I know that it is unusual to do that in this way, but it is important for this matter. Lord James says basically the same as Tricia Marwick said: shares have to be registered and they yo-yo. He thinks that it is important that we have a specific date on which to register shares.

**Kay Ullrich:** My concern is that share values can fluctuate wildly. The example in the paper states:

“For example, BT shares had a nominal value of 50p at launch. On 24 January 2002, BT shares were priced at £2.36 each.”

However, if you look in today's newspaper, you will probably find a value that is different from the value when our paper was prepared. The problem is that the values fluctuate to such an extent. September 11 saw a great downturn in shares. I

do not know enough about this, but because of fluctuations I am concerned about taking the share value on a certain day as the cut-off. However, the nominal value does not mean very much either, does it?

**Susan Deacon:** What is the Westminster practice? The paper talks about the Westminster threshold but does not say whether it is based on market or nominal value.

**The Convener:** It is the nominal value. The members' interests order reflected what was going on at Westminster. Members felt previously that nominal value did not mean much. I appreciate that there are problems when share values fluctuate, but I feel that we have to move away from a nominal value because it may be meaningless.

**Mr Macintosh:** I agree with the convener and Tricia Marwick: we have to move from nominal to market value. The latter has its problems, but it gives a far more accurate reflection of value. It will be updated only annually, but if—God forbid—you happen to be an Enron shareholder, you may have other worries anyway. The point is that the company in which you have a shareholding is stated. Others can make inquiries about its value at any time. Dealing with values annually is not an onerous task.

I agree with the point in the paper about 1 per cent. In many ways, how large an interest you have in a company is as important as whether you have £25,000 of shares.

**The Convener:** Indeed.

**Mr McAveety:** Does this requirement kick in at a certain level, or does it affect anyone with shareholdings?

**The Convener:** Currently, the threshold is a nominal share value of £25,000.

**Mr McAveety:** So it kicks in if you have more than that.

**Mr Macintosh:** Or more than 1 per cent of the shares.

**Mr McAveety:** In that case, I agree with what others have said.

**The Convener:** We have still to deal with unit trusts.

**Mr Macintosh:** I do not believe that unit trusts are an issue. For the most part, people do not know what is in their unit trusts.

**The Convener:** The final paper provides some supplementary information on non-pecuniary interests. Previously, the committee indicated that it wished to propose some form of compulsory registration of non-pecuniary interests. If we wish

to maintain that approach, we will have to consider how those interests should be defined. The paper suggests that defining non-pecuniary interests could be problematic. Should we take a broad approach and require the registration of all non-pecuniary interests that the public might reasonably think could influence a member? Or should we take a more focused approach and require registration of membership of, or positions held in, professional or trade associations, trade unions or specific interest groups?

**Tricia Marwick:** My initial feeling is that we should take the broadest possible approach. However, I am conscious that attempts to take such an approach in the National Assembly for Wales have run into problems with the European Court of Human Rights. We should be careful. Perhaps we will have to await the outcome in Wales before we go any further.

If a person is a member of a group or society, that person's political decisions could be influenced. For example, I would wish membership of the freemasons, of the Knights of St Columba or of other secret organisations—which claim that they are not secret at all—to be registered. Non-pecuniary interests are often at least as important as pecuniary interests.

**Kay Ullrich:** Would it be all right if they just rolled up a trouser leg?

**The Convener:** What do other members feel about Tricia Marwick's suggestions?

**Mr Macintosh:** I was taken with the examples from the Dáil and Canada. Transparency is the issue, rather than secretive or hidden interests not being declared. MSPs are aware of the need for transparency. A method that encouraged transparency would be good, whereas the other methods would be overly bureaucratic and out of proportion to the information that we intend to provide for the public. We could end up with a huge list of organisations that people are members of but which have no real relevance to anything. That would become a bureaucratic nightmare, and members' real interests, particularly their pecuniary interests, might be hidden by their long list of non-pecuniary interests.

**The Convener:** You prefer the current voluntary approach.

**Mr Macintosh:** Yes.

**Susan Deacon:** A distinction must be made between secret organisations and others. There is a real issue with secret organisations. Tricia Marwick is right to give examples from different points of the compass. If I thought that it were practical and possible for us to remove that secrecy, I would like us to do it. However, I see no evidence to show that it is practical and possible



for us to do that effectively. Others have grappled with this and failed.

On the more general issue of non-pecuniary interests, I like the voluntary approach. It is a proportionate response. It also, rightly, leaves the member to exercise judgment as to when others might judge a non-pecuniary interest to be relevant to an activity in which they are involved. Most members have voluntarily declared a number of non-pecuniary interests, some of which are very anodyne. Most of us have erred on the side of caution and transparency by registering such interests.

It would be undesirable to have a mandatory system in which formal action could be taken against a member, or sanctions imposed on them, for not registering such an interest. However, it is right to establish a tenor and framework within which we will operate that expects a degree of openness. Beyond that, it would be for the court of public opinion to judge were a real conflict to arise.

**The Convener:** I will return to Tricia Marwick in a moment. One of the things that provoked the discussion is that, as Susan Deacon pointed out, many members have declared non-pecuniary interests under the miscellaneous heading in the register.

**Tricia Marwick:** The Parliament could be accused of operating double standards. We passed the Ethical Standards in Public Life etc (Scotland) Act 2000, which requires local authority councillors to register pecuniary and non-pecuniary interests. If we do not do that for ourselves, we will be accused of operating standards for ourselves in the Parliament that are different from those for others in public life. We have passed a requirement that councillors declare non-pecuniary interests and it is incumbent on us to ensure that our operations in public life are as transparent as theirs. As long as the requirement that we have passed remains in force, we are obliged to follow it ourselves.

**Mr McAveety:** That was my concern. Perhaps Jim Johnston could clarify whether a distinction exists, but I am pretty certain—because I was involved in its development—that the Ethical Standards in Public Life etc (Scotland) Act 2000 requires non-pecuniary interests to be registered.

**Jim Johnston:** The act requires non-pecuniary interests to be registered.

**Mr McAveety:** Given the debate that the Parliament has had about parity of esteem, it would be appropriate for us to register non-pecuniary interests.

There may be a body of opinion that a distinction can be made between various organisations. Whether a collective organisation such as the

Knights of St Columba is a secret organisation that is comparable to a freemasons' organisation or other organisations is a matter for debate. I have never been invited to join any such organisation—

**The Convener:** Not the Knights of St Columba?

**Mr McAveety:** No, although I would probably be an ideal member.

We must consider what has happened in Wales. We should not say that we do not want to examine the issue, because it is a legitimate issue whose influence throughout public life and social activity may be worth exploring.

10:00

**The Convener:** I draw members' attention to paragraph 8 of our paper, which says:

"As an alternative to including such provision in the Bill, the Code of Conduct could be amended to require registration of non-pecuniary interests. Contravention of this would not attract criminal sanction. This approach would be consistent with the CSG Working Group's recommendations on the registration and declaration of such interests. The Working Group recommended that Members should be required to register:

any unremunerated interests which might reasonably be thought by others to influence the Member in his or her capacity as a Member of the Scottish Parliament."

The working group gave some examples of such interests, but was not specific. It left it to the member to decide what others might reasonably consider interests that would influence a member. That is my view of how we should proceed.

**Tricia Marwick:** I confess that I am tempted by that approach, but I return to the Ethical Standards in Public Life etc (Scotland) Act 2000. Is a councillor's failure to declare a non-pecuniary interest a criminal offence?

**The Convener:** I think so.

**Jim Johnston:** I do not know.

**Mr McAveety:** I do not know whether the act goes as far as criminal sanctions. The specified sanctions include loss of status in office and rights as a member. A scale of punishment was established, but it may not have involved the criminal courts.

**Mr Macintosh:** Frank McAveety makes a good point. It would be unfair to expect something of local councillors that we do not expect of ourselves. I noticed that the provision is in the code of conduct for councillors, so perhaps the solution would be to put it in our code of conduct. That would mean that we had the same treatment.

**The Convener:** I suggest that we do that. I am concerned about making failure to register a criminal offence under the members' interest order, because the procedure that is involved

might be open to abuse from complainants and others. It would be appropriate not to put the provision in the members' interest order, but to make it a requirement under the code of conduct.

**Kay Ullrich:** I am concerned that we would have double standards, as we would do something different from what we had imposed, if you like, on local councillors. Could we have details on the sanctions for local councillors?

**Mr McAveety:** I might be wrong—forgive me if I am—but I am almost certain that we did not go for criminal sanctions, because the kind of heinous offence in which we would expect the courts to be involved would be covered by criminal law, rather than by a code.

**The Convener:** I will make a suggestion. I am desperate to close the matter, but I will not close it while such an important issue is unresolved. The committee is unaware of what the Ethical Standards in Public Life etc (Scotland) Act 2000 mandates and whether it makes failure to register a criminal offence. We could postpone the matter and bring it back to our next meeting. We can ask for a briefing.

**Mr McAveety:** Someone could phone the Scottish Parliament information centre and have an answer in five or 10 minutes. A section of the 2000 act specifies the sanctions and it would not be difficult to find. The scale of sanctions ranges from a two-week suspension to loss of convenership and loss of public office, such as a provostship. I might be wrong, but I do not think that the bill goes as far as involving the criminal courts. I would remember discussing that.

**Kay Ullrich:** We need to know before we make a decision.

**Susan Deacon:** I am sympathetic to the arguments that have been raised and the action that is proposed. However, it is worth noting that several organisations expressed serious reservations about some of the provisions that the Parliament opted to put in the code of conduct for councillors. They view the sanctions as disproportionate; indeed, the sanctions have not yet been put to the test. It is possible that the provisions were a product of the time, but I sound a note of caution: mere parity with the provisions that have been made for other levels of representation are not necessarily the way to go, because we do not know what the impact of those provisions will be at other levels of representation. Serious concerns have been raised about the impact that they might have on people putting themselves forward for elected or appointed public office.

**The Convener:** In that case, I suggest that we bring the whole draft of the members' interest order to our next meeting without finalising the

final bit of the jigsaw. In the meantime, the clerks will find out that information.

**Mr McAveety:** Incidentally, there are two paragraph 8s. That should be corrected.

**The Convener:** That proves that you have read the document, Frank. That is good.

**Tricia Marwick:** One thing on which we are all agreed is that non-registration should not be a criminal offence. That would be disproportionate.

**Mr McAveety:** I am not unsympathetic to what Susan Deacon has said. In a sense, the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 were inherited from the Scottish Office. Many concerns have been raised about the proportionality of that act. The problem is that, if we do not have an equivalent for MSPs, the new provisions will be seen as a dilution.

Perhaps in time people might consider that the conclusions at which we are arriving are much more measured than the approach that was taken in the Ethical Standards in Public Life etc (Scotland) Act 2000. However, at the moment, those conclusions will be caricatured. People will say that the expectations of a member of a public body or a councillor carry a more onerous burden than the expectations of an MSP do. Most folk are fairly relaxed about the issue, although there was initially some concern. However, the provisions are not the determining factor when people consider serving on public bodies—many other issues deter folk from coming forward.

**Kay Ullrich:** I, too, am of the opinion that at some point we should consider whether members should register whether they belong to the masons, the Knights of St Columba or any other secret organisation. I would be interested in the outcome of events in Wales. Would there be an opportunity for us to revisit the issue?

**The Convener:** As I understand it, this is our chance to change the members' interest order during this session of Parliament.

**Jim Johnston:** The committee's report will not be the end of the inquiry. After it has been published, there will be further consultation with members. The committee may want to come back to certain points, including the registering of membership of societies such as the freemasons.

**Susan Deacon:** We should flag up our concerns about secret societies and how they should be dealt with in the register.

**Kay Ullrich:** Membership of a secret society could exert greater influence over someone's behaviour than membership of a trade union.

**The Convener:** I have to say that the Knights of St Columba is so secretive about being a secret organisation that I never knew that it was—I have

never before heard it accused of being a secret organisation. However, I understand that many people have accused the freemasons of being a secret society.

**Mr McAveety:** Perhaps there is a slightly different Catholic tradition in Aberdeenshire.

**Tricia Marwick:** The freemasons do not see themselves as a secret organisation—they think that that belief is a result of our fevered imaginations.

**The Convener:** That is why I chose my words so carefully.

**Tricia Marwick:** I was trying to balance both sides of the mitre.

**Kay Ullrich:** In America, people wear badges to show that they are masons. In Scotland, people wear rings that show that they are masons. Perhaps the point is that what is secret is what they do, rather than membership of the organisation.

**The Convener:** Let us move swiftly from freemasons to lobbying. We will top and tail the draft report at our next meeting and then put it to members for consultation.

10:09

*Meeting continued in private until 10:44.*



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