STANDARDS COMMITTEE

Wednesday 24 April 2002
(*Morning*)

Session 1

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STANDARDS COMMITTEE
7th 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

WITNESSES

John Duvoisin (Consultative Steering Group)
Professor Alan Miller (Consultative Steering Group)
Jane Ryder (Consultative Steering Group)
Canon Kenyon Wright (Consultative Steering Group)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 24 April 2002

(*Morning*)

[THE CONVENER *opened the meeting at 10:05*]

Committee on Standards in Public Life (House of Commons)

The Convener (Mr Mike Rumbles): Good morning and welcome to the seventh meeting this year of the Standards Committee. I extend a particularly warm welcome to our witnesses from the consultative steering group working group on the code of conduct.

Before we hear from the witnesses, we must deal with item 1 on our agenda, which concerns a draft submission to the Committee on Standards in Public Life. Members will recall that, at our last meeting, we agreed to make a submission to the committee's inquiry into standards of conduct in the House of Commons. The committee wants to draw on the experience of the devolved legislatures. The draft submission sets out our work on the Scottish Parliamentary Standards Commissioner Bill, lobbying and members' interests. I have been invited to give evidence to the committee when it visits Edinburgh next month. The written submission will be a useful basis from which to work.

Members will be familiar with the material in the submission. Before I ask for comments on it, I point out that it contains a line that was added in error. The line,

"The Committee reports to the Parliament as follows—"

should not be there.

Are members content with the draft submission?

Tricia Marwick (Mid Scotland and Fife) (SNP): I congratulate the clerks on the submission, which is excellent. I have read through it but I cannot find any reference to the fact that, under the Scotland Act 1998, criminal procedures would kick into action if there was a suggestion of criminal activity or to the fact that such matters would go to the procurator fiscal rather than the standards commissioner. That is probably different from the set-up at Westminster and would be worth drawing to the committee's attention. We operate under a quite different regime.

The Convener: That is a useful suggestion. I will incorporate that into the paper.

Members will notice that, as we agreed at our previous discussion, we have not answered the 13 questions that were asked in the committee's consultation but have described our system, leaving the committee to draw the comparisons.

Do members agree to approve the submission?

Members *indicated agreement.*

Members' Interests Order

The Convener: Agenda item 2 concerns our work on replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. This is our first oral evidence-taking session. I welcome former members of the CSG code of conduct working group: John Duvoisin; Professor Alan Miller; Jane Ryder; and Canon Kenyon Wright. Members will recall that the working group was set up to advise the CSG on the proposals for a code of conduct that the Scottish Parliament might be invited to adopt. Before I invite questions from committee members, Canon Kenyon Wright would like to make a brief opening statement.

Canon Kenyon Wright (Consultative Steering Group): Thank you for this opportunity. I have submitted a paper, which has been circulated to members, and will speak only briefly to it.

Most of the interim proposals seem to be a perfectly legitimate extension in the light of our experience of what was originally proposed and presented in the members' interests order. The proposals seem to keep the balance between transparency and proportionality.

My only specific comment on the proposals is that I support the mandatory registration and declaration of non-pecuniary interests, which would inform the approach that should be adopted. The purpose of that would be not simply to set legalistic boundaries but, as the Neill committee described it, to provide

"a more complete picture of the standpoint of the member".

In other words, I see the proposal as a positive step that is surely more important for MSPs than for MPs, given our expectations of a new political culture in Scotland. It would be a small step in the right direction.

I admit that my paper goes a little beyond the remit and talks about not just replacing the members' interests order but building on it. The Scottish Parliament was supposed to be fundamentally different, not just different at the margins or in its procedures. That difference was supposed to be based on the founding vision of the claim of right—that is, the recognition of the ancient Scottish principle of the sovereignty of the people, not of Parliament—and on the four CSG principles arising from that vision and adopted by the Parliament. For me, the clear implication of that vision and of those principles is that the relationship between MSPs and the people is not just quantitatively but qualitatively different from the relationship between MPs and the people. That difference is not fully reflected in the code of conduct because, however effective it might be, it is still primarily legalistic and preventive.

For years, a bee in my bunnet—I am not sure whether that is parliamentary language—has been my belief that a code of practice and a job description positively define what people can expect of their representatives in a new political culture. Many MSPs rejected the measures because they felt that they would restrict their relationship with constituents. As a result, I have modified the term "job description" to "job guidelines", which, far from restricting MSPs, liberates the relationship by defining expectations. Among other things, job guidelines would help to distinguish between the proper role and public expectations of constituency and list MSPs.

My purpose in raising those points is not to make detailed proposals, which is a matter for another time and place, but to draw the committee's attention to something that was also a recommendation of the code of conduct working group and a proposal in the supplementary report of the CSG. Job descriptions and the people's right to know and to help to define what to expect of their MSPs, regardless of whether they represent constituencies or regions, are

"issues … which the Parliament should consider and consult widely on".

As far as I am aware, that recommendation has not yet been acted upon. It seems a legitimate extension of today's debate to ask the committee to consider whether that could happen and whether such a debate should be initiated. Now that a corrosive—and totally unjustified—cynicism about politics is widespread and with an election forthcoming, the next year might be a good time to initiate such a debate.

The Convener: Thank you very much. You have provided us with plenty of food for thought. I will now open the meeting to questions from members.

Mr Kenneth Macintosh (Eastwood) (Lab): I thank all the witnesses for attending. In particular, I thank Canon Kenyon Wright for his statement.

I am not sure whether my questions are supposed to work from the general to the specific, but I will start with a specific question and follow it with a general one. Among our changes to the members' interests order, we are suggesting a few variations on your ideas. For example, we are considering the non-registration of the pecuniary interests of close family members.

Do you agree with our decision that registering their interests would be disproportionate, as family members are not elected? Anything that is received that might relate to a member's duties should be declared, but declaring more would invade privacy. Do we have the right balance

between a family's privacy and an MSP's public duties?

Professor Alan Miller (Consultative Steering Group): I am happy to break rank from the CSG's earlier proposals, which were made three or four years ago, when we were trying to anticipate how the Parliament would work. The advantage that the committee has is the reality test. It has had three years' experience of the areas in which problems have and have not arisen.

The fine judgment towards which the committee seems to be moving is of understanding that close family members—particularly spouses and partners—have more reasonable expectations of privacy than does an MSP who has put himself or herself into the public domain and so should expect closer scrutiny of their private affairs. That does not apply to the same extent to family members, whose interests may predate a person's becoming an MSP.

From the point of view of the European convention on human rights, the guidelines should be that such family members have a more reasonable expectation of privacy, which should be respected more than that of the MSP. If there has been no reason in the past three years to justify interference with family members' rights, not going down the registration road would strike a good balance, unless a problem arises in years to come, in which case the committee might have to reconsider the matter. From a human rights point of view, the committee has probably got the balance right, given the past three years' experience.

10:15

Canon Kenyon Wright: I agree.

Jane Ryder (Consultative Steering Group): I am content with that.

Mr Macintosh: Our aim in replacing the members' interests order is to be as transparent as possible. The situation in relation to non-pecuniary interests may illuminate that. We are slightly undecided on the issue and want to take a view. The matter comes down to the balance between transparency and openness and privacy. I wonder whether we have the right balance.

Yesterday, someone drew to my attention an article in the weekend papers that talked about the nexus of Labour interests and how everybody knows everybody else. That is the stuff of Sunday papers, but it shows us something. Canon Kenyon Wright talked about the corrosive cynicism of the media. The Parliament tries to be as open as possible but, often, that openness is turned round and used against it. The openness for which we stand is used as a tool to do down the Parliament and its members, although perhaps they are not as important as the Parliament is. Do we have the right balance? How can we plough ahead with our commitment to transparency, and balance that with the need to protect the institution's reputation and members' privacy?

Jane Ryder: I have considered that matter and have examined other codes, such as the proposed code for councillors and the code for ministers. I have also examined what is happening elsewhere. Non-pecuniary interests are important and must figure in the code somewhere, but one way in which the right balance might be achieved is by balancing registration and declaration. If the number of registrable interests was restricted and the set of declarable interests was wider, that would provide proportionality and allow declaration at appropriate times. If a fact were deemed objectively to be significant, it would be declarable, although it would not have to be registrable at the outset. Declaration provides an element of flexibility.

The Convener: You have made an unusual suggestion. As an ordinary back-bench MSP, I would have thought that I should register what I feel to be registrable and then declare that in debate. You seem to be saying that we should have a smaller number of registrable interests and then, when we get to the debate, we should say, "I should declare this but I didn't think it was registrable or relevant at the time." That seems strange.

Jane Ryder: Well, it may be different from what is currently envisaged. I go back to Canon Kenyon Wright's proposition that we are dealing with principles and trying to set in place something that is less prescriptive and more based on what is appropriate and principled. The principle is to abide by the common principles of public life that apply to all people in public life. However, if what is declarable must be registrable in the first instance—if the two are synonymous, which is what I think you are saying—some elements of non-pecuniary interests would have to be considered.

Canon Kenyon Wright: The principle of transparency should be that there is always openness unless clear legal, personal or security grounds dictate otherwise. Clear grounds may exist to account for privacy and non-registration. However, the principle that I am arguing for is that registration should not be seen as restrictive but as a way of allowing people to get a

"more complete picture of the standpoint of the member"—

to use the words of the Neill committee. That enables us in a positive way to go on to the next steps that I will argue for. For me, the registration of non-pecuniary interests falls into that category.

It helps us to understand better who the MSP is, so that we can relate better to them. It is not a way of somehow restricting their behaviour.

Tricia Marwick: I will ask a general question first before moving on to specifics. Like Mike Rumbles and Lord James Douglas-Hamilton, I have been a member of the Standards Committee from the beginning. It seems to me that the gap in the rules that relate to members' interests was that nothing referred to non-pecuniary interests. Did the CSG consider the need to register non-pecuniary interests at the time of its report? Did you conclude that they should not be registered? If so, why?

Professor Miller: I am open to correction but, as far as I can remember, we did indeed consider the issue. As with many other issues, we were in the dark as we tried to guess how the Parliament might work. I think that we came to the view—although perhaps without great conviction—that there should be some registration and declaration of non-pecuniary interests. We acknowledged that the nature of such interests was different from that of pecuniary interests and that MSPs might have difficulty in knowing what and what not to register and declare. Therefore, we felt that if it was found that something non-pecuniary should have been registered or declared but had not been, that should not be a criminal offence.

Canon Kenyon Wright: Yes—it was felt that non-pecuniary interests should be registered or declared but that not doing so was certainly not to be regarded as criminal.

John Duvoisin (Consultative Steering Group): Among non-pecuniary interests are such things as charitable, professional or cultural interests, in which people can be heavily involved and towards which they may feel strong loyalty. Leaving them out altogether would not make it clear that a member was coming from a particular direction. Therefore, to avoid accusations of hidden agendas, it is necessary to register or declare such interests.

My profession is accountancy, and we have moved away from having a strict, rule book procedure. Rules are there to be observed. If something is not covered by the rules, it is not covered. We are moving towards a more principles-based approach. There are necessary underpinning rules—there are things that you may not do—but there are also overall principles, and the member has to judge his performance and position against those principles. That makes the situation much more responsible and more one of substance over form.

Jane Ryder: That is a better expression of what I was trying to say about being led by principle rather than by the rule book.

Why do we seek transparency? In general, it might be to gain greater knowledge, but specifically, it might be to determine how a particular issue affects an MSP's conduct, whether in the chamber or in meetings outwith the chamber, perhaps with civil servants. Ensuring transparency about interests that might influence or be thought to influence a person is the sort of issue that is in the code for councillors.

Professor Miller: I agree with my colleagues. My thinking at the time has been strengthened by the experience of the Parliament in the past few years. The focus should be on the merits of what an MSP says and the contribution that it makes to debate on a policy. The aim should be to minimise the perception that a personal agenda is being served.

If a personal agenda is out in the open and is registered and someone wants to draw something from it, that clears the decks for the MSP's contribution to be judged on its merits and not on a feeling that something might be lurking in the undergrowth so we should revisit what the MSP said. If an interest is open and recorded, without a meal being made of it, we can get on with addressing questions such as, "Does this MSP make sense or are they just parroting some personal prejudice?"

Tricia Marwick: When the issue last came up in the Standards Committee, the press ran wild with suggestions that we just want freemasonry to be registered. In fact, we were talking about the registration of all non-pecuniary interests. In the National Assembly for Wales, there was a requirement to register freemasonry in isolation.

I want to test Professor Miller on human rights and the European convention on human rights. I understand that if we singled out one organisation for registration, that would be an infringement, but if we required members to register all non-pecuniary interests, that would not be in contravention of the ECHR.

The Convener: That is the position. The National Assembly for Wales is making proposals to revise the situation and to use freemasonry as an example of groups that have to be registered.

Professor Miller: In the European Court of Human Rights in Strasbourg, case law in relation to freemasonry and privacy and whether freemasonry has to be declared as an interest has related to challenges to the independence and impartiality of the judiciary rather than of politicians. You might be able to draw some conclusions about the principle of whether judges should declare membership of the freemasons from the court's approach, but there are different stages to consider.

In a couple of cases from the UK and Finland,

the Strasbourg court has said that when a judge takes an oath of judicial authorisation well and truly to try cases and to conduct him or herself properly, that should be sufficient guarantee that any personal membership or views will be subordinated to that public oath. Being a member of the freemasons, of itself, should not bar someone from being a judge or hearing a case. However, if a judge, through their membership of the freemasons, has formed an acquaintance with someone else who is a party to court proceedings, that personal acquaintance—rather than the membership of the freemasons itself—might have to be taken into account, and the judge might have to bar him or herself from being the judge in the case.

10:30

The European Court of Human Rights does not say much of any relevance to the issue that concerns the committee. However, there is a greater move towards transparency. In England and Wales, people who become judges are required to indicate whether they are members of the freemasons. Existing judges who took on the job without having to make that declaration were asked to declare voluntarily whether they were members of the freemasons. I think that about 96 per cent provided feedback and about 5 per cent were members of the freemasons.

The issue comes back to whether an MSP, when considering legislation that might be detrimental or relevant to the interests of freemasonry, ought to declare and make clear their membership of the freemasons, because there is a nexus, or direct relationship. The bigger picture is that it is difficult for someone who becomes an MSP to argue privacy, as they have lost their reasonable expectation of privacy. It is different for family members. An MSP is qualitatively different from a judge, but with the changes that are being made to judicial appointments in Scotland, I think that there will be more interest in and questioning of judges' backgrounds. Lord Hoffmann and Amnesty International in the Pinochet case were an example of that. That is the direction in which things are going.

Lord James Douglas-Hamilton (Lothians) (Con): Is it the view of not only Canon Kenyon Wright but all the witnesses that non-pecuniary interests should be registered on a mandatory basis?

Canon Kenyon Wright: That is my view—I said so—although the code of conduct working group added a rider that failing to register such interests should not be subject to criminal prosecution.

Lord James Douglas-Hamilton: If such registration were mandatory, a breach would be a matter for disciplinary action by the Standards Committee, which would then report on the matter to the Parliament. If I understand your point correctly, the principle is desirable rather than the legal technicalities. With the greatest of respect, we must have clear definitions in this area. If we do not, MSPs could be subject to a sanction without knowing what rule they are breaking. If an MSP is an office bearer or committee member with a charity, I presume that they would have to declare their position. However, they would not have to do so if they simply supported the charity. If I am correct in making that distinction, that would have to be spelled out. If such distinctions are not spelled out clearly, we could confront MSPs unfairly, as they genuinely would not know whether they were breaching the code of conduct.

Jane Ryder: That illustrates my point precisely. If every eventuality was catered for in the rules of registration, the rule book would be very thick and the single instance of an interest that was not registered might not be caught. However, you are right about proportionality.

Lord James Douglas-Hamilton: If I may say so, you are making an argument for voluntary rather than mandatory registration. You are saying that, because it is so difficult to define a mandatory requirement, it is easier to go down the voluntary route.

Canon Kenyon Wright: Might clear guidelines be a halfway house between mandatory and voluntary registration? I agree that the situation is difficult. It is easy to get into a legal minefield in which the attempts that have been made to draw lines make it difficult to know what falls on one side and what falls on the other. I understand the argument, but I am trying to make a case for the principle and the purpose being clear. The purpose is not to restrict but to understand better the nature of the member's character and interests, as that will make it easier to build up different relationships.

The Convener: Following on from Lord James's question, I want to pursue the issue because I am also interested in the practicalities. As Lord James highlighted, the practicality is that any breach will come before this committee. You seem to be saying that there must be either a recommendation that interests be registered—that is, a voluntary registration of interests—or a mandatory registration of interests, but that there can be no in-between.

If the registration of interests were voluntary, I foresee that—people being what they are—different MSPs would interpret matters in different ways. If there are MSPs who think that it is not fit that they must register their interests, they might have no reason to do so. That would not help us in

the arena of openness. The registration of interests should therefore be mandatory, as long as there is no criminal sanction. Will you comment?

Jane Ryder: On the whole, I agree. I think that the code of conduct that is recommended for councillors and for public bodies requires a mandatory registration of interests.

That takes us on to another dimension. MSPs have public duties as leaders. The issue is: quis custodiet ipsos custodes? It cannot be appropriate to impose higher standards on councillors and members of public bodies than on MSPs. The two standards must be at least within touching distance of each other. One would need to elicit a reason why the standard for MSPs should be different. From my reading of the code of conduct for councillors, I think that it requires the mandatory registration of interests.

The Convener: I am conscious that I cut Lord James short. Does he have another question?

Lord James Douglas-Hamilton: I still think that there will be problems over definition if registration is mandatory. If an MSP is reported to this committee by a member of the public or an organisation, an investigation would need to take place. If we were to go down the path of developing the voluntary registration that we have just now or requiring mandatory registration, should there be a consultation on the guidelines?

Canon Kenyon Wright: I have already argued clearly for such a consultation, which would include, but go beyond, that point.

The Convener: I want to add to the point that Jane Ryder made on members' interests. The Convention of Scottish Local Authorities' evidence states that councillors are required to register relevant interests such as membership of, or the holding of office in, institutions such as public bodies, companies and clubs

"which members of the public might reasonably think could influence your actions, speeches or votes in the Council".

Does Susan Deacon want to say something?

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I want to make a separate point—

The Convener: Sorry, before we move on, I want to allow John Duvoisin to respond.

John Duvoisin: Whether the registration is mandatory or voluntary does not matter as long as it is clear why the registration is required. If the member knows what—to use this word again—the principle behind the requirement is, that takes him one step further forward. In any given circumstance, a member may have an interest that is not covered by the requirement but, because he understands the rationale behind the requirement, he can use his judgment and say, "I ought to declare this interest even though the letter of the law does not mention it." If he understands why the rule exists, that takes him into the area beyond.

Canon Kenyon Wright: I think that John Duvoisin has defined the issue exactly. I used the word purpose. The paragraph that the convener read out defines the purpose behind that requirement: councillors must register those interests

"which members of the public might reasonably think could influence your actions, speeches or votes in the Council".

However, that statement is legalistic and confining; we want a positive statement of expectation. We deserve something better than that for our MSPs. We need a positive statement of purpose that goes beyond the one that the convener read out. On that basis, I agree that the committee has an extremely difficult task in working out the detail.

Susan Deacon: I apologise for arriving late and especially for missing Canon Kenyon Wright's contribution. I always add a caveat to questions that I ask and comments that I make in the committee. As the newest member of the committee, I am conscious that other members have drilled deeply into some questions and that it must be tiresome when people such as me ask them all over again.

I would like to probe some of the wider issues that have been touched on this morning and that contextualise what we may eventually do with the nuts and bolts of the members' interests order and other provisions that we put in place. That takes me into issues of culture and practice, rather than simply the rules and regulations of the Parliament.

You were involved in the work of the CSG. Clearly, your thinking—like ours—has changed and developed since the Parliament came into being and it has been possible to see, feel and touch it. To what extent are the culture and practices of the Parliament in tune with our stated aspirations? At the moment the Procedures Committee, to which several members of this committee belong, is immersed in that issue, which cannot be separated from the rules and framework that we are putting in place to govern the Parliament. I would be interested to hear your comments on that, particularly given the emphasis that a number of you place on a principles-based approach as opposed to a rules-based approach.

I am instinctively worried about our trying to build too much into rules. By definition, it is impossible to build everything into rules. As Jane Ryder indicated, the larger and more complex a rule book is, the more chance there is of problems being caused by things that are not included in it.

Forgive me if my question is somewhat amorphous, but could you comment on the issue of culture and practice—the spirit of the Parliament? Perhaps I should not say that in the company of Kenyon Wright, but he knows what I mean. Do you think that we are creating the right environment? I find it helpful to work back from that to what we build into the rule book.

Canon Kenyon Wright: One could talk about that issue for a long time, but I will keep my answer brief. Everything for which I argue is based on the assumption that the Scottish Parliament is founded on a vision and a principle, which makes it radically different from the Westminster system that has grown up over the years.

Everything that the CSG did was based on that premise, including the four principles and the work of the code of conduct working group. Some things must be mandatory, but others must be set out in guidelines. Those guidelines must be transparent enough for members of the public and groups in Scottish society to be able to know that their MSPs—be they constituency MSPs or list MSPs—have a distinctive task. People can then ascertain how MSPs are carrying out that task, identify their particular interests and relate to them. I am sure that that is a positive principle.

Susan Deacon asked to what extent such a culture is being created. I have said this so often that it must be boring, but I believe that a battle is still under way between what I call the old politics—the politics of secrecy, power holding and Westminster assumptions, to which some MSPs continue to cling—and the new political culture for which we argued in the CSG. When I am asked what I think of the first three years of the Parliament, I make the facetious comment that, under the proposed new law, we can now begin to smack it a bit harder, because it is almost three years old. Apart from that, my answer must be that the Scottish Parliament is infinitely better than what preceded it. It has done positive things, especially in the light of the media sniping that seems totally unjustified. Having said that, the battle is continuing and the issue still has not been settled.

The Convener: Thank you. Susan, do you want to ask a follow-up question?

10:45

Susan Deacon: I wanted to see what response I would get to my starter for 10. I shall probe the issue a bit further.

I am attracted to the quote that Canon Kenyon Wright has used, which drives the Neill committee. What we are aiming for is

"a more complete picture of the standpoint of the member."

Others have touched on what shapes and influences opinion and the way in which that impacts on what we do as MSPs. Like others, I am attracted to the idea that there should be some mechanism for identifying non-pecuniary interests.

The main influence on politicians is not financial issues; influence takes place in a number of different ways. MSPs could be required to declare membership of a club, charity or lobby group, or a non-executive directorship of a company. It would be quite easy to register such interests physically in some way. If people wanted to find out such information about a member, they could do so even if members were not required to register their interests. I know that the committee has spent a lot of time thinking about this—forgive me—but I wonder about the greyer area of influence.

Having made the transition from minister to back bencher, I know that the controls and checks around ministers are very tight, through private offices, diaries and suchlike, as ministers are the ones who are put under the magnifying glass. As MSPs, we have made ourselves open and accessible, and the world and his wife can get to us, be it through e-mail, phone, on the Mound, or whatever. This takes us into lobbying terrain, which is dangerous. There is a great network and lunch circuit that goes on, which must influence individuals a great deal. However, it is entirely unregulated—I do not argue to the contrary—and unseen, in many respects. It takes us back to the issue of how much we can capture in rules.

I wonder whether there is a danger that, if we push the boat out in terms of what is registrable, and imply that somehow we have caught all the main influences in the net, some of the main ways in which members are influenced will continue to fall well outside that. Forgive me for a long and meandering speech. I am trying to explain where my head is and not simply ask a question. It is the other side of the coin that worries me—about our pushing out the boundaries of what we ask members to declare. There is a whole area of activity that will never be captured through a rules-based approach, but which has a huge influence on individual MSPs' actions, what they speak on and the views that they adopt.

Professor Miller: The pressure should really be on when MSPs intervene in the proceedings of Parliament. They should be judged on the quality and merits of the argument that they put forward. Although there are interests that are capable of being defined, which should be registered and made open to the public, they should be a secondary concern.

The biggest defined non-pecuniary interest is membership of political parties, and the biggest public dissatisfaction is probably that MSPs may not hold the convictions that they profess—there

may just be a party-political line that has to be given. That is what the public gets a bit tired of, rather than who members have lunch with or what their social background is. I do not see any immediate answer to that problem.

Canon Kenyon Wright asked directly how the Parliament has measured up to the CSG's principles. I have a lot of sympathy with the view that the Parliament is more accessible, transparent and participatory—all the buzz words—than what went on previously. That is not a difficult task to accomplish. The more contact and dealings one has with the Parliament, the more obvious that is. The problem is that MSPs have come into a world full of cynicism, with the press and other media on them right away, and they have perhaps become a bit defensive. They should have the courage of their convictions, but they need rules to demonstrate that the Parliament is beyond reproach. That is inescapable, but it has been a difficult period for a young Parliament to emerge in.

Mr Frank McAveety (Glasgow Shettleston) (Lab): The purpose of the Ethical Standards in Public Life etc (Scotland) Act 2000 was to create a framework for the conduct of those in public life. Initially, it was supposed to deal only with the complex problem of behaviour in local government, but those of us who were involved in local government were conscious that it would require modification during its passage through the Parliament, as it was inherited from the former Scottish Office before the Parliament was established.

I do not think that there have been any cases in which the declaration of non-pecuniary interests has thrown up difficulties. If that had caused any problems, I think that, in a small world such as Scotland, COSLA would have told us so very quickly. The civil service briefings that were taken at the time seemed to take the view that civilisation would end if we opened up a debate on the registration of interests for elected members. From the committee's point of view, there should be equity with what is expected of councils and other public bodies. It is not at all unreasonable to have the same measurement for MSPs. That is what we are searching for.

I do not have a problem at all with the declaration of non-pecuniary interests. Members would only want to hold back something that they did not think should be public and transparent in the first place, which brings us back to the Nolan principles. There is clear language in the Ethical Standards in Public Life etc (Scotland) Act 2000 about what the public might reasonably think might influence members' actions. In a sense, if you are an elected member, you should try to take a belt-and-braces approach.

Susan Deacon talked about connectivity. There is occasionally speculation in the media about all the connections. I am still waiting to see myself appear—if any journalists from *Scotland on Sunday* are present—in the list of the 100 most important and powerful people in Scotland. It is really regrettable that they have missed me out; maybe it is because of the people I knock about with. The idea that family or business connections will automatically influence your conduct or what you say in the chamber makes good copy, but it is not reality. We want to achieve a balance between that sort of portrayal and the operational issue.

I would like to get a feeling for how the groups that are helping the Parliament to create a construct think we can achieve that. Within three years, a corrosive cynicism has quickly been developed, irrespective of the fact that many of us can demonstrate much more accessibility and accountability than existed in any previous system. It is not hard to improve on the previous centralised system, but how do we get beyond that? Doing so is one element of the process that will help to build and sustain public trust. How do we get beyond the fact that an Episcopalian minister says that he wants to give us a wee slap now and then? That may have something to do with the history and tradition of Episcopalianism in Scotland, but I do not want to enter into another theological debate with you, given that you were probably as brutal as the rest of us when it came to church history.

Canon Kenyon Wright: It was not a personal slap.

Mr McAveety: How do we create a sense that there is a learning curve and how do we grow up into being an effective Parliament over a period of time? Can you help members with some of those points? That is the real issue. I do not think that declaration is a big issue, although it would reassure the public and would at least provide a framework that would allow us to focus on the real issues. The real issues are what we say and what our defining philosophies are, from a party-political point of view or as individuals within parties. I have permission to say those things without the intervention of party headquarters. [*Interruption.*]

The Convener: That was not your pager, was it?

Mr McAveety: Not yet.

Jane Ryder: That is the point that I was trying to make, which is about linking into a common ethical framework that is grounded in common principles of the duties of public life. The specifics flow from the acceptance of the general proposition. That is what we must get across, rather than taking the rule-based approach that moves from the specific to the general. The key is to have the courage of

one's convictions and to be less defensive, more proactive and more accepting of that common ethical framework.

Canon Kenyon Wright: I make it clear that I was not making a personal statement about smacking the Parliament. There is a lot of that happening and much of it is unjustified, given the fact that the Parliament has not yet been running for three years. I wanted to ask a positive question. What can best help the general public to understand where members are coming from?

Let us take one fact that has not really been mentioned. Every Scottish elector has one Westminster MP and eight MSPs—one for the constituency and seven for the region. It would be helpful for electors to know more of those eight MSPs. They need to know not just to which party the eight belong—the argument is that if someone does not like the Labour member they can go to the SNP member, but I do not buy that—but the interests, concerns, strengths and experience of particular members. To take that further, one could classify that information in the form of a job guideline, such as I have proposed. However, I will not press that point again. Nevertheless, it would be helpful to have a clear picture of where each of a constituent's eight MSPs is coming from.

Lord James Douglas-Hamilton: My first question is on shares. The current rules are that shareholdings have to be registered if they have a nominal value of £25,000 or more than 1 per cent of the issued share capital. However, the market value could be well above that of the nominal value; moreover, shares can go up and down in value. What are your views on that? Do you think that the rules should be changed?

Professor Miller: Pass to the accountant.

Jane Ryder: Pass to the accountant.

John Duvoisin: When the code of conduct working group met, we picked up that point, because the rule was taken from Westminster, which uses nominal value. The working group recommended that the rule should use market value because £25,000 of nominal value can be worth £250,000 in market value. Somehow or other that was not translated into the members' interests order.

Lord James Douglas-Hamilton: So a market value figure should be chosen and used for registration purposes, rather than nominal value.

John Duvoisin: Yes.

Lord James Douglas-Hamilton: My second question is about future interests. It is clear from the earlier comments of the working group that there was difficulty in developing a rule that one could be sufficiently certain would be understood, interpreted and enforced consistently. Do you have any further views on that?

Jane Ryder: I cannot believe that that would have become any easier.

Tricia Marwick: I want to move on to pecuniary interests. I seem to remember that, when the CSG produced its report, the suggestion was that MSPs should be full-time MSPs and should not undertake any other paid employment. Is that still your view or do you think that it is acceptable for MSPs to have paid interests outwith the Parliament?

Jane Ryder: I gave some thought to that and to your possible opening line of questioning on whether MSPs should be permitted to have outside interests.

Tricia Marwick: Paid outside interests.

11:00

Jane Ryder: That is the point. We want people to have external knowledge and interests in the widest sense. We want MSPs to have the opportunity to keep their knowledge up to date and to develop new expertise in what could be, for many of you, a long and honourable career. The issue is whether the outside interests are paid outside interests.

In addition to the paid aspect, there is the danger of a conflict of time and energy if an MSP meets the obligations of paid employment or a paid contract. That, rather than head-to-head conflicts, may be an issue. MSPs have argued to retain the current number of MSPs because of the burden of the work load. If the burden is so great, how much time and energy can an MSP give to outside interests? That takes us into the area of the danger of the perception of privileged access. I have some sympathy with the view that MSPs should have no paid outside interests, provided that remuneration for MSPs is appropriate.

The Convener: My personal view is that we should not have any other paid employment while we are MSPs. However, it is quite a leap to say that no MSP should have paid outside interests. Do you see what I mean? Do you wish to comment on that?

Canon Kenyon Wright: In the Scottish Constitutional Convention and the CSG, the principle with which we started was that being an MSP was a full-time job. That was why from the beginning there was at least a bias against dual membership of Parliaments. That was allowed for a preparatory period, but I think that it has now ended voluntarily, if not in a mandatory way. The principle that the job of an MSP is a full-time job is clear enough. I presume that if an MSP writes articles for the press, they are paid for them, but I strongly support the principle that an MSP should

have no other paid employment that in any way interferes with their primary task.

The Convener: Would you go as far as to say that that should be a rule, because there is a difference between expressing a view on something and saying that there should be a rule to prevent it?

Canon Kenyon Wright: I do not know how to answer that. If the situation was transparent, perhaps the public could judge. Perhaps there should be a rule that says that anything that manifestly interferes in some way—I am sorry, but I cannot answer the question. I am not enough of a legal expert. I know—or I have heard rumours—that there have been cases in which MSPs have been busy with other engagements and have therefore been unable to attend to the work of the Parliament. There should be some way of addressing that situation in a mandatory fashion.

Tricia Marwick: I wish to take you forward a stage. At the moment, an MSP can declare pecuniary interests at the start of a debate in the chamber or at a committee meeting. The MSP can then take part in the debate and vote on it. When people have declared a pecuniary interest, should they play an integral part in the debate and in voting?

Jane Ryder: It is difficult to say. The situation is different from that proposed in the code of conduct for councillors. Councillors have to withdraw, but the code of conduct for members of public bodies is consistent with the current code for MSPs—the member must declare the interest but can continue to take part in proceedings.

Mr Macintosh: MSPs are full time; councillors are not. That difference should be taken into account. I welcome Alan Miller's view about whether it would be legal to stop MSPs having another occupation, profession or paid interest. I would have thought that that was a restraint of freedom, although that is just a side issue.

I think that we have been on common ground on most of the points that have been raised today. The rules are there to encourage transparency; they are not necessarily there to catch people out or to curtail our freedom to express ourselves or behave in a particular manner. They are there to ensure that there are no hidden agendas and that everything is open. I hope that you would agree that that is reflected in what we are discussing. Rules have the advantage of protecting MSPs as well as the public. That is why MSPs quite like some of the rules—and why they like them to be written down, as that effectively draws a line.

Tests of reasonableness are often used and there might be many unreasonable members of the public—although I point out to Frank McAveety that that does not include any of my constituents—as well as unreasonable MSPs. Rules can be helpful in that respect.

The current members' interests order does not allow for any defence in cases where members were not aware of a declarable interest. Do you think that we should have a defence? What should constitute an offence? What should our defence be? We have not got far with that issue so far.

Professor Miller: That is the one thing that I wanted to talk about before the end of the meeting so as to defend MSPs' human rights. The current order reads in such a way that offences are strict liability offences, with a presumption of guilt. In their own interests and to enjoy the same rights as any other citizen, members would have to insert a phrase such as "without reasonable excuse". The courts may interpret that in the same way as they interpret similar wording every day in relation to all sorts of criminal offences. Such a phrase would allow MSPs to explain their position; the court will judge whether that explanation is reasonable. That would be the way of ensuring that MSPs had the same rights as any other person when charged with a criminal offence.

Mr Macintosh: Is "without reasonable excuse" normal wording?

Professor Miller: Yes.

Mr Macintosh: You spoke earlier about our having given up rights to privacy. That is true up to a point, but are there limits? Do MSPs have some privacy?

Professor Miller: Yes, but less than non-MSPs. A number of cases are going through the courts in England, including those of Naomi Campbell, Michael Douglas and various footballers, in which privacy and freedom of the press are being balanced in the new context of the Human Rights Act 1998. The issue is press freedom versus privacy rights.

It is early days yet, but we can see the difficulties in striking the balance in relation to people who have entered the public arena and who therefore must expect to be open to public scrutiny. Those people clearly have fewer rights than private citizens. However, people in the public arena still have not given up all rights to privacy and there are some areas where public interest would not be served by matters being exposed in the press. For the public figure, that area is smaller than it is for the private citizen. It is early days, but I would say that you have fewer rights of privacy than the private citizen.

The Convener: That is fewer, Ken, not none.

Mr Macintosh: I was just getting some free legal advice.

Mr McAveety: So you know how Sven-Göran

Eriksson feels, Tricia? Am I allowed to say that, now that we are apparently supporting England in the world cup?

Tricia Marwick: Well, you might be.

Mr McAveety: No, I do not think so.

I wanted to ask about other employment. In the 2001 parliamentary elections, we ironed out the anomaly of MSPs who were MPs, but we still have not resolved the issue of MSPs who are also councillors, of whom there are still two or three. Many submissions from local government are about increasing pressures on local councillors in terms of work load and time—some of COSLA's recent submissions to the Local Government Committee have been about time pressures. Having been a councillor, I can vouch for what councillors are saying—it applies to those who engage in convenerships and have quasi-judicial roles and responsibilities. Do you have a view on whether MSPs should continue to be councillors? I have occasionally read in the press that councillors are as hard working as MSPs.

I also want to ask about the issue of whether people should take part in proceedings. At local government level, if councillors are in default of their council tax, they must declare that before the finance bill or the setting of the annual council tax figure. They would then be dealt with by a standards committee and under local government legislation, especially if they have participated in a vote when they knew that they were in arrears with their council tax or had not made an effort to address those arrears—a councillor could be in arrears but at least be trying to stabilise the situation.

One of the anomalies is that such councillors can participate in issues relating to rent levels—if the council still deals with housing, which is no longer always the case. One of the Nolan principles is that such information should be available to the public in the same way as information about shareholdings is made available.

I am not too fussed whether someone has shares with a nominal value of £25,000 or a market value of £0.5 million. Under the laws of capitalism, you win some and you lose some. The issue is that, as a citizen, I am entitled to know that someone has shareholdings; I can then judge accordingly how that person conducts themselves or their business either at local authority or parliamentary level. That is the knowledge that I want. I am wondering whether the issue is that the public just want to be aware of what could be influential factors in members' contributions and deliberations on policy and ideas.

John Duvoisin: To say that someone should not take part because of a registrable interest could be to deny the Parliament of the one person who has the deepest and best knowledge of a particular subject. He has to declare where he is coming from.

Mr McAveety: Would it be wrong for us not to know about that interest? A person could speak eloquently and powerfully. That is right and proper. They might bring a level of assessment with them that many of the rest of us do not have. However, at least I would need to know about their interests and I could then judge from the public record the quality of that information and know that an individual has, for example, £25,000 or £0.5 million in shareholdings. You have mentioned an interesting and important aspect of the policy—regardless of whether a person brings their experience with them, at least I would be aware of their interests, whereas I would not have had that information before.

John Duvoisin: That is the issue: when someone registers or declares an interest, that lets everyone know where that person is coming from.

Mr McAveety: Perhaps it strengthens that person's position.

John Duvoisin: Yes. It strengthens their position because no one can say that they had a hidden agenda. They have come out and declared their interests. The Parliament might then be able to get the benefit of a unique expertise.

Jane Ryder: That was Professor Miller's point about persuading by the power of argument.

Professor Miller: Yes.

Jane Ryder: A member could be the best informed and advance the best argument but colleagues could discount—or otherwise—that argument based on the strength of the personal interest that that member had. It is a judgment call.

Mr McAveety: Do you have any comments on whether someone should be an elected member of a council and of a Parliament?

Canon Kenyon Wright: I do not know enough about the issue. What is the local government position in light of the changes following the McIntosh report? What are the expectations of a member of a local council? Do councillors expect their job to be so demanding as to be incompatible with any other major employment? The matter seems to depend on the answer to that question, but I do not know the answer to it.

Mr McAveety: The Kerley report said that it was possible to combine a part-time post as an elected councillor with employment. One aim of the Kerley report was to discover whether that balance could be struck. Many of the submissions from large urban authorities suggest that the core work of a significant number of councillors—if not all of

them—is full time. How would councillors balance that if they were committed full time to being a parliamentarian? Unless I cannot count, there are not enough hours in the day to do both those supposedly heroic jobs.

Canon Kenyon Wright: One cannot do two full-time jobs.

Jane Ryder: Is not the issue—as Mr McAveety says—one of balance? It is about whether there is a conflict of interest, in the sense of a conflict of commitment, because there are not enough hours in the day.

Mr McAveety: I always wonder how Ian Paisley combines his different roles.

The Convener: Are the witnesses saying that the conflict of commitment is a concern?

Jane Ryder: Yes.

11:15

The Convener: We must now wrestle with the practicalities of the issues. We have talked a lot about non-pecuniary interests. The evidence session has been comprehensive and extremely useful. I thank the witnesses for their evidence. I invite them to take a seat in the public gallery; they are most welcome to listen to the next part of the discussion.

Agenda item 3 is also on the members' interests order. Members have the written responses to our consultation. In the light of the written responses and the evidence that we have just heard, we must consider whether to take further oral evidence, particularly on the registration and declaration of non-pecuniary interests. We must decide whether we need another session at which organisations or individuals can give evidence.

Tricia Marwick: Have any of the organisations that provided written submissions indicated that they wish to give oral evidence?

Sam Jones (Clerk): No, but we could explore with them whether they wish to do so.

The Convener: The letter from Martin McGibbon, who is the grand secretary of the Grand Lodge of Antient, Free and Accepted Masons of Scotland, states:

> "I trust what I have said here and the material in … this statement will be useful to the Convener and members of the Standards Committee and I shall be more than delighted to render any further assistance I can."

Perhaps that answers Tricia Marwick's question.

Tricia Marwick: It seems to me that the big issue on the members' interests order is non-pecuniary interests. Most of the media and public attention is on that issue. I am content with the written evidence. I do not think that we need another evidence session, unless an organisation particularly wants to speak to us. We should not rule that out; I do not want to deny any organisation that opportunity.

The Convener: I will double-check with the clerk that no organisation wants to give more evidence.

Sam Jones: I am not aware that any organisation wants to do so. We could contact the organisations this afternoon to find out whether they want to give evidence.

The Convener: Are members content to proceed by having the clerks draw up a paper for us on the matter?

Members *indicated agreement*.

Lord James Douglas-Hamilton: Will the paper go out for consultation?

The Convener: The consultation closed on 15 April.

Lord James Douglas-Hamilton: Yes, but if there are outstanding issues—

The Convener: I was trying to ask members whether we have enough information. The consultation period is now closed. I am not trying to close the discussion and I do not want to rush the issue. It is important to remember that we want to produce a report and perhaps get a bill through Parliament. I am not content to drag out the matter, but if serious issues have not been resolved, we should pursue them.

Lord James Douglas-Hamilton: If, in considering the responses, we find that there is a matter that is particularly contentious, will we be precluded from consulting further on that issue?

The Convener: Members have the written responses and we have had an oral evidence session. I would like to press on so that the clerks can produce a paper in readiness for a replacement bill. Time is of the essence, but I do not want to press on if members feel that there are issues that must be addressed. Is Lord James content to proceed in the way that I suggested?

Lord James Douglas-Hamilton: Yes.

Meeting closed at 11:20.

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