STANDARDS COMMITTEE

Wednesday 8 May 2002
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 8 May 2002

STANDARDS COMMITTEE
8th 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

Sarah Robertson

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 8 May 2002

(*Morning*)

[THE CONVENER *opened the meeting at 10:02*]

Item in Private

The Convener (Mr Mike Rumbles): Welcome to the eighth meeting this year of the Standards Committee. We have received apologies from Frank McAveety.

Agenda item 1 is to decide how we will consider item 4. As the item relates to the contractual arrangements for the standards adviser, I propose that we take the item in private. Is that agreed?

Members *indicated agreement*.

Members' Interests Order

The Convener: At our previous meeting, we agreed to consider a paper summarising the evidence that the committee has received in response to our interim proposals for replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. In the paper that has been given to members, the clerks have highlighted in bold the areas that we may wish to consider before finalising our policy on the order. I suggest that the best way to deal with this is to go through those areas now.

The first issue concerns the registration of non-pecuniary interests. In paragraph 13, which is the paragraph in bold at the end of the section that deals with non-pecuniary interests, we are asked to consider whether the registration and declaration of such interests should be mandatory and, if so, how we should approach defining what those interests should be.

The floor is open to members. I ask them to concentrate on the four bullet points in bold in paragraph 13.

Lord James Douglas-Hamilton (Lothians) (Con): There is no difficulty with having a recommended procedure, but if registration is mandatory, it is a rule. Anyone who breaks that rule can be reported to the committee and could face a sanction. Unless close rules are drawn up on what are and what are not non-pecuniary interests, there is a danger that MSPs could be subject to a sanction without knowing which rule they have broken.

At present, registration of such interests is not mandatory but voluntary. I would have no objection to registration being the recommended procedure, but if it is made mandatory for members, there will need to be a clear set of rules. For example, would someone who is a member of the Church of Scotland or another church have to disclose their church membership, because that could influence greatly their attitude on certain issues? Unless it were made quite clear what members did and did not have to disclose, a policy of mandatory disclosure would be difficult to enforce and would bewilder MSPs, as it would be difficult for them to know what they could and could not do. It would be much better to have a recommended procedure of good practice than to go down the route of making registration of non-pecuniary interests mandatory.

The Convener: Paragraph 5 of the paper states:

> "Witnesses were of the view that the replacement legislation should require the registration of non-pecuniary interests on a mandatory basis."

I agree with Lord James that, if we require non-pecuniary interests to be registered, there must be clear rules.

Tricia Marwick (Mid Scotland and Fife) (SNP): Like the witnesses, I think that there should be mandatory registration and declaration of non-pecuniary interests. At issue is how such a policy should be framed.

I refer members back to the Ethical Standards in Public Life etc (Scotland) Act 2000. The code of conduct for councillors requires them to register non-pecuniary interests,

"where non-pecuniary interests are defined as those which the public might reasonably think could influence a councillor's actions."

The word "reasonably" is difficult to define in law, as the lawyers among us, such as Lord James Douglas-Hamilton, will know. We need to provide guidance. I think that we should list examples of non-pecuniary interests, such as membership of trade associations, professional bodies, interest groups and trade unions, and require the registration of any other interests that might reasonably be thought by the public to influence an MSP's actions. We should not go too far and attempt to list all the interests that need to be registered, as we will be unable to include every organisation in the definition.

Registration of non-pecuniary interests should be mandatory and we should issue guidance on the type of interests that we think should be registered. We also need a catch-all provision, requiring the registration of interests that might reasonably be thought by the public to influence an MSP's actions.

Kay Ullrich (West of Scotland) (SNP): I find myself in agreement with both Lord James Douglas-Hamilton and Tricia Marwick.

Tricia Marwick: Are you a Liberal Democrat?

Kay Ullrich: Yes—I am sitting on the fence.

The Convener: Excuse me!

Kay Ullrich: The evidence suggests that there is a call for registration of non-pecuniary interests to be made mandatory, but if we provide a list of examples, where should we stop? Lord James gave the example of membership of the Church of Scotland. Would church membership have to be registered? Members will still be concerned about what they need and do not need to register.

There should be mandatory registration of non-pecuniary interests—there is no reason for lower standards to be expected of us than of people such as councillors. However, we will still be left with the problem of deciding what should and should not be registered.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I was struck by a number of the points that witnesses made on this issue. Ironically, I am not sure that I would reach the same conclusion as they reached.

Several witnesses emphasised the need for us to adopt a principles-based approach, rather than a rules-based approach. It is a classic case in point. We need to guard against the notion that we can build everything into rules, but we should establish some general principles that people can understand.

The second point that attracted me was the quote from Canon Kenyon Wright:

"The purpose is not to restrict but to understand better the nature of the member's character and interests".—[*Official Report*, *Standards Committee*, 24 April 2002; c 1004.]

It is worth bearing in mind the spirit of that comment. Some of us—even those who have been on the receiving end—feel a bit odd about non-pecuniary interests. We understand that to give the electorate a flavour of who we are, what we are and what we believe in, we must put in something that covers non-pecuniary interests, which might define a person more than their pecuniary interests do. I am keen that we should seek to do that and give the public that flavour.

I agree with the comments that the approach cannot be overly prescriptive. I do not think that we could seek to make the definition exhaustive. We should establish a framework—people have used the word "guidelines"—and give examples of the kinds of things that should be declared. Trade union membership strikes me as an obvious one.

We should not seek to "Adopt a closed definition"—to use the wording in the paper. I do not see what a closed definition would be. We need to establish some general principles and standards and then, in the first instance, leave members to judge. At a later date, the public would be able to judge whether something that someone had not declared would have been germane to their activities. We are in a grey area of judgment rather than prescription.

I think that my stream of consciousness is broadly in keeping with what colleagues have said.

Mr Kenneth Macintosh (Eastwood) (Lab): I think that this is the trickiest of all the options that we must consider this morning. I have strong reservations about mandatory registration of non-pecuniary interests, although I suspect that that is what we should do.

There are two strong arguments for mandatory declaration. First, it is probably more in keeping with the ethos of transparency that the Parliament has upheld. That was certainly the argument put

by the witnesses at the committee meeting two weeks ago. However, they failed to impress me on how that would be translated into detail. Much as I agreed with them in spirit, they came up against the same problem that we have about how to translate the approach into action. Nevertheless, the Parliament has adhered to the principle of transparency throughout and I suspect that, despite the brickbats that might be thrown, we should maintain our adherence to that principle.

The second point is that the definition has already been put into practice through the Ethical Standards in Public Life etc (Scotland) Act 2000. Whether that was the right thing to do for local government councillors is a different matter. If we suggested that local government councillors should have a mandatory declaration of interests, I suspect that we should also have one, because otherwise we might be accused of hypocrisy.

I do not believe that our role and the role of councillors are the same. Councillors take an active role in decisions such as planning matters; we do not do that, so we are not the same. However, I suspect that we would be perceived as setting one rule for them and one rule for ourselves.

I find those two arguments to be quite strong. Perhaps we all need to adjust to moving to a transparent system anyway. There could be some inertia in my mind, which I need to overcome. I can see there would be a difficulty with the range of organisations and members' interests. They are certainly beyond a closed definition. It is a question of what is reasonable and what is not.

At one extreme, there is the genuine public interest, for example in relation to the freemasons, which has been well publicised in the committee and elsewhere. I am not sure whether we would describe that interest as justified, but a strong interest exists in whether MSPs are members of that organisation. At the other extreme, should someone have to declare that they are the honorary president of the Boys' Brigade? I would find it difficult to justify that sort of entry in any system.

Having said that, I suspect that we have to go down the mandatory line, which should be buttressed by guidelines that give members a strong indication of how to interpret the members' interests order. The guidelines should give several examples of organisations of which membership should be declared and several examples of organisations of which membership does not need to be declared unless the member so chooses.

With that caveat, I support the idea of a mandatory declaration supported by the definition in paragraph 13 of non-pecuniary interests as

"those which the public might reasonably think could influence an MSP's actions."

10:15

The Convener: I would like to make my views clear. The key words "transparency" and "openness" keep coming up. We have to cement those and the order is one way of doing that. Susan Deacon quoted Canon Kenyon Wright and that resonated with me. He said:

"The purpose is not to restrict but to understand better the nature of the member's character and interests".—[*Official Report*, *Standards Committee*, 24 April 2002; c 1004.]

I was impressed by that approach and I think that we should focus on it.

At our most recent meeting, I commented to the witnesses that that approach is great, but the committee will have to wrestle with the practicalities of how to manage the order, which is what I am hearing from members now.

Lord James Douglas-Hamilton: It is perfectly true that the witnesses argued for a principles-based approach, but we are the committee that will have to enforce mandatory registration. If we are to enforce it, we must have rules.

I would prefer a voluntary system, because it is much simpler and more straightforward, but if I am in a minority on that and the committee wants to go down the path of mandatory registration, I would argue for the more open approach, which defines non-pecuniary interests as

"those which the public might reasonably think could influence an MSP's actions."

For example, I suspect that the committee might take the view that membership of the freemasons should be declared but that it would not be necessary to declare membership of the Women's Guild. A test of reasonableness would have to be applied. Unless we have guidance, it will be difficult for MSPs to know what they should declare and what they should not declare.

I noted that the witnesses were not in favour of hawkish sanctions for non-observance. I think that they talked about having no criminal sanctions. It is very difficult to know what sanctions should be applied if a rule has not been breached. If the committee were to go down the mandatory course, a more open approach with clear guidance would be necessary.

Kay Ullrich: The vast majority of problems will arise as a result of people not thinking that they should have registered a particular interest or not being aware that they had to do so. We are not talking about hanging or flogging them for that sort of thing.

Susan Deacon: I want to clarify something that I said earlier. I certainly do not think that we should be prescriptive about which groups should be registered. Any reference to specific groups should be illustrative and for guidance. I agree broadly with what Lord James said about the definition or threshold for declaration.

The Convener: The wording refers to interests

"which the public might reasonably think could influence an MSP's actions."

Susan Deacon: Yes. I want it to be clear that although a number of us have talked about different groups and so on, I do not want my comments to be taken to imply that I think that we should be prescriptive about which groups should and should not be included. That would be very dangerous.

The Convener: Before I summarise, I want clarification on an issue that a couple of members have mentioned. I think that we will be adopting the more open approach, by defining a non-pecuniary interest as

"those which the public might reasonably think could influence an MSP's actions."

We will give examples of groups that members might want to register. A couple of committee members have suggested that the guidance should state that there is no need to register certain groups. I question whether we should go down that route, because I think that the approach should be positive. Are members happy with that?

Members *indicated agreement*.

The Convener: I will summarise. We have decided to go down the route of mandatory registration and declaration of non-pecuniary interests, but not to adopt a closed definition. We have decided to adopt a more open approach, by defining non-pecuniary interests as

"those which the public might reasonably think could influence an MSP's actions."

We will produce guidance for MSPs and give examples of organisations. We will leave that to the clerks. Are all members agreed on that?

Lord James Douglas-Hamilton: Could my reservation that the requirement will be extremely difficult to enforce be noted?

The Convener: That comment will be in the *Official Report*.

It will be difficult to enforce the requirement 100 per cent because, as Kay Ullrich said, there may be difficulties with it at the margins. However, I think that it is the best approach.

Paragraph 18 is about our interim proposals on shareholdings and specifically a proposal to use market value, rather than nominal value, for the threshold. That proposal appeared to receive support at our previous evidence-taking session. Are there any views?

Lord James Douglas-Hamilton: Is the figure £25,000?

The Convener: That is correct.

Are members content with what we decided earlier?

Members *indicated agreement*.

The Convener: Paragraph 24 asks us to note the written and oral submissions received in response to our proposals on the interests of spouses, partners and close family members. The proposal is that, other than gifts received in connection with the member's parliamentary role, those interests should not be registrable. The evidence that we have received supports our position in paragraph 24. Are members content with paragraph 24?

Members *indicated agreement*.

The Convener: Paragraph 34 asks two questions about the rules on declaration of interests. In our interim proposals, we agreed that the rules did not need to be extended, for example to require members to declare relevant interests when communicating with ministers or civil servants outwith the proceedings of Parliament. We agreed that the register provided sufficient disclosure. Are we content that that remains our position?

Members *indicated agreement*.

The Convener: Finally, there is the issue of whether members should be permitted to have paid employment outside Parliament. We made no recommendations on that in our interim proposals, but the matter was discussed during the oral evidence session at our previous meeting. Paragraph 42 invites us to consider our policy on the matter. Witnesses at our previous meeting seemed to argue against an outright ban but suggested that there should be some way of taking action if a member's paid outside interests impact on his or her parliamentary work. In particular, Canon Kenyon Wright was exercised by that. Are there any comments?

Tricia Marwick: My view is that MSPs should consider their job as a full-time one. I seem to remember that that was the view of the consultative steering group. However, to say to all MSPs that they will not have an outside paid job seems to be very proscriptive. It is not the Standards Committee that will judge whether an MSP is doing their job. If an MSP has five other jobs, the people who elect us will judge whether that MSP is being effective.

It would be wholly wrong for the Standards

Committee to make a judgment about whether an MSP's outside jobs impact on their ability to be an MSP. We should not lay down a rule that says that no member can ever have other paid employment. However, there should be an understanding of the public's expectation that being an MSP is a full-time job.

Lord James Douglas-Hamilton: I do not think that there should be a rule against MSPs being engaged in outside employment. Let me give the example of a member of the House of Commons who was a dentist. To maintain his skills, a dentist must keep practising. If he does not and if he were to lose his seat, he could lose his job altogether. A dentist must do a certain amount of work to keep up his skills.

I am a non-practising advocate, but practising advocates have been known, both in the House of Commons and in the Scottish Parliament. The first duty of an advocate is to their client. If we were to lay down a proscriptive rule that says that members should not have outside jobs, we would limit the quality of people who enter the Parliament.

Susan Deacon: We must remind ourselves—as Tricia Marwick did—that, at the inception of the Parliament, strongly held views were expressed in the CSG and wider public forums that MSPs were expected to act exclusively as MSPs. That said, I share the pragmatism and realism that others have expressed, as it is probably neither desirable nor possible to be so absolutist. However, we must remind ourselves of the default position that existed at the beginning. I detect that there has been quite a bit of slippage from that position and that our attitudes towards members who have outside employment are becoming much more akin to those of that other place.

We must distinguish different factors. The first is money; are members earning money over and above their parliamentary salary and, if so, from what source? The second is time; is outside employment detracting from the time that is required in order to be an effective MSP? The third is conflict of interests. Those factors are not the same—some types of employment might involve one but not the others.

I am concerned that we are on a slippery slope and that we have become more accepting of members taking up external activities. We should not prevent members from doing so, but we should pause to consider the level of information that members should be required to declare about such activities. A member may declare the name of a firm of lawyers and a figure, but what does that information tell us? It tells me how much money the member gets from doing that work, but it does not tell me how much time they spend doing it or the type of clients for whom they work, nor does it answer questions about interests and so on.

In the same way, there are questions about members who write for newspapers. We can see that Joe Bloggs gets X thousand pounds, but should that information be clarified to show whether he is paid for writing a weekly column that is published and that everyone can read in the newspaper, or whether he is involved in other activities for that paper? My conclusion is that I accept the view that we should not be proscriptive to the extent of saying that members should not take up outside employment, but I think that we should consider setting a requirement for a more detailed declaration than exists at present.

I do not accept the point about a lot of professionals having to keep up professional practice. It is true that, increasingly, there is a requirement for continuous professional development in a range of professions. However, that does not require people to stay in paid employment, as there are other ways of keeping up professional practice. Let us recognise that need, but let us also recognise the valid concerns that existed at the inception of the Parliament and require members to present details of their employment to give the full picture to their colleagues, to Parliament and to the public. I am not sure that we are there yet.

10:30

Kay Ullrich: I have the same concerns as Susan Deacon. I retired as a social worker in 1997 and know that I could not return to work as a social worker immediately because I have not been keeping up with the profession. As Susan says, that principle can be extended to all kinds of professions.

There is a difference between being employed as a lawyer, for example, and being employed because one is an MSP. For instance, some members would not be writing newspaper columns if they were not MSPs. We must examine the issue of members gaining employment through being MSPs. It is valid to consider the time that those members spend in their other employment. Let us not forget—and I ask colleagues not to laugh—that we are supposed to be a family-friendly Parliament, working normal daytime hours. Unless members have a job in which they are permanently on night shift or back shift, it would be hard for them to say that they are not taking time away from the time they should be spending on their duties as MSPs.

The Convener: Let me make a personal contribution. I was a fellow of the Chartered Institute of Personnel and Development. The demands of continuous professional development

in that role were considerable. I am no longer a fellow of the institute because I decided that this is my full-time post. That was a personal decision.

As we heard from the witnesses a fortnight ago, the role of an MSP should be full time. I do not think that a member is doing their job properly unless they devote all their resources to it. Nonetheless, as Tricia Marwick pointed out, it is not for the committee to take a view on whether other MSPs are doing their jobs properly. That is a matter for the electorate, which will make its decision in 11 months' time. It is better to leave the matter to the decision of the electorate.

Tricia Marwick: The point that Susan Deacon made was valid, nonetheless. To allow the electorate to make up its mind, we must consider the level of detail that is required about members' external employment. For example, if a member spends X hours in external employment between 9 and 5 from Tuesday to Friday, that should be registered. Susan is right to say that the appropriate level of detail is not available to allow people to judge.

The Convener: I think that we will need to take legal advice if committee members want to pursue the issue. Does the committee feel that time commitments should be declared, as well as pecuniary interests?

Mr Macintosh: I do not. That may seem strange, as we have taken a severe line and pushed the boundaries back on proportionality regarding non-pecuniary interests. However, I can live with myself facing in two directions. Although none of us might approve of someone holding down two jobs, as we regard being an MSP as a full-time occupation, it is a question of individual judgment. I do not think that there should be any restraint on members earning money elsewhere. It is for the electorate to decide.

Do we need any more detail? The issue is to do with how many rules we impose on MSPs. We are setting high standards for MSPs already. The more definitions we have, the more the burden on MSPs will become too restrictive, if not unbearable. In this case, it is quite clear: either members have an extra job or they do not. I do not think that we need to know much more than that and I suggest that that is as far as we take it.

The Convener: Are members content with that position?

Lord James Douglas-Hamilton: I agree that constituents' interests must never be neglected. If those interests are neglected, the electorate must sort that out at the next election. There should not be a mandatory bar.

Susan Deacon: I want to make a distinction. None of us has argued for debarring MSPs from having other paid employment. I was making the point—with support from Tricia Marwick and elsewhere—that we ought to think about the level of information that is provided about that paid employment. Kenny Macintosh is right, and refreshingly candid as ever, to point out the inconsistency of asking for a high level of declaration of non-pecuniary interests but being happy to accept a member working for Bloggs and Bloggs solicitors for £100,000, although no one knows what they are doing for that money or when they are doing it. I would press the point that we should consider the detail that is required in that declaration. I stress that I do not think that any of us is saying that members should be debarred from taking on other paid employment.

Mr Macintosh: There seems to be a contradiction, but the two cases do not sit side by side. The public should know whether a member has other interests or another job. I do not believe that the public has a right to know much more than that.

At our previous meeting, we had an interesting discussion with Professor Alan Miller about whether MSPs have a right to privacy. We obviously have less right to privacy than others do. However, the electorate needs to know whether a member has another occupation or means of generating an income. There are all sorts of obligations for us to declare any interest that might clash with our parliamentary duties. Those obligations are clear.

If we were doing anything for remuneration or otherwise, that would have to be declared under the rules as they stand. Beyond that, to talk about how many hours people are doing their jobs is to go down a different route altogether—we could be highlighting to an undesirable extent those who choose to have other employment. If members have other employment, we can assume that they devote time to it and the public will be aware of that. Providing any detail beyond that would be onerous.

The Convener: I am clear about the positions of Kenny Macintosh and Lord James Douglas-Hamilton and I am clear that Susan Deacon is taking the opposite side, but I am not clear about the views of Tricia Marwick and Kay Ullrich.

Tricia Marwick: I am essentially with Susan Deacon. My standpoint is the same as the CSG's in that this should be a full-time job. I do not seek to debar anyone from having other employment if that is what they choose to do. However, the detail required by the register of interests does not make the distinction between those who are given money by Bloggs and Bloggs for services that we do not know about and those who are given money by Bloggs and Bloggs for spending X hours a week doing whatever it is that they are doing.

Where the register of interests shows a company's name and a sum of money, there should be more detail about why that money is being received. If that money is received for particular work, the nature of that employment should be registered.

The Convener: Okay. We have a two-two split so far. What do you think, Kay?

Kay Ullrich: As I appear to have the casting vote, I am afraid to say that I agree with Susan Deacon and Tricia Marwick. Even if a member registers the fact that they receive X grand a year for producing a weekly column for such and such a newspaper, more detail should still be provided.

Mr Macintosh: Did we not recently come to an agreement about the declaration of newspaper columns?

The Convener: Yes. We agreed that there was no need to declare such things separately, as they counted as earned income. However, the argument is now a little more in-depth and centres on the wider issue of MSPs' commitments in receiving remuneration.

Susan Deacon: It also centres on the interests that should be declared when such remuneration is received.

The Convener: Indeed.

Mr Macintosh: Under the current rules, any clash of interests has to be declared. In other words, if an MSP takes on any job that impinges on his or her parliamentary duties, he or she would have to declare it.

The Convener: An interesting point has been brought to my attention. Paragraph 4.3.8 of the current code of conduct says:

"Where a member undertakes a trade, profession or vocation or any other work, the detail that should be given is the nature of the work and its regularity as well as the level of remuneration."

Kay Ullrich: So we were right all along.

The Convener: The point is already covered in the code of conduct. I think that we need to remind members of that.

Tricia Marwick: I suggest that the clerk writes to members who are declaring remuneration from newspaper columns and says, "Hey, where's the detail?"

Susan Deacon: I am happy to support the existing rule.

Tricia Marwick: As Kay Ullrich said, we must have got it right in the first place.

Kay Ullrich: Unless members are working at night as bouncers, they have got problems.

Sam Jones (Clerk): Although that stipulation is in the code of conduct, I do not think that it is reflected in the members' interests order. I have to say that we do not generally receive such detail from members when they register their remuneration. If the committee is content for me to do so, we can draw paragraph 4.3.8 to members' attention when we write to them all later this month to ask them to review their interests annually.

The Convener: What a discovery.

Kay Ullrich: We could have saved ourselves the past 30 minutes.

The Convener: The point is that members are not aware of that rule. Perhaps a reminder would be opportune.

Tricia Marwick: If even committee members are not aware of the rule, I very much doubt that other members are. A reminder would be a good idea.

The Convener: Are members now content to consider a draft report from the clerks that sets out a proposal for a committee bill?

Members *indicated agreement*.

Kay Ullrich: We have just reinvented the wheel.

Cross-party Groups

The Convener: Our third item concerns the operation of cross-party groups. Members will recall that last year we reviewed the activity of such groups in the Parliament. Although the results of the review were generally positive, we had some concerns about MSPs' attendance at cross-party group meetings. A number of groups had not had two MSPs in attendance, as required by the rules.

In addition to that issue, we have received two requests to change the rules on the use of parliamentary resources. Instead of making piecemeal changes to the rules, it might be appropriate to have a comprehensive review of the rules and the operation of the cross-party groups. I seek members' views on that suggestion and on the issues that a review should address.

Tricia Marwick: Having been a member of the Standards Committee from the start, I think that it would be useful to explain our thinking behind the cross-party groups at the time. Although it was suggested that we should have cross-party groups, committee members were clear that they did not want to follow the Westminster model for such groups, which are essentially set up by organisations such as the Scotch Whisky Association and other individual companies and are no more than lobby organisations that have contacts with MPs. We were quite clear that cross-party groups in the Scottish Parliament would not be like that, but would be parliamentary in nature—"parliamentary" is the key word. That is why we included the requirement for two MSPs to attend, for example.

I have expressed my concerns on several occasions in the committee that the cross-party system is not working as effectively as some of us envisaged that it would. There is a misconception outside the Parliament about the purpose of cross-party groups and what cross-party groups are. Many organisations see Scottish Parliament cross-party groups as similar to the cross-party groups at Westminster. We need to review our approach to the groups.

10:45

I am concerned by a letter that I received this week from a councillor asking me to attend a meeting in the Parliament to discuss the formation of a cross-party group. There is no mention of the name of the MSP who will sponsor the group—all that I know is that the councillor is a member of a trade organisation. He kindly supplied the briefing paper that the trade organisation had sent to him. It appears that the trade organisation wants a cross-party group to be set up in the Scottish Parliament to allow it to contact and lobby MSPs. That seems to me to be back to front; it is not what the cross-party system in the Scottish Parliament should be about. We should not be receiving invitations from trade organisations to meetings that are being held in the Parliament.

I suspect that that is not a one-off occurrence. In light of our experience of the past three years, we should review cross-party groups and make recommendations for the session beginning in 2003. If we do not get to grips with cross-party groups, we will find ourselves going down the Westminster route, which is not one that our open, transparent Parliament should follow.

Kay Ullrich: I agree that there should be a review prior to the beginning of the 2003 session. I share Tricia Marwick's concerns about cross-party groups. I suspect that the issue might be a case of never mind the quality, feel the width. We are in danger of people forming cross-party groups as a platform—cynical old Kay would say this—for their own political ends. People want to be able to preface what they say with the words, "As a member of the cross-party group". I am a wee bit suspicious of some people's motives. I am concerned that there are cross-party groups that cannot get more than one MSP—and sometimes no MSPs—to attend. That must be reviewed. We must take a firm line on cross-party groups that are not operating in the way that we expect them to.

Lord James Douglas-Hamilton: I strongly support the proposal for a review. We could also check whether there is any duplication and whether it might be preferable for some groups to merge.

One of the great advantages of the Parliament is the increased accessibility—groups can visit us much more readily than they can the House of Commons, because of the cost of transport, for example. People enjoy coming to the Scottish Parliament. It would be useful to know how much the criticism that one MSP has been present on occasion, rather than several MSPs, mattered—perhaps the other MSPs would have been there if they had not been at other meetings. In the case of cross-party groups on health subjects, such as those on combating multiple sclerosis or cancer, it is inevitable that there would be complete unanimity across the party-political spectrum.

Tricia Marwick mentioned trade organisations. I agree that their involvement is worth reviewing. If the trade organisation has a legitimate interest in protecting jobs or in securing more jobs, its involvement is legitimate. However, if it is simply trying to pursue its commercial interests against other groups, its involvement is not legitimate. It would be useful to know what had taken place and

what the current thinking on the subject is. A review is necessary.

The Convener: Before I bring in Susan Deacon, I reiterate that, under the code of conduct, a cross-party group requires

"at least two Members of the Parliament".

To my certain knowledge, that rule is not being adhered to. As Tricia Marwick pointed out, the rule is in place for the specific purpose of maintaining the parliamentary nature of the group. It is important that we emphasise that rule.

Susan Deacon: I, too, strongly support a review. I also strongly support the suggestion that a review should take place soon—before the end of the current session. That would mean that the work would be done and the recommendations put in place for the period that follows the election. In the first session of the Parliament, it is understandable that the system has grown and evolved in a number of shapes, forms and directions. That makes it more important for us to stop, take stock and consider putting in place a sensible, meaningful and realistic framework for the period that follows the election.

It has become clear that people have good intentions when they sign up to a group but then find that they cannot participate in that group. Many individuals say that that is the case and I, too, have lapsed in that respect. If, as Tricia Marwick suggests, we are to maintain the parliamentary nature of the groups, we must make a distinction between the nominal and active memberships of many of the cross-party groups. That is important.

I want to add a few specifics to what has been said. It is important to separate out the issues of the enforcement of the existing rules and the need to change existing rules. I understand that the clerks are monitoring the levels of activity and attendance in the existing groups. It does not matter how robust the rules are if we do not monitor and enforce them properly. The rules can be called into question if they are not being put into practice.

The first piece of work that it would be illuminating for the committee to see would be the outcome of the clerks' monitoring exercise. I am aware that a report that was published not long ago covered some of the ground, but it would be useful to see more in-depth data. The second issue is whether the rules need to change. I do not want to prejudge the outcome of the review, but I want to add to the point that is made in paragraph 7 of the clerks' briefing paper.

We need to think further about the specifics that are involved in cross-party groups, including the definition of what constitutes cross-party membership. I think that the rules set out that one MSP from each party needs to be involved when the group is established—that is important. The degree of bona fide cross-party activity can quickly break down because of lack of attendance, for example. I would like that issue to be examined more fully.

I believe, although I would not swear to it, that Westminster has recently examined that issue. I understand that changes may be made to the rules on the minimal membership that is required when a group is established and to the rules on the membership that is required for a group to constitute a cross-party group. I got that information second-hand—it merits checking.

Another issue that needs further thought is one that, to put it bluntly, has rubbed up a number of members the wrong way—the public face of the cross-party groups. It does not matter how the points that are made in paragraph 7 of the paper about the operation of the groups are constructed, questions remain about how, when, and through whom the groups speak to people in the wider world. Undoubtedly, that is why we have a point of confusion. People think that the cross-party groups and the people who speak on their behalf have a formal locus within the Parliament, whereas that is not the case. I am not sure to what extent a set of rules would be able to embrace that issue, but I ask that it be considered in the review. We can think later about how it should be dealt with.

Mr Macintosh: I support having a review. I echo some of the concerns that have been expressed around the table, but I find that the cross-party groups are useful. Like other committee members, I am a member of several—perhaps too many—cross-party groups, but I have found that it is impossible to withdraw membership.

Kay Ullrich: Yes. I have tried to do that, too.

Mr Macintosh: I suggest that there should be two levels of membership. There should be one level of membership for those who have an active interest and another for those who find that the groups are a useful vehicle for being briefed on subjects about which they might wish to know more. Alternatively, we could have a genuine set of cross-party groups and a different set of organisations as vehicles for briefing members on certain subjects. I am not sure whether we should have two tiers of membership or two tiers of groups, but perhaps we could get round the problem in one of those ways.

On the timing of the review, I agree with Susan Deacon that we should try to agree the new rules in this session but put them in place for the next intake of MSPs. That would be excellent timing.

Tricia Marwick: Will the current cross-party groups fall at the election and have to be re-established after it? I cannot remember whether the groups are required to be wound up come the election and then be set up again, but that might be a good culling process—

Mr Macintosh: And a good exit strategy.

Lord James Douglas-Hamilton: The cross-party groups would need to be set up again after an election because they might have a different membership.

Tricia Marwick: That is my point. Do the groups come to an end?

Susan Deacon: They must be reconstituted 90 days after an election.

Sam Jones: The period is either 60 days or 90 days after an election. For some reason, I seem to have 60 days in my head, but let me find the rule. Yes, rule 14 of the rules on cross-party groups in the Scottish Parliament states:

"Cross-Party Groups will cease to be recognised 90 calendar days after the first meeting of the new Parliament … unless a fresh registration is made within that period."

Tricia Marwick: Therefore any new rules that we introduce would need to be adopted by potential cross-party groups in 2003. That is useful.

The Convener: The clerks now have the detail of all the points that were made, so we will press ahead with the review, which we hope to have completed by the end of the parliamentary session.

10:58

Meeting continued in private until 10:59.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Monday 20 May 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178