

STANDARDS COMMITTEE

Wednesday 11 September 2002
(*Morning*)

Session 1

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STANDARDS COMMITTEE

12th 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 Kenneth Macintosh (Eastwood) (Lab)

*Paul Martin (Glasgow Springburn) (Lab)

Kay Ullrich (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Alex Johnstone (North-East Scotland) (Con)

Michael Russell (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Ruaraidh Macniven (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 11 September 2002

(Morning)

[THE CONVENER *opened the meeting at 10:04*]

Scottish Parliament and Business Exchange

The Convener (Mr Mike Rumbles): Good morning everyone and welcome to the 12th meeting this year of the Standards Committee. We have apologies from Kay Ullrich, who cannot make the meeting today.

The first item on the agenda relates to correspondence from Margaret Jamieson concerning the Scottish Parliament and business exchange and confidentiality agreements. Members will have copies of correspondence between me and the Parliament's chief executive as well as a paper that details the relevant section of the code of conduct and summarises—in paragraph 5—the changes that have been made to the exchange's procedures during the summer recess.

The board of the business exchange considered those changes at its meeting yesterday. I have been advised that it agreed the following: first, that placement organisations should not require MSP participants to enter into separate confidentiality agreements; and secondly, that host organisations should instead consider—and only if absolutely necessary—the inclusion of an additional paragraph on confidentiality in the MSP letter of undertaking to the exchange. Any such paragraph will be subject to the approval of the exchange and must be consistent with an MSP's obligations under the code of conduct.

I remind members that our code of conduct states:

"Members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties."

Tricia Marwick (Mid Scotland and Fife) (SNP): The whole issue of the business exchange that arose over the summer gave me a great deal of concern. I have had concerns about the operation of the exchange from the outset. I believed that it was operating outwith the supervision of the Standards Committee in a way that every other cross-party group or organisation was not.

I believe that the MSP concerned, Margaret Jamieson, was not well supported or advised. I am glad that the business exchange has now come forward with some advice and guidance to MSPs. However, that is like closing the stable door after the horse has bolted. I would like the committee to consider the conditions for exchanges of MSPs. I would also like the business exchange scheme to be brought under the scrutiny of the Standards Committee.

It is important that all the institutions of the Parliament are responsible to somebody. Until now, the business exchange has not come under the remit of the Standards Committee and we were not involved in its setting up. I suggest that, if we had had a role when the exchange was established, we would not have had the problems that we saw over the summer recess.

I would like the committee to consider carefully what our response should be, because the matter might go well beyond the exchange's acceptance that what it does in future will be within our code. We must examine exactly what the exchange is doing and whether it meets all the conditions that the Standards Committee lays down for all other institutions in the Parliament.

Lord James Douglas-Hamilton (Lothians) (Con): A mechanism is needed whereby the best guidance is given on confidentiality agreements. For example, one would not want a confidentiality agreement to make an MSP beholden to an outside body of any description. Might it not be appropriate, in case of doubt, for members to seek guidance from the clerk to the Standards Committee? If a committee member were asked to sign a confidentiality agreement in the context of their committee's work, presumably they would check that with the committee clerk. However, in case of doubt, it would be helpful if they sought advice from the clerk to the Standards Committee, who would provide them with guidance based on the code of conduct.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I am glad that we have the opportunity to discuss this issue. The business exchange scheme is at a relatively early stage in its development, so it is appropriate that we should take stock—especially in the light of the case that has arisen. I, too, would like to comment on and express concerns about the operation of the scheme.

I preface my comments by saying that I regard a business exchange programme as important. We must support and, where necessary, defend arrangements that build links between MSPs and business. It is important to note that, in the case that we are discussing, the member complied with the rules of the scheme. It would be unfair to suggest otherwise.

I have several concerns. First, the confidentiality agreement in this case is wholly inappropriate. I welcome the information that the convener gave us at the beginning of the meeting about the changes that are now proposed, which are much more appropriate than the original agreement.

Secondly, we must consider wider issues to do with the nature of exchanges and placements in which members take part. We must consider the relationship between the nature of any placement and the areas of responsibility of the MSP concerned. That is a difficult issue, which cuts both ways. One could argue that a member who sits on a particular subject committee ought to undertake a placement that enhances their knowledge of that subject. However, as the case that we are discussing highlights, it is easy for such a placement to be perceived—this is a matter of perception, rather than of substance—as inappropriate.

We must also consider the scale and nature of placements. We are dealing with perceptions—an issue that the committee has, rightly, addressed in the past. A substantial overseas trip feels quite different from a series of one-day visits or a placement lasting a week or two with an organisation based in Scotland. I am not saying that overseas exchanges are necessarily inappropriate but, when a substantial trip is involved, greater caution is required of all parties. Individual judgment has a role to play and individuals will make different decisions about whether to participate in particular exchanges.

We also need to consider the guidance that governs the operation of the business exchange scheme. We should use this case as an opportunity to consider more fully the issues that it raises. We should do so above all to ensure the proper protection of members and of a scheme whose intentions are good and positive.

10:15

Mr Kenneth Macintosh (Eastwood) (Lab): I, too, welcome the chance to discuss the matter in committee, because the case showed up a particular failing in the system. I do not know about the particular case, but I believe that members are under no illusion that their responsibility is to their constituents and to the Parliament. As a result, I welcome this opportunity to clarify the matter.

As Susan Deacon pointed out, it is important that we should have this type of business exchange. The Parliament must be outward looking. There is always a danger that it might become rather parochial and introspective and we must take every available opportunity to open our eyes to the world.

I agree that the issue of perception is tricky.

Indeed, I might disagree with others' perceptions of certain businesses. Because we sometimes have to challenge prejudices that might arise from ignorance or whatever reason, I hesitate to introduce a code of conduct that is based on some people's perceptions that some businesses are not as worthy as others. Such a view might not be universally shared.

As I say, I welcome today's opportunity to clarify that MSPs are under no obligation except to their constituents and the Parliament.

The Convener: When the Scottish Parliament and business exchange scheme was first mooted more than a year ago, I wrote to the chief executive of the Scottish Parliament, Paul Grice, to outline some of my concerns. I should point out that I was completely unaware of the so-called confidentiality agreement until it surfaced at the beginning of the summer. We exchanged correspondence in order to sort things out and I think that we have found a good solution to the problem. However, I am well aware of the concerns that have been raised, particularly by Tricia Marwick, and propose to invite Paul Grice, who is the chief executive of both the Parliament and the exchange board, to attend a meeting so that we can question him in some detail. Are members agreed?

Members indicated agreement.

Lord James Douglas-Hamilton: It is generally agreed that no criticism is intended of the MSP concerned. However, it should be made clearer that guidance is always readily available from the clerk to the Standards Committee. In that way, any misinterpretation would be unlikely to arise.

The Convener: Thank you for that.

Scottish Parliamentary Standards Commissioner

The Convener: The next item on the agenda relates to the standards commissioner. I am sure that we are all aware that the Scottish Parliamentary Standards Commissioner Act 2002 received royal assent on 30 July. We now need to propose various changes to standing orders to give effect to various provisions in the act. At a later date, we will consider various changes to the code of conduct. Members should have a copy of some draft standing orders and a covering note for each one that sets out the background to the changes. I hope that members have had a chance to read them thoroughly; the accompanying notes are quite good. Are members content with the changes?

Members *indicated agreement.*

The Convener: The suggested amendments will be considered by the Procedures Committee at its meeting on 24 September with a view to seeking the Parliament's agreement to the changes in October.

I should also inform members that I attended the conveners liaison group meeting yesterday. The amendments to the code of conduct, the Parliament's request for a committee bill on the members' interests order and—Tricia Marwick will be pleased to learn—a debate on lobbying have been tentatively arranged for 3 October. That is good news.

Tricia Marwick: You said that the amendments to the standing orders will go before the Procedures Committee. I take it that they will go to the Procedures Committee to be considered along with other possible changes to the standing orders that might at some point go before the Parliament. I assume that the Procedures Committee will not look again at our work on the proposed amendments.

The Convener: You are right. That is what will happen.

Draft Committee Report (Alleged Unauthorised Disclosure)

The Convener: The third agenda item relates to an alleged so-called leak of a draft Justice 1 Committee report prior to the summer recess. Members have seen my correspondence with the convener of the Justice 1 Committee, Christine Grahame, who asked the Standards Committee to consider investigating the alleged leak. The complaint has been referred to the committee because it does not name an individual member. Under the rules, we may nevertheless, if members so wish, exercise our discretion to refer the matter to the standards adviser for his consideration. Members will recall that, following last year's inquiry into the confidentiality provisions in the code of conduct, we agreed that in future we would seek the views of the committee concerned before deciding whether to exercise that discretion. Christine Grahame provided further information in her letter of 22 July. I ask for members' views on the course of action that we should take.

Lord James Douglas-Hamilton: As I am a member of the Justice 1 Committee, I am content to absent myself from the consideration of this item. I do not propose to say anything about it. The convener of the Justice 1 Committee has made the committee's views clear.

The Convener: It is not necessary for you to leave if you wish to stay.

Mr Macintosh: Leaks of committee material are damaging to committees and to the Parliament, for the reasons that Christine Grahame's letter spells out. Leaks can damage trust and undermine committees' work. I sympathise with the Justice 1 Committee members. Our difficulty is that the process of dealing with leaks in the past has not been entirely satisfactory. We have tried to improve the process by referring leaks back to committees to get something more substantial to work on. I appreciate that Christine Grahame reconsidered the matter, although, as her letter was sent in July, she probably did so without the involvement of the other committee members. She states her arguments clearly, but there is not sufficient extra information to instigate an inquiry.

An inquiry would serve little purpose in this case. At the same time, I am concerned that we would send out the wrong signal to the Justice 1 Committee. I suggest that we write to that committee to say that we are not minded to conduct an inquiry without more evidence that the adviser could use in an investigation.

Tricia Marwick: I agree that the leak of confidential material undermines the work of a

committee and the trust among committee members. The Standards Committee has had many discussions about unauthorised leaks. Ken Macintosh has explained our difficulties in dealing with such matters.

When we considered a previous leak, we circulated a paper that outlined what we considered to be appropriate procedures, not the least of which was that, in the first instance, the committee from which a leak comes should be asked to investigate. Only then should the matter be referred to the Standards Committee. I have read carefully the material that Christine Grahame provided, including the *Official Report* of the meeting of Tuesday 18 June, when the matter was discussed. In the minds of the Justice 1 Committee members, the Standards Committee was the first option—members decided immediately that the matter would be referred to the Standards Committee.

Committees have a responsibility to carry out at least an initial investigation before a case comes to us. I suggest that we write back to Christine Grahame to draw her attention to our previous report on the issue and that we ask the Justice 1 Committee to carry out an initial report. Only after that, if the Justice 1 Committee considers that there is sufficient evidence to warrant a Standards Committee investigation, should the committee and the standards adviser get involved.

The Convener: I refer members to something that I thought was interesting. The papers include a copy of the *Official Report* of the Justice 1 Committee meeting on Tuesday 18 June. I refer to Maureen Macmillan's comments:

"Despite the fact that the journalist says that he has a copy of the draft report, from what I read of the article, the report was not quoted accurately. I am not sure whether he is pretending that he has a copy or whether he has one."—
[*Official Report, Justice 1 Committee*, 18 June 2002; c 3894.]

It struck me from reading that that the newspaper report contained inaccuracies. I am not even sure whether a leak took place. I happen to agree with Maureen Macmillan's comments.

Susan Deacon: As has been said, it is important that the committee reiterate its view that the leaking of parliamentary reports is a serious matter. Whatever the outcome of our discussion on the case, it must not be taken to suggest otherwise. However, I concur with Tricia Marwick and Ken Macintosh that the evidence that has been presented to us and the details of the case are such that, on this occasion, it would not be productive or appropriate for the committee to take the matter further. I am attracted to the point that Tricia Marwick made about the responsibility of committees to have a higher threshold before they refer such matters to the Standards Committee.

Perhaps committees could go through other stages or undertake other work.

The Convener: Is the committee content with that?

Members indicated agreement.

The Convener: I reiterate that that is the most appropriate approach. We have the discretion to investigate and we are using that discretion appropriately in this case. I will write to the convener of the Justice 1 Committee expressing what has been suggested.

Disclosure of Complaints

The Convener: Item 4 is a revision to the code of conduct concerning the disclosure of complaints to the media. Members should have a draft amendment and an issues paper that details the background to the proposed change. The purpose of the amendment is to clarify the existing prohibition on members disclosing to the media details of complaints that are under investigation. The Parliament will debate the amendment on 3 October if the Parliamentary Bureau agrees.

The amendment strengthens the rules to prohibit members from publicising an intention to make a complaint to the Standards Committee as well as from speaking to the media after submitting a complaint. That deals fairly with an issue that has come before the committee previously, but I would like to hear members' views on the proposal.

Mr Macintosh: We discussed the matter at great length. I am happy that the amendment, plus what seems a straightforward and simple right of rebuttal, has been proposed. If our legal draftsmen are content with the way in which the proposal is worded, so am I.

Tricia Marwick: What is the next stage? Will changes to the code of conduct go to the Parliament for approval?

The Convener: Yes, they will be debated on 3 October. If the Parliament approves the changes, the code of conduct will be changed from 3 October.

Tricia Marwick: It is important that MSPs have the opportunity to find out the thinking behind the amendment. I am not sure that all MSPs are aware that complaints to the Standards Committee should not go to the press first. Indeed, there should be no discussion about a complaint after it has been submitted to the committee. The forthcoming parliamentary debate gives us an opportunity to highlight the issue and to explain our proposed amendment. The committee might also consider writing to all MSPs, drawing their attention to the fact that there should be no discussion in the media before a complaint is lodged with the Standards Committee or during our consideration of it.

10:30

Susan Deacon: It is important that a letter, presumably in your name, convener, be sent to all MSPs on this matter. Perhaps the letter announcing an amendment to the code of conduct should not be written in a similar way to the many circulars that MSPs get, to whose detail members pay a varying level of attention. I think that a nice,

user-friendly letter from you, explaining in clear terms what the amendment means, would be useful. I recall the issue being a matter of discussion when we considered the case that prompted the amendment.

On the substance of the proposed amendment, I seek one point of clarification or reassurance. Could the legal experts in the room or anyone else assure me that the amendment as phrased definitely includes all members, both the complainant and the complainee—if those are the correct terms? I was concerned about the previous draft of the relevant paragraph. The matter came into sharp focus in relation to the particular case that we were examining a few months ago. As I recall—I apologise that I am operating just from memory—the phrasing was ambiguous as to whether the same set of rules governed all MSPs including the member complained against, the MSP who had complained and, for that matter, any third-party MSPs. The wording in the proposed amendment is fine according to my reading of it, but I would welcome reassurance on that.

The Convener: I invite Ruairaidh Macniven to come to the table to give us that reassurance.

Ruairaidh Macniven (Scottish Parliament Directorate of Legal Services): I can indeed reassure Susan Deacon that the prohibition in the first part of the amendment applies to all members. The right to reply at the end of the amendment applies only to the member who is the subject of the complaint.

Susan Deacon: That appears to be clear from the wording of the amendment.

Lord James Douglas-Hamilton: On Tricia Marwick's point about the level of awareness and communication with MSPs on such matters, I think that many MSPs are not aware that they should not be communicating to the media under the circumstances that we are discussing. If they are aware of that, they are perhaps not sufficiently aware of it. This is not about party-political knockabout or disagreements over policy; it is about impropriety, which is a distinct issue.

The Convener: If members are content, I propose that, once the Parliamentary Bureau has approved the slot for a debate in the chamber, I will write to all members, drawing their attention to the debate and to the proposal, which will make them aware of the matter.

I thank our legal adviser, who has been getting into the habit of coming to give legal advice on the record. I hope that that does not get him into trouble.

Tricia Marwick: That is not a happy position for him—his advice will be set down in black and

white for us to quote back to him in the future.

Lord James Douglas-Hamilton: If a complaint were substantiated, it would eventually become public as it would come before the Parliament. Would that be at stage 3 or stage 4 of the process?

The Convener: At stage 3. Stages 1 and 2 are conducted in private.

Lord James Douglas-Hamilton: So if somebody were found to be out of order, the matter would eventually become public.

The Convener: Absolutely. Let me reiterate that the purpose of the proposals is to ensure fair play and a fair hearing. That is what we are interested to ensure.

Lobbying (Conference)

The Convener: Our final item this morning is an invitation to a conference on lobbying to be held in Budapest next month. Tricia Marwick will give the committee the background to the invitation.

Tricia Marwick: Earlier this year, I was contacted by Laurie Naumann, who does a lot of work in Hungary and eastern Europe. He was particularly interested in the Standards Committee's work on lobbying—the regulations and guidelines and so on. It is quite new to the people with whom he has been working.

I gave Laurie Naumann some information that was already in the public domain, such as the *Official Report* of our meetings and the reports on Standards Committee inquiries, to let him see what we were doing. He took that back to Hungary and following that, much to my surprise, I was asked to speak at the conference in Budapest.

I contacted Sam Jones and suggested that speaking at the conference might be good for the Parliament. As we know, the work that the Standards Committee and the Scottish Parliament have done on lobbying has attracted a great deal of interest, not just from Westminster and the National Assembly for Wales, but from further afield. We are one of the few Parliaments in the world that are considering so closely the issues of lobbying and standards. The conference might be an opportunity for good public relations for the Scottish Parliament. I hope that the committee will agree to make a bid to the Parliamentary Bureau for the air fare. It would be excellent if one of the committee clerks could accompany me. There is an opportunity for links to be made and that would be good for the Scottish Parliament.

Susan Deacon: I agree that it is important to utilise opportunities to build links and share information and knowledge about the work of the Parliament. In principle, participation in the event would be worth while. However, that said, and having raised a question about overseas trips earlier in the meeting, I feel duty bound to say that although I trust Tricia Marwick's judgment, it is important that the convener and the clerk are sure that the nature of the event is such that we would want to be associated with it. Perhaps the clerk could check out the sponsorship and so on. I do not think that Tricia Marwick has told us who the organisers are and it is important to check those points.

There is also a question about costs. I am not sure how this applies to participants from a bona fide Parliament, but it is normal practice for conference organisers to bear the costs of a guest speaker or contributor. That leads back to the

question about who is paying for the event. It is important for the committee to be sure about the appropriateness of all those matters before agreeing to the request. However, it is important to take the opportunity to promote and share the work being done in Scotland, provided that that is done in an appropriate forum.

The Convener: I hear what Susan Deacon is saying about checking out the conference and the costs. However, rather than leave it for the clerk and me to check out, I put the matter on the agenda because we have to be happy as a committee that we want to send someone to participate in the event. If the committee agrees, I will take the request and argue the case at the conveners liaison group. If the conveners liaison group agrees to the request, it will go to the Parliamentary Bureau. I need a steer from the committee. I do not want the decision to be left to the convener.

Susan Deacon: I do not believe that we can give that steer if we do not know who the organisers are and what costs are involved. We do not have a piece of paper that gives us that information. I do not mind others looking into that subsequently—that is the point that I made—but it is not fair to ask the committee for a steer in the absence of any detail.

The Convener: Could you give us any more detail Tricia?

Tricia Marwick: Not really. I have given the clerk most of the information that I got and I am quite happy for her to check it out. That would be better than my providing further information. It is right for the clerk to do that.

Paul Martin (Glasgow Springburn) (Lab): I am sorry that I was late, convener.

I do not have any difficulties with the principle. However I am concerned to find out whether the costs will be met. The document that Tricia has provided makes it clear that she is being invited as a speaker at the event. I am sure that there will be significant charges for others attending the event. However, the organisers should meet the costs if they ask one of us to speak at the event, or ask for the Parliament to be represented. I do not know what feedback Tricia has had on that.

The Convener: The second-last paragraph of the letter that we received from Laurie Naumann says:

“The sponsoring organisations will, of course, meet your accommodation and related costs while in Budapest. It would help us considerably if you are able to obtain assistance in meeting the cost of the airfare.”

We are talking about the cost of the air fare.

Susan Deacon: I apologise. I did not realise that we had a piece of paper about this. I have

read it very quickly, but I see that it is still missing some information that we need before we can take the matter any further. That includes the points that Paul Martin made about costs. However, I apologise that I had not seen the letter when I said that we did not have a piece of paper.

The Convener: I have just been told that bids for the next bidding round have to be submitted to the conveners liaison group by 27 September. We could discuss the matter again at our meeting on 25 September. If Tricia Marwick provides the committee with background details about the event and the organisers and addresses the issues that Susan Deacon, in particular, has raised, we can put the matter on the agenda for our next meeting.

Lord James Douglas-Hamilton: I am slightly confused as to why the letter was not sent to you as convener of the Standards Committee. If the invitation was intended for a senior member of the Standards Committee, such as you or Tricia Marwick, the most appropriate approach would have been to send the letter directly to you. I am sure that that is a matter between you and Tricia. If either of you wanted to go, it would be extremely good for the committee, especially if there is to be a report back to the committee in due course. However, I do not believe that it should automatically be assumed that the convener of the committee is excluded from consideration because the invitation has not come to him.

The Convener: What can I say? Tricia Marwick is going to bring the matter back to the committee at the next meeting.

Tricia Marwick: Lord James makes a fair point. When the issue comes back to the committee after the clerks have considered it, perhaps the committee will consider who should represent the Standards Committee. I am quite relaxed about that.

Lord James Douglas-Hamilton: I am content that Tricia should go, but it would have been more appropriate if the letter had been sent to the convener.

The Convener: Your point is taken. Is everybody content?

Members indicated agreement.

Meeting closed at 10:42.

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