

STANDARDS COMMITTEE

Wednesday 18 December 2002
(*Morning*)

Session 1

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STANDARDS COMMITTEE

18th 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

Karen Gillon (Clydesdale) (Lab)

Alex Johnstone (North-East Scotland) (Con)

*Michael Russell (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

Frazer McCallum (Scottish Parliament Research and Information Group)

Connie Smith (Scottish Parliament Research and Information Group)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 3

Scottish Parliament

Standards Committee

Wednesday 18 December 2002

(Morning)

[THE CONVENER *opened the meeting at 10:01*]

The Convener (Mr Mike Rumbles): Good morning and welcome to the 18th and final meeting this year of the Standards Committee.

I extend a warm welcome to Ian Jenkins, who joins us for item 2. We have received apologies from Tricia Marwick and again welcome Mike Russell as committee substitute in her place. That is becoming a habit.

Michael Russell (South of Scotland) (SNP): One I hope to break.

The Convener: We have apologies from Paul Martin. Susan Deacon and Ken Macintosh are running late this morning, but I hope that they will join us as we proceed.

Item in Private

The Convener: Our first task is to decide how to take item 6 on the agenda. It is the initial consideration of the adviser's report on a complaint against Henry McLeish. Members will recall that the investigative procedure is for us to undertake the initial consideration at stage 3 in private. Members will also note that item 7 on the agenda, which is our decision on the complaint, will be taken in public. Are members content that we proceed in that way?

Members indicated agreement.

Cross-party Group

The Convener: Our second item is a proposal from Ian Jenkins to establish a cross-party group on textiles, clothing and footwear. Would Ian Jenkins like to add any comments in support of his proposal before we move to questions from members?

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): No. I will be delighted to do my best to answer any questions that committee members have.

Kay Ullrich (West of Scotland) (SNP): I see no problem with the group and I can see the reasons for having it. Are you aware that the group will run for only three months, because all cross-party groups cease to exist on dissolution?

Ian Jenkins: Yes.

Kay Ullrich: Can you comment on that?

Ian Jenkins: We were approached last June about the idea of setting up a group. As textiles are very important in my constituency, I went to the meeting on the subject and was convinced that there was a case for establishing such a group. There are precedents that would make the establishment of the group no problem in itself. The question was whether people felt that there was a case to be made and we said yes at that meeting.

I was invited to set up a further meeting, which took longer than expected to set up. We had a second meeting—I think that it was in November. Members of the Scottish Parliament and people from the industry wanted to establish the group. We considered other sectors such as the paper industry and felt that it would be worth while to have a textiles group. We want to establish the group now, so that if it wants to be reconstituted after the election it will already be up and running. The mechanisms will have been put in place, the membership will have been established and it will be possible to move on from there quite quickly.

Kay Ullrich: Did you not consider saying that, as there were only three months to go, you might wait and allow somebody else to do it?

Ian Jenkins: I did not want to be involved in establishing the group, but David Mundell and I were the only two MSPs at the second meeting and I did not want the group to fall by the wayside. I explained that I would not be standing for the Parliament again, but everybody felt that it was worth getting the group on the map. If the number of cross-party groups were to be rationalised after the election—I do not know whether the committee has any such thoughts or even whether it would be the committee to do that—the textiles group

would be in there to be considered. In other words, the textiles group would be part of the thinking if there were proposals to consolidate or bring together various cross-party groups.

Michael Russell: The proposed group obviously complies with the regulations. This is in no sense to diminish the importance of the subject but, although the view is often expressed that cross-party groups offer the only way for bodies to influence and interact with the Parliament, that is simply not true. As I think I have said before at the committee, I believe that there are too many cross-party groups. I think that the default position, which is that interest groups should automatically be involved in setting up cross-party groups, is leading to a situation where the system cannot operate.

There are far too many groups, and MSPs do not have time to go to all of them. Some of the MSPs named in the proposed membership are active members of other cross-party groups. Although the application is clearly in order and must be accepted, I would suggest to Ian Jenkins—and moreover to members in the new parliamentary session—that we should find other ways of proceeding and should not always automatically set up cross-party groups. They sometimes fall into disrepute because they do not meet or because MSPs do not turn up, and they become frustrating for those involved. When we come to consider the draft proposal on external research later in the meeting, we need to think carefully about the over-provision of cross-party groups.

Ian Jenkins: I am inclined to agree with that view, which is why I made the point about consolidation offering one way forward. MSPs do not know as much about textiles as they think they do. One of the proposed non-MSP members is an academic who works on industrial textiles. There is stuff about clothing that we do not always consider.

Michael Russell: But those things could be learned about from visits.

Ian Jenkins: Indeed. The impact of changes in the sector has a broad geographical spread. If people wish to come together regularly to consider sectoral training, marketing and so on, the proposed cross-party group offers one way of facilitating that. Cross-party groups are the mechanism that the first Parliament has established. I would like the textiles sector to be in the position of having been represented in a cross-party group when such groups are being examined again after the elections.

The Convener: How many meetings do you intend to hold between now and dissolution?

Ian Jenkins: Just the one.

The Convener: Just one meeting?

Ian Jenkins: Yes, I think so.

The Convener: Let us consider the seven MSPs who are proposed as members of the group. You have indicated that you are not standing for re-election yourself. Nobody is able to look into a crystal ball and see who will still be here after the elections, but from our experience of cross-party groups, we know that some members are more active than others. Who are the more active members among the seven MSPs? You and who else?

Ian Jenkins: David Mundell is the proposed vice-convenor, but I would not want to get into this discussion—it is awkward.

The Convener: What I am trying to get at is whether there is—

Ian Jenkins: A driving force behind the group?

The Convener: Yes. We have changed our procedures. In taking applications for cross-party groups and looking into the problems around them, it often became apparent that some MSPs had done little more than put their names on the group registration form, and were not very active in the group. We asked potential convenors of groups to come to the committee—in the way that you are here today—so that we could press them a little to find out what their motivation, driving force and connection with the group was.

The whole point of the groups is that they should be parliamentary in nature, but we find that, despite the fact that the regulations specify that at least two members must attend each meeting, that has not necessarily been happening. I am therefore trying to press you a little further about how active the MSPs who have put their names to the registration form are.

Ian Jenkins: They have not had any opportunity to be active, as the group is not up and running. It was established—rather, the procedures to establish it were gone through—at the meeting that I mentioned, and David Mundell and I were the two members who were there at the time. That does not mean that other members would not be active once the group got going.

Lord James Douglas-Hamilton (Lothians) (Con): We should support the application because the production of clothing, textiles and footwear is very important to the Borders. A decision to support the application should not be taken as a precedent that the committee will act similarly any closer to the election because after the new year, the election will be so close that it may be preferable to leave matters to the new session. Although a strong case has been made for this group, especially the fact that it will have at least one meeting, that should not be taken to mean that the committee would approve any others.

The Convener: If there are no more questions, I will sum up. The committee is inclined to approve the application, which is absolutely in accordance with the rules. It is worth putting on record, as Lord James Douglas-Hamilton has just said, that we would treat any other application for a cross-party group differently in the new year because it will be so close to the election. This group has got in just under the wire.

I thank Ian Jenkins. As you are here, I will not write to you to tell you the good news that the committee has approved your application.

Ian Jenkins: Thank you, convener. I am grateful and I acknowledge what has been said about the application.

Cross-party Groups Review

The Convener: Item 3 on the agenda also concerns cross-party groups.

At the last meeting, the committee agreed to send a proposal to the conveners liaison group to commission external research to evaluate the cross-party group system. With the assistance of the Scottish Parliament information centre, the clerks have developed a draft proposal, of which members should have a copy.

I welcome Connie Smith and Frazer McCallum from SPICe, who will be able to help us with any queries in relation to the proposal. Do members have any questions or points to raise on the draft proposal?

Michael Russell: I would like the research to examine alternatives to the operation of the cross-party group system, in terms of parliamentary structures and other ways of proceeding. I am worried that the automatic reaction from any sectoral interests once they get involved in the Parliament is to set up a cross-party group.

There are not many niches left in the ecology of the Parliament in which cross-party groups can operate. Cross-party groups create a burden and put an expectation on members that cannot be fulfilled. My view is that they create enormous difficulties for members and also for the groups themselves. I would like that factored into the research. I do not see it specifically mentioned anywhere, especially in the research objectives.

The Convener: If members are happy with that, we will proceed.

Lord James Douglas-Hamilton: Can the task be completed successfully within the allotted time scale? I would prefer something short and highly effective, rather than an unfinished book.

Frazer McCallum (Scottish Parliament Research and Information Group): January 2004 is a realistic time scale. Although that must seem like a long time away, part of the reason for the time scale is that the elections are coming up and cross-party groups will break up for a period, during which MSPs will not be available. We might also want to see what happens in the new session and factor that into the research.

Kay Ullrich: Will you be starting with the groups as they exist at present?

Frazer McCallum: We can certainly start by examining some of the background material, both before and during the elections. I have my doubts whether it will be practical to meet cross-party groups before the elections. By the time the conveners liaison group approves the research

and it is up and running, we might be straight into the election period.

Kay Ullrich: That is disappointing, because it is important to consider how the groups have been operating for the past three years and to see where they have reached. It is important to be able to evaluate the groups after they have been running for a long time rather than at the start of a new session, when everybody is bright eyed and bushy tailed and rushing to join cross-party groups and so forth—particularly the new members who have not yet got the tee-shirts. It is important to look at how the groups are operating at present and I am disappointed that we are not going to do that.

10:15

Connie Smith (Scottish Parliament Research and Information Group): I will clarify that point. It should be possible for the research to do that. The process of commissioning the research means that the contract cannot be awarded until March. We would expect the researchers to do the background work to identify the current groups during this session. Although the researchers may not speak to members of the groups until May or June, they will talk to cross-party group members about their experience of the groups during this session. We may, however, be into the next session before that happens. It is fairly standard research interview practice to ask people to reflect on things.

The Convener: The paper contains no reference to costing. The conveners liaison group will ask how much the research will cost.

Connie Smith: Once the committee agrees the proposal, the next stage in the process is to work out an outline costing, which will accompany the proposal when it goes to the conveners liaison group. That costing will be very much an estimate for the basis of competitive quotes.

Michael Russell: The point that Kay Ullrich made also worries me. From our previous discussion, I understood that we were going to learn from the experience of this session. Cross-party groups will come forward for registration after the election and yet the research on which decisions about future cross-party groups will be predicated will not be introduced until January 2004. New groups will be registered before that—indeed, I suspect that the research will lead to a revision of the system.

Given that possible changes may have to be made to the system, registrations that are accepted after the election would be subject to the decision of the Standards Committee. I understood that we were going to truncate the process. If that is not going to happen, I hope that

registrations after the election will be conditional on receipt of the report.

The Convener: We cannot, of course, bind members of the next Standards Committee to such a decision.

Michael Russell: No.

The Convener: We could produce a handover note for the new committee to make clear our views on the subject. As members have no further points to make, I assume that the committee is content for me to take the paper to the conveners liaison group in January.

Members indicated agreement.

The Convener: Thank you.

Lord James Douglas-Hamilton: If the researchers run into any particular problems getting information and so forth, they could always come back to us for support.

Frazer McCallum: Thank you.

Draft Committee Report (Alleged Unauthorised Disclosure)

The Convener: We move on to item 4, which concerns the alleged leak of the Justice 1 Committee's draft report on its inquiry into the regulation of the legal profession. Members have copies of the correspondence between the convener of the Justice 1 Committee, Christine Grahame, and me. The complaint that was referred to the Standards Committee does not name an individual member. Nevertheless, under paragraph 10.2.3 of the code of conduct, we may exercise our discretion to refer the complaint to the standards adviser for his consideration.

Members will recall that, following our inquiry last year into the confidentiality provisions of the code of conduct, we agreed that we would seek the views of the committee concerned before deciding whether to exercise our discretion.

Kay Ullrich: My views on the matter are well documented. Frankly, it is a waste of time trying to find a leak. As no name has been put forward, we are simply chasing our tails. We have been down this route before. That is unfortunate, as the Standards Committee is the body to which members have to refer such a complaint. However, the history of Parliaments is that people do not say, "It was me; I cannae tell a lie."

The Convener: Members will note that, in my letter of 5 December to Christine Grahame, I asked for

"the Justice 1 Committee's views on the following:

- An assessment of whether a full investigation is likely to be productive.
- Information on the circumstances of the alleged unauthorised disclosure ...
- Confirmation that an unauthorised disclosure has actually taken place."

Since 5 December, I have received no communication on this matter.

Lord James Douglas-Hamilton: I am a member of the Justice 1 Committee. Yesterday the committee considered the matter in public, so I need say no more.

Michael Russell: What conclusion was reached? Does the Justice 1 Committee want the Standards Committee to continue its investigation?

Lord James Douglas-Hamilton: It is for the convener of the Justice 1 Committee to communicate with the convener of the Standards Committee.

The Convener: We have not progressed this matter. A precedent was set when we last

considered a similar case. As I have done on this occasion, I wrote a detailed letter to the convener of the committee concerned to ascertain from the committee whether it felt that it would be productive for us to refer the matter to the standards adviser. We should proceed only if we think that such a step would be productive. We have received no communication from the Justice 1 Committee. Perhaps we should defer consideration of the matter until our next meeting.

Michael Russell: We should definitely do that. If the Justice 1 Committee discussed the matter in public, presumably some members of the public know what the committee concluded. I am sanguine about whether it is possible for us to discover anything about the source of this leak, even though it is particularly blatant.

Lord James Douglas-Hamilton: I do not think that there have been any new developments since the exchange of correspondence between the convener of the Justice 1 Committee and the convener of the Standards Committee.

The Convener: Once I have received confirmation of the Justice 1 Committee's conclusions, I will respond appropriately. Are members content that I should do that?

Members indicated agreement.

Scottish Parliamentary Standards Commissioner Act 2002

The Convener: The next item on our agenda is consideration of changes to section 10 of the “Code of Conduct for Members of the Scottish Parliament”. The changes are consequential to the Scottish Parliamentary Standards Commissioner Act 2002.

The changes will set out the four-stage investigative process and explain the responsibilities of the commissioner in handling complaints. The Parliament’s directorate of legal services has prepared some draft directions that we are empowered to make under the act—for example, on how anonymous complaints should be dealt with. If we agree to the changes today, they will be published before Christmas so that we can seek the Parliament’s agreement to the amendments early in the new year. Do members want to comment on the proposed changes to the code, the draft directions or the committee report? I have been through the changes with a fine-toothed comb and regard them as appropriate.

Lord James Douglas-Hamilton: Have we not considered the changes before?

The Convener: Yes—I am bringing them before the committee formally for a decision.

Michael Russell has left the room. I ask other members not to leave—if they do, we will not be quorate.

Are members content with the changes?

Members *indicated agreement.*

Complaint

The Convener: The next item on our agenda is initial consideration of a report from the standards adviser concerning a complaint against Henry McLeish. As agreed at the beginning of the meeting, we will now move into private session. The committee’s decision on the complaint will be made in public as soon as we have considered the report. I ask members of the public and press, and broadcasting and official report staff, to leave the room.

10:23

Meeting continued in private.

10:44

Meeting continued in public.

The Convener: I thank the public and press for their patience. Our final item is to decide whether we agree with the adviser’s report on a complaint against Henry McLeish and whether the code of conduct has been breached. Before we do so, I will outline for the benefit of the public and press the complaint against Henry McLeish and the adviser’s findings.

The complaint was made by Tommy Sheridan and is twofold. First, Tommy Sheridan alleged that Henry McLeish’s decision to accept a House of Commons resettlement allowance when he stood down as an MP, having told the Parliament at First Minister’s questions on 16 November 2000 that he did not intend to accept the allowance, was a breach of the code of conduct. Specifically, Tommy Sheridan highlighted section 2.8 of the code, which states:

“Members have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.”

Tommy Sheridan’s second allegation concerns Henry McLeish’s registrable interests. Specifically, Tommy Sheridan asked why Mr McLeish had taken three years to register alleged income amounting to £2,000 from two research companies. Tommy Sheridan did not identify the companies concerned.

The adviser has investigated the complaint and we now have his report. On the first allegation, he found, on two grounds, that there had been no breach of the code of conduct. First, Henry McLeish’s statement to the Parliament was an honest statement of intent. Secondly, the acceptance of the allowance from Westminster to which he was entitled was not an act carried out in the course of his parliamentary duties as an MSP

and therefore not a matter for the code of conduct. The remits of the code and of the committee extend only to members' conduct of their parliamentary duties as MSPs.

On the second complaint, Henry McLeish registered remuneration from two research companies in June 1999 in compliance with the requirements of the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and the code of conduct. The adviser has therefore recommended that the complaint should not be upheld.

The committee must decide whether we agree with the adviser's report and whether Henry McLeish has breached the code of conduct. As is our normal practice in such matters, I will seek the views of each member.

Kay Ullrich: I uphold the adviser's findings. The issue seems to be an issue of personal conduct and is therefore outwith the Scottish Parliament's code of conduct.

However, I am disappointed that Mr McLeish said one thing to the Parliament and then did the complete opposite. I also want to stress that if the committee upholds the adviser's report, I hope that our decision will not be seen as an okay for a First Minister or any minister to be absolved of responsibility for making misleading statements to the Parliament. The pressure of question time is no excuse for saying one thing to get off the hook, and then doing something else at a later date. Such behaviour brings the Parliament into disrepute. However, as the adviser's report says, the allowance in question came from Westminster and is outwith our jurisdiction.

Lord James Douglas-Hamilton: I uphold the adviser's findings. There has been no breach of the code of conduct, but the actions that are complained about could be interpreted as not being within the spirit of the code of conduct. Although I believe that there has been no breach, I recommend, as a matter of good practice, that, in the absence of powerful arguments to the contrary, statements of intention should be followed through.

Michael Russell: I accept and agree with the adviser's report. In the strictest sense, the adviser is absolutely correct.

However, I also agree with James Douglas-Hamilton that, although the letter of the law has not been broken in respect of the code, the spirit of the law may have been. Whatever has happened has not brought credit to the Parliament. Members of the public must have faith in the absolute integrity of members and have complete trust in statements that they make. That is even more the case in respect of a member who holds the highest office in Scotland. On this

occasion, that faith may have been dented. Changed circumstances have been brought into the argument and may be a reason for changing one's mind, but they are not an excuse for the conduct in question.

The matter is a salutary lesson about the complainant and the subject of the complaint, Mr Sheridan. Politics is about more than salaries and allowances and a bidding war on who will take least. Such politics always end in tears.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I also agree with the adviser's findings and the conclusions of his report on this occasion. I do not believe that there has been a breach of the code of conduct in this instance. However, it is at least arguable that the actions described do not accord with the spirit of the code. I recognise that individual circumstances in this case had changed, and I also recognise that the spontaneous nature of political exchange, especially in the chamber, can often lead to sometimes unwitting comments and commitments being made by members, which may, at a later stage, be difficult to uphold. There are lessons for us all in that respect. The highest possible standards of integrity and trust are required from all MSPs, particularly at this time, and the actions and events on this occasion are therefore regrettable. However, I believe that no further action should be taken and that it is time for us to move on.

The Convener: I will sum up on behalf of the committee. There is a unanimous decision to uphold the adviser's report. There is a unanimous view that there has been no breach of the code of conduct. Our independent adviser has made it quite clear that Henry McLeish's actions were not to do with his parliamentary duties as an MSP—the allowance was from Westminster and not the Scottish Parliament—and that when he made the statement, he made it with honest intent. However, members feel that it was regrettable, to say the least, that Mr McLeish's actions were not within the spirit of the code. Do members agree with that summary?

Members indicated agreement.

The Convener: Rather than hold another meeting to do the draft report, we will ask the clerks, as they have enough information, to produce a draft report, which we will agree to by correspondence. I hope to publish our report and the standards adviser's report in full on Friday. Is that agreed?

Members indicated agreement.

Meeting closed at 10:52.

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