

STANDARDS COMMITTEE

Wednesday 18 June 2003
(*Morning*)

Session 2

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STANDARDS COMMITTEE

2nd Meeting 2003, Session 2

CONVENER

Tricia Marwick (Mid Scotland and Fife) (SNP)

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Alex Fergusson (Galloway and Upper Nithsdale) (Con)

*Donald Gorrie (Central Scotland) (LD)

*Alex Neil (Central Scotland) (SNP)

*Karen Whitefield (Airdrie and Shotts) (Lab)

*attended

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 2

Scottish Parliament

Standards Committee

Wednesday 18 June 2003

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 09:02*]

The Deputy Convener (Mr Kenneth Macintosh): Good morning and welcome to the second meeting of the Standards Committee in the second session of the Parliament. We have received apologies from Tricia Marwick. I remind members to switch off their mobile phones or to put their beepers on silent. I have just switched off my mobile phone.

Item in Private

The Deputy Convener: Item 1 is consideration of how to handle item 4, which is the committee's initial consideration of a report from the acting Scottish parliamentary standards commissioner. The code of conduct requires the item to be considered in private to ensure the privacy of further investigation into the complaint. I remind members that our decision and any oral evidence or further representations that we wish to hear will be taken in public session. Do members agree to take item 4 in private?

Members *indicated agreement.*

Previous Standards Committee

The Deputy Convener: Last week, we asked the clerks to bring back a paper on the work of the Standards Committee in the previous session for our consideration. The paper is quite short—it has only 12 paragraphs—but a number of points are made. Perhaps the best way of dealing with it is to go through the items in order.

Some issues are still outstanding. Changes that have been made to the code of conduct in the past four years are outlined. We introduced a model of investigating complaints, which led to the Scottish Parliamentary Standards Commissioner Act 2002. Some of our work on lobbying, which accounted for a lot of the committee's time, is still outstanding. Do members have any comments?

Alex Neil (Central Scotland) (SNP): Paragraph 5 of the paper says:

"The Minister for Parliamentary Business also agreed to review the Scottish Ministerial Code".

Could we write to the Minister for Parliamentary Business asking whether the Executive has now reviewed the code and whether it has made any changes? If it has made changes, it will presumably let us know what they are.

On paragraph 6, which is on possible registration schemes for lobbyists, it might be quite useful, in considering how to proceed, to undertake some comparative work—although I am not suggesting that we need to troop off to Canada to see the lobbyists registration scheme there.

The Deputy Convener: I thought that the invitation to examine the operation of the federal lobbyists registration scheme in Canada was very welcome. I welcome the idea that we write to the Minister for Parliamentary Business and I will do so, if everyone is agreed. As I recall, the minister told the committee last session that the review of the Scottish ministerial code would be implemented, but we could write requesting an update.

My feeling is that we need not decide today about our future business. It is not fair to do so when we do not have Tricia Marwick, the convener, with us. I also do not think that there is a big rush to do so before the summer recess. Those are my initial thoughts, but I wanted to hear those of other members. There are several items of outstanding business, to which we will have to return at some stage, but I am in no rush to make a decision on that today, or even before the summer.

Karen Whitefield (Airdrie and Shotts) (Lab): Is there an issue to do with the membership requirements that cross-party groups must meet to

be reconstituted? As they stand, the regulations require a member of each political party to join. Members think that that would be an onerous requirement for some of the smaller parties in particular, given the number of groups. Might the committee require to make a decision on that before the summer recess?

The Deputy Convener: Hopefully, we will deal with that under item 3 and come to a decision on the matter, at least to provide guidance on how to interpret that particular anomaly.

Members might wish to outline the priority that they wish to give to the outstanding business. As I said, I am not in a rush to set the programme, certainly not today.

Bill Butler (Glasgow Anniesland) (Lab): It is entirely sensible that we do not rush to set the future programme today, especially as one of our number is not with us at the moment. However, it is sensible that we come to at least an interim position on cross-party groups, which we will be addressing under item 3. It is an important matter.

The Deputy Convener: I have been going through the paper in order, but I will jump now to paragraphs 10 and 11, on cross-party groups. Of all the items outstanding from last session, I would like to give most priority to the matter of cross-party groups. We have all adopted a holding position on cross-party groups until the current investigation is concluded—I think that that goes for most MSPs. There is a need for the Standards Committee to conclude its review on cross-party groups with some urgency. However, I note that the research that we have commissioned will not be returned to us until towards the end of the year, which sets the timetable for us. Nevertheless, it is still the issue that I would like to progress first.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): Have we gone on to item 3 now? Are we coming back to cross-party groups later in the meeting?

The Deputy Convener: We are definitely returning to cross-party groups under item 3.

Alex Fergusson: In that case, I will leave my remarks until then.

The Deputy Convener: Are there any other comments under item 2, about future business or the work of the committee in session 1?

Alex Neil: Being new to the committee I want to ask whether the bill proposing the mandatory registration of non-pecuniary or non-financial interests is scheduled for introduction in the first year of this session of the Parliament—or is it not yet scheduled?

The Deputy Convener: It is my understanding that it is not yet scheduled.

Alex Neil: So we are under no pressure to do that.

The Deputy Convener: No, we are not. In fact, the new intake of MSPs has signed up under the old system. As members know, there was a great deal of pressure on the clerks to get MSPs to sign up under that system. Now that that has happened there is no pressing urgency, but we want to reform the system and put the new rules in place when we can.

Alex Neil: Paragraph 12 concerns the Scottish Parliament and Business Exchange, which, as members know, was the subject of some controversy last year. I suggest that we write to the exchange to ask what progress it is making in examining our recommendations. When we come to discuss the work programme, presumably after the recess, we can perhaps build in some kind of monitoring exercise to find out what progress has been made.

The Deputy Convener: That is a helpful suggestion. We have covered four items in the paper, to do with lobbying, members' interests, cross-party groups, and the business exchange, all of which are what I would describe as unfinished business. We will need to come back to those. As I understand it, we are waiting for the business exchange to finish its review of structures and come back to us with a recommendation. However, it would do no harm to write a letter to the exchange to find out when that will happen.

Alex Neil: Presumably the business exchange gets reconstituted.

The Deputy Convener: As I understand it, the business exchange is a separate company.

Sam Jones (Clerk): I think that it recently had another inaugural meeting for this session and that there are new directors.

The Deputy Convener: We are obviously working slightly in the dark here. A letter to the business exchange is a useful idea, and we will try to get something on the agenda for when we come back after the summer.

Donald Gorrie (Central Scotland) (LD): It would be helpful if we could discuss the draft bill that is mentioned in paragraph 9 of the report, because there are a number of outstanding issues. The question of how far we probe into partners' finances is a tricky one—there may be strong arguments both ways. There is a minor technicality about registering shares whose market value exceeds £25,000. As we have seen recently, shares can go up and down by a great deal, so someone would keep on coming in and out of the register.

On the non-financial interests, every now and then people raise the question of the masons and others. It would be helpful if we had a chance to consider and comment on the draft bill.

The Deputy Convener: Indeed. Donald Gorrie has touched on some of the Standards Committee's key discussions last session. If we want to push the bill forward in a draft form it will have to go before Parliament and will therefore be discussed by all MSPs. Perhaps what we are mulling over this morning is not so much the need to think further about those four items but when we want to have a discussion on the draft bill.

Donald Gorrie: As long as it is in the list.

The Deputy Convener: Indeed. I suspect that the previous committee broke the back of the matter, and at least gave us an outline that we can try to work round and reach agreement on. It is really just a case of when we want to wrestle with that and bring it to the Parliament. The bill will have to be a committee bill, so we have to find a slot. My feeling is that we need to come back—*[Interruption.]* We have been heckled by alarms all morning. We will need to have a fuller paper after the summer, to discuss our future work agenda, those four outstanding items and any other items that members feel that the committee should be discussing. We can work out from that how we will prioritise our timetable. I am not in a rush to do that before the summer.

With members' agreement, I will ask the clerks to produce a paper on those four items for our first meeting after the summer recess, when we will be fully constituted. We will then resume the discussion. Do members agree to that suggestion?

Members indicated agreement.

Cross-party Groups

The Deputy Convener: The one agenda item on which we must make at least some progress relates to cross-party groups and the interpretation and application of rule 2 of section 8.3 of the code of conduct. At present, the rule requires cross-party groups to have a minimum of five MSPs, with at least one member from each of the parties that are represented on the Parliamentary Bureau. Of course, six parties are now represented on the bureau.

The paper from the clerks asks us to provide guidance on the minimum numbers of members in each cross-party group and of parties that should be represented in each group. The paper suggests that we delay proposing changes to the code of conduct until the completion of our review of cross-party groups but that, for guidance purposes only, we should come to a decision today.

09:15

Bill Butler: It is important that we come to a holding position that will give guidance on the formation of cross-party groups. Given the new composition of the Parliament, we must be flexible. In the previous session, there were exceptions to the rule that each cross-party group had to have at least one member from each major party—I might be wrong, but I think that those groups were the cross-party group in the Scottish Parliament on Palestine and the cross-party group in the Scottish Parliament on nuclear disarmament.

My suggestion to throw into the pot is that, given the new composition of the Parliament, each cross-party group should normally have one member from each of the four major parties, but that groups need have only one other member, to be drawn from either the Scottish Socialist Party, the Scottish Green Party, the Scottish Senior Citizens Unity Party or any of the independents. Given that there are around 17 members in that group, that would provide flexibility, while ensuring that the general thrust of the rule on the formation of cross-party groups is held to, which is that there should be one member from each of the four main parties. None of us wants unnecessarily to hold back the formation of cross-party groups, which are a fairly important facet of the Parliament. For what it is worth, that is my suggestion for the holding position.

Alex Fergusson: I should say for the record that I am to be the convener of the proposed cross-party group on ME.

I commend Bill Butler's suggestion, which is eminently sensible. Any other measure that would

take us back to the requirement that each party that is represented on the Parliamentary Bureau should be represented on each cross-party group will lead to members signing up to cross-party groups simply to allow them to register. As the convener of a cross-party group, I would want the members of the group to be prepared to work and give time to the group. Anything that can be done to achieve that should be encouraged.

Donald Gorrie: My suggestion is along the same lines as Bill Butler's, but it is slightly more relaxed—or whatever is the right word.

Alex Neil: Perhaps the word is "Liberal".

Donald Gorrie: I would not dream of saying that—my suggestion is liberal with a small l.

The thrust of Bill Butler's suggestion is correct, but my suggestion is that cross-party groups should have to perm four parties from six. It would be adequate if four parties were represented on each group. However, I will not go to the wall for the figure of four, rather than five.

There is a lot of pressure on members. In the previous session, there were 16 or 17 Liberal Democrats and I was on a number of cross-party groups merely so that they could have a Liberal Democrat member. I had to tell groups that I would be on their books, but that I would hardly ever be able to attend meetings. I accept Alex Fergusson's point that cross-party groups should have working members rather than ghost members, although I felt that I was doing groups a favour by being a ghost member.

Anecdotal evidence suggests that a number of members are reviewing their situation and that, like me, they feel that they signed on for too many cross-party groups in the previous session of Parliament. Those members intend to reduce the number of groups of which they are members. It would be a pity if we lost groups by being too tight, so I suggest that four different parties have to be represented, but if five is the more popular view I will go with that.

Alex Neil: For the long term I probably agree with Donald Gorrie, but we are trying to cater for the short-term position, so that we can register and reregister cross-party groups. We are trying to achieve three things simultaneously. First, we are trying to ensure that a minimum number of members are interested in effectively participating in each cross-party group, which is why we have the rule on there being a minimum of five MSP members. Secondly, we want to ensure that the groups are genuinely cross-party and have broad support across the Parliament—it defeats the purpose of having a cross-party group if that is not the case. The third, more negative, objective is not to give any party the right in effect to veto the creation of a cross-party group. That is important

as well, and is why the system of waivers worked quite well in the last session.

We should coalesce around Bill Butler's proposal for the time being. It is eminently sensible. The fact that the number of SSP plus Green plus independent members equals the number of MSPs from the fourth party makes his proposal exceptionally eminently sensible.

The Deputy Convener: We seem to be heading for agreement.

Alex Fergusson: The issue will probably have to be examined in every successive session, given the changing make-up of the Parliament. Bill Butler's suggestion is sensible, in particular because it gives legitimacy to some of the individual members of the Parliament playing a good role on cross-party groups. However, we have to accept that the issue may have to be examined by this committee following every election.

The Deputy Convener: Indeed. I am conscious that we are coming to a decision, but that the key people who are missing from this discussion are the independents and the smaller parties. We do not wish to denigrate or do down the smaller parties. It is still the case that if a group has five members it is recognised as a functioning party in this Parliament, but it is a practical impossibility for a six or seven-member party to find a member to sit on the 49 cross-party groups. As Donald Gorrie said, we do not want to encourage the previous bad practice where, because they wanted to keep a group going, members signed up but did not attend, and ended up disappointing members of the public and others who did attend those groups.

Alex Neil: Will we have a chance to revisit the likes of Donald Gorrie's proposal for the longer term?

The Deputy Convener: Yes. It comes back to the point that I made under item 2. Putting in place a more permanent solution that will satisfy all our needs is the most pressing issue for the Standards Committee. There are questions in the paper about the function and purpose of cross-party groups, which effectively précis some of my points. The groups have to be genuinely cross-party. However, we do not want one party to be able to veto—as it could under the current system—any of the good work that is going on in some of the groups from the previous session.

We are reaching agreement. This is very much an interim solution. I remind members—I believe that this is still the case—that any group that has difficulty in reaching the new threshold of having a member from each of the four major parties plus one from the independents can come to the Standards Committee and ask for that to be waived.

We want to encourage good practice. It might still be difficult for some cross-party groups to obtain the necessary five members that we are suggesting. We want to encourage good practice and to ensure that every member of this Parliament is asked to be a member of the cross-party groups. Like Alex Fergusson, I declare an interest, as I am the co-convenor of the cross-party group on cancer. We had 41 MSP members in the previous session, none of whom were from the smaller parties. We have written individually to the Greens and the Socialists—I will need to go back and write to the independents as well—to offer them the opportunity to sign up. Making such an offer is quite important for the cross-party groups, because they have to be inclusive not exclusive organisations.

Alex Fergusson: I endorse that suggestion. Indeed, we on the cross-party group on ME did exactly that. We simply e-mailed every MSP—several times, as a matter of fact—with an invitation to join the group and, as a result, we now have a registered member from every party that is represented on the Parliamentary Bureau. I do not think that other groups will be different in that respect.

Donald Gorrie: Would it be polite and useful if we sent a message to the members of the two smaller parties and independent members to inform them of our provisional view on this matter and to find out whether they have any observations? As you have correctly pointed out, deputy convener, they are not represented on the committee and might have some views to express.

Alex Neil: I have one other point. When we come to take a longer-term view on this issue, we should bear in mind the fact that this time round there has been a trend in the earlier meetings of the cross-party groups to appoint more co-conveners. For example, one cross-party group has three or four co-conveners. We should take a minute to consider the implications of such an approach. If something goes wrong with a particular cross-party group, who is ultimately responsible if there are co-conveners?

Donald Gorrie: I will probably find that I am a co-convenor or co-deputy convener or something of one of the cross-party groups that I sit on.

Alex Neil: It might not be an issue at the moment, but it could become one.

The Deputy Convener: That is a good point. I am aware of two cross-party groups that have appointed what is called a rolling chair, which means that the group is alternately chaired by members of different parties.

Donald Gorrie also made a good point. We should certainly write not just to independent members and members of the Green party and

the SSP but to all members in general. However, as we do not have the time to seek responses to our suggestions and come to a different decision, we should write to inform members that we are simply offering advisory guidance. I would want to highlight that we have yet to reach a firm conclusion on the future of cross-party groups and that any views from individual members or parties would be welcome; that our suggestions are not changes to the code of conduct but are merely guidance; and that we are looking for good practice, which means not only that there is genuine cross-party operation but that cross-party groups are making an effort to invite members from across the Parliament to join them. Perhaps we should also add that any cross-party group has the right to come to the Standards Committee if it finds it difficult to meet this particular threshold.

Alex Neil: I seek some guidance. Is rule 2 in effect part of the code of conduct?

The Deputy Convener: It is.

Alex Neil: In that case, am I right in saying that, as that rule stands, a cross-party group cannot come into operation if it does not meet the two requirements of having five MSPs and representation from every party on the Parliamentary Bureau? After all, the rule states not that there should be representation from each of the four parties on the bureau, but that there should be representation from all parties on the bureau. Just to keep ourselves right as a Parliament, is it not necessary to have a short sharp resolution to this matter by changing rule 2 in order to legalise cross-party groups? By definition, most cross-party groups might not necessarily fulfil that objective, especially if they follow the guidance that we have just agreed. As someone might want to cause trouble under the law as it stands, we should probably consider a short sharp resolution to the problem.

Bill Butler: I take Alex Neil's point up to a point. However, we might find ourselves in an unnecessary situation. We are saying that this guidance is a holding position; it is simply good advice that does not replace the code. Indeed, it cannot do so, because we will need to wait for the Conveners Group review towards the end of the year.

I am sure that we can ensure that no one becomes a bit of a martinet about the code. Indeed, I hope that no one would be so lacking in common sense as to take such an approach. Instead, as far as I understand it, we have reached a consensus on giving the cross-party groups some good commonsense advice—which is something that is sometimes most uncommon. On that basis, we are establishing a holding position. As we are simply asking people to take our advice, we do not need to formalise things any further.

09:30

The Deputy Convener: I take Alex Neil's point. Any member can complain about the operation of a cross-party group if they feel that it is not operating in the way that it should. The guidance is there to enable parties to know when an appeal to the Standards Committee would be successful.

As it stands, we have the power to waive the membership rule and we are suggesting that, in the case of those groups, we would be willing to use that power. Hopefully, that would discourage people from coming to us with 49 different objections to the existence of those groups.

Alex Neil: Presumably, that means that, in relation to all the cross-party groups, we would formally agree to waive the need for both those requirements until there is a permanent change.

The Deputy Convener: I do not think that we would go down the formal route. As I say, we are talking about guidance at this stage.

Sam Jones: We could provide the committee with a list of groups that have not been able to recruit a member from each of the six parties.

The Deputy Convener: They will all have to be registered by 6 August, so it should be possible to review the matter with the help of such a list after the recess. We could find out which groups have not been able to meet the threshold of having a member from each of the six parties and then determine which ones would benefit from the guidance that we are suggesting.

Karen Whitefield: It would be useful if we asked cross-party groups how the suggestion had worked and whether they had encountered any difficulty. That would enable us to have a full picture of the effectiveness of the proposal when we meet after the recess.

The Deputy Convener: Yes. I am reluctant to change the code of conduct, even temporarily, if we do not have to.

Alex Fergusson: I have no difficulty with what is being said, but I think that it is fair to say that a certain amount of frustration is being caused—in my group, certainly—by the fact that the proposed cross-party groups will not be approved by us before September. I would like to put down a marker to suggest that, before the end of the next session, someone needs to examine the issue of how the transition is handled. It is particularly frustrating that the minutes from the three and a half years that the cross-party group on ME has existed have been removed from the internet. I have not yet discovered whether they will be put back on the web once we are reregistered. That is the kind of unnecessary act that can lead to frustration and could be improved.

As I said, I think that the matter should be examined seriously before the next dissolution, as the current set-up effectively means that there are no approved cross-party groups from the end of March to the middle of September—six months in which effective cross-party groups could be working.

The Deputy Convener: Groups can continue to work. If they register at this point, they continue to exist.

Alex Fergusson: They continue to exist as proposed cross-party groups, yes.

The Deputy Convener: No, they continue as cross-party groups. They have already been approved and, therefore, once they submit their reregistration forms, they can continue as before.

Alex Fergusson: They still appear on the web as a proposed cross-party group.

The Deputy Convener: Yes, but I think that that is a separate issue. That is being investigated by the clerks.

You make a good point about the timetable. The end of the 90-day period in which cross-party groups must make a fresh registration comes in the middle of the recess, which is probably not the best time for it to happen. Actually, we tried to make certain changes to the procedure before the election, but we ran out of time, as happens with many issues. Hopefully, we will not run out of time over the next four years.

We will write to all MSPs advising them of our decisions with regard to the guidance, as agreed.

Our final item, relating to the report of the acting standards commissioner on a complaint, will be taken in private session.

09:34

Meeting continued in private until 10:55.

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