

STANDARDS COMMITTEE

Tuesday 16 December 2003
(*Morning*)

Session 2

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STANDARDS COMMITTEE

11th Meeting 2003, Session 2

CONVENER

*Brian Adam (Aberdeen North) (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)

COMMITTEE SUBSTITUTES

Lord James Douglas-Hamilton (Lothians) (Con)

Marilyn Livingstone (Kirkcaldy) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Catherine Scott (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 4

Scottish Parliament

Standards Committee

Tuesday 16 December 2003

(Morning)

[THE CONVENER *opened the meeting at 11:00*]

Complaints and Items in Private

The Convener (Brian Adam): Welcome to the 11th meeting of the Standards Committee in this session. At our last meeting, we agreed to discuss how to consider referrals to the committee from the standards commissioner and the Scottish Parliamentary Corporate Body. To that end, members have before them a short paper that has been produced by the clerks and Catherine Scott, our legal adviser. I will give Catherine the opportunity to talk to the paper, which gives fairly clear guidance on how we can comply with the Scottish Parliamentary Standards Commissioner Act 2002 and the "Code of Conduct for Members of the Scottish Parliament" and when certain matters should be dealt with in private.

Catherine Scott (Scottish Parliament Directorate of Legal Services): The paper advises the committee that stage 1 referrals from the Scottish parliamentary standards commissioner and referrals from the SPCB should be taken in private. As the paper says, that advice is based on section 5(2) of the Scottish Parliamentary Standards Commissioner Act 2002 and on section 10.1.7 of the code of conduct. I am happy to answer any questions on the paper.

The Convener: In paragraph 3, you say that "investigations ... should take place in private"

and in paragraph 10, you say that complaints

"should be dealt with as a private matter".

Does "should" mean "must", or does it mean that we have some discretion?

Catherine Scott: In my view, section 5(2) of the act and the relevant section in the code of conduct do not leave much room for discretion.

The Convener: So it really means "must".

Catherine Scott: My interpretation of those two provisions is that it is appropriate for those matters to be taken in private.

The Convener: And that it is inappropriate for them to be taken in public?

Catherine Scott: In my view, were that to

happen, the Standards Committee could well be in breach of the code of conduct, which would be quite an unusual circumstance.

Mr Kenneth Macintosh (Eastwood) (Lab): What would happen if a member who was the subject of a complaint wished any stage of the investigation to be publicised? For example, a complaint to the SPCB may be dealt with without its becoming public knowledge. That is fine, but what if a member wished a complaint to become public knowledge? The member might have been the subject of adverse publicity and might wish it to be known, for the record, that a complaint was unfounded. Would the member, the Standards Committee or the SPCB have any discretion to publish in such a case?

Catherine Scott: I think that there is discretion once a complaint has been dealt with by the standards commissioner at stage 1 or stage 2 of the complaints procedure. Under section 10.1.7 of the code of conduct, with a basic standards commissioner investigation, there is a requirement not to disclose details of a complaint only during stages 1 and 2. At stage 3, there is a further provision that, when a report by the standards commissioner has been produced, that report should initially be dealt with in private. There is therefore a further rule relating to such complaints.

However, section 10.1.7 also refers to excluded complaints, of which an example could be a complaint from the SPCB. The section says that once the committee has decided not to refer a complaint to the standards commissioner, the restriction on disclosure will end. In my view, that means that if the committee decides not to make a referral to the commissioner, the committee should determine matters, although that is not written down. To carry forward the spirit of the rule, there is a sense in which the committee should ultimately determine matters and choose whether to make an issue public. Indeed, the member could do so, too.

The Convener: So at that point, the committee has discretion whether to deal with the matter in private or to make it public. Of course, it would be open to any member at that point to take whatever steps they considered were appropriate to publicise the matter or otherwise.

Catherine Scott: Yes. At that point, there is no restriction on the member against whom the complaint has been made.

Mr Macintosh: I would like clarification on something. Is a complaint that is made to the SPCB but which does not make it as far as the Standards Committee covered? If, for example, a complaint goes to the standards commissioner but is ruled out by the commissioner at stage 1 and the standards commissioner or the SPCB has

made a ruling, the matter will never get as far as the committee.

The Convener: In those circumstances, will it not be a matter for people other than members of the Standards Committee? Unless the matter comes to the committee, it will not be a matter for the committee, will it?

Mr Macintosh: The complaint would have started down the process, but it would never reach us.

Catherine Scott: The code of conduct does not specifically cover such situations; certainly, the disclosure provision does not specifically cover them. In section 10.1.7 of the code of conduct, the disclosure provision seems to envisage a situation in which the excluded complaint has come to the Standards Committee. Of course, many complaints are not referred. In such situations, I cannot see anything that would stop a member from making a statement. There is no specific coverage in the code one way or another. Such a situation would fall between the lines of the code.

Mr Macintosh: I suppose that the presumption is that there would not be public disclosure and that the whole matter would be dealt with in private.

The Convener: That is what the paper seems to say. However, if a member chooses to disclose a private matter, I presume that that is a matter for them.

Donald Gorrie (Central Scotland) (LD): I have a question, although it is not on exactly the same issue. During a lengthy investigation of a complaint, another complaint was made that covered some of the same material, of which we learnt only inadvertently. The fact that there had been another complaint and the nature of that complaint might well have affected the committee's judgment on the original complaint. That may never happen again, but there should be some provision that if there are several complaints, some of which have advanced further down the track than others, the committee should be notified that other complaints have been made. Those complaints should not be kept totally secret.

The Convener: You are right to say that, if there are further matters that are relevant to the complaint that the committee has been dealing with, which might affect how we deal with it, it is appropriate that those matters are disclosed to us before we make a final judgment. Perhaps we should raise that matter with the commissioner. Would that help?

Donald Gorrie: Yes, I think that it would. Having been on the Procedures Committee for a long time, writing reports saying that committees should never meet in private, if at all possible, I approach

the issue from the other point of view. However, I am persuaded that, in the interests of justice, we have to go down the private route. I cannot think of anything better, so I accept that proposal.

The Convener: Does anyone else have anything to say on that matter?

Members: No.

Item in Private

11:10

The Convener: Under agenda item 2, we must decide whether we will consider item 5 in private. In the light of the paper that we have just discussed, it is clear that we must take the item in private. Is that agreed?

Members *indicated agreement.*

Work Programme

11:11

The Convener: Item 3 is our forward work programme. There are all sorts of things that we could do and some things that we must do. There may well be other issues to which members have given some thought, which have not been included in the proposals that are before us. The non-Executive bills unit will be available to discuss and provide a briefing to the committee on the draft members' interests bill, which was carried forward from the previous session of Parliament. NEBU will be available to talk to us about that in January. The researchers who undertook work on the cross-party groups will also be available to brief the committee in January.

Perhaps we should give some thought to whether those briefings should be informal or part of a formal committee meeting. It is up to the committee to decide how it wishes to proceed. I believe that the committee has had an away day—*[Interruption.]* Sorry. The committee has not had an away day. Perhaps that is one way in which we could tackle the briefings. We will also want to decide how frequently we should meet. We are currently meeting roughly fortnightly, but members might think it possible for us to meet monthly unless there is a burning issue or an individual case that needs rapid disposal. A draft document from the standards commissioner on his information and media strategy will also come before us in January.

I leave it to the committee to comment on the proposals that are before us. It is important that we get our priorities right in deciding which proposals we are going to take up and which ones we are not going to take up—whether we want to have an away day or anything else.

Alex Neil (Central Scotland) (SNP): Once we have gone through the particulars of the paper, can we also have a discussion on our relationship with the commissioner? I have been a member of the committee for six months but, if the commissioner walked in the door, I would not recognise him, let alone know about his work load. I know that we cannot ask for the details of individual cases; however, I notice that the commissioner sought and obtained permission from the corporate body to bring in additional lawyers and legal advice. The Standards Committee should be consulted on such issues before they go to the corporate body, because if the work load is so big that we have to recruit more lawyers and all the rest of it, clearly there will be implications for the committee as well.

Before we read the paper, I ask that we also include a general discussion. You said that your

idea is for us to have a meeting with the commissioner fairly soon, but given that that meeting will happen fairly early in the new year, we have to be clear as a committee about what we want out of the meeting, and the issues that we need to clarify with the commissioner.

11:15

The Convener: Your last point is helpful. The commissioner has offered to meet us on 13 January. You will note that a number of meetings have already been scheduled. I agree that it would be sensible to have an agenda on the commissioner's staffing and approach to discuss with him. I expect that we would do that on an informal basis at the conclusion of the meeting on 13 January, perhaps—I am looking in particular to the Labour members—over lunch, but I know that that might present some members with some problems. Some of us could get up a little bit earlier on that day and have the meeting a little bit earlier to accommodate. Committee members can discuss that and let me know how they feel before we set the time for the meeting.

Donald Gorrie: Do you wish at this stage to discuss the content of the meeting, or merely how we should progress with it?

The Convener: Both. We need to have some early items on the work programme, and we need to decide which items have priority. We may also wish to dispose of some items. We are not bound by what the previous committee decided, unless it is a matter of the law. For example, the previous committee examined lobbying, and did not take it any further. We have the choice of whether we wish to take it further—we may decide to do so, or we may decide, given sufficient time to consider the matter, that we do not wish to pursue it this year. We want that kind of steer.

Donald Gorrie: We should certainly have a briefing on the proposed bill to replace the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1998. I agree with many of the proposals, but not with some of them. That briefing should be held in public. I see no reason why it should be held in private.

It may be interesting to find out what the Canadians did on lobbying. I would find it helpful to be briefed in more detail on the status quo.

On cross-party groups, do we need legislation, or can we just make progress?

The Convener: It is not legislation that is required, but a recommendation from us to the Procedures Committee, I think.

Sam Jones (Clerk): No. Changes to the code of conduct would be required, which it would be for this committee to bring forward.

The Convener: Okay.

Donald Gorrie: We should progress with that.

The Convener: I suggest that we deal with that urgently. I concur with Donald Gorrie on the members' interests order. The Parliament was charged by Westminster to bring forward its own members' interests order. It did not do so in the first session of Parliament. If we are not careful, we may miss a window of opportunity with the non-Executive bills unit. Both those items should be dealt with.

Karen Whitefield (Airdrie and Shotts) (Lab): I agree with Donald Gorrie on the three issues in the paper that are most urgent. For some time, there have been issues surrounding cross-party groups, such as how they work and whether there is duplication. In this session of Parliament the groups' conveners have attempted to streamline their work where there has been a crossover, but I think that the Parliament is looking to the committee for guidance on the matter. We have a responsibility to finish the work that the previous committee started and to make any necessary changes to the code of conduct.

We should try to complete the work on lobbying, because—again—we must address members' concerns about the impact of lobbying on the Parliament's reputation.

I am keen for work to start on the proposed committee bill, because I do not want there to be a rush to complete the bill's passage through the Parliament before the end of this session.

The Convener: Are you talking about a bill that would introduce a registration scheme for lobbyists?

Karen Whitefield: No, I mean the proposed bill on the members' interests order. We need to do something about that now, as it could take up to two years for such a bill to go through all its stages, even though its intent would be quite simple: it would review and clarify the obligations that are placed on members, to ensure that the system works effectively.

The Convener: Am I right in thinking that the four issues that you suggest that we consider are the replacement of the members' interests order; lobbying; and two issues around the cross-party groups—membership, and the general point about the need for more research?

Karen Whitefield: Yes.

Bill Butler (Glasgow Anniesland) (Lab): I agree with the members who have commented on the recommendation about our three priority concerns.

We should start work as quickly as possible on replacing the members' interests order. As the

paper says, we should schedule any necessary legislation to be introduced during the second or third year of this session, so that it can come into force at the start of the next session. Given that the previous Standards Committee ran out of time and that it would be problematic to introduce a new members' interests order halfway through a parliamentary session, that recommendation is particularly appropriate.

I agree with what members have said about lobbying and I have nothing to add to their comments.

We should include a review of the cross-party group system in our forward work programme. In January we will have an initial briefing about the CPG review, but until that review is completed we should retain the interim guidance on membership of CPGs. The guidance is working and has not, I think, given rise to any problems.

Alex Neil: I think that there is a tendency for some committees to bite off more than they can chew. None of the issues that have been highlighted is so urgent or of such importance that we need to move on it in January or February. We should address those matters timeously, but we should not overload the committee, as there will need to be a fair bit of briefing, research and consideration on many of the issues before we reach a point at which we can make a decision.

I agree with the recommendation that outlines our three priorities, although I want to say a few words about a couple of those. It is clear—certainly from my first six months on the committee—that the existing procedures for handling complaints are wholly unsatisfactory in a number of areas. We need to review them at some stage, to make them fairer to both sides and to address some of the anomalies that we have come across in our work in the past six months.

I want to strike a cautionary note on the members' interests order and on lobbying, both of which we are suggesting could be dealt with by primary legislation. In my view, one of the reasons why the Parliament's reputation is not high out on the street is because we spend so much time dealing with internal matters and matters that people regard as being fairly peripheral to the day-to-day issues that they face. It could be dangerous if we try to introduce too much internal legislation and tie up parliamentary time in the years in which—if the Parliament's first session was anything to go by—the Executive will be introducing the bulk of its legislation, so we should be cautious. Taking on two bills—one on lobbying and one on members' interests—would not be clever and I think that, at some stage, we should prioritise one of them.

A briefing would be a good starting point, especially on members' interests, because I do not

agree with a fair amount of what the previous Standards Committee recommended. There is a danger of us going completely over the top—we are getting to the stage at which not just people who are thinking of becoming members of the Scottish Parliament but their extended families will start to worry about whether they should bother. We need to ensure that we operate to a high standard, but I have never heard anything as daft and ridiculous in all my life as the suggestion that members should be required to register gifts that are worth in excess of 0.5 per cent of their salary.

We have to be careful about what we propose. Although we must maintain high standards, we must strike a proper balance and use our common sense. We are not under any pressure, as the Parliament has been very clean as regards lobbying, interests and so on—nothing has come to light that has been proved to be in any way underhand. That is not the Parliament's problem in the eyes of the people. I am cautious about tying up a lot of the committee's and the Parliament's time with what is, in essence, internal, housekeeping legislation. We should be conscious of that when we decide what we want to do.

Mr Macintosh: I agree broadly with Alex Neil's points. There is no rush. During the first six months, we were conscious that we were not making much progress on standards business, but if we consider the issues involved, none of them is so urgent that we must drop everything to concentrate on it.

My priority would be for us to have a chance to speak to the standards commissioner, which is the first issue that Alex Neil raised. I had no idea that the commissioner had asked for extra legal advice and I would be extremely concerned if the standards procedures are such that the commissioner is so bogged down in legal matters that he requires extra assistance. If that is the case, it is a slightly worrying development. I would welcome the committee's having the opportunity to meet and establish a relationship with the commissioner, to find out what we expect of him and whether the processes are working fine so far.

Alex Neil went on to say that he was concerned about the current complaints process. I do not think that we should rush into judging that, because it took four years to get to the present stage. Each case throws up new issues and I do not think that we should react to each case by changing the processes, although we should certainly think about whether they are satisfactory or whether they could be amended. That process should not be rushed; it could be progressed during our initial discussion with the commissioner.

Alex Neil: Monthly meetings are a great idea.

Mr Macintosh: Absolutely. The primary duty of the Standards Committee is to deal with any

complaints that arise as timeously as possible and that will always be the case.

As far as the other background issues are concerned, I want to meet the commissioner and have a general discussion about how he is coping with the new procedures and to ensure that the relationship involving him, the committee and others in the complaints process is working okay.

I would then prioritise the issue of cross-party groups. It has slightly lost its urgency, because we have all signed up to many of those groups and, as Bill Butler suggested, our interim solution seems to be working. However, we need to address several issues concerning the groups. For example, I do not think that some of them work in a particularly cross-party way. That said, if the research will be available in January, that would be the perfect opportunity to set our programme in that respect.

Finally, I suggest that we examine the members' interests order before the issue of lobbying. I totally endorse Alex Neil's comment that the committee should certainly not be driven by a sleaze agenda. Such sleaze does not exist; in any case, I have always felt that such an agenda was slightly spurious. At the same time, it is important that we have our house in order and I would be satisfied if we could establish a long-term timetable that would allow us to address those issues over the next three and a half years of this session.

11:30

Donald Gorrie: On housekeeping, I want to highlight the internal complaints process that is mentioned mainly on page 8 of the paper. I find it pretty bizarre that, if we dislike what a convener is doing and complain about it, the convener deals with that complaint. I am sure that that will not occur in this committee; however, it might well happen in other less regulated and less well-run committees. As a result, we should perhaps have some neutral court of appeal, which could be this committee or some other group. The issue is worth considering and will not involve a great deal of legislation. Presumably, we can simply rewrite our own rules.

The Convener: I seek guidance on that issue.

Sam Jones: Donald Gorrie is right. We could simply change the code of conduct.

The Convener: As far as I can gather, members feel that the members' interests order should be progressed, although some have suggested that we need to be careful about getting too tied up in internal affairs. However, a duty was placed on us when the Parliament was set up to examine that issue. Do members agree that the members'

interests order is a higher priority than the issue of lobbying?

Members indicated agreement.

The Convener: I must admit that I share some of the concerns about focusing too much on lobbying. After all, it was quite a controversial issue in the previous parliamentary session and there is no universal view on it. Perhaps we should put to one side the issue of taking a legislative approach to the matter.

There are two aspects to the issue of cross-party groups. The first is whether we carry out a review of how they are functioning and the second is whether we review the interim arrangements to reflect the Parliament's new balance. I take it that other members share the view expressed by Bill Butler and Ken Macintosh that the interim arrangements are working and that we should not interfere with them.

Members indicated agreement.

The Convener: After reading the papers, I felt that we should deal with that matter urgently, but I am quite happy to go along with the committee.

Alex Neil: The reality is that most of the cross-party groups, particularly the newer ones and the groups that have merged, have not yet bedded down. After all, they did not really get up and running until after the summer recess. As a result, we should not carry out a review of how the groups are functioning too early on because we have to give them time to bed down and to work out any problems that they might have. We want any review to have some value. In other words, many of the problems that might be highlighted in a review that we might carry out early in the new year might simply be teething troubles experienced by the new or merged groups settling down. There has been an attempt to streamline some groups and we have to give them time to function in this parliamentary session before we evaluate how well the system is working.

The Convener: My concern was about whether the interim arrangements were satisfactory. The rest of the committee thinks that they are.

Mr Macintosh: Although I feel that they are working, given anecdotal evidence, I was looking forward to hearing the results of the research so that we could take a decision.

The Convener: We will have those results, so we will be able to decide where we go.

Mr Macintosh: I am in no rush to deal with any of the issues, but I would prioritise the cross-party groups above the members' interests order.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: There are a number of other issues to consider, but it is up to members whether we pursue them at this stage or later.

Mr Macintosh: I suggest that you and the clerks use your discretion to find time. All the issues are important and worthy of our attention, but none is absolutely pressing. It is a case of finding the most suitable slot to make progress on them all. I notice that some depend on work being done elsewhere.

The Convener: If the committee wants to pursue your suggestion, we could commission papers on the issues. When we have a bit more background on them we can make a more informed decision about whether we wish to make more progress on them and what should take priority. There appears to be general acceptance of that. No one mentioned the opportunity for an away day. There seems to be no desire for one.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): The tradition of not having one should be pursued with a vengeance.

The Convener: That is a fairly clear view, which the committee appears to share. I have absolutely no problem with that.

Bill Butler: Briefings in public, as and when they are necessary, are fine.

The Convener: I accept the point that Bill Butler and Donald Gorrie made that as many of the committee's activities as possible should take place in public. I seek guidance as to whether we should work on a monthly cycle or a fortnightly cycle, putting to one side urgent cases, which we will deal with as soon as possible.

Bill Butler: Why do we not go with the three suggested dates—two in January and one in February—and see whether we are overloaded or whether we can get by with monthly meetings?

The Convener: I will not be here on 27 January, so I suggest that we do not hold a meeting that day. If we do, Kenneth Macintosh will convene it. Business is pencilled in for 13 January, including an informal meeting with the standards commissioner. I am happy to be guided by the committee on that.

Donald Gorrie: In principle, I prefer scheduling meetings that are cancelled subsequently. I would like us to go for the fortnightly system, because we would not then book in anything else. It is always good news when the clerk says that there is not enough business and the meeting is cancelled.

The Convener: Is that view shared by the rest of the committee?

Alex Fergusson: It depends how much notice we are given that a meeting is going to be cancelled. If someone arranges to be in Edinburgh on a given day and then finds out at short notice

that they do not have to be there, it is difficult for them to rearrange their diary.

Alex Neil: I would prefer to have a monthly meeting that lasts three hours rather than have two monthly meetings that last two hours—they always end up lasting two hours, because when people meet they talk.

Bill Butler: Not you, Alex.

Alex Neil: Bill Butler's suggestion is good. Why do not we run with having three meetings over the next two months—whatever dates have to be settled on—and see where we go from there? If we have the work load to justify more meetings, we can have them. If we do not, a three or four-weekly cycle would make more sense.

Mr Macintosh: If the convener cannot make the meeting on 27 January, I see no need for us to meet then. We should start off with a monthly cycle and meet on 13 January and 10 February and take it from there. If we have a meeting on 27 January without the convener, that implies that there is pressing business for us to address, but there is not. We should start as we mean to go on.

The Convener: I suggest that if pressing business arises we have a meeting on 27 January; I am happy to leave that to the discretion of the deputy convener. I will be away from 22 January to 2 February.

Alex Fergusson: Would it make sense to schedule a meeting for the beginning of March, given that in April we will be into the Easter recess? We could review our work load at the March meeting to see whether we need to meet more regularly.

The Convener: We will hold the third meeting on the first Tuesday in March, if that is agreeable. If cases arise that need to be disposed of, the convener, the deputy convener and the clerks will discuss whether a meeting is required.

Bill Butler: I have a point about the timing of the first meeting, when we will meet the standards commissioner. The other Labour members and I would find it difficult if the meeting were to be extended through lunch time. An earlier start would make it easier for us, if that is acceptable.

The Convener: Will you leave that to the three of us—the convener, the deputy convener and the clerk—to deal with?

Bill Butler: Certainly.

The Convener: I am happy to accommodate members. We will also have to discuss the timing with the commissioner.

I think that we have disposed of the forward work programme, with the exception of the detail of what we might want to discuss with the

commissioner. Alex Neil and Ken Macintosh have made some suggestions. I suggest that members e-mail the clerk with specific issues that they would like to raise and we will draw up a list of issues.

Alex Neil: In the meantime, could we get a briefing from the clerks on what we can find out about the commissioner's work load? I do not seek information on individual cases at stage 1 of the complaints procedure. However, I think that it would be reasonable for the committee to get an up-to-date report on how many cases the commissioner is dealing with at stage 1, stage 2 and so on. That would give us an indication of his work load and a feeling for what is happening.

We need to clarify that if the commissioner—who, at the end of the day, reports to us in the Parliament—goes to the Scottish Parliamentary Corporate Body to ask for additional resources, we should be consulted before that happens. With all due respect to the commissioner, my understanding is that his resources come out of our budget—

The Convener: I do not think that that is the case.

Alex Neil: Perhaps that is not the case, but nevertheless I think that we should be consulted on those matters. The committee should not be bypassed. I would like a briefing on that.

I would like to know how many cases the commissioner is dealing with at each stage, what resources are available to him in terms of legal advice and what changes have been made as a result of the corporate body's decision on 16 September. I would like us to receive all such information. We should be aware of what the commissioner's resources are and what, in general terms, his work load is.

The Convener: Do members agree that such information would be helpful in advance of our meeting with the commissioner? It may well be that some of those issues will be addressed at the meeting; we might not be able to get all the answers before then, although I am sure that the clerks will do their level best to get the information. If members have specific questions for the standards commissioner or if there are specific issues that they would like to discuss with him, it would be a good idea to flag them up for the clerks in advance. The issues can then be flagged up to the commissioner so that he will be prepared and the meeting will be more useful.

11:45

Mr Macintosh: Although this is not the commissioner's annual report—I believe that he will report annually—the more information that we

can get that is not individualised, the better. For example, I would like information about the sort of complaints that are made, classified by the amount of time he has taken to deal with them and by their nature, without going into individual circumstances. We can address some of those matters in our meeting with him. I am trying to get a picture: we are talking about the period immediately after the election and there might be something specific about the post-election period that creates a flurry of interest.

If possible, I would like that information to be mapped out for the past four years. The commissioner is not answerable for the past four years, but it would be good to have some sort of comparison.

The Convener: You are talking about getting a feeling for the quantity and nature of the complaints.

Mr Macintosh: Exactly.

Alex Neil: If we could have an idea of the percentage of complaints that convert from stage 1 to stage 2, that would be a good indicator—by proxy—of our likely forward work programme. I remember David Steel saying that the most unpleasant aspect of the Presiding Officer's job was dealing with nitpicking complaints between members, and not just those between first-past-the-post and list members. If a lot of the commissioner's work is dealing with childish stuff, those complaints should be nipped in the bud before they get to the commissioner, and if that is happening over a period of time, we should be prepared to consider that and do something about it.

The Convener: Perhaps the commissioner's work load could be considered in terms of annex 5 of the code of conduct, which deals with the relationship between constituency and regional MSPs. There were some specific issues around that relationship and I would be interested to hear whether the present Presiding Officer is finding that his work load is affected by having to deal with such issues, as well as how the previous Presiding Officer felt about the situation and whether he wants to recommend any changes. I suspect that although many of the complaints are interesting to the members concerned, the public would think that they were very childish.

Is everyone happy about how we are going to deal with the meeting with the commissioner? During the next week or two—up to the turn of the year—if any member has other ideas that they might want to explore, I ask them to put those to the clerks. When we get in touch with the commissioner, we will consider all such issues.

Acting Scottish Parliamentary Standards Commissioner

11:48

The Convener: Members have before them a paper on the acting standards commissioner, who was commissioned to continue beyond his initial contract period to work on the complaint against Kenny MacAskill and Tricia Marwick. That work was recently finished and this is the first opportunity that the committee has had to deal with the matter. I suggest that we confirm to the SPCB that no further assistance is required from the acting standards commissioner so that a line can be drawn under the subject.

Alex Fergusson: I have no difficulty with that recommendation other than to say that I have been told—entirely anecdotally—that following the case that is outlined in paragraph 4 of the paper, there is a possibility that further complaints might arise. If that is the case—the convener might be better informed on that than I am—would the acting standards commissioner be required to be involved yet again? I would consider that to be a thoroughly unsatisfactory state of affairs.

The Convener: If there are further complaints—even complaints of the same nature—those will be a matter for the new commissioner, rather than for the previous acting commissioner. As I understand it, the previous acting commissioner had his contract extended on an hourly basis to deal with the particular complaint or series of complaints that we are discussing.

Alex Fergusson: That is fine.

The Convener: Alex Neil has raised some questions about this issue.

Alex Neil: I am happy to accept the recommendation, but I do not understand who took the decision to extend the acting commissioner's contract beyond 31 March, when that decision was taken, why it was taken and why we ended up having two commissioners, instead of one, for six months. I have lodged questions about those matters and am still awaiting an answer from the Scottish Parliamentary Corporate Body.

The Convener: Can our clerking team answer any of those questions?

Sam Jones: It is for the corporate body to respond on those matters. As I understand it, there was not an extension of the contract as such. The original contract said that the acting commissioner would serve until the permanent commissioner took over, but that if there were one

or more outstanding complaints subject to investigation at that time the acting commissioner would continue to deal with those complaints.

Alex Neil: The acting commissioner told at least two people who were involved in the saga of Kenny MacAskill, Tricia Marwick and Dorothy-Grace Elder that the new commissioner would take over from 1 April. The original complaint by Dorothy-Grace Elder was made on about 27 February and the acting commissioner's contract was due to expire on 31 March—at a fairly early stage in the inquiry. As late as 19 March, he informed at least two people that he would retire on 31 March and that after 1 April all correspondence should be directed at the new commissioner.

What happened between 19 March and whenever a decision was taken? Who took the decision and why was it taken? We need some answers to those questions. I have lodged questions to the corporate body because I want to ensure that there is no suggestion of a cover-up or anything of that sort in what has happened. More than any other committee, the Standards Committee must ensure that everything is done transparently, openly, fairly and objectively. We need answers to the questions that I have asked. There may be a perfectly good explanation for what has happened, but why is it not forthcoming?

The Convener: As the clerk indicated, these are matters primarily for the corporate body.

Alex Neil: Again this committee has been bypassed. It was not asked about the extension.

The Convener: Does the rest of the committee share Alex Neil's view that these questions need to be answered? Can anyone suggest a remedy that will enable us to get answers? Is this a matter that Alex Neil should pursue with the corporate body, or should the committee do that?

Bill Butler: These are questions that require answers. I seek the guidance of the convener and the clerking team on whether it would be appropriate for the committee to seek answers to questions that were first raised by a member of the committee—Alex Neil. If that is an appropriate way of proceeding, we should proceed in that fashion and get answers quickly.

Mr Macintosh: I have nothing against that suggestion. I do not know what the decision-making process in this case was, but everyone worked under the assumption that Mr Spence would stand down and that the new commissioner would take over. When the matter was examined closely, it dawned on people—as often happens in such situations—that that was not possible and that Mr Spence would have to deal with the outstanding cases. Members will recall that the first session ended in March and that we were in

the period running up to the election, when much other business was suspended and temporary arrangements were made.

Alex Neil: The question is, who did that dawn on and who took the subsequent decision? To the best of my knowledge, it was not this committee. I have checked the minutes.

The Convener: Is the committee minded to take up Bill Butler's suggestion that we write as a committee to get the answers to the questions that have been posed?

Bill Butler: I was struck by one thing. How long ago did you ask the questions, Alex?

The Convener: It was very recently.

Alex Neil: I started asking them about six weeks ago.

Bill Butler: That is long enough.

The Convener: The answers became available last week.

Alex Neil: No—I have not had answers to most of the questions. They have not come through to me.

The Convener: Have they not?

Alex Neil: Not that I have seen.

Sam Jones: I was under the impression that they have been answered.

The Convener: I have had the answers.

Alex Neil: I was having to—

The Convener: You were ill at the end of the week, and I came to talk to you about the matter.

Alex Neil: If the answers have come through, that is well and good, and I am happy to ensure that they are circulated to the committee.

The Convener: Some of them have certainly been answered. Will you leave it to the discretion of me and the clerks as to how we, on behalf of the committee, sensibly pursue the questions that have not yet been answered by the corporate body?

Alex Neil: Yes—as long as they are answered satisfactorily.

The Convener: We will judge whether or not the answers are satisfactory when they are presented to the committee.

Donald Gorrie: This raises a wider issue. The Scottish Parliamentary Corporate Body seems to be a rather unaccountable body, as well as a corporate one. Can we take action in relation to the SPCB? Can people complain about the corporate body and, if they do, will those complaints come to us?

The Convener: We would consider a complaint only if it was about an individual member's actions. However, we might consider one if the corporate body took an action that was contrary to the code of conduct. As was rightly pointed out earlier, I could be in the same position: if there was a complaint against me, who would deal with it? We could also be in the same position if someone made a general complaint about the Standards Committee. To whom are we accountable? We might have to wrestle with that question. No member is above the law or the code of conduct. If I have got that wrong, I am more than happy to be corrected by the clerks.

Sam Jones: No, that was correct.

The Convener: We will pursue the questions that Alex Neil asked. In the meantime, let us return to the area for which we have responsibility. I take it that members are content with the recommendation that we inform the Scottish Parliamentary Corporate Body that we no longer require the acting commissioner's services, as he has completed the task before him.

Alex Neil: I am absolutely happy with that. However, taking up the points that Donald Gorrie and others made, on which we are agreed, I think that we should say to the corporate body that the committee does not intend to be bypassed on any issue relating to the contracts of the standards commissioner or whomever. We should be involved as appropriate, and we should certainly be kept informed by the corporate body about what is going on if there is any change in resource allocation and so on. We should not have to wend our way through the corporate body's minutes.

The Convener: Is that a general view?

Bill Butler: I would agree with that, although we could perhaps say that we wish to work in the closest possible partnership with the corporate body. I think that that is what Alex Neil is pushing towards. If we expressed things in that way, I would agree. After all, we elect the corporate body.

Alex Neil: Well, it is Christmas.

The Convener: I take that as a vote of confidence in the convener and clerk to find an appropriate form of words in which to put that.

Bill Butler: By acclamation.

Mr Macintosh: I suggest that the committee formally thanks Mr Spence for his contribution as acting parliamentary standards commissioner. It was a difficult post to take up, and I think that he handled it very well.

The Convener: I take it that the committee would wish to write to Mr Spence in those terms.

Members: Yes.

The Convener: As we agreed earlier, we will move into private session in order to deal with item 5. Would the press, public and anybody else who should not be here kindly disappear?

11:58

Meeting continued in private until 12:30.

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