

STANDARDS COMMITTEE

Tuesday 10 February 2004
(*Morning*)

Session 2

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STANDARDS COMMITTEE

2nd Meeting 2004, 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 :

Chris Ballance (South of Scotland) (Green)

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

Nora Radcliffe (Gordon) (LD)

Mark Richards (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 10 February 2004

(Morning)

[THE CONVENER *opened the meeting at 11:01*]

Cross-party Groups

The Convener (Brian Adam): Welcome to our second meeting of 2004. Donald Gorrie has sent us his apologies for not attending today's meeting. I apologise for the number of changes that have been made to the agenda, but that has been done so that we can deal with business as expeditiously as possible.

Item 1 on the agenda concerns proposals for cross-party groups. The first is for the establishment of a cross-party group on wastes management. I note that Nora Radcliffe is not here, but all members have the papers before them, so if there are any questions we shall attempt to deal with them as best we can.

Alex Neil (Central Scotland) (SNP): I suggest that we approve the proposal.

The Convener: Is anybody otherwise minded?

Members *indicated disagreement.*

The Convener: In that case, I am pleased to say that the committee agrees to that proposal. We shall write to confirm that.

The second proposal is of a similar nature and is for the establishment of a cross-party group on Tibet. Again, the proposer, Chris Ballance, is not present, but if committee members have any questions I am sure that we can deal with them.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I have a question, based on the e-mail that we have received from the Chinese consulate. I assume that everybody has a copy of that e-mail and I think that we have to speak about it. I would be grateful for members' views, but I suspect that what that e-mail does is flag up something that we have spoken about before, which is the perception of what a cross-party group with the Scottish Parliament tag attached to it actually is. In the public eye, there is a perception that a cross-party group of the Scottish Parliament has much more official relevance to parliamentary proceedings than is the case. I wonder what members' thoughts are on responding to the e-mail and on whether the e-

mail affects our thinking on the proposed cross-party group on Tibet in any way.

I also have slight reservations about the possibility of ending up with a cross-party group for every country in the world, given the shortage of MSPs. Nonetheless, I accept that there are entirely genuine desires behind the proposal to establish the group.

The Convener: At this point, I welcome Nora Radcliffe, who has just arrived. I have to tell you that your visit has almost been in vain, as we have already dealt with the matter. I am pleased to say that we have approved the cross-party group on wastes management, and we shall be writing to you accordingly.

Nora Radcliffe (Gordon) (LD): Thank you, convener. I am pleased to be here in person to thank the committee.

The Convener: On the point that was raised by Alex Fergusson, have all members of the committee seen the e-mail to which he referred?

Alex Neil: No.

The Convener: We were aware that the Chinese consulate had not quite managed to get everybody's address right, and I thought that we had arranged to send the e-mail on, but it may well be that members have not yet had the opportunity to look at it. I shall just give everyone a couple of moments to read it.

On the point of principle on which Alex Fergusson is seeking guidance, there are some requirements for cross-party groups, but all that is required is that a group is parliamentary in character, that it raises concerns of genuine public interest and that its membership is in accordance with the rules. As far as I can see, each of those criteria is met by the proposed cross-party group on Tibet, but if members wish—

Alex Fergusson: Perhaps I can—

The Convener: On the general principle that Alex Fergusson mentioned, perhaps there is confusion between cross-party groups and committees of the Parliament. That is a matter that we shall return to in our report on cross-party groups, for which we have commissioned independent research. We have already had one cut at it and we await the final report from the academics from whom we have commissioned the work.

Alex Fergusson: What I am really trying to ask, in a rather inadequate way, is whether you intend to respond to the e-mail and to point out what you have been saying, which is that as long as certain criteria are met there is no reason why a cross-party group on Tibet should not be set up, and that

there is certainly no diplomatic slur intended by the establishment of such a group.

The Convener: If that is the wish of the committee, I am more than happy to respond on behalf of the committee, if we agree—which we have not done as yet—to recognise the cross-party group on Tibet. Do other members want to comment?

Mr Kenneth Macintosh (Eastwood) (Lab): Can I ask who the e-mail was addressed to?

The Convener: It was addressed to all members of the Standards Committee but, to be fair, I think that one or two of the addresses were not quite right. I think that you will find when you go back to your desk that there will be a copy for you.

Mr Macintosh: In that case, I think that there is an obligation on the convener to respond on behalf of the committee.

The Convener: Is it agreed that we should approve that cross-party group?

Members indicated agreement.

The Convener: I shall write or e-mail, as is appropriate, to the Chinese consulate.

The second matter under the agenda heading relates to groups in which there have been difficulties with membership. Since the setting up of cross-party groups in the new session, we have had to contact a number of the groups that have not quite managed to get the membership that is required from all the parties. As a consequence, we have had correspondence from Pauline McNeill, the convener of the cross-party group in the Scottish Parliament on the Scottish contemporary music industry. Because she has been unable to get a full complement of members, she is requesting that we waive the relevant rule in this case.

Bill Butler (Glasgow Anniesland) (Lab): It seems that there are two precedents from the previous session of the Parliament that we could consider: the cross-party group in the Scottish Parliament on nuclear disarmament and the cross-party group in the Scottish Parliament on Palestine.

I will quote Patricia Ferguson, the present Minister for Parliamentary Business, who was then Deputy Presiding Officer: I do that from time to time. On the cross-party group on nuclear disarmament, she said that “all reasonable steps” had been taken by the group to meet the criteria. On that basis, the previous Standards Committee decided that an exception could be made. I think that we have another exception here because, as far as I am concerned, Pauline McNeill and the other interested members on the cross-party

group on the Scottish contemporary music industry have taken all reasonable steps: we should allow an exception and waive the strict criteria.

Alex Neil: I agree with Bill Butler. It is not surprising that we could not find a Liberal Democrat to sing from the same hymn sheet as a Labour convener.

The Convener: Do any other members want to express a view? Is it the view of the committee that, because all reasonable steps have been taken by the group, we should waive the rule?

Bill Butler: I think that we are in harmony on the matter.

Alex Neil: That strikes the right note.

The Convener: On a similar issue, we have been approached by Cathy Peattie on behalf of the cross-party group in the Scottish Parliament on women. There is a late paper on the matter, which I will—if members want to see the detail of it—pass around the table. Cathy Peattie's group was in operation during the previous session of Parliament but unfortunately it has, during this session, been impossible for her to find a Conservative member to serve on the group. We have not heard any objections to the group; the problem is just that members are rather overstretched. Cathy Peattie has taken considerable steps to try to get a Conservative member to serve on the group.

Is the committee of a mind to waive the rule in this case, too?

Alex Fergusson: As I represent the party for which there does not appear to be a member for the cross-party group on women, I agree with that suggestion. I can certainly confirm that extensive steps have been taken to try to get a member; they will continue. I would not want to stand in the way of the formation of the group.

Both of the cross-party groups that have asked for a waiver were well established during the previous session. It is not as if they are new groups; they have quite good records on the issues that they were formed to discuss and they should be encouraged to continue.

The Convener: Is that agreed?

Members indicated agreement.

Mr Macintosh: For the record, Chris Ballance, who will convene the cross-party group on Tibet was here but, because we moved through business so speedily, he is delighted that the committee has approved the group and has departed.

The Convener: That might well be a lesson for other members: if they want to be involved, they

must turn up timeously. Nevertheless, we will record that Chris Ballance attended.

Mr Macintosh: To be fair to him, he was told not to come until 10 past 11.

The Convener: That is okay, although I do not know what we were going to be doing between now and 10 past 11.

Standards of Conduct Committee (National Assembly for Wales)

11:14

The Convener: Item 3 is correspondence from the National Assembly for Wales. We have a written request for information and perhaps some guidance. The National Assembly for Wales is also proceeding down the route of considering the establishment of a standards commissioner. We have been invited to give a written submission with the background to the arrangements for our own Scottish Parliamentary Standards Commissioner Act 2002, as well as some information on how the procedures are operating.

That would be helpful. Perhaps Ken Macintosh might be in a position to do something about that, but the rest of us might well be relatively inexperienced. It is fair to say that the arrangements are relatively new so we are also trying to find our feet.

In the spirit of co-operation with our colleagues in Wales, perhaps we ought to draft a short submission and emphasise the fact that the procedures were developed by our predecessors but that we will have to keep them under review. If members are content with that perhaps we could invite the clerks to prepare a draft paper for our next meeting in March. Members will note that we have been given the opportunity to participate by giving evidence through videoconferencing, which might happen somewhere down the line. We might have to make use of our deputy convener's greater experience on the detail of the matter and get him to do it.

Alex Fergusson: Am I right in thinking that the March meeting is provisional?

The Convener: We have two meetings arranged for March. One is a firm date. The second, which is currently in brackets in our work programme, has been included in case we have urgent business. That is how the dates were set out.

Karen Whitefield (Airdrie and Shotts) (Lab): I agree with the convener's suggestion. We should send a written submission, but it would be helpful if the clerks were to prepare a paper for us to consider at our next meeting.

The Convener: Thank you. Is that agreed?

Members *indicated agreement.*

Members' Interests Order

11:16

The Convener: The next item is on replacing the members' interests order. We have received considerable correspondence on the matter and we will have the benefit of the presence of members of the non-Executive bills unit, in case we require them. We are being asked today to decide in principle what we wish to do with the members' interests order. A number of options are available to us: one is that we will not proceed with a members' interests order; another is that we will accept the work that was done by the previous Standards Committee and proceed with its draft bill. We can start from scratch or we can revisit the subjects on which there was discussion—or at least those on which there was not unanimity of views—and consult on them. I throw the subject open to members to express their views. I welcome David Cullum from the non-Executive bills unit and Mark Richards from the Parliament's directorate of legal services, who are available to answer any technical questions that members have.

Karen Whitefield: We should go ahead with our proposal to introduce a committee bill. It would be unwise to start from scratch, especially given that the previous Standards Committee did a considerable amount of work on the subject. All new members of the committee should want to consider carefully the previous committee's conclusions and the work that it did, which will help us. We might want to revise some of its proposals, but I suggest that we use that work as the basis for what we want to include in a committee bill, and that we use it as a helpful starting point rather than start from scratch. The clerks provided a helpful paper outlining a timetable for us. We have to be mindful that it would be helpful for the next session of Parliament if such legislation were in place. If we want that to happen, starting with a blank sheet of paper to reinvent the wheel will only delay us and will not be particularly constructive.

The Convener: Is that suggestion agreed?

Members *indicated agreement.*

The Convener: Are there any items in particular that you would like us to look at again?

Alex Neil: There are quite a number.

The Convener: To give guidance to the clerks and, indeed, to ensure that we get the support that we require from our legal advisers and the non-Executive bills unit, perhaps those views should be expressed now. That would be helpful for our preparatory work.

Alex Neil: I will run through the main provisions. My first point relates to gifts. I have my doubts about the switch to a percentage of the MSP's salary, for presentational reasons if nothing else. It seems to me that if we have to register a gift that is 0.5 per cent of an MSP's salary, we will have to register something that is not a hell of a big gift. The public would understand a figure like £250, £500 or whatever much more easily than they would 0.5 per cent of an MSP's salary.

We have to remember that the bill has two purposes. The first is to ensure the highest standards among MSPs in relation to, in this case, gifts. The bill also aims to build public confidence in the standards of MSPs. Therefore, the easier that the bill is made for people to understand and the simpler it is, the greater the chance of achieving the second objective without endangering the first.

I am quite happy to lower the £250 figure although it is not a huge sum of money. A figure such as that is easy for people to understand. There is also less chance of members accidentally not registering a gift if they know the exact monetary value of gifts that they have to register instead of an amount that is a percentage of a figure that is in itself a moving target.

My second point relates to interest in shares and is a question rather than a point. Obviously, and quite rightly, we are interested in shareholdings that might influence our decision making. However, if I am the holder of a Standard Life policy that has a with-profits bonus attached to it, I have as much financial interest in what happens to Standard Life as I would in Marks and Spencer if I were a shareholder of that company. I understand that the provisions, as they are drafted, would not cover my interest in Standard Life because technically it is not a shareholding as I am part of a mutual organisation. However, if we are asking for details on shareholdings, is there not also a need for a broader definition?

My question arises because we are discussing the matter at a time when issues such as the mutuality of Standard Life are at stake. I am a Standard Life policyholder. Although I will vote against demutualisation, I will be a beneficiary if Standard Life demutualises. As I understand it, under the provisions as they stand, I am not required to record that interest. That seems a bit unfair.

The Convener: Can I stop you at that point, Alex? Are you looking for an answer or some advice on those points?

Alex Neil: I am just raising them as issues that need to be addressed.

The Convener: Okay. That is fine.

Alex Neil: My next point relates to election expenses. It seems to me that the rules that the Electoral Commission imposes on all parties more than adequately cover the question of election expenses. I do not think that any additional bureaucracy that we suggested would add anything to the subject. We would not find out anything that the Electoral Commission does not require us to declare at the moment.

The final couple of points relate to future interests. I have to say that the proposals could be difficult to implement.

Alex Fergusson: So do I.

Alex Neil: Absolutely. Quite frankly, I do not see how anyone can be asked to predict a future interest. If a member is also involved in a business that they are conducting legitimately, openly and transparently, it is clear that the business has to trade. For members to have to declare anticipated activities would be a complete breach of their commercial responsibilities. If they are a director of the company, theoretically it might even breach the requirement under the Companies Acts to act in the interests of the company. This whole section of the paper is a nonsense and should be deleted.

My final point is on whether interests that are disposed of by members shortly before their election should be registrable. I do not think so because, quite frankly, that is an intrusion too far. Where do we stop? How far back do we go? The whole issue becomes absurd. Not only that, if we are going to do that, why not then register interests for, say, two or three years after a member leaves the Parliament, because who is to know whether an MSP, knowing that they were going to retire, did something that they would benefit from six months, 12 months or two years later?

If we open it up to the period before someone becomes an MSP or after they stop being an MSP, the whole system becomes unimplementable, and if it becomes unimplementable, it becomes incredible, which is the last thing that we want if we are trying to achieve our target of public confidence in the system.

The Convener: Do you think that we ought to examine those issues?

Alex Neil: Yes.

The Convener: And should we consult on them?

Alex Neil: Absolutely.

Alex Fergusson: I have a couple of words in support of Alex Neil. He spoke of the need for the public to understand and for there to be absolute clarity about this issue. The gifts paragraph states:

"The draft Bill proposes that Members be required to register gifts in excess of 0.5% of an MSP's salary if they are received in connection with their Parliamentary duties."

That is a subjective judgment that individual MSPs will have to make. I do not argue against the need for a bill, but it must not include things that require subjective judgments by MSPs.

Similarly, I agree with Alex Neil that the section on future interests should be deleted, because it talks about

"where there is 'a reasonable expectation',

but who is to say what is a reasonable expectation? If we are to go down this route, let us focus on absolute clarity so that the public have confidence in the system.

I have considerable reservations about the registration of spouses' or partners' interests. Why stop there? Why not include mothers, fathers, grandparents, children or cousins? I do not understand why we should stop at spouses and partners. I may return to those reservations when we discuss the bill.

One question that I would like to be answered is whether a legacy is a gift.

The Convener: At this stage we are deciding whether we will go down the bill route, and which questions we wish to be answered. Your question is reasonable.

Karen Whitefield: I do not disagree with the points that have been flagged up, but I think that the reason why we refer to 0.5 per cent of an MSP's salary is to ensure that the legislation is always current and reflects any changes to MSPs' salaries over the years. Could the bill be worded in such a way that a figure is indicated along with whichever percentage, so that flexibility is built into the system to reflect any changes over the years and ensure that we do not have to revise the legislation constantly?

The Convener: Perhaps that could be done by regulations that require publication of the figure on an annual basis.

Alex Neil: Or at the start of each session; 0.5 per cent of the difference between the salary at the start of a session and the salary at the end of it would be negligible. The irony is that because of even limited inflation of 2 per cent or 3 per cent, with a figure of £250 the reins are tightened over the four-year period. That works in the right direction, as far as public confidence is concerned, and it keeps it simple for people to understand.

The Convener: We are now getting into a debate that we do not need to have now. However, Karen Whitefield's point is valid.

11:30

Mr Macintosh: I welcome Alex Neil's comments on the success of the Labour Administration in keeping inflation low during the past few years—which is why we are having this discussion. We could not have had this discussion under previous Administrations.

Alex Neil: For the record, I did not say that.

Mr Macintosh: It was implicit in everything that you said.

We all have different points of view on the merits of the key elements of the bill, but the question is which ones we should be discussing and when.

The Convener: Can I ask those who advised on the production of the draft bill whether there are any technical points that they feel that we ought to bear in mind while visiting the issues?

I note that the background material on the standards commissioner for the National Assembly for Wales refers to criminal defences in relation to breaches of the order. I note that we are advised that including such a defence might be technically difficult.

Is there anything that you want to share with the committee at this stage?

Mark Richards (Scottish Parliament Directorate of Legal Services): Not at this stage. You highlighted the fact that the criminal defences issue that the previous committee was keen on addressing in the bill is difficult, to say the least. There is certainly the question whether putting such a provision in a bill might be a modification of the Scotland Act 1998, which is not permitted under that act. That would appear to be a barrier.

There might be other issues, but none of them would be insurmountable. There are matters on which the committee might have to make policy decisions, but none of those would stop the committee from proceeding with its policy intention.

The Convener: Would I be right in saying that it is the committee's view that we should go ahead with the bill and that we want to reconsider a limited range of issues, including all those that were in the clerk's list? I do not think that any fresh issues were brought up today. Does the committee agree that we should try to adhere to the timetable?

Members indicated agreement.

The Convener: The only issue that no one has touched on—although I suspect that we or those whom we consult will—is the issue of non-financial interests. That provoked a certain amount of discussion during the previous parliamentary session but I assume that we will revisit that issue

to give new members of the committee and of the Parliament an opportunity to express a view on that, and to allow the wider public to give us their advice.

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): There is one other minor issue that the committee will have to consider. At the moment, the bill deals with paid advocacy and it contains an exemption for work on members' bills and on amendments. The committee might want to think about whether that provision is wide enough and whether the same exemptions should apply to, for example, dealing with statutory instruments, and whether there is anything else of that ilk that should be exempt.

The Convener: You are talking about paid advocacy for any legal process, not just members' bills.

David Cullum: There might be other areas that members will want to cover.

The Convener: The committee will welcome any advice that you can give on that area so that we can investigate it properly and then put it out to consultation. If any members or our advisers have further thoughts, they should make them available to the committee clerk.

I thank David Cullum and Mark Richards very much for coming along and advising us today. No doubt we will be relying on you in the coming months as we try to get the bill right. I hope that we will get the bill to a point where it will be enacted in time for the next session.

Mainstreaming Equality

11:35

The Convener: We move to agenda item 5, for which members have briefing papers. The committee is invited to decide how it will implement the Parliament's mainstreaming equality agenda in its work. Do members have questions or comments on the papers? My recollection is that we are asked in particular to address recommendations 2, 5 and 7 of the previous Equal Opportunities Committee's first report of 2003.

If no one else has a comment, my only one is that, so far, the Conveners Group has not endorsed recommendation 7. That is largely because highlighting the mainstreaming of equality in a committee's annual report would run counter to the whole idea of mainstreaming; it would put it into a little ghetto if it were part of an annual report. I do not know how other members feel about that point. However, if the committee agrees, I am happy to make that point to the Equal Opportunities Committee and to agree that we will do our level best to adhere to recommendations 2 and 5.

Mr Macintosh: The recommendations are intended to guide us and ensure that there is a mechanism for automatically reminding ourselves of the need to mainstream equalities issues. Whether or not we think that recommendation 7 is the most important one, the idea is that we should formally scrutinise our work once a year and ask ourselves if we have been consciously implementing our mainstreaming equality policy. Whether mainstreaming equality has a space in our annual report or not, it is important to have the item formally on an agenda because that will allow us to scrutinise our thoughts and workings on equalities issues. Perhaps there will be nothing to report on that, but it is always worth reminding ourselves that mainstreaming equalities issues is part of the committee's duties.

Karen Whitefield: The clerks have made a helpful suggestion in paragraph 10 of the briefing paper, although it probably means further work for them if we accept it. They suggest that we prepare "alternative formats" for the code of conduct, which members of the public would be able to access. That would ensure that anybody who wants to find out more about the workings of the Parliament and our code of conduct would be able to do so with no great difficulty.

The Convener: On that specific suggestion, are the committee agreed?

Members indicated agreement.

The Convener: Does the committee have a strong view one way or the other on recommendation 7?

Alex Neil: It sounds fair.

The Convener: So is the committee content to agree to all the recommendations? Or does the committee share the Conveners Group's reservations about recommendation 7?

Alex Neil: I share the reservations because there is the possibility of inverted discrimination if we take recommendation 7 in a certain direction. We should avoid that possibility. The point is that either we mainstream equality or we do not. If we are mainstreaming, I share the Conveners Group's reservations about singling out equality issues. The point is that we want to mainstream them.

Bill Butler: I take the convener's and Alex Neil's points, but we could say that the mainstreaming of equality is at an interim stage. If we are trying to mainstream, we might as well assess for the first year or so whether we have been successful. I know that that sounds contradictory. However, if we simply mainstreamed an equality issue and then sat back while the practice failed to match the agreed principle, the principle would not be worth the paper on which it had been written. Therefore, it is important to assess how the principle, which we may or may not agree on, is getting on and whether it is being acted on. I know that my point seems contradictory, but I think that it is logical.

Alex Neil: I would not go to the barricades on the issue. I am happy to follow recommendation 7 for a couple of years, then drop it if we are satisfied that everything is hunky-dory.

The Convener: Can I take it that Mr Butler's recommendation is agreed, that the committee accepts recommendations 2, 5 and 7 and that the committee will revisit the mainstreaming issue in general after we have produced two annual reports?

Bill Butler: I hope that the suggested procedure will fall naturally into abeyance.

The Convener: I seek specific guidance for the clerks, so that they know exactly what is required of them. Do members agree to the points to which I referred?

Members indicated agreement.

The Convener: I will now formally draw the meeting to a close, but I would like members to stay behind for a couple of seconds.

Meeting closed at 11:41.

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