

STANDARDS COMMITTEE

Tuesday 20 April 2004
(*Morning*)

Session 2

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STANDARDS COMMITTEE

5th 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:

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 20 April 2004

(Morning)

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

Members' Interests

The Convener (Brian Adam): I invite everyone to switch off their mobile phones. I have received apologies from Donald Gorrie. I welcome everyone back after the Easter break and hope that they are all refreshed and ready for the long haul to the summer.

Before we get too far into item 1, I should explain how our work on replacing the members' interests order will proceed. I will be looking for guidance from the clerks in case I do not get the detail absolutely right. In light of one or two press inquiries and misunderstandings about what we are up to, I would rather spell it out.

Under the Scotland Act 1998, there is an obligation on the Scottish Parliament to provide for a register of members' interests. The Standards Committee in the first parliamentary session did a lot of the groundwork on a bill but, for a variety of reasons, that was not taken all the way through the process. At the moment, we are preparing for a replacement to the members' interests order by producing what will eventually become a draft bill. At this stage, we are producing the material that will be used for the consultation.

The Standards Committee will not deal with the detail. Parliament will have to set up a committee to take the bill through the process because it will be a committee bill promoted by a designated member of the Standards Committee. We are now considering the items that ought to go into the committee bill. There is certainly a significant degree of misunderstanding among the public and the press that we are making final decisions on the detail of a bill. That is not the case.

I hope that that preamble will clarify matters, and we can now move to more detail on the replacement to the members' interests order. We have papers before us and, as far as I can see, we have a variety of options.

I also ought to welcome David Cullum from the Scottish Parliament non-Executive bills unit and Mark Richards from the directorate of legal services. They are here to field any technical questions that might be asked.

The two parts of what we have to debate today are set out in papers ST/S2/04/5/1a and ST/S2/04/5/1b. I suggest that we start with ST/S2/04/5/1a. The first choice that is open to us is not to include non-financial interests at all, which would be the end of the matter. The other option is to include non-financial interests, which is what we have already decided to do. However, that is not quite the end of the matter, because we need to make a fairly firm decision on which non-financial interests should be included. Perhaps we could do that by putting the matter out to consultation. Presuming that members are happy to proceed along the lines that I have outlined, I am more than happy to hear their views on the matter.

Alex Neil (Central Scotland) (SNP): I think that we should put the matter out to consultation because, although the paper is extremely helpful, we still do not have enough information to make a final decision. I want to satisfy and assure the public by ensuring that MSPs declare enough of an interest to show that there is no conflict between their private interests and what they might promote as MSPs.

On the other hand, we must strike a balance between taking such an approach and having a manageable system. If we go too far, we could end up unacceptably invading the privacy of MSPs and their families, or the system could become so byzantine that it would be unmanageable, which would defeat the very purpose of introducing it.

As a result, I want to hear the views of interested parties, organisations and individuals outwith the Parliament to get a better measure of the matter. We are not in a position to take a final decision one way or the other and consultation should be the order of the day.

Mr Kenneth Macintosh (Eastwood) (Lab): I totally endorse Alex Neil's comments. The difficulty is that the process could be overly bureaucratic or cumbersome and, frankly, I am not sure what would be achieved by declaring only some interests. For example, as far as non-pecuniary interests are concerned, there is a clear difference between involvement in semi-secret or private organisations and the membership of a church or voluntary society. Such a list could be unhelpful rather than helpful. That said, although I have my doubts about such declarations and, as an MSP, I can see the downside to that approach, the public might still need more information about the background of various MSPs to find out where they are coming from.

I can see that we need to strike a balance. In any case, we have to make a clear distinction between pecuniary and non-pecuniary interests. If we came up with a manageable scheme, I would go with it. Apart from anything else, I was persuaded by a point made during a discussion in

the previous Standards Committee that we had already stipulated such a requirement for councillors. After all, if we introduce a scheme that requires councillors to declare non-pecuniary interests, we should be consistent. However, I am not yet persuaded that we have formulated a manageable and workable scheme that will benefit anyone as far as sharing information is concerned.

Karen Whitefield (Airdrie and Shotts) (Lab): Picking up on the points that Ken Macintosh and Alex Neil have made, I think that we need to seek views on this matter. However, I too would have reservations if, after setting particular standards for local government, we introduced a different system for ourselves. Such an approach might look bad to the general public, who might think that we do not want to have standards that are as open and as transparent as those for local government. I do not think that any member of the committee holds such a view, but we must guard against giving that impression.

It strikes me that all members of the Parliament, irrespective of their party, try to be open and transparent. However, members register some interests but not others and there is no real clarity about what is required. The committee has a duty to identify the framework with which we expect MSPs to comply, so that members of the public can access information that might well have an effect on decisions that MSPs take about the issues that they choose to pursue. We have a responsibility to ensure that the framework is open, transparent and fair and we must take account of the standards that other democratically elected bodies set, so that there is parity and equity.

Bill Butler (Glasgow Anniesland) (Lab): I do not have a problem with Alex Neil's suggestion, to which Ken Macintosh acceded, that we go out to consultation. We must have a workable scheme.

The principle of using the Ethical Standards in Public Life etc (Scotland) Act 2000 is fine. The previous committee recommended that approach, which offers a good way of proceeding. We must also be mindful, as other members have mentioned, that we cannot be seen to be operating one scheme for ourselves and another for other bodies. That would smack of double standards and the previous committee was mindful that such a perception could be created. We must have a consultation that considers the development of a practicable scheme. I think that we all agree on that principle—I certainly do.

The Convener: Before we draw the matter to a conclusion, we need to decide whether the contravention of any scheme would be regarded as a criminal or a non-criminal offence. I think that in the past the view was that such a contravention would not be a criminal offence but that it would be

subject to the usual range of sanctions that are available. Do members agree with that general approach?

Members indicated agreement.

The Convener: I take it that the committee accepts Alex Neil's suggestion that we go to consultation and that it is agreed that we contact a range of organisations. The matter might attract considerable interest, so we should approach the appropriate organisations—perhaps the clerks and I can determine which ones. If members are happy—

Alex Neil: Could we also issue an open invitation to any organisation that wants to contribute?

The Convener: Absolutely. It will be open to any organisation, MSP or member of the public to contribute to the consultation exercise when we reach that stage. It might be useful in this case, however, if we were a little more proactive and drew up an appropriate list of folk to contact.

Paper ST/S2/04/5/1b considers the circumstances in which members should be required to make a declaration and whether the requirement should be extended to apply outwith parliamentary proceedings, for example when members write or speak to ministers or deal with constituency cases. Do members have strong feelings about how we should proceed in relation to the recommendations in paragraph 13?

Bill Butler: For what it is worth, I think that the recommendations in paragraph 13 are entirely sensible. If we were to oppose the first bullet point, for example, we would be involved in a lot of work that would be impracticable and cumbersome, as the previous committee said. The other two bullet points speak for themselves. The recommendations are fine.

The Convener: Do members agree with that?

Members indicated agreement.

Annual Report

11:15

The Convener: Agenda item 2 concerns the annual report that the committee must produce. Members have copies of a draft annual report in the standard layout that has been agreed by the Conveners Group. Do members have any comments to make? Do members agree that the report should be this year's annual report?

Members *indicated agreement.*

Scottish Parliamentary Standards Commissioner (Draft Directions)

11:15

The Convener: Agenda item 3 concerns detailed draft directions to the Scottish parliamentary standards commissioner—I think that this is the first time that we have considered them. The committee has a duty to issue directions from time to time, once it has determined its position. We have determined our position in respect of giving the factual element of the commissioner's report on any complaint to the complainer as well as to those against whom complaints have been lodged. The draft directions following from that are before us.

As they are laid out, are the directions acceptable to committee members?

Alex Neil: They are perfectly acceptable. However, on a point of clarification about the terminology, are we talking about the draft report that is circulated to the committee?

The Convener: No. I stand to be corrected, but—

Alex Neil: Does that report become a final report?

The Convener: It is the report that is currently issued to the person against whom the complaint is lodged.

Sam Jones (Clerk): It is the final draft report.

Alex Neil: I would like the terminology to be clarified for me and for everyone else. The commissioner should prepare a draft report and then circulate it to both parties for comment or whatever. He will then receive recommendations or comments from those parties and, at the end of the day, the report will be his report. He will prepare a final report and decide whether to accept any or all of the proposed changes. He will then circulate that report to the committee.

The Convener: That is right. It is the final report.

Alex Neil: At that stage, he will circulate the report only to the committee and not to the other two parties.

Sam Jones: The member who is the subject of the complaint will receive a copy of the final report. Under the procedures, the committee must invite them to make representations, but the report is sent to the member only once it has been sent to the committee. It is not sent to the member by the commissioner.

The report is sent to the committee by the commissioner at the end of stage 2. Under the code of conduct for members, one of the first things that the committee must do at stage 3 is to send a copy of the report to the member who is the subject of the complaint and invite them to appear before the committee to make representations in respect of that final report or to make a written response to the committee. That is when the committee will decide whether it wants to accept the commissioner's report, conduct its own investigation or refer the report back.

Alex Neil: At that stage, the committee is free under the existing rules to give a copy of the report to the complainer. There is nothing in law to stop us doing that.

Sam Jones: There is no provision in the code for giving a copy to the complainer.

Alex Neil: Right.

The Convener: The code spells out how we should deal with things and, if it had wanted that to happen, it would have said so.

Alex Neil: One thing that concerned me about a previous case with which we dealt was that, when we reached stage 3, we took evidence from both the complainer and the MSPs who were complained about, but the complainer had not seen the final report. That seems a bit daft and unfair to me.

Sam Jones: One of the options that we gave in the paper that was considered by the committee last time was to give a copy of the report to the complainer if the committee decided that it wanted to take oral evidence at stage 3. If the committee wanted to proceed down that road, it would be possible to produce a draft direction to give effect to that. I do not know whether our legal adviser wants to say anything.

The Convener: However, that is not what we were asked to do.

Alex Neil: I accept that. I am not in any way challenging these draft directions as far as they go; I am just seeking clarification. If we decided that the complainer should get a copy of the report on a complaint on which we wanted to take further oral evidence at stage 3, I presume that we would need to issue draft directions—or would that just be written into the code of conduct?

Sam Jones: Rather than a draft direction, a change to the code of conduct would probably be required.

Alex Neil: Okay, so will that change be forthcoming?

Catherine Scott (Scottish Parliament Directorate of Legal Services): It would be a decision for the committee to choose to do that. If

the committee wanted to make that practice a regular occurrence, it would be advisable to incorporate it into the code of conduct.

The Convener: There would be no requirement to put it in the code of conduct, given the fact that we have discussed the matter in the past and agreed that we could also make a decision on a case-by-case basis.

Catherine Scott: It would be advisable to make it clear in the code of conduct because, at present, the code is not absolutely clear on that point.

The Convener: Just so it is absolutely clear, because that is not the matter that is before us today, is it the advice of the legal advisers and the clerks that we need to produce a change to the code of conduct now to include that as an option for the committee to consider at stage 3?

Sam Jones: My advice is that if the committee wants to implement such a policy, it should be put into the code for clarity.

The Convener: In that case, I suggest that we include the matter in the work programme so that we can determine it. I am happy to receive representations from members of the committee as to when the matter might appear in the work programme. Does that clarify matters for you?

Alex Neil: Yes, I just wanted to make sure that we are absolutely clear about the matter.

The Convener: Do other members want to comment?

Sam Jones: It might be helpful to clarify as well that, as Alex Neil pointed out, it is up to the commissioner whether he accepts any of the representations that he receives on the draft report. However, he has to annex to his report those representations that he does not accept, so that the committee can see what has been accepted and what has not.

The Convener: So all the information is there anyway. Having moved into an area that is related but not the same as the one under discussion, are members content that I send these directions to the standards commissioner?

Members indicated agreement.

The Convener: I also acknowledge that, without having had direction, the standards commissioner has already taken note of the committee's view in dealing with outstanding cases.

We need to clarify when the next meeting will take place. I have decided that we will not have a meeting on 4 May. We have pencilled in a meeting for the morning of Thursday 13 May, but that is dependent on the details that the business bureau might issue about our overall parliamentary work programme for that week.

Alex Neil: Is that in the week that Parliament is not sitting?

The Convener: That is absolutely right.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): So that gives us another week.

The Convener: I would guess so, but it depends on how heavy the agenda is. I will adjust the time if the agenda is a little heavier. That is also dependent on which other committees might or might not be meeting. I hope that that will become clearer fairly soon and I will issue advice on the date and the time, if not necessarily on the details of the agenda, as soon as possible. Is that agreed?

Members *indicated agreement.*

The Convener: I thank members for their attendance today.

Meeting closed at 11:24.

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