

STANDARDS COMMITTEE

Tuesday 29 June 2004
(*Morning*)

Session 2

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STANDARDS COMMITTEE

† 10th 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:

John Swinburne (Central Scotland) (SSCUP)

Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

CLERK TO THE COMMITTEE

Sam Jones

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 2

† 9th Meeting 2004, Session 2—held in private.

Scottish Parliament

Standards Committee

Tuesday 29 June 2004

(Morning)

[THE CONVENER *opened the meeting at 11:03*]

Cross-party Groups

The Convener (Brian Adam): I welcome everyone to the 10th meeting this year of the Standards Committee and ask those present to switch off their mobile phones if they have not already done so. We have received apologies from Ken Macintosh.

Item 1 on the agenda is consideration of applications for cross-party groups, the first of which relates to a cross-party group on solutions to the loss of consultant-led services in Scotland. I welcome to the meeting the group's proposed convener, Jean Turner, and proposed vice-convenor, John Swinburne. Although I am quite happy to hear from the two proposers, I must intimate that this morning we received notification that the Labour member who was to have been part of the group has resigned. That means that the group no longer meets the rule for cross-party group membership. I understand that Dr Turner is seeking a replacement member. If she is not successful in that, she is quite entitled to ask the committee to waive the membership rule, which we are allowed to do under section 8.3 of the "Code of Conduct for Members of the Scottish Parliament". Perhaps at this point I should give Dr Turner and Mr Swinburne the opportunity to address the committee, after which members may ask questions.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I would like first to address the question of Maureen Macmillan's late withdrawal from the group, which I found out about only at 10 o'clock this morning. Maureen Macmillan was to have been a vice-convenor of the group, along with John Swinburne. I notified everyone that the application would be discussed at today's meeting and gave them the opportunity to attend. Apart from John Swinburne, none of them could come along. I have to say that I was surprised to receive the notification at 10 o'clock this morning. Am I allowed to read it out?

The Convener: Go ahead.

Dr Turner: Maureen Macmillan says:

"Dear Jean

I have decided to resign from the proposed Cross-Party Group on Loss of Consultant Led Services in Scotland.

It seems that the West Highland Project Solutions Group is going to reach a satisfactory conclusion and I do not see the Cross-Party Group being able to engage with maternity issues in Caithness which is as much about transport solutions as availability of consultants.

I found the presentation on the European Working Time Directive"—

which we received at the proposed group's previous meeting—

"very informative—made me realise how difficult it will be to find sustainable solutions in some cases".

I would have thought that that last paragraph constituted a good reason for having the proposed cross-party group. After all, we need to be as well informed and to have the opinion of as many experts as possible. I should point out that the public as well as people who work or have worked in the health service support and welcome the proposal to establish the group.

We do not know what the solutions are and certainly would never have wanted to be in our current situation. We have known about the working time directive for 10 years and no one has been working hard on finding solutions to the problem. Everything in the health service is being changed all at once; new contracts are being introduced and more people are required to feed them.

I am very hopeful that the group will find some solutions. For example, I received an e-mail from David Sedgwick, a consultant at the Belford hospital in Fort William, which says:

"Dear Jean ...

Here is a potential number of General Consultants to run a compliant rota. There are obviously areas for debate. This is a reasonable starter for a discussion and Dr Charles Leeson-Payne, our Consultant Anaesthetist here at the Belford, has spent a lot of time working out compliant rotas for junior staff and Consultants."

After setting out his model for a rota, Mr Sedgwick says:

"We await information from the European Union Commission in regard to a possible flexibility in the new legislation. This flexibility is reflected in the flexibility column".

The matter is not decided. Indeed, Maureen Macmillan is misinformed if she thinks that the whole thing is signed, sealed and delivered. The model set out in Mr Sedgwick's e-mail would be wonderful not only for the Highlands and Islands, but for Glasgow and the big towns.

The Convener: I should point out that our role in this matter is to agree or otherwise the establishment of the cross-party group. We have to consider the application within the current rules. With Maureen Macmillan's withdrawal, the

application does not comply with those rules. That said, it is possible for the committee to agree a waiver.

Although I am quite happy for other members to ask questions, I suggest that we defer consideration of the application until after the recess to give you, Mr Swinburne and the proposed group's other members the opportunity to persuade a Labour member to join you. If you are unsuccessful in that and can establish that you have made every effort to get a Labour member to join, you may come back to us seeking a waiver. After all, we have granted waivers for a number of other groups.

Given that you found out only at 10 o'clock that the Labour member who had joined up does not wish to continue, it would be unreasonable for us to grant a waiver when you have not had an opportunity to try to fill the gap. Of course, that will not prevent you from having discussions with your colleagues or with people outwith the Parliament. Are you happy to proceed along those lines?

Dr Turner: I will take your advice on that matter. However, as I am in the fortunate position of being a medical doctor, I probably understand the issues better than some politicians do. If the Labour Party cannot find anyone who thinks it worthwhile to try to find solutions to the problem on a cross-party, no-fault basis, I will follow your advice and seek a waiver from the committee.

We need to find evidence on which to base our work. We expect doctors to practise evidence-based medicine. We should have evidence-based changes. I would have thought that the many groups that are seeking solutions would be complementary to one another. I will ask the committee for a waiver if the Labour Party cannot find somebody who realises the urgent need to maintain our national health service.

The Convener: Before I let Mr Butler and Mr Fergusson ask questions, I point out that it is not the role of the Labour Party to find a member.

Dr Turner: Perhaps I put that incorrectly, but you know what I meant.

The Convener: I understood the sense of what you said.

Dr Turner: It came as a shock this morning. Ten o'clock is very late.

The Convener: Nevertheless, Maureen Macmillan is entitled to resign.

Dr Turner: Of course she is and I do not object to her explanation. I was just saying that she may not have been in full possession of the facts. The last sentence in her letter lays out a jolly good reason for having a cross-party group with highly informed people in it, including the public, to work

towards solutions. That is all that I was trying to say. I do not blame Maureen Macmillan at all for her decision, which she was entitled to make.

Bill Butler (Glasgow Anniesland) (Lab): Convener, you are absolutely right to say that it is up to individual members to join cross-party groups; it has nothing to do with any party finding someone. I am glad that you set that straight. We are here to examine the criteria for cross-party groups. That is our remit—nothing else. Any argument outwith that is completely inappropriate, although I am absolutely certain that all of us here—of all parties and none—are in favour of pursuing policies that make our NHS better.

Having said that, I think that your suggestion is eminently sensible. The putative convener Dr Jean Turner and vice-convener John Swinburne could have a trawl during the recess to see whether any member would be willing to join the proposed cross-party group. If that trawl is successful, that will be fine; if it is not successful, we can consider a waiver. That would be the proper way in which to proceed and I support it.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I put on the record the fact that I find the timing of the member's withdrawal—at 10 o'clock in the morning, an hour before the proposed convener comes before the committee to put the case for the group—to be on the verge of bad manners. I would have gone for a waiver today, but I can see where you are coming from, convener. I simply want to put on the record the fact that I find it almost discourteous to withdraw with such a short period of notice. Withdrawing last week would have been fine, but doing so this week is almost unacceptable. I have the greatest sympathy with the proposer of the cross-party group.

I can see the sense of where you are coming from, convener, because it makes sense to try to find another member. I agree entirely with Bill Butler that it is not up to the Labour Party to provide somebody; a member of the Labour Party must want to join the group. I sincerely hope that one will.

The Convener: Are members content with my proposal?

Members indicated agreement.

The Convener: Dr Turner, I know that you will be disappointed—

Dr Turner: Not just me personally, but all the people who were to be in the group. We were to have vice-conveners from different parties.

The Convener: I suggest that you do as the committee invited and have a trawl of Labour members. If you are unsuccessful, please detail to us how extensive your trawl was. You have

already had an indication from at least one committee member that you might well get a sympathetic hearing, but we require some evidence that extensive efforts have been made.

11:15

John Swinburne (Central Scotland) (SSCUP):

In my opinion, as far as the health of the country is concerned, the proposed cross-party group is one of the minor steps in the right direction that the Scottish Parliament could take. Nothing annoys me more than sitting through a health debate with all the parties yah-booming at one another. Health should be taken out of politics completely and should be dealt with on a national-crisis basis by a coalition of all parties. We should not be discussing health as a party-political football. The proposed cross-party group is a minor step in that direction. I hope that one day common sense will prevail and all parties will join together in a consensual manner and attack in an intelligent way the enormous health problems that face this country, rather than indulge in the yah-boo politics to which we are currently subjected.

The Convener: I reiterate that the role of the committee is to determine whether any application complies with the rules. We have agreed waivers for some cross-party groups that have not managed to get members from the various parties, but we have done so only when extensive efforts have been made to find such members and those efforts have been unsuccessful. Mr Swinburne, you are right to say that cross-party groups have a valuable role to play in parliamentary activity. Thank you for coming today. We look forward to hearing from you when we meet after the recess.

We will now deal with the second application, which is for a cross-party group on funeral and bereavements. I understand that Mary Scanlon, who is the proposed convener of the group, is unable to attend today. However, Dr Jean Turner, who is also a proposed member of the group, is present. The one part of the application on which we are missing some information is an estimate of the value of the secretarial services that are to be provided by the National Association of Funeral Directors. Other than that, I am sure that we can confirm that the application complies with the rules. Do members have any questions?

Alex Neil (Central Scotland) (SNP): I declare an interest, as I have signed up for the group.

The Convener: You are declaring an interest.

Alex Neil: By way of preparation, I think that we all should.

Dr Turner: Death is only a hair's breadth away.

Alex Neil: I might be closer to it than others. I suggest that we agree to the application, subject

to the gap in the information being satisfactorily filled.

The Convener: Do members agree?

Members *indicated agreement.*

The Convener: Thank you for your attendance, Dr Turner. We will write to you in due course with regard to the second of the applications.

Members' Interests

11:18

2. The Convener: We have two papers to consider on replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. The first is on election expenses and the second is a draft consultation paper.

We will take the election expenses paper first. We agreed at our meeting on 9 March that there was a need to require MSPs to register election expenses, given their duties under election law. The committee asked for a paper comparing the requirements under electoral law and those under the members' interests order. That paper has now been circulated. Paragraph 18 offers options for the committee:

"Include a provision on registration of electoral expenses in the proposed Members' Interests Bill ... which either adopts or expands upon the provision in the existing MIO; or ... Not include any such provision in the proposed Bill, leaving election expenses to be registered with the returning officer and the Electoral Commission in accordance with the Scottish Parliament (Elections etc) Order 2002."

Depending on our decision on election expenses, the consultation paper will be revised accordingly and a new draft sent to members by e-mail.

Members are welcome to offer suggestions, but my proposal is that we consult on the basis that we should drop election expenses from the proposed bill, as they are covered by other legal avenues and the Electoral Commission takes care of them. I suggest that we consult on whether the provision should be dropped and include a question that is phrased to that effect. Are members content for us to do that?

Karen Whitefield (Airdrie and Shotts) (Lab): I agree. We must ensure that there is no duplication. Although it is important that any money that a member receives to assist with their election expenses is registered, there is a question mark over whether it also needs to be registered under members' interests legislation. On that basis, we should ask members of the public whether they think that there are compelling reasons why such expenses should be listed in accordance with the Scottish Parliament's election law and under members' interests legislation.

Donald Gorrie (Central Scotland) (LD): I see no point in consulting people on the matter. To have two pieces of legislation covering the same thing would be idiotic and we should not do that. We should leave the question of any irregularity in election expenses to the Electoral Commission and the law dealing with returning officers. It is

nothing to do with our job. We are interested in people's standards of behaviour as MSPs; a totally different set-up exists to monitor whether we behave ourselves as candidates and it is quite wrong for us to trespass into that territory. We are going to ask people hundreds of questions anyway and to include some extra questions that are idiotic would not be sensible. We should not include a question on the matter but should just forget about the whole thing and leave the law as it stands, allowing irregularities to be dealt with through the electoral machinery. I therefore oppose your proposal, convener.

Alex Fergusson: If it is a viable option for us not to consult on the matter and to drop it, I support that wholeheartedly. I see no point in duplication, which is what it would be.

Alex Neil: I was initially attracted by your proposal, convener. However, if someone commits one offence but can be done for it under two pieces of legislation, that takes us into the realms of stupidity. I would not have thought it right in law that, having failed to declare an election expense, I could be done for that under members' interests legislation as well as through the activities of the Electoral Commission. Is that not called double jeopardy? I am not a lawyer, but I do not think that someone should be done twice. Given that the law already covers the matter, Donald Gorrie's point seems to be common sense.

The Convener: I am not sure how Karen Whitefield's view differs from mine.

Karen Whitefield: It does not.

The Convener: I am quite happy to go along with what Mr Fergusson, Mr Gorrie and Mr Neil have said, if that is the will of the committee. I see no reason why we need to consult on the issue. We are discussing what will appear in the consultation document. If members of the public are concerned about the matter—I have a further proposal anyway—there is no reason why they cannot write to us. If our judgment is wrong in their view, we may choose to put that provision in the bill. It will be open to any member of the Parliament to reintroduce it if that is their wish.

Bill Butler: Like Alex Neil, I was initially attracted to your proposal, convener. However, I do not think that we can consult on something that we have no intention of putting into force. I would not—and I do not think that the Parliament would—support a provision that duplicated another piece of legislation. On that basis, attractive as the initial proposal was, we should modify it and simply go with what Mr Gorrie has suggested.

The Convener: That is clearly the will of the committee and I bow to the will of the committee. We will not include that question in the

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consultation document.

Over recent months, we have spent some considerable time discussing the detail of the proposals and we now have a draft consultation document. I do not see any great need to reopen the discussion on the questions that it contains. The only suggestion that I make is that we should include a catch-all question at the end of the document, asking members of the public to let us know if there are any other issues that they wish us to consider. We can include some appropriate wording to that effect. Do members have any other comments to make on the draft consultation document?

Alex Neil: I propose that we accept it.

The Convener: Mr Gorrie is looking puzzled.

Donald Gorrie: Yes. Personally, I would scrub the whole thing. In my view, we are into serious hair-shirt territory, on the wrong side of Calvinism. However, I have a specific point to make. Paragraph 13 of the document states:

"Members of the current Committee support the view that the requirement to register gifts from family members is an unacceptable invasion of MSPs' and their families' privacy. The Committee wishes however to avoid creating a loophole whereby an individual or organisation could seek to influence a Member by sending gifts to his or her spouse."

That is not the issue: the second of those sentences is not related to the first. At a previous discussion, we established that if my wife decided—because she loved me so dearly—to give me a present that was worth more than £250, it would be idiotic if that had to be declared. The second of those sentences reads:

"The Committee wishes ... to avoid creating a loophole".

However, I do not see where there is a loophole. The issue is gifts within the family. Unless I have a nephew who wishes to suborn me in some way, the problem does not occur.

The Convener: Are you suggesting that that sentence should be deleted from the draft consultation document?

Donald Gorrie: I think that I am. Unless I have misunderstood it and the wise people who drafted it are of greater wisdom than I am—

The Convener: Is any member of the committee otherwise minded?

Members: No.

Donald Gorrie: It is a token gesture against the hair shirt and I will accept the rest. I think that it is all rubbish, but I will not carry on.

The Convener: I remind you that it is a requirement of the Parliament to consult on any legislation. We have debated the consultation

document for at least six months. I am happy to go along with your specific proposal, but I suggest that, if no one is otherwise minded, we accept the draft document with two amendments. The first of those is the one that Mr Gorrie has just proposed—the deletion of the second sentence in paragraph 13—and the second is that we include an appropriate catch-all question at the end, through which people can raise their concerns with us. We do not necessarily have all the answers to all the questions—or, indeed, all the questions.

Donald Gorrie: It is the third sentence of paragraph 13. I did not read out the first sentence. For the record, we are deleting the third sentence.

The Convener: It is the second and third sentences that you wish to delete.

Donald Gorrie: No. We are keeping the second sentence of paragraph 13 and deleting the third sentence. That was my intention.

The Convener: I did not count the sentences appropriately, but we got the sense of what you meant.

Donald Gorrie: You numbered the sentence wrongly. I did not read out the first sentence in the paragraph.

The Convener: Indeed. I plead guilty to that. Thank you for the correction.

Complaint

11:29

The Convener: We move to item 3. I will read a statement with regard to—*[Interruption.]* Order. Any member of the public who interrupts the meeting will be removed. That is not in order. Members of the public are entitled to attend parliamentary meetings but not to speak at them.

Our final item of business is to announce our decision on a complaint against Kenny MacAskill and Tricia Marwick, which was raised by five members of the public who are resident in the Blairingone and Saline area.

The Scottish parliamentary standards commissioner has completed his investigation into the complaint and his report, and that of the committee, will be published immediately after this meeting. The commissioner has conducted a thorough investigation and produced a detailed report on what has undoubtedly been a difficult and sensitive case. The committee wishes to convey its thanks to the commissioner.

The complaint concerns the retention by Mr MacAskill and Tricia Marwick of a file that contained health questionnaire returns and other material relating to an inquiry into the dumping of organic waste in Blairingone and Saline that Dorothy-Grace Elder MSP was undertaking as a reporter for the Public Petitions Committee in the first parliamentary session.

We wish to express our great sympathy for those members of the public who, through no fault of their own, became caught up in a dispute between three MSPs. We regret the consequent distress that was caused to them.

The Standards Committee notes that, with the exception of the approach by the Presiding Officer to the members concerned, the conduct that was complained of has already been the subject of previous investigations by the acting standards commissioner and the committee in the context of a separate provision in the code. In that instance, the conclusion was that the complaint should not be upheld.

In investigating the current complaint in the context of different provisions of the code, the standards commissioner came to the conclusion that, in his judgment, there were three breaches of the code.

The key factor in the committee's decision to dismiss the earlier complaint was the circumstances in which the MSPs found themselves. In our report, which was published in October last year, the committee stated:

"Kenny MacAskill's and Tricia Marwick's responses to the requests for the return of the file appear to have been influenced by various factors: the use of their researcher without their permission, the circumstances surrounding the dismissal of that researcher, the ongoing employment dispute with that researcher and their own conclusions about the importance of the documents to Dorothy-Grace Elder's work on behalf of the Public Petitions Committee and the ownership of the documents."

The committee found it a matter of "considerable regret" that all three MSPs concerned had been unable to seek constructive engagement or to find a resolution to their dispute. However, we concluded that the circumstances had been less than conducive to compromise.

We do not condone the conduct of the members who are the subject of the complaint and we reiterate that we view their actions as having been regrettable and disappointing. Their obduracy in dealing with the matter was most unfortunate and we would not expect to see it being repeated. Nevertheless, we continue to judge that the members' conduct falls short of a breach of the code, because of the particular circumstances of the case. We hold to our previous judgment that the MSPs' conduct was influenced by a number of factors, which I listed a few moments ago. The committee believes that, when the case is considered, those factors should be weighed in the balance.

In their written representations to the committee about the current complaint, Kenny MacAskill and Tricia Marwick have recognised that

"this whole affair has been regrettable and has been detrimental to all parties"

and that

"there are matters that we could have, and perhaps should have dealt with differently".

We welcome that statement, even though it is belated. We also recognise that this is the culmination of a long-running issue that has been detrimental to all the people involved.

The committee agrees unanimously that the complaint should not be upheld.

Meeting closed at 11:34.

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