STANDARDS COMMITTEE

Tuesday 26 October 2004

Session 2

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STANDARDS COMMITTEE
11th 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)
Linda Fabiani (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:

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)
Frances Curran (West of Scotland) (SSP)
Mark Richards (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 4

Scottish Parliament

Standards Committee

Tuesday 26 October 2004

[THE CONVENER *opened the meeting at 11:02*]

Item in Private

The Convener (Brian Adam): Welcome to the Standards Committee. We will have to postpone the declaration of interests, which was to have been our first item today, until the next meeting, because we have received an apology from Linda Fabiani, who is unable to attend. We have also received an apology from Donald Gorrie.

The committee is asked to consider whether it will take item 7 in private. We wish to take it in private because it will centre on legal advice that has been given to the committee, which it might be more appropriate to consider, at least initially, in private. Do members agree to take item 7 in private?

Members *indicated agreement.*

Cross-party Group

11:03

The Convener: We have before us an application to establish a Scottish Parliament cross-party group on lupus. The paperwork complies with the rules for cross-party groups. Frances Curran, who is to be the convener of the group, is here. Do you wish to add anything to the application, Frances?

Frances Curran (West of Scotland) (SSP): I will be quick; there are a lot of cross-party groups and the committee must have gone through this procedure many times.

My first point is about awareness of lupus as a disease. There are many cross-party groups on health issues, but not much is known about lupus, even though it is very common. That is why I want to raise the issue here. Lupus is more common than leukaemia, multiple sclerosis and muscular dystrophy put together. It is reckoned than one in 800 people in the population suffers from it. With the cross-party group, we want to raise awareness. The disease is common, but because it affects various things—kidneys, heart, lungs, skin and the central nervous system—people are often treated for those other things. Arriving at a diagnosis can take a long time. It would save the national health service a lot of money if general practitioners knew about the diagnosis. We also want to raise awareness among statutory bodies such as the Department for Work and Pensions and among employers and the public.

I was pleasantly surprised to see the interest when we held our first meeting. Then, when a meeting was held to set up the group, seven consultants turned up from hospitals across the country. That is an indication of the importance of raising the issue and increasing awareness of it. There is also a group at the Westminster Parliament, so I hope that the committee will look favourably on our application.

The Convener: I open up the meeting to members who may wish to ask Frances Curran questions.

Mr Kenneth Macintosh (Eastwood) (Lab): I do not have any questions but I will say that, for the reasons that Frances Curran has outlined, I think that the group is welcome. Little is known about lupus and it has no political profile—it has no profile even in the NHS. Despite the fact that we sometimes wrestle with the proliferation of cross-party groups on health issues, it is good that this group has been formed. It is very worth while.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I am the convener of the cross-party group on ME and we often think that ME

sufferers have a desperately low profile. However, even compared with ME, lupus struggles in that department, so I welcome the formation of the group.

The Convener: Do you plan to work with any of the other cross-party groups on matters of common interest, Frances? Lupus is often regarded as an auto-immune disease. As far as I am aware, there is a group on arthritis, and there may be matters of common interest with groups on bone diseases.

Frances Curran: We discussed those issues at our first meeting and Dr Zoma, who is an expert in the field, spoke about the arthritis group. The impetus exists to get the lupus group going; there are enough interested parties. Some groups have taken a long time to get set up. Ideally, there would be an alliance, with people in different groups working together.

With all the health groups, issues arise over a register of patients and a set of policies about care. We can all learn from one another. The health professionals, too, are taking part in that learning process. So the simple answer to your question is, yes, we intend to work with other groups. It would be a good idea to have some joint meetings—to share information on the best way of raising awareness. We also have to consider how to organise care within the NHS.

The Convener: Are members content that we should approve the group?

Members *indicated agreement*.

The Convener: We will write to you about that formally, Frances.

Frances Curran: Thank you—that is really helpful. My sister suffers from lupus, so she will be delighted.

The Convener: Thank you very much for coming today.

Work Programme

11:09

The Convener: The next item on our agenda is our forward work programme—we have a paper that is based on the informal work that we did on our away day. As well as agreeing on our areas of work up to the summer recess, members might want to consider the priority that we should give to each area. The first item is replacing the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. Without wishing to pre-empt the discussion, I expect that the committee will want to give that issue a high priority and we will have to ensure that our timetable is acceptable to the Parliament. Depending on the outcome of our deliberations today and at our next meeting, we might have to consider the need to hold meetings slightly more frequently. Perhaps we should not reach a formal agreement on our priorities today. At this stage, I am content for us to reach agreement on the items that are to be included in our work programme. It is open to members to make their own suggestions about the form that our work programme takes.

Mr Macintosh: I endorse the convener's comments. The draft work programme reflects our informal discussions. I also agree with what he said about the members' interests order. Given that we were not able to implement new legislation in the first session of the Parliament, we should make speed on it in this session.

Karen Whitefield (Airdrie and Shotts) (Lab): I am sorry for being late, convener.

I am concerned that, if we continue to talk about a forward work programme, we will never take a decision on it or achieve anything. We know that we have a lot of work to do on the members' interests bill and we should press forward with that. Given that the paper helpfully outlines the issues that we discussed at our away day, we should be able to move forward.

The Convener: So you are suggesting the need to take some decisions.

Karen Whitefield: Yes.

The Convener: The three items that are set out in the paper are the three main items that we will deal with in the coming year. I think that it is generally agreed that we need to make as much progress as possible, as quickly as possible, on the members' interests bill.

Members' Interests

11:12

The Convener: Let us move to the replacement of the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999. A considerable amount of material is before us, including a report on the consultation, in which we received 23 responses. That contrasts rather with the 54,000 responses that the Minister for Health and Community Care received in the consultation on a ban on smoking in public places. Perhaps the number of responses that we received reflects the greater priority that the public quite rightly give to the issue of smoking. Nonetheless, it is rather disappointing to have received so few responses and, indeed, that many of those came from a particular viewpoint. That said, we should be grateful that 23 people or groups took part in our consultation. Some of the comments are helpful and informative; they should help us to reach a view.

A variety of options are before us as to how we might wish to proceed. We can accept the options that are set out in the paper or take our own view. I have given some thought to whether, before arriving at a formal view, we should look at areas about which there is a little bit of contention. From the responses—limited in number though they are—it is clear that the area of contention is that of non-pecuniary interests and the membership of certain organisations in particular. I am not sure whether members are minded to hear more on that subject or whether they feel that we have enough information on which to make a decision about what should be included in the bill. I am happy to hear members' views on the subject.

Given that we agreed the areas on which we should consult, I suggest that we go through the questions one by one and arrive at a view on each of them. The issue of non-pecuniary interests is the only area that we might want to explore further, given that significant external views were expressed on the subject. I am happy to be guided by the committee on how we should proceed.

11:15

Mr Macintosh: I am not particularly anxious to take further evidence, given that we have put the issues out for consultation and that we have received written evidence, which reflects a certain level of interest and a certain number of views. This is not the end of the story, because we still have to draft the bill, which will go out for consultation, so there will be plenty of room for debate and further evidence sessions on the bill itself.

The Convener: We might need some clarification on that. The bill is a committee bill, the procedures for which are slightly different. It might be useful to receive some guidance from the non-Executive bills team on what exactly will happen next, after we have agreed what will go in the bill.

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): Standing orders require the committee to report to the Parliament and to obtain the Parliament's approval to draft and introduce a bill. The practice in relation to committee bills to date has been not to produce a draft bill for consultation, but to incorporate the decisions of the Parliament in the debate into the bill. The Parliament's decisions bind the committee. The committee cannot put matters in the bill that are not part of the report to the Parliament and thus part of the discussion. Similarly, the committee cannot miss things out that are part of the report to the Parliament. Given those two aspects, producing a draft bill would not achieve an awful lot, because, if the committee were then to change it, it would have to report back to the Parliament, have another debate and get permission to introduce a different committee bill.

Mr Macintosh: I seek clarification. As I understand it, a bill is produced—I should not have used the term "consultation", because the bill does not go out for consultation. However, an ad hoc committee is set up and takes evidence. Therefore, there will be opportunities for people to make their views known and for the ad hoc committee to take oral or written evidence on each point. Perhaps I am wrong, but the ad hoc committee has the opportunity to amend the bill as it sees fit, after which it presents the bill back to the Parliament.

David Cullum: Yes, but stage 1 is truncated with a committee bill. No committee is set up to scrutinise the bill at that stage. The bill goes to the Subordinate Legislation Committee and the Finance Committee if appropriate, but it goes straight to the debate on the general principles at stage 1, after which the normal stage 2 amendment procedure occurs. The ad hoc committee that will be set up to consider the bill could, if it wanted to, take evidence, but it would do so at stage 2, not at stage 1.

The Convener: In that sense, pre-legislative scrutiny primarily lies with us, although the ad hoc committee may listen to the views of outside people on the bill at stage 2, which would not normally happen with an Executive bill.

David Cullum: On none of the committee bills that went through Parliament in the first session was evidence taken at stage 2 by the ad hoc committee; the committees went straight to consideration of individual sections and amendments.

The Convener: So if, on behalf of the Parliament, we wished external people to elaborate on anything that they had put in written evidence to us, or on areas that we felt we had not heard about but that we wished to hear about, it would be up to this committee to arrange that, as opposed to the ad hoc committee. Is your advice that that is the best approach?

David Cullum: I think that that is correct. In general, standing orders are written so that, in effect, stage 1 is carried out by the committee prior to the introduction of the bill.

Alex Fergusson: I seek clarification on whether we are absolutely committed to introducing a bill, because I find it telling that we received only 23 submissions to our consultation exercise. That suggests to me that the vast majority of the population, bar 23, are fairly content with the current members' interests order. I am not convinced, having read the evidence that has been submitted, that there is a need to change it.

The Convener: We must introduce a bill, because that is a requirement of the Scotland Act 1998. The act did not say that that had to happen in the first or the second session of the Parliament; it just said that it had to happen. Given that it was not possible to complete the process in the first session of the Parliament, we have a duty to do so now. What appears in the bill is, in the first instance, a matter for us.

You say that only 23 people responded to the consultation, but only 21 of the submissions contained responses to our detailed questions, because one of the respondents had no comment to make and another expressed the view that you have just offered us, which is that we should make no change.

Alex Fergusson: Thank you for that.

The Convener: I suggest that we address the questions individually and take a view on them—today, if that is possible. We can return to any of the questions on the way through, if we want to hear anything further. It is perfectly okay for us not to hear anything further; I am happy to be guided by the committee on that.

I suggest that we consider question 1, which is on the level that should be set for registration of gifts. A significant number of the people who submitted answers—seven or eight of them—gave us their views on that. Now that members have seen the submissions to the consultation, does anyone have a view on what we should recommend about how the Parliament should proceed or what should appear in the bill?

Mr Macintosh: The gist of the responses is that MSPs should declare everything at all stages—in other words, that the threshold should be 0 per cent of an MSP's salary—but, to be honest, I do not think that that is practicable. Although I appreciated hearing that view, I do not necessarily share it. It reflects a cynical strand of opinion, which is perhaps based on a lack of trust in politicians. We must address that, but I do not think that we should start from the presumption that politicians are out to feather their nests. We should start from the basis that members' interests legislation is there to protect the Parliament's reputation and to promote its standards. There should not be a presumption that politicians take gifts willy-nilly, because I do not think that that is the case. The consultation responses express opinions, but there is no evidence to suggest that there is an underlying problem.

I was content with the level of registration that we had before, which was £250, although I thought that it would have to be uprated. My preference is for a percentage. I know that members such as Bill Butler had a problem with that and would prefer a figure that was expressed in pounds rather than as a percentage. However, if the bill stipulated a percentage, it would not have to be reviewed annually or every four years once it was passed.

The Convener: You have dealt with questions 1 and 2 at the same time, which makes sense.

Bill Butler (Glasgow Anniesland) (Lab): I do not have a problem with what Ken Macintosh has just said. I think that 0.5 per cent of a member's salary is a reasonable figure, which would save the need to uprate continually. It is good to see the strong opinion that people have but, by and large, it is very much a minority opinion. Although we should not completely discount that opinion, it is argumentative rather than evidence based. I recognise the trouble that people have taken in giving us their opinion, but I agree with Ken Macintosh that the rational thing to do is to adopt the 0.5 per cent threshold.

The Convener: Can either Ken Macintosh or Bill Butler explain why, if it is perfectly feasible for members who have a ministerial role to declare every gift, no matter its size, we should discount some gifts that are given to ordinary members? I accept that we might want some kind of threshold.

Bill Butler: With respect, convener, it is still open to members to register gifts if they so wish. By and large, I think that it is reasonable to set the threshold at 0.5 per cent of a member's salary rather than require members to declare every gift, which might include, for example, the small memento that a member might receive for the opening of a tenants organisation's hall. If people want to declare every bunch of flowers that they receive—I have never yet been given a bunch of flowers—that is fine. However, being realistic and practical, I think that setting the threshold at 0.5 per cent would meet the requirement.

Karen Whitefield: Bill Butler makes a fair point, but the reality is that ministers who receive gifts in the course of their duties are unlikely to be given a commemorative mug or a bunch of flowers on the opening of new housing association houses. Those are not the kinds of gifts that are being registered—

The Convener: They are.

Karen Whitefield: We need to get the balance right. I know that MSPs who feel that they should register something below the current monetary value—as I have tried to do—are unable to do so. If we make everything registrable, including those things that have no real monetary value, we might simply create difficulties and set up a bureaucracy that will catch out MSPs without achieving anything.

For example, if I attend three gala days in my constituency, I might get into trouble for not registering one bunch of flowers after registering the other two. I often tell organisations not to waste their money giving me flowers, because I would much rather that they used the money for their own activities. However, organisations sometimes want to give some small token of their appreciation and that makes them feel good.

Nobody would find such gifts unreasonable, but people are concerned about gifts that have a high monetary value and that could influence the job that we do. The question is whether the gift will influence our job and the way in which we represent people. No MSP opens a gala day or church fête on the basis that they might be given a small bunch of flowers. They take part in such events because they respect the organisation, which they want to be seen to assist in their constituency.

The Convener: So your argument is that a 0 per cent threshold would be an unreasonable administrative burden on individual members who may fall foul of the legislation inadvertently and that the criteria against which we ought to be judging this is whether it is possible to corrupt or influence members' decision making through gifts and whether there is a perception of that because of the declaration process. Is that a fair summation?

Karen Whitefield *indicated agreement*.

11:30

Alex Fergusson: I strongly agree with what Karen Whitefield has said. There is logic to the argument that we should declare everything from a postage stamp upwards, but I take the point that that would make every MSP vulnerable to somebody who spent half their time going through the register of interests and spotted that Bill Butler's first-ever bunch of flowers was not registered. We are opening up a whole can of worms that is completely unnecessary. Nobody is ever going to convince me that Bill Butler's getting a bunch of flowers is going to influence his vote one way or another. I may be wrong about that, but I very much doubt it.

Bill Butler: You are absolutely right.

Alex Fergusson: Therefore, a figure of 0.5 per cent is reasonable. I receive very few gifts for doing things. This evening, I will open a new village pub, which is a rare event in rural Scotland nowadays, and I may well be given a half-pint of beer for doing so. To expect that to be registered—particularly if I am given more than one half-pint of beer—would be asking an awful lot.

The Convener: You need to be careful what you are saying. It sounds as though you are touting for drink.

Alex Fergusson: We can take declarations far too far. I strongly back the figure of 0.5 per cent. As Ken Macintosh said, it saves our having to revisit the matter every year to determine a financial amount.

The Convener: Why have that as a threshold rather than the figure that is suggested in submission 2 from the registrar of the House of Commons, which is 1 per cent?

Alex Fergusson: The figure of 0.5 per cent corresponds most nearly to the figure that we use now. To my knowledge, nobody has complained about what we have just now.

The Convener: Well, what we have just now is what was given to us in advance by Westminster. Westminster has reviewed the figure since and now has a different threshold.

Bill Butler: Westminster is allowed to have a different threshold, but we do things differently here. We are talking about what is reasonable for us. I would advise colleagues down south—if they ever look at the figure again—to return to 0.5 per cent.

The Convener: I take it that there is general agreement that the present arrangement is satisfactory and that the threshold should be 0.5 per cent.

I ask members to give their views on question 2, concerning whether we ought to uprate the figure annually when we publish the monetary value at the beginning of each year, so that members' attention is drawn to it and the public know what it is.

Bill Butler: That would be reasonable and transparent. I think that we should do that.

Alex Fergusson: Hear, hear.

The Convener: Are members content that we have dealt with questions 1 and 2?

Members *indicated agreement*.

The Convener: Is the non-Executive bills unit quite clear about the wishes of the committee with regard to those matters?

David Cullum *indicated agreement*.

The Convener: Question 3 concerns a requirement to register overseas visits when the cost has been met wholly or in part by a UK public body, a European Union agency or a foreign Government. Do members have a view on whether we should change the current practice of registering those visits irrespective of that fact or move into line with other practices?

Bill Butler: I think that we ought to register them and keep the status quo. It is transparent and is absolutely the way in which we should be going on this. I do not see the need for any change.

Mr Macintosh: I am slightly worried about this rule. It has never applied to me—to be honest, I am not sure how many members it will apply to—but I worry about rules that are designed to trip us up rather than help us. The whole point of these rules is to help us in our dealings. There is no problem with gifts of any size being declared by any of us. It is a question of judgment in many cases and of ensuring that the public are aware and the rules are there to help us to make judgments. In this case, I worry that we might end up with a situation in which anybody who does anything has to register it with two or three people. The most important thing is that something is public knowledge; whether it is kept on our register or someone else's register is not so important. I wondered whether having multiple registrations was almost designed to catch people out. I do not feel strongly about it, but I like simple rules that are easy to understand and follow.

The Convener: When I read some of the responses, I was concerned that some respondents did not understand the present arrangements or the implications of changes. I seek guidance from our advisers on what is required to be registered under the current arrangements and the implications of the removal of the requirement to register overseas visits where the costs have been met by other public bodies.

Mark Richards (Scottish Parliament Directorate of Legal Services): Under paragraph 7 of the schedule to the members' interests order, where a member has made a visit outside the United Kingdom, there are exceptions to the requirement on the member to register the visit. Those are where the costs

"are wholly met … by the member; … by the member's spouse or cohabitee; … by the member's mother, father, son or daughter; … by the Parliamentary corporation; … or out of the Scottish Consolidated Fund; or … were approved prior to the visit by the Parliamentary corporation."

In those cases, the costs do not have to be registered.

The Convener: If members of the Parliament were invited to observe elections, which is fairly common, or were invited on a visit by the Organisation for Security and Co-operation in Europe or a similar body or another democracy foundation that was funding the activities, would members have to declare the costs? The arrangements that you just described would not exempt such visits.

Mark Richards: Yes, unless the costs were approved by the parliamentary corporation before the visit took place.

The Convener: It depends what the purpose of the register is. If it is to be completely open and transparent and if all international trips are to be covered, that is simple and clear cut. However, if it is to deal with the perception of influencing members, that is a different matter. How do members feel about that? Should we continue with the present arrangements, move to a more relaxed sphere or insist that everything be declared?

Bill Butler: What we have at present is reasonable. Someone might not be asked simply to observe elections; a particular foundation might ask them to go—as I did in the convener and deputy convener's stead—to Berlin for one day to talk about standards. It is quite right that such a visit should be registered, because even though I was talking about standards, people might think that I was on a jolly to Berlin, which I certainly was not—it was not jolly; it was very serious. What we have at the moment offers a reasonable way of proceeding and we should stick to it.

The Convener: Is that the view of the committee? I think that Mr Butler is proposing that there be no change. Even visits that are currently sponsored by other public bodies, such as the European Union, UK public bodies or foreign Governments would require to be registered. If the answer to question 3 were yes, Mr Butler would no longer be required to register his visit to Berlin.

Mr Macintosh: The visit was paid for by the Parliament. It would not have to be registered under the new or the old rules.

The Convener: No, it was funded by an external body.

Bill Butler: A foundation. Actually, Ken, I went to Berlin in your stead. I am suggesting that we stick with the status quo. It is in the exceptional

cases, where visits are funded partly or wholly by external bodies, that we still require to register. That is a sensible way of making sure that members are seen to be acting in a transparent and above-board fashion.

Mr Macintosh: I have one thing to check, but it is not a big issue and it might not be fair on the clerks, although Franck David might know. Has there been any confusion or difficulty with people registering such interests?

The Convener: No. The reason for asking the question is to consider removing some of the administrative burden when a visit is being sponsored by another public body or Government and it might be reasonable to suggest that there is no possibility of the member being influenced. I am quite happy to get some formal advice on that.

David Cullum: One of the issues would be the translation of such a policy into the legislation. Unless there were a generic term that covered the bodies that could invite an MSP without the MSP having to declare it, the bodies would have to be listed, or there would have to be some mechanism for approval; otherwise it would just be open.

The Convener: So the present arrangement is quite clear cut and administratively clear. If we were to change it, we would have to devise a set of criteria and an approval mechanism that would be transparent so that members of the public could check it.

David Cullum: Short of listing all the bodies that could invite MSPs without that requirement, there would have to be a mechanism for approval.

The Convener: Thank you for that clarification. Is that satisfactory?

Mr Macintosh: It certainly is.

The Convener: In that case, I take it that the committee accepts that there is to be no change.

Members *indicated agreement*.

Mr Macintosh: Some of the rules apply to members' families and to staff. Are we going to return to that at the end?

Alex Fergusson: It comes up later.

Mr Macintosh: I thought so, but I got lost. I do not want to go through the whole argument again if we are doing it at the end.

The Convener: If you still have questions, I am happy to deal with them when we discuss question 18 in the consultation document. There was indeed a submission on how staff are dealt with, but staff have their own code. The question of families and spouses permeates the current code. If members want to see any change to that, they should indicate that as we are going through the questions or at the end.

We move on to question 4, which is on heritable property. Should we exempt homes that are for sale? Should rental income from any additional property be banded rather than specified, in order to protect the tenants? There is a view that declaring the income from heritable property deals with matters that are personal to tenants as well as to the property owner. Are there any views on those items? We have been given some fairly clear advice in the responses that we received to the consultation, but those were perhaps fairly simplistic as well as being limited in number. Do members have any specific views about whether we need to tidy up this aspect of the members' interests order? Should we exempt homes that are for sale?

11:45

Mr Macintosh: In a word, yes. I cannot remember the case, but one member was inadvertently in breach of the members' interests order for a period of months while they were selling their house and buying a new one. We should not over-complicate things. This is about somewhere that has been a member's main dwelling and home but which is uninhabited for a temporary period while they are trying to sell it. It is a bit like the exemption in the rules for council tax on second homes. The rules are not designed to catch people out; they are there to help us to make judgments about what is an interest that we should declare and that may be judged to have an influence on us. I do not think that a member's own home comes into that category.

Alex Fergusson: Are we talking purely about our own residential homes?

Mr Macintosh: That is what I thought.

The Convener: Yes—that is my understanding.

Alex Fergusson: In that case, I agree with Kenneth Macintosh.

The Convener: What about including a time limit on how long the situation might be ignored?

Mr Macintosh: Could I ask whether David Cullum has a view on this? The Government recently issued guidance—but not legislation—on council tax exemption for second properties. It says that property that is unoccupied for less than 12 months, I think it is, comes into a certain category. That is not phrased in legal terms, however; it is just guidance for the benefit of local authorities. Would it be difficult to encapsulate that in legislation?

David Cullum: It would not be difficult to define a specific period, but it would be rather harder to deal with a floating period. Defining 12 months would be simple; if you wanted to relate the period to some other factor, it would be more difficult to

get that into legislation. However, it might be possible to work something into the determinations.

The Convener: We need to take a view on this. We do not have to express our final view today, but if we do not do so, we will have to revisit the matter at some point. Do any other members have views on exempting homes that are for sale? I remind members that the issue was drawn to our attention because of a particular circumstance that arose. Does anybody object to exempting homes that are for sale?

Bill Butler: What is the present situation?

Mark Richards: At present, if a member has two properties, they must register one of them. One of them will be their principal residence, which they do not have to register, but they must register any second property. In the situation that Ken Macintosh describes, in which a person has put up their principal home for sale, has bought a new property, has moved into that new property and is still seeking to sell the original property—now their second property—they should register that second property.

Mr Macintosh: Which is what happened in the case that we are alluding to. That is why I know about it. That happened in the previous session. The member in question was inadvertently in breach. Sorry—in fact, they were not. In any case, they did sell the property in the end.

The Convener: It depends on what test we apply. I think that the test is to be whether someone gains advantage or is perceived to gain advantage as a consequence of having a second home and being a member. I find it hard to see where there would be any advantage. I know that the present climate in the property market is still relatively buoyant, but some of us around this table will remember when it was not so buoyant. I think that a period of up to 12 months is quite reasonable. Are members content with that?

Members *indicated agreement.*

The Convener: Are our advisers happy that it would be reasonable to draft the bill to reflect that?

David Cullum *indicated agreement*.

Mark Richards *indicated agreement*.

Alex Fergusson: Just for clarification, is the decision that we exempt the member's main residential home for a period of up to 12 months?

The Convener: Yes—if it is for sale.

The current position is that the amount of rental income from heritable property has to be declared. We considered whether MSPs' tenants were entitled to a certain amount of privacy. Banding such rental income would avoid the need for a specific amount to be declared. The response that we have received to that suggestion has been limited. Although the bulk of respondents have taken the firm view that rental income should not be banded and that the amount of such income should be made public, none of the respondents appears to have addressed the concern that led us to ask the question, which was about offering some protection for the privacy of MSPs' tenants.

Alex Fergusson: I think that it was me who flagged up the matter, because of my circumstances.

The Convener: Indeed; I recall why it came up.

How do members feel about introducing a set of bands? We will hear from our advisers on the issue. Banding exists in other circumstances. My recollection is that additional sources of income can be banded and that the precise amounts do not have to be specified.

Karen Whitefield: I am minded to accept a degree of banding, not because I want to cover up how much income any MSP gains from heritable property, but because I think that MSPs' tenants are entitled to some privacy. It is not their fault that they are renting from an MSP; they might have been renting from that person for many years before he or she became an MSP. There would still be an obligation to declare such an interest, but banding would offer some privacy to the tenants in question. We could introduce such a system without being seen to be hiding anything.

The Convener: Let us have some technical advice.

Mark Richards: It might be helpful to point out to the committee that although the draft bill that its predecessor committee attached as an annex to its report on replacing the members' interests order does not mention banding, it certainly allows for banding. The Parliament determines the detail of what is to be registered, but the committee would have input into that process and would undoubtedly be instrumental in deciding the policy behind the determination. However, that is a matter for another day if the committee is happy with the way in which the issue was dealt with in its predecessor committee's draft bill. The committee does not have to set out banding in any bill that it proposes now.

The Convener: So if we were to use the existing draft bill, we would be able to offer the protection that we had in mind when we drafted our consultation, without having to specify the banding at this stage.

Mark Richards: Yes. In effect, the draft bill would engage a registration requirement in respect of the second property—the rental property—the income from which exceeded a

certain amount. It would not determine the detail of what should be registered, as that determination is made by Parliament. On the basis of the draft bill, Parliament could determine that registration should be made according to bands, which would mean that bands rather than figures would be specified.

The Convener: Are you saying that the bands would be determined by secondary legislation? How would the Parliament determine them? The parallel would be ministers acting under regulations but, as far as I am aware, the Parliament does not have a mechanism for doing that. How would that happen?

Mark Richards: It would need to happen through the Parliament approving the committee's recommendation on the code of conduct.

The Convener: So the matter would come back for the committee to issue guidance.

Mark Richards: Yes, indeed.

The Convener: Are members content to proceed along the route agreed in principle that income should be declared but that it will be left to Parliament and, in all likelihood, this committee to determine whether and how it is banded, or would they prefer to see that set out in the bill? The disadvantage of setting all this out in the bill is that we would have to specify the bands and to put in place a review mechanism for them. If we have to establish such a mechanism, we are as well taking the advice that we just received, because it will need to be reviewed from time to time.

Do you have any further thoughts on the matter, Mr Fergusson?

Alex Fergusson: My slight quandary is that such an approach seems a bit indecisive and buck-passing, if I may use that expression. If we agree that banding should be introduced or that income should be declared on a banding basis, are we not better to grasp the matter and declare in the bill what we think the bands should be? Presumably, that would be open to amendment as the bill progressed through the parliamentary procedures. I have no great difficulties either way, but if we have decided to go down this route, why do we not just say so in the bill?

The Convener: I am aware that, in drafting legislation, one should pay heed to those who have to deal with the consequences of the legislation. I think that I would like to hear again whether there would be any great problem with setting out the mechanism in the bill.

David Cullum: I do not see any great difficulty with setting the bands out in the bill. There would not necessarily be any need to amend them in future. If we had bands from, say, £1 to £5,000, £5,000 to £10,000 or whatever figure, they would probably stand the test of time. We could also have open-ended, incremental bands. Our slight reservation is that, in doing so, you would put detail into the bill when similar detail does not appear anywhere else. That said, what you suggest is perfectly doable. It would not present any drafting difficulties or any on-going problems with uprating, because I do not think that there would be any need to uprate the bands.

The Convener: I do not want to put words into your mouth, Mr Fergusson, but are you looking for technical advice on how we could set out in the bill the principle of banding and then specify how that would operate?

Alex Fergusson: I am sorry; I do not particularly want to make a big issue out of this. However, I do not quite see why we cannot grasp the matter. As for putting detail into the bill, we did not say in relation to question 1 that we should state the principle of having a percentage above which the value of gifts should be declared but then simply leave it to Parliament to decide what that percentage would be. Instead, we said that the threshold should be 0.5 per cent and that what the figure really means should be published annually. As I have said, I do not want to make a big issue out of this; if the correct way forward is not to specify the bands in the bill, so be it. However, if we are agreed that we should have a banding mechanism, I do not see any difficulty with setting it out in the bill.

The Convener: Does the committee feel that the income that MSPs receive from heritable property ought to be declared but that, in order to protect tenants' privacy, the exact amount of income should not be published?

Members *indicated agreement*.

The Convener: That is the committee's unanimous view. Is it the committee's view that the bill should lay out clearly the mechanism for achieving that? Do members want banding in the bill, or will we take the draftsmen's advice that we can achieve that through another mechanism?

12:00

Bill Butler: We should take the draftsmen's—or draftspeople's—advice.

The Convener: Are members content with that?

Alex Fergusson: Yes.

The Convener: That is fine.

David Cullum: I have one supplementary question. At the moment, the trigger for declaring rental income is any amount that is greater than £4,000. Is that figure to remain?

Mr Macintosh: Would it help to express the amount as a percentage of our salary?

David Cullum: That would be roughly 8 per cent.

The Convener: I suggest that £4,000 is a fairly substantial sum. To go some way towards recognising the concerns that have been expressed, the figure should be lower.

Alex Fergusson: We have agreed to propose the principle of banding, and bands will be set later. It was said that the first band could cover £1 to £5,000—I suggest that that should be nought to £5,000. Banding means that we can leave the decision to later. The downside of all the banding is that those who wish to use the figures will always assume that an item in the nought to £5,000 banding is worth £4,999 rather than £10.50.

The Convener: In effect, Mr Fergusson says that all rental income will need to be declared.

Alex Fergusson: If it is unearned income.

The Convener: We will not go for a percentage figure.

Mr Macintosh: I am hesitant about the matter. I do not know how many people rent property temporarily or have a small rental income, but the rules should not over-complicate matters. The figures are arbitrary. Whether the threshold is £250 for a gift or £4,000 for rental income, it is arbitrary. Any figure could be plucked. We are just trying to obtain a figure that helps our judgment. Some people may rent property temporarily or have a small rental income. I do not think that we should include them; that is not the point of the legislation.

The Convener: Some would suggest that £4,000 is not an insignificant sum.

Mr Macintosh: Exactly—that is why £4,000 is the threshold. However, £4,000 does not represent a large annual rent for a property. How much is that per month? I am trying to work it out, but my maths is not quick enough.

The Convener: That is about £330 a month.

Mr Macintosh: I suppose that that is a fair amount.

Alex Fergusson: It is £80 a week, which is quite a lot.

The Convener: The threshold is quite high. If we are to have a threshold, it should be lower. We can have that or go along with the view that has been expressed fairly strongly that all rental income should be registered. I see no technical reason why we should not register all rental income. People are aware of having rented property. The chances of renting a property for one day for 10 quid are remote.

Bill Butler: I agree. If we go for banding in principle, we can take the suggested approach. The figure is £4,000 at the moment, but we are saying that we agree the principle of banding. The advice that we have had is that it will be up to the Parliament to designate the bands.

The Convener: That task may well return to us.

Bill Butler: That could happen.

The Convener: If we take Mr Butler's advice—

Bill Butler: My advice echoes your advice, convener.

The Convener: Fair enough. If we follow that advice, we can return to that point without delaying the bill. Is that correct?

David Cullum: Yes.

Mr Macintosh: The question is whether or not we need a threshold.

The Convener: We do not have to have a threshold in the bill, because if we adopt banding, the threshold of £4,000 will disappear. Is that correct?

David Cullum: It is entirely for yourselves to decide.

The Convener: In that case, so that we can proceed, I suggest that we dispose of the threshold and leave it to the Parliament to determine whether to have banding and how it will be dealt with. That will be a matter that we will not have to deal with in terms of the members' interests order, but we have agreed in principle that we will offer to protect the privacy of individual tenants while extending the range of financial income that MSPs receive that will be in the public domain, although an exact figure may not be given. That is consistent with some other parts of the existing members' interests order, where other sources of income are banded. We will leave it to the discretion of the Parliament to determine what the bands might be. Is that reasonably clear?

Mr Macintosh: It is still unclear to me. Are you saying that we could reintroduce a threshold? Or, if we agree that there will be no threshold, will there be no threshold?

The Convener: The effect of that decision would be that there would be no threshold unless the Parliament decided to reintroduce one.

Mr Macintosh: We started off by suggesting that the members' interests order has been working successfully for five years. There has never been an issue over the threshold in the past and I do not think that there is currently an issue over it; however, getting rid of the threshold might

create issues and problems. We know that the threshold has been working at the level of £4,000, which I agree is a completely arbitrary figure that we might want to reduce or increase. Getting rid of it would not be helpful and could create anomalies and problems. Nobody has said that there is a problem with having a threshold, so there is no point in creating one.

Bill Butler: No one has said that there is a problem with not having a threshold.

Mr Macintosh: But we know, from experience, that the threshold has worked for five years.

The Convener: I suggest that we resolve the issue here and now, rather than return to it. Mr Macintosh has moved that we continue with the threshold—does he have a seconder?

Members: No.

Mr Macintosh: That is democracy in action.

The Convener: Absolutely.

Bill Butler: In democracy, a threshold has to be achieved.

The Convener: You are invited to record your dissent, if you so wish.

Mr Macintosh: No, it is all right.

The Convener: I did not think that you would. I thought that you did not feel so strongly about it.

Are you content, Mr Cullum, that you have got—

David Cullum: Almost. We understand that the committee wants the minimum threshold to be removed. We could draft the bill in such a way that Parliament could reintroduce a threshold without the need for primary legislation.

The Convener: Yes, is the answer to that. I think that is the view of the committee.

Alex Fergusson: I wonder whether that is necessary. We have left the detail of the banding for further deliberation, and the detail of the banding could well reintroduce a threshold.

The Convener: That is exactly what David Cullum is saying.

Alex Fergusson: Sorry. I beg your pardon.

The Convener: We are agreed on that, with the exception of Mr Macintosh—but that is neither here nor there.

Let us move on to question 5. In relation to shareholdings, views are sought on whether market value is a more appropriate measure than nominal value. I would like the committee to address questions 6, 7 and 8 along with question 5. Question 6 asks whether the thresholds of £25,000 and 1 per cent of issued share capital are appropriate; question 7 asks whether shareholdings should exclude Government securities, and so on; and question 8 asks whether any other financial matters ought to be included. Let us discuss those questions collectively. Do members have any views on the questions, taking into account the submissions that we have received?

Mr Macintosh: When it comes to declaring an interest in shares, much of what we are trying to do is describe areas where a member's interests may have or appear to have an influence on their public behaviour. Many of these matters are private, and although we put ourselves forward for public office, we are still entitled to some degree of privacy. Determining where to draw the line between our private and public lives is difficult. We all agree that we abandoned some degree of privacy when we stood for public office.

The issue at the heart of the matter is at what point your interest in a company could influence your behaviour. In that sense, it is not the value of the shares that matters, it is the percentage of shares that you hold, and the influence that you have as a shareholder through your voting rights. Alex Neil has brought this up before: if you are a member of Equitable Life through your mortgage—which I am not—you could quite easily pass the £25,000 threshold. In addition, pensions, which are a shareholding, could quite easily be held in Government securities, interest bonds and all sorts of different shares, which members might not even know about, although perhaps they could find out.

I do not think that in any of those cases, the fact that someone has a pension or mortgage needs to be declared. There is an assumption that most members will have a mortgage and a pension, and that affects our behaviour to an extent, because we want pension companies and mortgage companies to be stable and reliable institutions, but we should not take an interest in any particular one.

We are trying to address the situation where someone has an interest in a particular company, and a shareholding of a substantial nature, so we should head in the direction of a percentage, because that is what we are trying to capture. I know that there are weaknesses in taking that approach, because with huge companies you may have a substantial shareholding that does not approach 1 per cent, but that is the direction that we are trying to head in. If we frame the measure in the wrong way, we will capture information that it is not designed to capture. We should try to avoid that.

The Convener: Are you proposing the status quo?

Mr Macintosh: The status quo has its weaknesses. On the question of market value and nominal value, if we use £25,000 as the threshold over which an interest in shares should be declared, market value is far more important than nominal value. The nominal value could bear no relation to the market value.

The Convener: But market value fluctuates.

Mr Macintosh: Yes, but we could have an annual declaration. I think we have one now, or maybe it is once every four years. However, we could have a duty to make a declaration annually, rather than every time the market goes up or down. I do not know if members agree with my suggestion that we need to frame the measures in such a way that we do not include pensions, mortgages and so on, because that is not the point.

The Convener: That relates to question 8, on other forms of investment or financial arrangements, including mortgages and pensions, and some of the other interesting and innovative financial vehicles that are constantly being made available, but which would not necessarily lead to an individual MSP having influence over a company or having an interest in promoting legislation that will benefit that company. Are members content that we do not extend the range of financial vehicles that would be caught by the legislation? That would also cover question 7. Does anyone wish to express a contrary view?

12:15

Are we really talking now about declarations of shareholdings in terms of market value or nominal value and of thresholds? If it is to be market value, we could assess that annually on a fixed date or by some other mechanism. My own personal worry about that is that, for example, Mr Butler might have an interesting pensions portfolio; he might decide that he has a little money to invest and he might go for the next dotcom bubble. If he hits a banker, the shares that he bought for £1 each could be worth £100 each, so if he bought £1,000-worth of shares at £1 each they would be worth £100,000. Exceptional fluctuations of the stock market could lead to such a situation. Would he then be in breach of the rules if he had not declared that investment?

That is my worry. I know that most folk are more likely to have shares in the companies that were privatised. Their holdings will be of a modest size and the fluctuations will be much less exceptional. Nevertheless, that is my worry. Do other members have views on that?

Alex Fergusson: As the only avowed capitalist on the committee—as I understand it, anyway—I can safely say that I do not have a stock or a share, so I do not actually understand half of those things. I think that the market value would have to be assessed on a fixed date every year, because it is my understanding that stocks and shares go up and down faster than yo-yos, if that is possible. Ken Macintosh has referred once or twice to simplicity and that share declarations must be kept simple if the system is to be workable. Should Bill Butler be fortunate enough to hit the dotcom bubble, it would be ludicrous to expect him to declare on a daily basis the differences that might come about. An annual date is the only way in which that could practicably be done.

Mr Macintosh: I agree.

The Convener: What would the threshold be? I may be in a minority on this point, but I suspect that there are technical problems around that point. However, I accept that that is not the majority view of the committee.

What would members suggest in terms of thresholds for declaration in relation to the market value and the percentage of issued share capital? Are members content that the current threshold levels are reasonable?

Mr Macintosh: Indeed. They seem to work.

The Convener: Do members have any concerns about an absolute value being placed on the threshold without including a mechanism for uprating or reviewing it? Would it be possible to put something into the bill that would allow a review mechanism in relation to the threshold value and the capital value?

David Cullum: The short answer is yes. We could, for example, say that 50 per cent of someone's salary was the threshold. That would make it simple.

The Convener: Are members content with that suggestion?

Bill Butler: That is a reasonable suggestion.

The Convener: I think that we have arrived at a reasonably clear answer. Do we need to give you the date?

David Cullum: The existing date is 5 April, which is for tax reasons. Those who have shares do tax returns anyway.

The Convener: That takes us to question 9. Are you content with the guidance that we have given you for questions 5 to 8? We are interested only in what is caught by the current legislation in terms of shareholdings, and we have agreed that we shall move from the nominal value to the market value, that the threshold will continue to be 1 per cent of the issued share capital, that we shall uprate the threshold for the monetary value on an annual basis, that that threshold should be 50 per cent of

an MSP's salary, and that the assessment should be made annually on 5 April.

David Cullum: That is all fine. Can I just be clear on question 7, which is the definition of shareholdings? I understand that you want to exclude mortgages and pension-related holdings. Question 7 possibly goes a bit wider than that.

The Convener: I asked the members whether they wanted to include Government securities, fixed-interest bonds, fixed-interest securities or unit trusts. I did not get any response other than that they are content to continue to exclude them on the basis that we discussed. Since they do not involve single companies, there is no prospect of there being a benefit to the member in terms of influence one way or the other. I take it that members share that view.

Members *indicated agreement*.

The Convener: We move on to non-pecuniary interests. We had much more in the way of detailed response about this area; members have that before them. Almost all the concerns related to membership of organisations that might be regarded as secret. How do members feel about whether MSPs should be required to register non-financial interests? That is a rather wider concept than the narrow one that is taken from many of our submissions today, which relates to membership of the freemasons. How do members feel about that?

Alex Fergusson: For clarification, is it correct that under the status quo it is the duty of any member to declare an interest, pecuniary or non-pecuniary, if he or she believes that that will influence their work as an MSP?

The Convener: No.

Alex Fergusson: That is not the case?

The Convener: No. There is a series of specific things where members are required to register an interest. There is no general requirement to register financial or non-financial interests where there might be a public perception of influence or interest. There is no general principle. Some of the submissions before us would impose into the code an onus to disclose membership of organisations. However, the current code does not have that requirement. Rather than have me make that assertion from my safe position as convener, will our advisers confirm that that is right?

Mark Richards: You referred to financial interests and I would take issue with that, but not to any great degree. The members' interests order requires financial interests to be registered where they meet the various thresholds set out in the members' interests order. There is no requirement to register non-financial interests.

The Convener: Financial interests are only declarable when they are on the list in the code.

Mark Richards: Yes.

The Convener: Mr Fergusson's question related to the broad question of financial and non-financial interests where there might be a perception of possible influence.

Mark Richards: To that extent, I agree with what you said. There is no requirement to register non-financial interests. There is a power to register them, but no requirement.

The Convener: The current situation is that there is no requirement to register non-financial interests. However, we have placed a requirement on members of local authorities to do so. Elsewhere in the United Kingdom, there are requirements on people in public office—not necessarily elected office—to do so. If we continue not to have a register of non-financial interests, it might be perceived that we wish to retain more privacy ourselves than we allow others. I appreciate that there are two sides to the argument. Despite the detailed information that we sent out, we received a very limited number of responses. That suggests to me that—other than among a limited number of people—there is no great public debate on the issue.

There are technical reasons why it might be difficult to draw up the criteria for a register of non-pecuniary interests. However, I feel that we ought to have a requirement for such a register in the bill, because we are imposing that requirement on other people. If we include that requirement in the bill, I am certain that that will engender a public debate, and I would rather that we had that debate in as open a way as possible. If we do not have that debate, we will be open to the accusation that we are trying to do things quietly and in secret.

The bill ought to contain a requirement to declare non-financial interests. We will have to be careful about how we draw that up, so that we are not asking members to register the fact that they are the treasurer of the local cricket club. I suspect that not many members of the public would be desperately interested in that.

Mr Macintosh: We introduced a bill that required councillors to declare their non-pecuniary interests, so there is quite a strong argument that we, too, should declare such interests. It is a grey area. I do not think that it is a big issue, and I do not want to create problems unnecessarily, but there are certain organisations that some people are very concerned about. I do not think that we should declare our attendance at or membership of church groups or the Boys Brigade or the Rotary Club. However, the Ethical Standards in Public Life etc (Scotland) Act 2000 said that a person should register non-financial interests if other people might consider those interests to have an influence on the person. Would such a

definition cover concerns about supposedly private or secret organisations, without covering the kind of voluntary community organisations that we are all active in, although not necessarily members of?

David Cullum: To be consistent with the requirements for financial interests, we would require non-financial interests to be declared if they might reasonably be considered

"to prejudice or give the appearance of prejudicing"

the ability of the member

"to participate in a disinterested manner in the proceedings of the Parliament"

relating to any matter. I am quoting from a draft bill that was prepared for the committee in the previous session.

The Convener: That covers the point that Mr Fergusson made. If something like that were included in the bill, it would put the onus on the individual.

Bill Butler: We should proceed as the convener and Kenneth Macintosh have suggested. I think that we are in agreement that this is something that we should include in the bill, if only to engender discussion.

The Convener: If we are to engender such discussion, it is a question of where, when and how. Given the advice that we received earlier, does the committee think that the matter should be left until stage 2 or ought we to resolve it before we produce a report to go to Parliament?

12:30

Mr Macintosh: I do not think that I am in any doubt about people's views on the matter, in the sense that some people are very passionate about certain issues, particularly about membership of the freemasons.

Alex Fergusson: One issue.

Mr Macintosh: Yes, it is one issue, but people on both sides feel very passionately about it. I do not think that it has ever been an issue in the Parliament, but people feel very strongly about it. I am not sure how much further forward receiving evidence would take us. As far as I understand it, the issue would be covered by the legislation that we are framing. The legislation is not designed to pick on any one organisation, but it would cover the matter and it is fair to all.

The Convener: My concern—it is why I raised the issue—is that I think that there should be an opportunity for those who might be affected by such legislation to respond to it in advance or at a stage when it might be possible to influence the legislation. I am not sure exactly when in the process that ought to happen. I would rather that we were open and up front about the issue, which is one of the reasons for my suggesting that we ought to at least consider what we should do, before we go to the Parliament.

It may well be, as Kenneth Macintosh said, that people's views are well known on either side of the debate and that hearing evidence directly may not sway us one way or another. However, when the Parliament was set up it was made clear that it was supposed to be accessible, open and transparent. It is noticeable that some of those who might be significantly affected, in their eyes, by any such change, have not taken the opportunity to provide written evidence on the matter. I certainly would not wish an accusation to be levelled against the Parliament that those people had not been given an opportunity to put their side of the case.

Alex Fergusson: Given the fact that we are talking, basically, about one organisation, you can take it that the views of those who are most likely to be affected—who have been named in some of the evidence that is before us—are to be found in paragraph 17 of page 35 of the document that we are discussing. The final sentence of the paragraph probably encapsulates their views.

The Convener: In essence, you are saying that the view of the freemasons would be that there should be no change.

Alex Fergusson: Let me declare, for the sake of the discussion, that I am not a member of the freemasons—I never have been and I suspect that I never will be—but I suspect that that is probably fair comment.

The Convener: Nevertheless, the freemasons have not expressed a view. However, it is a matter of record that we wrote to them, among other organisations, and invited them to give their view. I am happy to be guided by the committee. If members feel that they have had every opportunity to comment, I will accept that that is the case.

Bill Butler: I am inclined to agree with you that, at an appropriate time, we should hear evidence from both sides on the issue. The Parliament has operated in a transparent and accessible fashion in the past and should continue to do so. We should give both sides the opportunity to give evidence at an appropriate time. I think that such an evidence session would be interesting.

Alex Fergusson: I must dissent from that view. By holding such a session, we would simply reinforce the possibility of the exercise almost becoming a witch hunt against one specific organisation. I am keen to avoid that. That is why I very much approved the wording that David Cullum read out to us. I am perfectly happy with that wording. If we go into too much detail, we will

put the focus on to the one organisation that we have been talking about, which is unfair.

The Convener: I am anxious that we should be fair.

Karen Whitefield: We all want to be fair on the issue. I am not sure that we would be conducting a witch hunt against the organisation by giving it an opportunity to speak to the committee. We would be giving it a proper opportunity to express its views and to engage with the committee. At the end of that process, we would know that we had not been a party to a witch hunt, but that we had given the organisation an opportunity to engage with the committee.

I tend to agree with the convener. We should seek the organisation's views and offer it an opportunity to give those views. That organisation has a right to choose not to take up that opportunity and not to engage with us. It might say, "We've said all that we have to say on the matter." It is for the organisation to make such a decision.

The Convener: What Karen Whitefield said is helpful. The freemasons' silence might well be their view, but I would like to give them an opportunity, and I suggest that we write to them and offer them such an opportunity. If they choose not to take it, we will have heard the other side, which is before us, and our decision can go with the other side of the argument, which is, in essence, that there should be a declaration. If the freemasons choose not to take the opportunity to come and talk to us, we should proceed on the basis that the wording of the previous draft bill will be the line that we take. We should give them whatever period of time to respond.

Bill Butler: I am not against that suggestion, but a full evidence-taking session is not even needed—there could simply be a written submission. Giving them another opportunity is clearly a separate matter from any suspicion that there is a witch hunt. We would all wish to dissociate ourselves from such a suspicion. The suggestion would simply give that organisation another opportunity to put its side of the case. It may or may not take up the offer if we proceed on that basis, but that is entirely a matter for that organisation.

The Convener: Would Mr Fergusson and Mr Macintosh be content to proceed along those lines? I would prefer not to go to a vote on the matter, if we can avoid doing so.

Alex Fergusson: I want to clarify what I said earlier. When we started the conversation, I assumed that we were referring to MSPs who had been drawn into the argument on previous occasions. I make it clear that my earlier remarks referred to those individual MSPs and not to the freemasons themselves. I do not want the impression to be given that the Scottish Conservative and Unionist Party speaks for the freemasons—it does not. I think that I might have given the impression that it does so, and I want to clarify matters.

The Convener: I certainly did not think that.

Alex Fergusson: I still think that there is a danger. If we invite the freemasons to give evidence—written or otherwise—I do not see why we should not ask cricket clubs, church organisations and many others to give evidence, too. I do not want to go down that route, but there is a danger that, if we focus on one organisation, the discussion will move in a direction in which I do not think that any of us particularly wants it to go. However, I will not stand in the way of the course that you suggest.

The Convener: I would like to introduce something new at this stage. The Public Petitions Committee sent members a copy of petition PE761 for information. Are members content to consider the petition as part of our discussions on the matter? There is no requirement on us to consider the petition, but given that there is division in the committee, I suggest that we do so.

Alex Fergusson: Does the fact that we have received an envelope marked "private and confidential" allow us to discuss the matter in public?

The Convener: The information was sent to members on that basis, but if you read it you will see that it has been provided for the committee. I am aware that the petitioner is anxious that we consider the matter. The matter is not on the agenda today and there was no requirement to include it. I could have chosen to put it on the agenda but I did not do so. However, given the direction that the discussion has taken, it might be helpful to consider the matter. If members have not had the opportunity to read the petition, I am happy not to consider it at this stage.

Mr Macintosh: We received a private and confidential paper, but if we decide to discuss the matter we should bring it back as a public paper, not for the benefit of the committee but for the benefit of the public. I am in sympathy with Alex Fergusson. What we do about non-pecuniary interests should be driven by the principles of the Parliament and what we are trying to do to maintain the probity of the Parliament and confidence in the Parliament. We are trying to protect, secure and promote the Parliament as an upholder of standards in public life. We should not allow ourselves to be driven by other people's agendas or hobby-horses. Everything that we do should follow a certain set of principles.

I am influenced by the fact that we have passed a law that requires councillors to declare non-pecuniary interests that might be considered by others to influence their judgment. There is a strong presumption that we should follow a similar path. If we do not do so, we will be accused of double standards. Not just non-pecuniary interests, but many issues that we have discussed are quite intrusive. The line between public and private life is difficult to draw and we have to make judgments all the time. However, that is the approach that we are taking.

I do not think that our approach should be driven by the freemasons or by people's obsessions with the freemasons. Specifically to invite the freemasons to give evidence to the committee would miss the point of what we are doing. I agree with Alex Fergusson that we should invite everybody who has a view on non-pecuniary interests to write to the committee. We should not write specifically to the freemasons; we should put out a general call for views.

However, we cannot get away from the fact that there is particular public concern about freemasonry. The petition was passed to us by the Public Petitions Committee, so we can consider the issue specifically in the context of the petition. As it happens, the petitioner also responded to our consultation. We can take both approaches. We can repeat the call for written evidence on non-pecuniary interests before the draft bill comes back to the committee, and people who want to supply further evidence will be welcome to do so. We can also put the petition on the agenda for our next meeting or the subsequent meeting, at which point we can specifically consider freemasonry and write to the freemasons about the petition. That approach would address both issues.

The Convener: Will Mr Butler comment?

Bill Butler: I have changed my view. Ken Macintosh makes a sensible suggestion. We can consider the matter through the vehicle of the petition, by discussing the petition in public as a separate agenda item. There would be no harm in making a call for further comments from organisations that have a view on the principle towards which we are moving, which is that we should require MSPs to register non-financial interests in the way in which officials described. That would be the best way forward. We can still discuss the freemasons in the terms of the petition at a future meeting.

12:45

The Convener: If the committee is content with that approach, I make a specific suggestion. Assuming that this is the only matter that is unresolved, I suggest that we deal with it at our next meeting on 9 November. We can pursue the matter through the correspondence that has been suggested, and we should leave it to the clerks to draft the appropriate letter to the appropriate people. My concern—and the reason for my raising the subject of the petition—is that all the submissions that we have received on the issue have come from only one direction. There is no question of holding a witch hunt, but I think that there should be a further opportunity for the freemasons to respond.

I do not wish to delay the matter in any way, but I would like to seek guidance from our clerking team and our advisers on the bill on whether the suggestion that we deal with this item—probably only this item—in conjunction with the petition will present any difficulties. I assume that we will arrive at a decision on this matter at our meeting on 9 November. Are members content with that suggestion?

Members *indicated agreement*.

The Convener: Okay. That is question 9 dealt with. Is David Cullum content with the way in which we have parked the issue or temporarily disposed of it?

David Cullum: That is fine. However, inevitably, I have a supplementary question in relation to non-financial interests. The Scotland Act 1998 requires that breaches of the requirement in the bill on financial interests will be criminal offences. However, it does not require breaches of non-financial interests to be criminal offences. What does the committee want to do in relation to non-financial interests?

The Convener: We will have the opportunity to consider that at our next meeting, on 9 November. I will be looking for some background material on the consequences of breaches of non-financial interests from whoever wishes to submit it to the committee sufficiently far in advance. We will deal with question 10 as part of that.

Alex Fergusson: I am sorry to interrupt, but I know that Bill Butler has to leave fairly soon and I, too, am under time pressure. The committee is in danger of becoming inquorate. I do not wish to seem awkward, but I wonder whether we should postpone further discussion of this item until the next meeting, on 9 November.

The Convener: If that is the wish of the committee, I am happy for us to do that.

Bill Butler: It is not what anyone would wish, but time constraints dictate that course of action. The decision is up to you and the deputy convener, but the committee might wish its meeting on 9 November to start a little earlier if that helps.

The Convener: I will bear that in mind. We will deal with the rest of the members' interests order at that meeting.

Scottish Parliament and Business Exchange

12:49

The Convener: Under the next agenda item, do members have any questions on the report from the Scottish Parliament and Business Exchange?

Members: No.

The Convener: Are members content to accept the report?

Members *indicated agreement*.

The Convener: I suggest that we write to the Scottish Parliament and Business Exchange, saying that we appreciate the fact that it has submitted the report and that we look forward to having regular updates, as agreed.

Members *indicated agreement*.

The Convener: Okay. I ask for the room to be cleared as we move into private session to consider the final item on the agenda.

12:50

Meeting continued in private until 12:54.

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