

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 20 November 2007

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

3rd Meeting 2007, Session 3

CONVENER

*Keith Brown (Ochil) (SNP)

DEPUTY CONVENER

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

*Christina McKelvie (Central Scotland) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Dave Thompson (Highlands and Islands) (SNP)

COMMITTEE SUBSTITUTES

*Trish Godman (West Renfrewshire) (Lab)

Alison McInnes (North East Scotland) (LD)

Alasdair Morgan (South of Scotland) (SNP)

Elizabeth Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Jamie Hepburn (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 3

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 20 November 2007

[THE CONVENER *opened the meeting at 14:15*]

Interests

The Convener (Keith Brown): Good afternoon, everyone. Welcome to the Standards, Procedures and Public Appointments Committee. We have received apologies from Cathie Craigie and Jamie McGregor. Trish Godman is here as Cathie Craigie's substitute. That keeps up the pattern of Deputy Presiding Officers coming to our meetings; we had Alasdair Morgan with us last time. I invite Trish Godman to declare any relevant interests.

Trish Godman (West Renfrewshire) (Lab): I do not have any, except that I am on the proposed cross-party group on human rights and civil liberties. Indeed, I think that I might have been made a vice-convenor, because I did not attend its meeting. Usually, that is what happens.

Cross-party Groups

14:15

The Convener: That leads us into our first agenda item, which is on cross-party groups. The committee's agreement is sought to establish two new cross-party groups and to re-establish a cross-party group from session 2. Members will be aware that we must consider a range of matters when deciding whether to approve a cross-party group, including the group's purpose and whether it is being formed in the public interest.

The first proposed cross-party group that we are considering today is that on rural policy. Unfortunately, no office bearer for the proposed group is able to attend, because of other parliamentary and constituency commitments. I am content to consider the application in their absence. If committee members have any queries about the group, we can seek written responses from its convener, Roseanna Cunningham.

As no members have any comments, I seek members' agreement to approve the cross-party group on rural policy.

Members indicated agreement.

The Convener: The second proposed cross-party group that we are considering today is that

on human rights and civil liberties. I welcome to the committee Jamie Hepburn, the proposed group's convener.

Hugh O'Donnell (Central Scotland) (LD): I declare an interest as one of the proposed group's vice-conveners. Unlike the other member who has spoken about it, I was present at its meeting. I will withdraw from any questioning on the group.

The Convener: No members have indicated that they have questions. As Jamie Hepburn is here, I will ask him—

Jamie Hepburn (Central Scotland) (SNP): I was expecting to get an easy grilling.

The Convener: Yes—I did not want you to get away with it. The aim of cross-party groups should be to inform members about issues and to ensure that their work is of public interest. How does the cross-party group on human rights and civil liberties propose to meet that aim?

Jamie Hepburn: There was a wide-ranging discussion at our inaugural meeting, which was held in this very committee room a couple of weeks ago. A decision was taken to focus the group's activities on things that will affect the work of MSPs. In other words, it will focus on issues that come before the Scottish Parliament. We have not set out any concrete programme of events, but we intend to meet every couple of months, probably, and to invite speakers along. We hope that they will come from organisations representing matters that are relevant and newsworthy, and that the Parliament will be considering those matters at the time.

The Convener: Members have no other questions, so I thank Jamie Hepburn for attending the committee. I invite members to agree to approve the proposed cross-party group on human rights and civil liberties.

Members indicated agreement.

The Convener: The final group seeking our approval today is the proposed cross-party group on Scottish contemporary music. As the group was active in session 2, I have not invited its convener to attend the committee.

Members have no queries regarding the group's registration form, so I seek members' agreement to approve the group.

Members indicated agreement.

Scottish Parliamentary Standards Commissioner

14:19

The Convener: Agenda item 2 is on the Scottish parliamentary standards commissioner. Members will recall that, at our away day in September, we agreed that we wish periodically to take oral evidence from the Scottish parliamentary standards commissioner. This item provides us with an opportunity to consider two reports by him. The first is a draft memorandum of agreement between the standards commissioner and the Crown Office and Procurator Fiscal Service. The covering letter and draft memorandum are in annex A of the paper.

Members will be aware that the Scottish Parliamentary Standards Commissioner Act 2002 provides for the standards commissioner to refer alleged breaches of the act to the Crown Office and Procurator Fiscal Service for it to determine whether to prosecute. The draft memorandum proposes the steps to be taken by the standards commissioner and the Crown Office and Procurator Fiscal Service in relation to any alleged criminality, in part to ensure that any action by the standards commissioner does not prejudice any criminal investigation by the Crown.

I should make it clear that our approval—or not—of the draft memorandum does not in any way affect the standards commissioner carrying out his role, but I thank the commissioner for seeking our views on the draft.

The second document for our consideration is the standards commissioner's annual report for 2006-07. I welcome Dr Jim Dyer to the committee and invite members to begin by asking him questions about the draft memorandum. Once we complete that, we will move on to the annual report.

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): Thank you very much, convener. I welcome the opportunity to give evidence to the committee.

The Convener: Do members have any questions?

Marlyn Glen (North East Scotland) (Lab): Good afternoon, Dr Dyer. Will you clarify for the committee who is the intended audience of the memorandum of understanding?

Dr Dyer: The memorandum is intended to guide those who will be directly involved—me, the area procurator fiscal and the Crown Office. As the introduction indicates, the aim is to give detail to the implementation of the direction on criminal

offences that I was given by your predecessor committee in January 2003.

The memorandum simply seeks to set out a protocol. Referrals to the area procurator fiscal do not happen often—I have made four referrals in four and a half years—but when they happen it is important to get them right. The memorandum is designed to ensure that we do not have to reinvent the wheel every time a situation arises and that we have a set procedure that we can follow.

I should say that the procedure has been tried out in draft form. I had one case in 2005 and three cases more recently, two of which are still with the area procurator fiscal. In the last three of the four cases, we have done a dry run to see how the memorandum works in practice.

Marlyn Glen: My reason for asking the question was the inclusion of more general background material in the memorandum, as if, perhaps, it was for a wider audience.

Dr Dyer: The memorandum is not primarily intended for a wider audience, but there is no reason for secrecy, so I thought that I would make it available on my website once it is fully approved. For example, MSPs might be interested to consult it, but it is not primarily intended for the general public.

Marlyn Glen: Thank you.

Dave Thompson (Highlands and Islands) (SNP): Paragraph 1 of the memorandum refers to

“the event that any issue or potential issue of criminality arises”

during an investigation. Would your reports to the procurator fiscal relate purely to the issues under your remit? If you came across another criminal offence, such as fraud or dishonesty, outwith the specific remit of the 2002 act and the Interests of the Members of the Scottish Parliament Act 2006, would you report it to the procurator fiscal?

Dr Dyer: I operate purely in relation to complaints, and the narrower interpretation is correct. The memorandum is aimed at the context in which I carry out my role under the 2002 act, investigate complaints and come across conduct that is potentially a criminal offence.

If I was somehow made aware of another potential offence, I would advise the person who was making me aware of it that it is open to them to make a complaint to the police. It would not be appropriate to do it through me unless there were grounds for a complaint to me in the ordinary sense. Does that make the position clear?

Dave Thompson: Yes, I understand.

Dr Dyer: The position is set out in paragraph 5 of the memorandum, which deals with when there

is an interaction between my work and the Crown Office and Procurator Fiscal Service—it is restricted to occasions on which I am investigating a complaint.

Dave Thompson: Yes, under your remit. I was concerned that the “any” in paragraph 1 seemed to broaden things out. You might consider wording the first paragraph more tightly, so that it says that the memorandum sets out the steps that you would take in the event of criminality that specifically came within your remit.

Dr Dyer: I can have a look at that paragraph, to ensure that it is clear.

Christina McKelvie (Central Scotland) (SNP): Paragraph 6 appears to set out three circumstances in which you can report a case to the area procurator fiscal. Can you confirm the purpose of paragraph 6, who is intended to use it and how?

Dr Dyer: Yes. The first six points in paragraph 6 set out the normal sequence of events. If I received a complaint about failure to register or declare a financial interest or about paid advocacy and I identified that if the conduct were proved an issue of criminality might be involved, I would notify the APF and have a discussion, the primary purpose of which would be to ensure that I did not compromise subsequent PF or police investigation. Paragraph 6.7 says that the same procedure would be invoked if criminal conduct came to light while I was conducting an investigation—in other words, if criminality was not apparent at the beginning of the process.

The Crown can also approach me, if it is investigating an allegation of criminality on the part of an MSP, to check whether I am investigating the matter or whether the matter is within my remit, so that we do not tread on one another's toes. Those are the three circumstances that are set out in paragraph 6.

The Convener: Are there further questions or comments?

Dr Dyer: I have received helpful comments from the clerks, with input from lawyers, on textual issues such as the need to update the name of the committee.

Hugh O'Donnell: In what circumstances—and how—would you arrive at a decision about criminality? Would you refer to your legal advisers? The law is complex these days. Does your office have the resources to make a judgment about whether there is an issue of criminality?

Dr Dyer: It is ultimately for the prosecuting authorities—not me—to decide whether to raise proceedings and take the matter to court. My role is set out in the direction that I was given in 2003. In essence, if I think it is likely that there has been

a breach of a provision in circumstances in which, if the breach were proved, it would automatically be a criminal offence, I will formally report the matter to the area procurator fiscal. The Scotland Act 1998 and section 17 of the Interests of Members of the Scottish Parliament Act 2006 make it a criminal offence to take part in parliamentary proceedings without having complied with the provisions on registration and declaration of financial interests and paid advocacy.

Dave Thompson: In paragraph 6.2, you say that your office will be treated as one of the reporting agencies that reports to the procurator fiscal service. Does that mean that you report to the fiscal in exactly the same way as the police, transport inspectors or any other body?

14:30

Dr Dyer: Yes. Paragraph 6.2 simply recognises me as a body that might report matters to the fiscal. As I said, the decision whether to prosecute is for the fiscal and the Crown Office. Crown counsel will always be involved in such cases.

If the conduct is proved, it is automatically an offence, but the prosecuting authorities take various factors into account in deciding whether to raise proceedings, including whether it is in the public interest to do so. I have reported two cases to the area procurator fiscal, and in both cases it was decided that no further action would be taken. The matter then comes back into the parliamentary process.

Dave Thompson: That is interesting. So if the procurator fiscal decides to take no further action and the case is marked “no proceedings”, it is referred back to you and will come back into the parliamentary process for further examination.

Dr Dyer: I suspend investigation while the matter is with the prosecuting authorities, but thereafter I can resume investigation, because there might still be a breach of the code or the 2006 act, which I could subsequently report to the committee. Indeed, that happened in a case in 2005.

The Convener: Are there any further questions for Dr Dyer?

Members: No.

The Convener: It appears that the committee does not seek major changes to the draft memorandum of understanding. As Dr Dyer mentioned, there has been some correspondence about minor textual changes, and he agreed to take on board Dave Thompson's point about paragraph 1. Subject to those minor changes being made, do members agree to the draft memorandum of understanding?

Members indicated agreement.

Dr Dyer: Thank you, convener.

The Convener: We move on to the second part of Dr Dyer's evidence, which is his annual report for 2006-07.

Have you noticed any tailing off of your work since the key principles were moved to the introduction to the code of conduct? What have been the implications for your workload?

Dr Dyer: As might be expected, the number of complaints has reduced this year. The committee will note that I had 34 complaints in 2006-07, 14 of which were exclusively to do with the level and quality of service. If those had not come to me, I would have been left with 20 of the 34. It is to be expected that there will be a reduction in the number of complaints and a consequent reduction in workload, because such cases no longer come to me.

I should clarify that. If somebody writes in with a complaint, I have to consider its admissibility. It will still come to me, but I will declare it inadmissible if it is an excluded complaint because it is dealt with under section 8 of the third edition of the code of conduct. I will still have to deal with those complaints, but not at length.

The Convener: It is worth mentioning that the committee has agreed to include the issues surrounding section 8 in its work programme. You will have an opportunity to give evidence to the committee on the matter.

Dr Dyer: Thank you.

The Convener: Members have no further questions on the annual report. Is there anything that you want to add, or anything else that we should hear about the report?

Dr Dyer: Yes. I wrote to the previous Standards and Public Appointments Committee about a specific complaint and the committee took up with the Conveners Group my suggestion that it would be helpful to clarify the use of "embargo" in the Parliament. There was confusion, perhaps, between an embargo on distribution before a certain time and an embargo on publication before a certain time, which could give rise to misunderstandings. I draw that to your attention. I do not know whether further steps have been taken. The Parliament's media relations office was to be involved as well.

In the future work section of my annual report, I promise to undertake a self-audit of my complaints work in relation to a guide to principles of good complaints handling produced by the British and Irish Ombudsman Association. I have now done that and I have made a brief report available to the clerks. I understand that you might desire me to talk about that at a future meeting.

We wanted to discuss my future interaction with the committee, as it is a difficult balance to get right. I act independently from the committee and we have separate roles, but there are matters that we need to discuss, as today. I suggest that we should have at least a once-yearly meeting to discuss the annual report. It would also be helpful if I were able to attend the committee when you discuss reports that I have made to the committee on individual cases, especially if there are difficult or controversial issues that it might help to have an oral explanation of as well as my written report. Otherwise, we might want to wait and see how frequently issues arise on which we want to meet, although it would be good not to leave it too long between meetings. It would be helpful to meet several times a year at least, to discuss issues.

The Convener: We discussed the matter when we met earlier in the session. Generally, I agree with your point. At the least, you should be able to come along to speak to the annual report. Over and above that, it would be good to have you along to the committee at least once every six months. I do not know how other members of the committee feel about that.

Hugh O'Donnell: That would be very helpful and useful. We might consider a procedure that allows us to consider the initial report on an investigation and to examine various perspectives on it before we invite Dr Dyer along. That would give us an opportunity to clarify in our minds any issues that may arise and on which we might want to question him further. Rather than have the complaint report circulated to be discussed at the next meeting, it might be good to have a short hiatus in which we have an opportunity to consider the issues to which the report refers before we invite Dr Dyer along.

The Convener: That relates to Dr Dyer's second point about his coming along when a report has been lodged, to give us further information and advice on controversial or complicated matters. That would be useful. We will leave consideration of how we might deal with the practicalities of that with the clerks, but can we agree the general principle that we want to have the commissioner along to discuss the reports that he brings to us?

Members indicated agreement.

Hugh O'Donnell: Can I come back to Dr Dyer's point about the interpretation of "embargo"? I take it that Dr Dyer is referring to an entirely parliamentary perspective on or interpretation of "embargo". It would be exceptionally difficult for the committee or any MSP to do more than encourage the media to observe an embargo. I take it that you are talking about parliamentarians?

Dr Dyer: Yes, indeed. I was referring purely to its use in Parliament—particularly the issuing of committee documents and the Parliament's media relations office putting out press notices. My observation was that there is scope for misunderstanding when these things happen. Light was thrown on that by one particular case.

The Convener: I am advised that nothing further has come back on that as yet, but the matter will be raised with the media people again.

Trish Godman: As I am the chair of the Conveners Group, I feel that I must say something. The matter was discussed and we concluded that there is quite a difference between an embargo on distribution and an embargo on publication. As I remember, we came to an agreement and a specific instance was brought to the Conveners Group. It related to committees, not to what generally happens in Parliament with ministerial publications and so on—we did not deal with those. The media people came and spoke to a paper, and we came to an agreement that appears to be working. All committee conveners and members have signed up to that agreement, and there has not been a problem since that last time. Obviously, we would keep our eye on the situation if it happened again.

Dr Dyer: That is interesting to know. Thanks very much.

The Convener: Thanks very much, Dr Dyer. We all look forward to seeing you more frequently in the future.

Dr Dyer: Thank you.

The Convener: Members will recall that we agreed at our previous meeting to consider the legal advice on the report by the commissioner for public appointments in private at this meeting, as that advice is provided solely for the committee.

14:40

Meeting continued in private until 14:48.

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