

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 15 January 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

1st Meeting 2008, 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:

Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Mike Pringle (Edinburgh South) (LD)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 15 January 2008

[THE CONVENER opened the meeting at 14:15]

Cross-party Groups

The Convener (Keith Brown): Good afternoon, everyone, and welcome to the Standards, Procedures and Public Appointments Committee's first meeting of the year. Happy new year to everybody.

Agenda item 1 is on cross-party groups. The committee's agreement is sought to establish four cross-party groups. Members are aware that in considering whether to approve proposed cross-party groups, they must take account of a range of matters, such as a group's purpose and whether it is being formed on the basis of public interest.

The first proposed CPG is on Tibet. As members know, such a group was active in session 2. I welcome Mike Pringle, the group's convener. Does he have any comments to make?

Mike Pringle (Edinburgh South) (LD): Not really. I am here just in case anybody has any questions.

The Convener: Members have no queries, so I thank Mike Pringle for attending. Do members agree to approve the cross-party group on Tibet?

Members indicated agreement.

The Convener: The second proposed CPG is on climate change. I welcome Malcolm Chisholm, the group's co-convener. Would he like to make any comments?

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I do not need to justify the group's creation—it is a case of booking early to get in, as it is one of the most popular cross-party groups that I have had anything to do with.

I was asked a question—I am not sure what the precise formulation was, so the convener can correct me if I am wrong—about the monetary value of secretarial services to the group. The secretary told me that her work takes the equivalent of about one working day every month to administer and that that is worth approximately £85 per month. Of course, the secretary is priceless, but I had to give a value.

The Convener: What are the criteria for declaring the equivalent monetary value of what is used?

Peter McGrath (Clerk): Any benefit that exceeds £250 a year ought to be declared.

The Convener: The secretarial services have been declared, so the group has complied with that requirement.

Members have no questions for Malcolm Chisholm, whom I thank for coming. Do members agree to approve the cross-party group on climate change?

Members indicated agreement.

The Convener: The third proposed cross-party group is on civil nuclear energy. Unfortunately, no office bearers for the group could attend the meeting, but I am happy to consider the application in their absence. Should members have queries, we can seek a written response from the group's convener, Elaine Murray.

Yesterday, I received information from Linda Smith on the support that British Energy provides to the group, which is mentioned on the group's registration form. She confirmed that she provides secretarial support to the cross-party group and that she cannot vote at any of the group's meetings. The secretarial support involves arranging speakers from organisations that group members would like to hear from and providing a brief minute for the website. She says that interested parties from other companies—including energy companies—are free to attend meetings should they wish to do so.

The monetary value of the support is minimal but hard to cost. It is estimated that Linda Smith spends a maximum of about eight hours a year on arranging and attending meetings. Approximately four meetings a year are agreed by members. She holds a parliamentary pass for use when working on cross-party group meetings, meeting guest speakers and other visitors to meetings and escorting them to meetings.

Members might wish to seek confirmation from the convener of the proposed CPG on civil nuclear energy that the value of that secretarial support does not exceed £250 in any one calendar year. If members have no comments or questions about the proposed CPG, we could agree to write for that confirmation. Subject to receiving that confirmation, do we agree to delegate responsibility for approving the group to me?

Members indicated agreement.

Peter McGrath: Could you also seek agreement that if the value exceeds £250, members still agree to approve the cross-party group?

The Convener: If the group's convener confirms that the value is above £250, the code of conduct will have been complied with, so the group would proceed in any event.

The final proposed CPG is on housing. Cathie Craigie is the group's convener. Does she want to make any comments?

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): First, I declare an interest in the group. I think that other members of the group would have to do that, too. I have one amendment to the application, which is that I want to add Dave Thompson to the list of MSPs who will be involved in the group. I throw myself open to the mercy of my committee colleagues.

Hugh O'Donnell (Central Scotland) (LD): That is a brave thing to do.

The Convener: Members seem to have no questions or comments. Are they happy to approve the CPG on housing?

Jamie McGrigor (Highlands and Islands) (Con): Yes.

The Convener: Jamie McGrigor, at least, is happy, so I think that that is agreed.

Commissioner for Public Appointments in Scotland (Report)

14:20

The Convener: We move to agenda item 2. Members will recall that, at our meeting on 2 October 2007, we considered a report from the Office of the Commissioner for Public Appointments in Scotland. The report stated that certain appointments to the Cairngorms National Park Authority and the Loch Lomond and the Trossachs National Park Authority were materially non-compliant with the OCPAS "Code of Practice for Ministerial Appointments to Public Bodies in Scotland".

Members will also recall that the Minister for Environment, the Commissioner for Public Appointments in Scotland and the local authorities held differing views on the compatibility of the code of practice with the National Parks (Scotland) Act 2000, including on whether local authorities should have to nominate more nominees than there are vacancies.

We agreed at that meeting to write to the minister and the commissioner to seek resolution of the issues that the report set out. We set a deadline of 7 January 2008 for responses, which have been received and are included in paper SPPA/S3/08/1/2. In summary, the minister proposes to lay an order to exclude the appointment of local authority nominees to national park authorities from the ambit of the Public Appointments and Public Bodies etc (Scotland) Act 2003 and, hence, from the code of practice. The commissioner confirms that such an approach would avoid a recurrence of the present situation, but states that it would not address her concerns about the fairness and transparency of the 10 appointments that have been made.

I invite members to comment on those responses.

Hugh O'Donnell: The minister has proposed a course of action that would provide an exemption from the requirements of the 2003 act. I am a bit hesitant about setting a precedent by exempting any organisation in that way, because to do so would partly undermine the 2003 act and the intent, if not the actuality, of ensuring that appointments to public bodies are transparent.

Cathie Craigie: I agree with Hugh O'Donnell's point, but I am probably willing to hear more on the minister's proposal. If it had been proposed that local authorities could nominate only councillors, I may have been able to accept that, because councillors would have legitimacy from going

through the democratic process. However, I understand that, under the 2003 act, local authorities can nominate to the national park authorities councillors or any other person. I do not think that we would be complying with the requirement for openness and transparency, or the intention of the 2003 act, if the minister had no choice and just had to accept who a local authority had nominated. Having made one exemption, where would we stop?

We may want to hear more on the matter from the minister or the commissioner. I do not want to make a mountain out of a molehill, but the 2003 act is in place and we want to ensure that its provisions are implemented openly, transparently and fairly across the board.

Jamie McGrigor: I seek clarification. The code of practice says that all appointments to public bodies must be governed by the overriding principle of selection based on merit. However, the problem seems to be that the minister is just handed nominations from local authorities, so no merit is involved—it is a *fait accompli*. He has said expressly that he does not mind that and that he wants nominees to be elected by local authorities. However, in doing that, the minister would be going against the code by accepting nominees without a choice. Is that right? Is that the pivotal point?

The Convener: That is my understanding of it, although I gather that the situation was misconstrued at the start when the national park authorities were included in the code. The legitimacy of the national park authorities springs from the fact that nominations to them are made by elected bodies; they are different from most of the other bodies in the code in that regard. Apparently, what is being said is that the national park authorities should not have been one of the bodies to be listed in the legislation and subsequently attached to the code. Such appointments do not comply with the code, which is why we have reached the present impasse.

Jamie McGrigor: By the time that the nominations are made and the *fait accompli* is presented to the minister, has there been just a single nomination or has the local authority given a choice of nominees?

The Convener: Argyll and Bute Council and Moray Council are an exception in what they have done. Does Peter McGrath want to add anything?

Peter McGrath: I do not have much to add, except that my understanding is that two councils have—at least at times—interpreted the legislation as allowing them to nominate more nominees than there are vacancies. Two out of eight nominating councils have done that, but six have not.

Dave Thompson (Highlands and Islands) (SNP): Two or three points arise. The first is that, apparently, local authorities were never meant to be included under the auspices of the code in the first place. Local authorities go through an open and transparent process in making their nominations—they decide who is best able to represent them. Highland Council nominated its convener, the convener of the planning committee and three local members from the Badenoch and Strathspey ward, which is within the Cairngorms national park area. Highland Council is very open about who it nominates, so there is an openness built in to the system.

The code has never applied to local authorities themselves—they do not need to apply it when making any appointment. Finally, we would not just be exempting local authorities, because schedule 2 to the 2003 act lists the various exempted bodies. I do not have a list of them, but the intention of the act, under schedule 2, was obviously that certain bodies would be exempt from the ministerial part of the process. It is not anomalous, nor does it set a precedent, to include local authorities in that list.

Hugh O'Donnell: In that case, I would have thought that the way for the minister to proceed would be to deal with the legislation. Perhaps, ultimately, we—although probably not this committee—should consider whether local authorities should be encompassed by both the code and the 2003 act. That may be the solution. Cathie Craigie made a relevant point on who the nominees are, and her point with regard to elected members was perfectly valid. That is entirely true, but in one instance we have an official who was nominated by a local authority—I think that I am right in saying that from reading the papers—and that individual did not necessarily go through due democratic process. We, as a body, have no way of knowing whether that appointment was made in keeping with accepted legislation and practice. The scope of it is quite dangerous.

Marlyn Glen (North East Scotland) (Lab): Presumably, the original appointment of that official to his job followed due process. We are not clear what we think about this issue and we need to go a little further. If two local authorities can give a choice, I do not see why the others cannot also give a choice of people whom they are putting up for nomination. As Hugh O'Donnell asked, are the local authorities following an open, fair and transparent process? I do not know whether there is such a process, but there certainly should be. If there is such a process, we need to be told about it, and if there is not, perhaps it should be introduced. Are we delaying those appointments? The convener is shaking his head, so the appointments have been made and the work of

the boards is going forward anyway—we are not doing anything in retrospect.

14:30

The Convener: As I understand it, we are responding because the matter is in the commissioner's report, which she has submitted to us. The appointments have been made, which is why the commissioner has seen it as an issue.

Dave Thompson: This has been an issue for three years, since 2004, when the commissioner first raised it with the previous Executive. Hugh O'Donnell talked about making councils subject to the code, but that is a different issue. I am not saying that I agree or disagree with the suggestion, but we need to consider the pros and cons of such an approach. There may be an argument for making councils subject to the commissioner's rulings, but she is a parliamentary commissioner, not a local authority commissioner, so I am not sure that I support the proposal 100 per cent.

Hugh O'Donnell mentioned that the legislation will need to be changed. In essence, that is what is happening. The minister proposes to make an order that will make local authority nominations exempt. That will deal with the difficulty. The argument about whether councils should be subject to the code can take place at another time.

The Convener: Previously we were reluctant to get too involved in the issue, as we wanted to see whether it could be resolved between the minister and the commissioner. A resolution has now been proposed: the situation will be rectified if the minister makes an order to remove local authority nominations from schedule 2 to the 2003 act, as he says he plans to do. However, the commissioner is still concerned that the appointments that have already been made were not open and transparent. We cannot affect those appointments, as they have already been made.

My view is informed by my experience in local authorities. I am reluctant to see councils' democratic credentials questioned. When the Parliament makes nominations to other bodies, the fact that we are members of the Parliament is seen as sufficient to ensure that the process is open and transparent. The situation is similar for local authorities.

I am not sure what we can achieve, but different options are open to us. We can accept what the minister intends to do and make our views known through the *Official Report* and the correspondence that has passed back and forth. Alternatively, we can take the matter further and invite both the commissioner and the minister to give evidence to us. We have now received two letters from each of them setting out their exact

views, so it is clear that they are not going to agree. I do not know where we can go from there, given that our remit is to accept the commissioner's report and that the substantive matter seems to have been resolved, albeit not to the commissioner's satisfaction. I am not sure that taking evidence from the minister and the commissioner would achieve much, but it is for the committee to decide whether it wants to take the matter further.

Hugh O'Donnell: My main concern about the proposed mechanism for resolving the issue is that it has the potential to create a precedent for dealing with an inconvenience—a mismatch between legislation and the code—by means of an order that exempts the appointments of a body from legitimate scrutiny. I am not sure that that is a good idea. Might a subsequent minister use this decision as a precedent for seeking to exempt other bodies from legislation?

The Convener: The same thing could happen again. Inconvenience is not the only issue. It was never intended that council nominations would fall within the remit of the code, but that has happened, whether because of bad drafting or for some other reason. If the minister wishes to deal with the matter, he must lay an order before the Parliament, which will have an opportunity to debate and decide on it. An exemption will not be made just because the minister wants to make it. Any subsequent minister who wanted to make an exemption would also have to bring their proposal to the Parliament.

Cathie Craigie: Local authorities regularly appoint people to different organisations and boards without having to report to ministers; ministers do not have a say in such decisions. However, the National Parks (Scotland) Act 2000 states clearly that the minister appoints the members of national park authorities. In other legislation that we have passed, we have said that when ministerial appointments are made, there should be choice and people should be selected for posts based on their ability to do the job.

I am sure that the councillors who have been nominated by the local authorities concerned have been good choices, but we are not complying with the legislation. We need to consider whether we want particular groups of nominations to be exempt. If we do, should we stop at that, or do we want to get things right? I need a bit more information. I would like us to hear from the commissioner and the minister, if that is within the committee's remit. If it is not within the committee's remit to do that, we must ask the minister and the commissioner for much more detail.

Dave Thompson: What is to be gained from calling people before us? We have a workload that

will keep us fairly busy. It is pretty clear that there is a conflict between the code and the legislation. One or the other must be changed. The commissioner said that the code will not change because she has no power to change it. That rules that option out, so the only way to deal with the issue is to amend schedule 2 to the Public Appointments and Public Bodies etc (Scotland) Act 2003, unless our Labour and Liberal colleagues have an alternative. I would like to know how they plan to resolve the problem. It will be a waste of time calling people before us if we end up in the same situation a few months down the road.

Jamie McGrigor: I again ask how on earth the situation arose in the first place. When the legislation was drawn up, the draftsmen must have been mindful of what the arrangements were to be for the national parks. It is obvious that a mistake was made which was not spotted at the time.

Everyone seems to be saying that the code of practice cannot be changed and that it is set in cement, but there must be some way of changing it; I do not believe that there is no way of changing it.

The Convener: It can be changed. The commissioner can change it, but her point is that she could not change it in such a way as to resolve the situation. I think that I am right in saying that the only way to do that would be to offer the minister a choice of nominations. The committee cannot change the code of practice.

Cathie Craigie: We cannot change it because of what has happened over the past few months, but given that the appointments in question might not have to be made until after the next local authority elections, we have time to get things right. The choice that we face is between having an open system, in which the minister is offered a choice of nominations, or one in which local authorities have the say and there is no need for ministerial involvement. I want to find out whether the guidance must change. I think that it was Marlyn Glen who pointed out that two local authorities offered the minister a choice. Why did they do that when the other half dozen local authorities did not? What drove them to take that stance? Is it a question of interpretation of the guidance? I am grateful to the clerks for making the issue simpler for us to understand, but the position is still not clear to me.

Christina McKelvie (Central Scotland) (SNP): Would it be worth writing to one of the local authorities that provided a choice and one that did not to ask for an explanation of why they did what they did? That might give us a clearer picture of the situation. I have not looked at the boundaries of the national parks. It might be that some local authorities did not offer a choice for geographical

reasons—they might have had four spaces on the park board and there might have been only four councillors for that area. The explanation might be as simple as that, although there could be another explanation. Perhaps we should seek additional evidence from the two groups of local authorities on the different processes that they used.

The Convener: I think that that was certainly the case in Stirling. If the local member is to be chosen, the board nominees are self-nominating. However, there is no obligation to get the local council member; I think that the guidance says that a local representative can be appointed.

If the committee wants to follow the course of action that has been proposed, I have no problem with our doing that, but I not see how it would help us, because we know what the views of the minister and the commissioner are and we have a fair idea of the local authorities' views—there is enough correspondence in our papers to allow us to determine that. We do not have the power to change the code. If the minister wants to introduce a change to the guidance, he can do so without our say-so, so I am not entirely sure what we would achieve by stretching out the process. That was the position that I adopted the last time that we discussed the matter.

If we take evidence, we will have to invite the commissioner, the minister and representatives of the local authorities to be witnesses. I do not think that we could select which people should give evidence; we would have to hear from anyone who wanted to give evidence.

The slight difference is that the correspondence from local authorities that we have seen so far was requested by the minister, whereas if we followed the suggestion, we would be asking for letters directly. However, I do not think that we would end up anywhere different from where we are just now and, as we will see from another item in the agenda, one or two work pressures are starting to build.

Hugh O'Donnell: What legislation gives the local authorities the right to make such nominations in the way in which they do? Might the solution involve changing that legislation, rather than the public appointments legislation, to ensure that local authorities are obliged to offer a choice?

The Convener: I am advised by the clerk that the relevant legislation is the National Parks (Scotland) Act 2000, which, obviously, was followed by statutory instruments. However, there is nothing that requires local authorities to put forward more than one nominee.

Hugh O'Donnell: In that case, as the 2000 act is the legislation that drives these appointments, if any changes are needed in order to meet the

requirements of the Public Appointments and Public Bodies etc (Scotland) Act 2003, those changes should be made to the 2000 act.

Peter McGrath: The short answer is that one way of ensuring that a choice of candidates was offered would be to amend the designating orders and the 2000 act. I am not sure that the minister has an order-making power that would enable him to do that. In other words, further primary legislation might be required.

Hugh O'Donnell: Is this committee able to recommend that as a course of action?

Peter McGrath: Yes. As I say, however, I am not clear that the minister has an order-making power that would enable him to do that.

Hugh O'Donnell: That is a matter for the Government.

The Convener: Presumably, in order to follow that course of action, we would take evidence, come to a conclusion among ourselves and agree a report that would go to the Parliament as a recommendation.

Hugh O'Donnell: Right.

Dave Thompson: We might be making a mountain out of a molehill. It was never the intention that local authority nominations be included in this situation. The simple way out would be to remove them from the schedule. At the end of the day, the issue is not about giving the minister choice—it is always good to give a minister choice. The issue is whether we believe that it is the minister or a local authority that should choose a local authority's representatives. If this power is given to the Government, it is taken away from local authorities. I wonder if that is what we really want to do.

Cathie Craigie: As far as I remember, the Public Appointments and Public Bodies etc (Scotland) Act 2003 had unanimous, cross-party support, because we all wanted appointments to public bodies to be made in a fair, open and transparent way. The Parliament, as a whole, wants that to happen. However, a question mark has been raised over the legislation because of the problem that we are discussing.

I repeat that I do not want to make this into a big issue but, as we have had the minister's view and the commissioner's view, we—as back-bench parliamentarians—should have the opportunity to express our view. The minister and the commissioner are on a collision course. Obviously, the current minister and previous ministers have not been able to resolve the matter. It is right that the back-bench voices in the Parliament should be heard as we try to come to some clear and open conclusion that enables all local authorities to know what they should be doing. I do not know the

right way in which to ensure that that happens. If it is within the remit of this committee to do that, we should do that. If it is up to the ministers and the commissioner to come back to us with a joint recommendation for a way forward that we can ensure is acceptable and open, so be it. I suggest that we seek the advice of the officials, who should go away and consider the matter.

14:45

The Convener: I have the benefit of having been briefed on our different options and of having had a prior discussion on the matter. Obviously, you will have been involved in similar situations, Cathie.

I will outline what I understand to be our options. We can accept the minister's proposal, that we cannot change what he intends to do, and that the commissioner is unhappy with the 10 appointments that have been made. Alternatively, we can decide that we are unhappy with that approach and defer a final decision on what we will say until a later meeting. If we decide to do that, we will have to agree what we intend to do, whether we will take evidence, whom we will call and so on. We would have to defer deciding on such things until a future meeting.

The clerks have asked me to point out that if we decide to defer a decision, we will not prevent the minister from laying the order. That is entirely in his hands—he can lay the order. If we do not want to close the matter today, we can write to the minister and the commissioner to tell them that that is our view.

I said something earlier that I will say again. I have read the minister's and the commissioner's responses and have listened twice to the commissioner, and I do not think that we will bring them closer together as a result of anything that we do. However, I do not want to be seen to be in the way of further discussion of the matter. I will not go against such discussion, but I am not convinced that taking the matter further would be a great use of our time or that we could achieve a great deal more. Perhaps because of my local authority background, I agree that the level of scrutiny, transparency and openness in local authority appointments processes is unlike that in other appointments processes, such as those for appointments that are made by quangos. That is my point of view. Anyway, those are the options that have been laid out to me. I do not know whether anybody else can think of any other options.

Marlyn Glen: I want to clarify something. I am reading the commissioner's letter. She is not unhappy with the appointments; rather, she is unhappy with the appointments procedure.

Whatever happens, in the future the process to appoint people must be open, fair and transparent. That is not to doubt the abilities of any elected persons in local authorities or anywhere else. We must be clear about that.

The Convener: Yes. On the need for clarity, if the minister lays the order, the statutory nominations will be taken outwith the remit of the commissioner altogether. She would have no locus in the matter. She may remain unhappy, but there would be no conflict with her responsibilities.

Marlyn Glen: But is that a solution?

Dave Thompson: We have all the information that there is to get. Taking the matter further will add nothing. We would simply take up our and everybody else's time—and we all need our time. We should trust the local authorities and accept the minister's proposal. I am prepared to press the matter to a vote if that is necessary.

Jamie McGrigor: I second that. As far as I can see, the minister is making a good attempt to clear up a mess. The commissioner is the only person who may be unhappy about the 10 appointments that have been made. If we leave things as they are, more appointments will have to be made that would also go against the commissioner's code. I do not think that there is any other way out. Rather than hold things up, I am inclined to agree, for once, with the minister.

Cathie Craigie: I could not accept that suggestion. Let us be clear. We are not holding up anything—the appointments have been made. The committee has an opportunity to rectify matters for any future nominations to the Cairngorms National Park Authority and the Loch Lomond and the Trossachs National Park Authority that may be required. At the moment, although two local authorities complied with the commissioner's code, the majority of local authorities have chosen not to submit their nominations in such a way. We must get to the bottom of that.

If the minister lays an order exempting statutory nominations to the NPAs from the commissioner's code, that would allow us to question him and get some information. There is also a chance that such an order might not get through Parliament. The committee has an opportunity to consider the matter in more detail. If the minister is intent on laying an order, at least we will be more informed about the decisions that we will have to make. We will not be holding anything up—we will be preparing ourselves for any nominations that are required for the parks authorities. In my opinion, that is what Parliament would want us to do.

Questions were asked about appointments to public bodies. We have laid open the books, if you like, and people have to comply with the legislation that the Parliament passed. When the

Commissioner for Public Appointments in Scotland—herself a public appointment—highlights a difficulty because certain appointments do not comply with the code of practice, we must either find a way to make them comply and ensure that changes are made so that the commissioner can sign the appointments off as having been done properly, or take them out of her remit altogether.

That is not to question local authorities. I was a member of a local authority and I know that they are open and transparent. Councillors have the legitimacy of having put themselves before the public and having been democratically elected. However, when local authorities have a wider remit to appoint anyone to a post, we do not have the reassurance that the person has been open to public scrutiny at an election.

Marlyn Glen: I am more comfortable with that approach. It might be helpful to the people who are appointed if we are clear about the process.

Christina McKelvie's suggestion that we write to local authorities asking them to describe their process is a helpful one. That would clarify everything, for the people who are appointed as well as for local authorities and the committee.

Hugh O'Donnell: If it is agreed that what Marlyn Glen has just said is the way forward, then I am inclined to support it. We should also let the minister know what our intention is. As Dave Thompson said, the minister can, in effect, lay an order notwithstanding our decision. If he chooses to do that, we have to deal with it accordingly. It is important that we keep the channels of communication open and tell the minister what we are doing and why we are doing it.

The Convener: I will come back to a couple of points that Cathie Craigie made. I do not think that it is the case that two local authorities are complying with the code because they have made more than one nomination per post. The commissioner lays out a number of ways in which she thinks that all local authorities are breaching the code in different respects, although making more than one nomination is important.

The substantive issue would be resolved if the minister does what he proposes to do. It is not the case that we would have to resolve the problem in time for the next set of nominations or elections—it would be resolved by the minister's action if an order went through. There would no longer be a conflict between the commissioner's code and the bodies to which it applied. That would resolve the problem, albeit—at least from the point of view of the commissioner and others—not satisfactorily.

I am thinking back to the limited training that we received before we became conveners. We were told to try to avoid a vote at all costs and to see

whether we could get compromise, but I am not sure that that will be possible.

I will try to clarify the proposals before us. Dave Thompson suggested that we note the positions of the minister and the commissioner. I have been asked by the clerks that we agree, if we do that, how to make the views of the committee known at this stage. I suggest that we would do that through the *Official Report* and publication of all the correspondence. I take it that Dave Thompson's proposal is that we note the positions and publish all our correspondence. I understand that Jamie McGrigor seconded that proposal.

Conversely, Cathie Craigie and Marlyn Glen propose that we ask the minister, the commissioner and local authorities for further comment before we come to a final conclusion. Is that right?

Dave Thompson: You are right, convener. I move that we accept the minister's proposal, as laid out in paragraph 8 of paper SPPA/S3/08/1/2. The *Official Report* and the committee minute would be sufficient for public notice.

The Convener: I am advised that the clearest thing to do is go to a straightforward yes-or-no vote on Dave's proposal. If it is not agreed to, we will have to agree what to do subsequently. In essence, we are voting on whether to note the commissioner's report and take no further action.

Is that what you are proposing, Dave?

Dave Thompson: Yes, although paragraph 8 says "accept the Minister's proposal". We should use whatever wording is proposed in the paper.

Peter McGrath: By way of clarification, another approach would be to note the report, take no further action and neither approve nor disapprove of the minister's proposed order, but leave it to later parliamentary scrutiny. In other words, the committee could vote on your proposal without taking a view on whether it agrees with the minister's proposed course of action. It is up to you whether you want to make it clear that, by voting for your proposal, committee members are agreeing to the minister's proposal.

Dave Thompson: I would like to agree to the minister's proposal because, having read the papers, I feel that that is the right thing to do.

The Convener: As no one else wants to clarify anything else or seek compromise, we will go to the vote. The question is, that the committee agrees with the Minister for Environment's proposal to introduce subordinate legislation. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Keith (Ochil) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Central Scotland) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
O'Donnell, Hugh (Central Scotland) (LD)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0. The proposal is agreed to.

Peter McGrath: As I understand it, that means that the committee has agreed by majority to support the minister's proposal and that no further action will be taken on this item.

Hugh O'Donnell: Will that be reflected in the published documents?

The Convener: It will be.

Hugh O'Donnell: I do not think that it was part of Dave Thompson's proposal, but I suppose that he would not object to our publishing all the correspondence on the item so that everyone knows the different parties' different positions. The *Official Report* has to be published anyway.

Peter McGrath: Most of it is on the record anyway.

Hugh O'Donnell: Does the committee's decision prevent members of the committee from speaking against the order when it is laid?

Peter McGrath: My view is that, first, those who dissented have made their dissent clear and therefore are entitled to express a different view; and, secondly, even those who voted for the proposal could change their minds between now and the order being laid.

Hugh O'Donnell: Thank you for that.

Cathie Craigie: Will the order come before this committee or will it go to the Local Government and Communities Committee?

Peter McGrath: I would have thought that it was most likely to go to the Rural Affairs and Environment Committee.

Hugh O'Donnell: Are we in a position to express an interest in the detail of the procedural change and bring the order before us for the appropriateness of the change to be considered before it goes before Parliament?

The Convener: I think that we could, but perhaps we can leave that until it happens, because we are about to rehearse the discussion that we have just had.

Hugh O'Donnell: It is worth asking the question just to see the huddle among the officials.

Peter McGrath: The decision on what committee considers an order is taken by the Parliamentary Bureau. However, if it is within its remit, the committee would be entitled to consider the order at a future meeting and report as a secondary committee to the lead committee considering it.

The Convener: There is something in what Hugh O'Donnell says. We are the committee that receives official reports from the Commissioner for Public Appointments in Scotland, so we would want to show an interest in anything that affected her work. We are probably best to wait until the order is laid and take it from there.

Code of Conduct

14:59

The Convener: Agenda item 3 concerns the written evidence received from members in response to the committee's review of section 8 of the code of conduct for members of the Scottish Parliament. I thank all the members who provided written evidence to the committee. The responses have provided us with useful evidence of how section 8 impacts on MSPs' working practices.

Committee members will also have received the Scottish Parliament information centre's briefing note on ethical standards and complaints procedures in other Parliaments around the world. It has helped to illustrate other Parliaments' practices.

Committee members will recall that we agreed to consider responses from interested stakeholders and members of the public at our next meeting on 5 February.

I invite members to comment on the responses that we have received so far and the general conclusions that have been drawn from those responses, as detailed in the paper. I ask members to try to steer away—as one or two respondees did not—from particular cases or, if you like, beefs from the past. We should stick to the general principles of what we are examining.

Christina McKelvie: I note my disappointment that only 10 of the 129 MSPs commented, although it is evident that some of the business managers canvassed the views of the rest of their groups and responded as such. We can say, "50 per cent said this and 50 per cent said that," but the sample is not a representative one that enables us to see the bigger picture.

Cathie Craigie: Christina McKelvie is right to make that point. Unfortunately, it always seems that we all have opinions to give over a cup of coffee but when it comes to putting them down on paper we are a little bit shy. I know that the response from Jackie Baillie is on behalf of our Labour group and I suspect that some of the other business managers also responded on behalf of their groups, so that is perhaps an excuse for our colleagues.

The convener is right to point out that people strayed a little from the remit. Some folk, in fact, went on a bit of a rant. If we want to go into more detail on the matter, we might want to have some discussions with the Presiding Officer and the business managers. At the moment, there is not much to take forward.

The Convener: That is right. When we discuss our work programme under agenda item 7, we will

consider who to invite to come back and whether we should invite all members or just those who contributed. The current item is on the agenda just to allow members to make any comments on the submissions that we received.

The comments on the number of responses are right, but I understand that the response is par for the course for such consultations. Our group did not take a group position, so we cannot hide behind that. As a member of the committee, I took a self-denying ordinance not to muddy the waters by responding, but I do have views on the matter, obviously.

As there are no further comments on the responses, are members happy to move on? We will consider the matter again under a later agenda item.

Members *indicated agreement.*

Points of Order Inquiry

15:03

The Convener: At our meeting on 2 October last year, we agreed that an inquiry into points of order in the chamber should be included in our work programme. The paper that has been circulated provides an analysis of points of order in the four-month periods at the beginning of two sessions. It also refers to the various methods that other legislatures use to deal with points of order. SPICe has provided a research paper, which is included as annex B to the paper, that gives detailed information on other legislatures.

Members will note that, in both periods, the amount of chamber time that was taken up by points of order was 0.7 per cent of the time that was allocated for business and at least half of the points that were raised were not thought to be valid points of order. A number of practices are outlined in the paper, including time restrictions on points of order, compensation for loss of debating time, the taking of points of order at a specific point in proceedings, the identification of the rule to which a point of order relates, and sanctions for abuse of the system for points of order.

Do members have views on the issues in the paper? I ask members to bear it in mind that the paper contains initial information for the committee and that it would be premature for us to reach a conclusion today, particularly as we agreed to take evidence from business managers and so on.

Jamie McGrigor: The time that members are allowed to make a point of order—three minutes—is perfectly correct, because some points of order are quite complicated. I do not know how members of the European Parliament manage to do it in one minute, given that their point has to be translated about six times. Apparently, they are allowed only one minute to make a point of order. I am staggered by that.

Surely it is down to the Presiding Officer to recognise when somebody is making a fool of the system. If they do so continually is no form of recompense available? Is there nothing in our system to deal with that? Surely they can be accused of a sort of breach of the peace or something.

The Convener: I think that that is why we are here discussing the matter; it has been identified as an issue. I do not want to speak for the Presiding Officer—we have received a letter from him and we can hear from him again—but I do not think that he feels that he has sufficient sanctions under the standing orders. We are not looking to reach conclusions at this stage, because we will hear from those who are more closely involved.

Jamie McGrigor: My view is that it is not a very big problem; points of order do not seem to take up that much time. If you make hard and fast rules about it, people will be discouraged from making points of order that might be relevant. There is the suggestion that members have to know every bit of the standing orders, but if a point of order occurs to them during a debate, how on earth are they supposed to know off the top of their head to which part of the standing orders it relates? They cannot do that unless they know the standing orders backwards, which I think is too much to expect.

The Convener: Although that gives rise to the question how members know something is a point of order if they do not know what part of the standing orders has been breached.

Jamie McGrigor: Members might think that the standing orders have been breached, in which case they are right to raise a point of order.

Hugh O'Donnell: The clerks have done a remarkable job of analysis. It is interesting that there is not a huge difference between the number of points of order made in 2003 and the number made in 2007—in percentage terms at least. I get the sense that the people who are most aggrieved in both instances are the Government of the day.

There are issues about the use of points of order. Jamie McGrigor made a point about members' knowledge of the standing orders. Even someone who is as pedantic and as much of an anorak as I am would struggle to pick up single points of order with reference to the standing orders. For the most part, points of order seem to be used as an opportunity to rehash the arguments. Perhaps that can be curtailed through time restrictions.

Once we have spoken to business managers, a suggested way forward will be clearer. At the moment, the use of points of order seems to be less of an issue that I thought it was.

The Convener: It is certainly true that the time allowed for points of order is less of an issue than we had thought.

Hugh O'Donnell: Yes.

The Convener: The time when they are made is probably more galling to people.

Cathie Craigie: I was surprised by the analysis of what happened in May to October 2003 and May to October 2007. Some people's perception was that there was a huge increase, but there has been a considerable fall. I am sure that members agree that there has been disquiet among members about this issue. We cannot expect members to walk about with a copy of the standing orders under their arm so that they can refer to them all the time, but there is a perception that

members are breaching the standing orders and that back benchers in particular should be protected by the standing orders better than they are at the moment.

We should get the business managers in. It is our duty to give the Presiding Officer standing orders that can protect him as well as us. Some of the evidence that we take might lead us to discuss the issue further. We should do that, because there is disquiet on the Government side and the Opposition side that all is not well.

Dave Thompson: Perhaps it is just my imagination, but I thought that the situation with the use of points of order was worse in November and December than it was until October. However, I am not asking for an analysis of November and December.

I have some sympathy with Jamie McGrigor's point that points of order are used, as it says in paragraph 33 of the report, as a "safety valve" and that they are good for allowing members to get things off their chest. However, there is perhaps a case for some sanction for the Presiding Officer. At the moment, there is little that the Presiding Officer can do. It is worth considering a sanction that he could use in exceptional cases when he felt that a member was misusing the system.

The Convener: It is interesting to read about the draconian systems in which members are suspended and their wages docked.

Hugh O'Donnell: We could try keel-hauling them through the ponds—although they are a bit shallow.

Christina McKelvie: What about yellow cards and red cards?

The Convener: It is often business managers' responsibility to raise points of order on behalf of their group. It would be a bit unfair to punish them individually.

Hugh O'Donnell: Why? [*Laughter.*]

The Convener: If there are no other points, let us take a decision.

It has been suggested that we invite the Minister for Parliamentary Business, the business managers of the other parties and the head of the chamber office to provide evidence. The independent member and the Scottish Green Party are included in that invitation, to see whether they want to comment. And we will ask the Presiding Officer whether he has any further comment to make at this stage. That will cover all the bases.

Are members happy with that?

Members indicated agreement.

Decision on Taking Business in Private

15:12

Meeting continued in private until 15:38.

15:11

The Convener: Item 5 is simply a decision to take items 6 and 7 in private. We will consider items that we have not previously considered, and we will want to take a view on how to handle them.

The first is a request from the Audit Committee for a change to its title and remit; the second is a letter on the practical application of the “Code of Practice for Ministerial Appointments to Public Bodies in Scotland”—that is not the discussion that we have just had, but a different one. We might also want to consider in private whether to call witnesses for the review of section 8 of the code of conduct.

As it is usual practice to discuss the committee’s approach to its work programme in private, do we agree that those items should be taken in private?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting.

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