STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 26 February 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
3rd 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 GAVE EVIDENCE:

The Rev Graham Blount (Scottish Churches Parliamentary Office)
Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)
Robin Harper (Lothians) (Green)
Lewis Macdonald (Aberdeen Central) (Lab)
Margo MacDonald (Lothians) (Ind)
Alasdair Morgan (South of Scotland) (SNP)
Elaine Murray (Dumfries) (Lab)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERKS

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 26 February 2008

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

Code of Conduct Review

The Convener (Keith Brown): Good afternoon and welcome to the Standards, Procedures and Public Appointments Committee's third meeting this year. We have received no apologies, but I understand that Hugh O'Donnell is running a little late and will join us shortly. Alex Neil will not be able to give evidence, but we hope that Margo MacDonald will join us later.

Agenda item 1 is evidence for our review of section 8 of the "Code of Conduct for Members of the Scottish Parliament". I welcome Dr Jim Dyer, who is the Scottish Parliamentary Standards Commissioner.

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): Good afternoon.

The Convener: I also welcome the Rev Graham Blount, who is the Scottish Churches Parliamentary Office's parliamentary officer.

The Rev Graham Blount (Scottish Churches Parliamentary Office): Hello.

The Convener: I encourage members and witnesses to be as brief as they can in their questions and answers, as time is limited. I thank Dr Dyer and Graham Blount for their submissions, which members have found helpful, and I invite questions from members.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): As the convener did, I thank both witnesses for their submissions, which will help throughout the inquiry.

My first question is to Dr Dyer. Your submission says:

> "the inclusion of key principles in Section 8 is inconsistent with the … approach taken by the Standards and Public Appointments Committee".

What do you see as the disadvantages of retaining the principles in section 8?

Dr Dyer: My answer has two parts. In the Parliament's second session, the Standards and Public Appointments Committee announced its intention to clarify the code by separating enforceable rules from aspirational principles and from guidance and explanatory material, so the code that has operated since May 2007 has three volumes. The first volume contains aspirational principles and introductory material, the second contains enforceable rules, and the third contains explanatory and guidance material.

I understood that the intention was to take all the overarching principles out of the enforceable part of the code and to leave them as aspirational principles. That was done. The principle that members should be accessible to constituents and should represent their interests conscientiously was previously in section 2 of the code and was moved into volume 1, but it was left in section 8—the old annex 5—which deals largely with relationships between constituency and list MSPs but which also includes the principle of accessibility and conscientious representation. That means that, for the past 10 or 11 months, complaints about the level and quality of the service that MSPs provide have gone to the Presiding Officer, who deals with section 8 complaints, rather than to me. I apologise that the first part of the answer has proved to be a bit long, but the issue is complex. There is an anomaly in taking principles out of the code but leaving general principles in section 8.

The second part is the answer to the question whether the standards complaints mechanism should deal with complaints about the level of service that MSPs provide. As a matter of principle, I think that it should not. Of course, I am not for a moment saying that MSPs should not be accessible or represent their constituents conscientiously. They are there to do a job for which public funds pay. However, MSPs are not employees of the Scottish Parliament. They cannot be held to a strict job description that specifies how constituents' problems must be dealt with and says that letters must be answered within such and such a time, as an employee might be; they answer to the electorate.

I therefore think that the standards system should be reserved for issues such as propriety, conduct and transparency over financial interests. Different ways should found to deal with what happens when MSPs are accused of not being accessible or of not conscientiously representing constituents.

Cathie Craigie: I am satisfied with that answer.

Jamie McGrigor (Highlands and Islands) (Con): Dr Dyer considered complaints about the level of service or performance of members under what was annex 5 and is now section 8. Will you elaborate on what in your experience are the key difficulties in reaching a judgment on accessibility or conscientious representation?

Dr Dyer: The first point is that, in the absence of any job description, it is difficult for me to judge

what is reasonable accessibility and conscientious representation. For example, should a member acknowledge all correspondence from constituents? Within what timescale? It is hard for me to sit in judgment on the correct standards of accessibility and conscientious representation.

I have sometimes had the feeling that people were trying to use me to make members do things for them that the member did not necessarily want to do. Constituents were not just complaining retrospectively but hoping that I could, in a headmasterly way, take a member aside to tell them that they should deal with an issue. Of course, that would not be a proper exercise of my role.

We get into difficult and inappropriate territory for a standards system that should, as I said, be primarily about probity, propriety and transparency on financial issues. It should not put me in judgment on the level of service that is provided by members, which is properly a matter for the democratic process—the ballot box. Given that we have a list system in Scotland, which means that parties as well as voters help to choose MSPs, people could also be encouraged to complain to party leaders if they are dissatisfied with the performance of members. Therefore, if someone was dissatisfied with their representative, having first complained to the member they could consider complaining to the party leader. Failing that, they could exercise their democratic right at the next election.

Hugh O'Donnell (Central Scotland) (LD): I want to ask quickly about your point on party leaders. As far as I am aware, there is a democratic process for all the political parties that are represented in Parliament, so do you acknowledge that the appointment or selection of parliamentary candidates is not solely in the province of the party leaders? That fact would somewhat undermine the role of the party leader in complaints.

Dr Dyer: There would obviously have to be further discussion of the idea, but it is based on the party leader's being a figurehead of the party who selected who was on the list and where they appeared on it. The idea reflects the fact that, unlike in a simple first-past-the-post system, parties as well as voters play a role in determining who become members.

Dave Thompson (Highlands and Islands) (SNP): The guidance in the code of conduct in section 9 details the criteria that a complaint about the conduct of a member should meet. It includes criteria such as that the complaint should be made in writing and by an individual. I understand that you apply the criteria to all the complaints that you receive, including those that you used to consider under the old annex 5. Do you believe that complaints to the Presiding Officer should meet the same requirements?

Dr Dyer: I think that those are generally sensible requirements. As you said, I must apply them to any complaint that comes to me, which includes any complaint under section 8. If I receive a complaint, I must notify the relevant member and consider the admissibility of the complaint. If it is about the level and quality of service, it is an excluded complaint, which I must therefore dismiss and tell the complainer that I will, if they would like me to, pass it on to the Presiding Officer, who is now the proper recipient of such complaints.

To answer the core of Dave Thompson's question, it is helpful to have rules that state that complaints should be in writing and should be signed by the complainer, and that they should name the MSP who is being complained about. There are rules in the legislation that set up my role—the Scottish Parliamentary Standards Commissioner Act 2002—about how to deal with anonymous complaints and so-called undirected complaints that do not name members, and so on. It is helpful to have rules of that sort.

Christina McKelvie (Central Scotland) (SNP): Good afternoon. In his submission, Graham Blount explains the procedure whereby complaints would be directed to the Presiding Officer, which would provide

"an appropriate test of reasonableness."

What sort of criteria or evidence should the Presiding Officer have regard to in deciding whether a complaint about an MSP is reasonable?

The Rev Graham Blount: As we tried to express in our written response, the first key principle in section 8.2.1 of the code of conduct is about conscientious representation and accessibility, which I think give the basis for a judgment by the Presiding Officer.

It seems to me that the issue is to whom, from among a range of people, complaints should go. Have they nowhere to go? Somebody must make a judgment about reasonableness at some point in the process. I accept that there are different criteria for issues of financial irregularity, for which more objective, hard and fast rules can be clearly laid down. However, many spheres of legislation rely, as do other aspects of life, on a test of reasonableness and on finding the right person to make that judgment.

I believe that the basis for the judgment of reasonableness is in the key principles in section 8.2.1 of the code of conduct and that the Presiding Officer is, initially, the person who should make the judgment.

Christina McKelvie: Do you have examples of criteria that would be used to judge reasonableness?

The Rev Graham Blount: For the sake of argument, let us say that an MSP, whether a list or a constituency MSP, who resolutely held surgeries only in the east end of their constituency and refused to hold them in the west end might be held to have failed in that respect. I am talking about a reasonably substantial geographical area in which there were people who genuinely had difficulty in attending a surgery. I think that that situation might be an example of an MSP failing, or appearing to fail, the test of accessibility. If that case were substantiated, there would be a prima facie case for saying that the MSP was not doing something reasonable in terms of accessibility.

Christina McKelvie: Okay. I think that that answer was what I was looking for, convener.

Marlyn Glen (North East Scotland) (Lab): On the same lines, can you please explain what you mean when you comment in your written submission that members

"owe their constituents the exercise of their good judgment."

Can you add a little bit more to that?

The Rev Graham Blount: Yes. Constituents have the right to expect from MSPs proper responses on issues that they bring to them, although the response may not be what the constituent wants. There is an analogy between what we would expect in this context and what the Public Petitions Committee does with petitions. It seems to me that the role of the Public Petitions Committee is to ensure that the petitioner gets a proper answer, which may or may not be the answer that they want. Similarly, nobody would say that it is an MSP's duty to do everything that every constituent wants them to do—that is clearly impossible. It is clear that although there is scope for judgment about what action is appropriate, simply ignoring the matter is not appropriate.

14:30

Marlyn Glen: Okay, so one cannot ignore such matters. Does that mean that if members fail to exercise their good judgment, the code of conduct should provide a remedy?

The Rev Graham Blount: I do not think that it is the Presiding Officer's job to question members' judgment if he feels that they have reasonably exercised their judgment. It is not about second-guessing the judgment call that has been made; it is about whether the member has done anything.

Marlyn Glen: Right—so as long as some kind of response has been made, it would be an exercise of judgment.

The Rev Graham Blount: As I said, the analogy is with the way in which the Public Petitions Committee seeks to ensure that petitioners get answers.

The Convener: It strikes me that the phrase

"owe their constituents exercise of their good judgment"

is almost exactly the same as a quote from Edmund Burke—I do not know whether people know of him—the conservative philosopher. He made the point that you should exercise your own judgment rather than take instructions from the electorate. I offer that as a point of interest.

The Rev Graham Blount: I did not pinch the quote knowingly.

The Convener: What you said was very similar—you are in good company.

My last question to Graham Blount is similar to that which was asked by Christina McKelvie. You said in your submission that in relation to "accessibility, and conscientious diligence", it would be counterproductive to prescribe what members should do to adhere to the principles, although you do not suggest that members should no longer be governed by the code. Is there a danger that if one does not prescribe what members should do, it becomes more difficult for the Presiding Officer to determine whether an MSP has failed to adhere to those principles?

The Rev Graham Blount: It is not only inappropriate but impossible to provide black and white rules in this area. There is an inescapable question of reasonableness. The basis on which the Presiding Officer should make a judgment is in the existing principles. I would not be happy about being more prescriptive than is already the case. Equally, I would not be happy about removing the principles, because they are the key. You cannot simply say to the constituent who feels that she or he has a complaint about an MSP who has not done as they should have, "The next time there's an election, you know what you can do." There should be an avenue for complaint. Other than the ease of making rules, there is no difference in this regard between financial impropriety and failure to do the duty as sketched out in the principles.

The Convener: Thank you very much. Those are all the questions that I am aware of—unless any member has further questions for Dr Dyer or Graham Blount.

Jamie McGrigor: Following on from what Graham Blount said earlier, would there be any circumstances in which an MSP could ignore a repeated message from a constituent?

The Rev Graham Blount: If the MSP had in the first instance given what she or he considered to be a reasonable response, but the matter was

simply being brought up again and again, that would not be the same as the MSP's ignoring the request.

Jamie McGrigor: Thank you.

The Convener: That is the end of our questions. Do Dr Dyer and Graham Blount want to make final brief comments about their evidence?

Dr Dyer: I will comment on that last question. I note in paragraph 15 of my written evidence that the current section 8 contains a

"hostage to fortune, in saying that '…they [constituents] also have the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so.'"

That does not appear to allow for there being circumstances in which the MSP could properly decide not to take on a case.

In my next paragraph, I mentioned cases in which such a situation could arise. For example, the member might consider that the action that he had been asked to carry out was unreasonable and that, if it were undertaken, it might reflect badly on his standing. Alternatively, the member might be aware that a constituent had already approached seven other MSPs in the region. As the eighth MSP to be approached, he or she might feel that they had little to add to what their seven colleagues had done.

Another such scenario would arise if a constituent asked the member to advocate a position that opposed a stance that the member had already taken publicly. The member might think that to take the constituent's stance might lead to their losing credibility. Those are all circumstances that have arisen in my four years' experience of dealing with such complaints, which is a difficult area.

The Convener: Before you make a final comment, Cathie Craigie has a question for Graham Blount.

Cathie Craigie: In the specific case that Jim Dyer mentioned, would it be reasonable for a constituent to make a complaint about an MSP if the constituent had been all round the houses with an issue and other MSPs had said that it would not be appropriate for them to take it up, or had referred the constituent to another organisation, which they had failed to approach? Are you saying that the constituent should be able to make a formal complaint in any circumstances?

The Rev Graham Blount: The question is whether a complaint should be treated as being reasonable. In the circumstances that you describe, I would not expect the Presiding Officer to consider such a complaint to be reasonable.

I want to add that, in the churches' experience, constituents are, in general, very well served indeed. It is not because we are involved in some sort of conspiracy theory that we believe that there should still be an avenue for a constituent to make a complaint. If MSPs are seen to be getting rid of a form of accountability that they used to have, that might create the potential not only to bring the Parliament into disrepute, but to give MSPs a bad name that they do not deserve. We want to enhance the name of MSPs and Parliament, and we believe that a procedure to deal with such complaints is part of that.

The Convener: I thank both witnesses. The committee was keen to hear from you: Dr Dyer's experience of dealing with such complaints is fairly unique and the churches' submission offered a more comprehensive view than any of the other submissions. We are extremely grateful to both of you for coming along today.

Our second panel is made up of MSPs. I ask Alasdair Morgan to come forward first because he has to leave early. Good afternoon and thank you for coming along. Marlyn Glen will ask the first question.

Marlyn Glen: In your submission, you comment on the key principles that are set out in paragraph 8.2 of the code of conduct. Should those key principles be included in section 8 of the code, given the decision of one of our predecessor committees to remove other key principles from the code?

Alasdair Morgan (South of Scotland) (SNP): I apologise for having to leave by 5 to 3 if the committee has not finished with me by then and for the fact that there is a fairly significant mistake in my submission, which I noticed today when I reread it. In the second paragraph under the heading "Relationships between MSPs", I say:

"in my opinion the existing situation necessitates",

when I should have said, "does not necessitate". That is a fairly radical difference, although I think that what I was trying to say followed logically from what preceded.

On the key principles, the committee may wish to debate whether they should remain in the code. I did not address the matter directly, but my view flows on from some of my other comments.

Jamie McGrigor: In your submission, you say that

"each constituent has eight MSPs whom they can approach",

and that

"should the first MSP approached not give a satisfactorily service",

the constituent can approach another MSP. Is that safeguard sufficient to address the principles of accessibility and conscientious representation?

Alasdair Morgan: My comment stems from the fact that responsibility to constituents is not enforceable in any reasonable sense. Section 8.2 may make a pious statement of good intentions, but the question is whether that should form part of what can almost be described as a disciplinary code. That is entirely another matter, however.

We are using a sledgehammer to crack a nut. An earlier witness said—by way of a general comment—that constituents are "well served". On that basis, I wonder whether a code of conduct should include statements that can best be described as anomalous.

Jamie McGrigor: Section 8 comments on the conduct of staff who work for local and national agencies and the Parliament's inward educational programme and public inquiry unit. Is it appropriate for the code to comment on the conduct of individuals other than MSPs?

Alasdair Morgan: No. However, as I say in my submission, such comments were included by accident not design; they have crept into the code. We are talking about a code of conduct for members. It should not say what other people—whether they are our employees or someone else's—are or are not expected to do.

The Convener: Given that Alasdair Morgan has to go, we limited ourselves to three questions. However, does any other member have a question for him on his comprehensive submission?

Cathie Craigie: I am not sure whether he heard the evidence from the previous panel. What should I call him? Will Mr Morgan do?

Alasdair Morgan: That will do. I recognise who you are talking about.

Cathie Craigie: Right. Jim Dyer said earlier that a complaint under the code of conduct or the complaints procedure should relate to probity or transparency. The code appears to allow members of the public to complain about the way in which we go about things. Is that confusing for members of the public?

Alasdair Morgan: I do not know whether it is confusing for them; I wonder how many members of the public are aware of the code. However, it may be an avenue for people who are ill-disposed towards their MSP, or who become so because of a perceived lack of resolution of their case, which may have been a poor case in the beginning.

My experience, which echoes other evidence that you have heard, is that most MSPs do their level best to address their constituents' problems. It is interesting to note that some of the problems to do with the relationships between MSPs—which is the other side of the question, and on which I commented—are predicated on the assumption that MSPs are falling over themselves to deal with constituents' problems. It seems strange for one part of the code to say that MSPs should be put under certain strictures because they are too keen to deal with constituents' problems and for another part to deal with situations in which MSPs are too quick to get rid of cases.

We have to look at how often genuine cases arise in practice. If, as is my expectation, they do not arise very often, is the sensible starting position to have rules that are full of anomalies and lead to all sorts of unintended consequences?

We start from the principle that the electorate is sovereign in this matter. They get a chance to make their decision every four years, which is not long in coming round. MSPs who are complete wasters—I do not think that we have seen many of those over the past few years—will pay the penalty in very short order. Rather than put in place a whole other structure, I am happy to stick with the good structure that we have, which is called elections.

14:45

The Convener: There are no more questions. Do you want to make any final comments?

Alasdair Morgan: I put some thought into my submission. Some of it deals with fairly trivial points, such as the semantics of section 8 of the code of conduct. However, it is important that documents that have almost the force of law—or are an annex to something legal—are dead right and bang on. That is why I went into detail in my submission, which I hope has been helpful to the committee.

The Convener: It has been helpful, and it has been useful to hear about your experience as both a regional list member and a constituency member. Thank you for your attendance, and best of luck in your next committee meeting.

We will now hear from Robin Harper MSP, Margo MacDonald MSP, Lewis Macdonald MSP and Jeremy Purvis MSP. I thank them for coming along. Some of our questions might be directed to individuals, but I hope that all the witnesses will feel free to answer any question.

Christina McKelvie: Good afternoon. I would like each of the witnesses to answer this question, so that we get a mix of opinions—there might be differences of opinion. Should MSPs who decline to take on a case provide the constituent with a reason for that, and should they tell the constituent about the other MSPs who can represent them?

Lewis Macdonald (Aberdeen Central) (Lab): I would not expect an MSP ever to decline to take on a case. It would be perfectly legitimate for them to tell a constituent that they felt that the case had already been exhausted either by them or by

somebody else, but that is a different matter. If the individual then asks for information about other members, they should be given it. However, in my experience, individuals in such cases usually already have a full print-out of all possible elected representatives at every level.

Margo MacDonald (Lothians) (Ind): Members are perfectly at liberty to refuse to take on a case when we know that pursuing it would either waste our time or our office's time—that means wasting public money—or cause the person involved even more grief. A lot of poor souls come to us, so we have to be able to make such decisions. That requires a wee bit of judgment, but I believe that members should come to this place with some judgment already formed.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): There are times when MSPs do not so much refuse to take up a case as believe that they cannot help the constituent or that the issue in question would be better raised with another organisation or through a different avenue. In my experience, constituents are often really looking for legal advice, rather than looking for an MSP to take up a case.

The question is what our rules say about how we should operate. It is best practice for MSPs to explain to the best of their knowledge how they can help or, if they cannot help, where the constituent should go for help. That is hard to set out in rules, because, ultimately, it is about how each MSP responds in individual cases.

Robin Harper (Lothians) (Green): I agree with Jeremy Purvis and Margo MacDonald. Some people who come to MSPs with cases have clearly been right through the system and hope, for some reason or other, that the MSP may have more power or knowledge than any of the previous people whom they have tried. It is wrong to take up a case on that basis and give people the false hope that we might be able to do something when we know perfectly well that we can do absolutely nothing. For those reasons, we must retain the right to decline to pursue cases. However, I wish that we could sometimes turn to a counselling and advocacy service—I am serious—that could help people who are not prepared to accept the judgments of all the appeals bodies that they have been through.

Christina McKelvie: I get the feeling that the consensus is that we generally do not decline to take up cases but, if we do, it is usually on reasonable grounds. Part of the question was whether MSPs should give the constituent the actual reason why they declined to take up the case. For instance, if somebody had been to their constituency MSP but did not get satisfaction and then went to all the regional MSPs, should the original MSP give the constituent and their colleagues—the regional MSPs—the reason why they declined to take up the case?

Lewis Macdonald: It is hard to imagine that they would not. However, that should not be a matter for rules and regulations; it is just good practice, as Jeremy Purvis described it. If, in a face-to-face conversation with anybody, they ask a question, one gives them an answer. If the answer is, "I'm sorry, there's nothing I can do to help," one would expect it to continue, "You might want to talk to your lawyer," for example.

Margo MacDonald: That is nothing to do with rules; it is to do with good sense, good manners and some sense of humanity towards someone who may be under fantastic stress and terrible pressure, and going through things that we can hardly imagine. We might spend a few minutes sounding them out and, when we are convinced that their problem is not one that we can solve, we let them down as gently as we possibly can. If there is anything else that we can think of doing, we do it. We do that out of humanity, not because we are MSPs.

Cathie Craigie: In written evidence, some members have suggested that we should remove the requirement for regional MSPs to notify constituency MSPs about each constituency case that they take up. I seek the opinion of our hugely experienced panel of witnesses on that. What would the risks be of MSPs duplicating casework? Do the witnesses have experience of a whole group of constituency and regional MSPs writing to local organisations about the same case?

Margo MacDonald: The member is making assumptions that the MSPs can read and write.

Cathie Craigie: Well, I would like to hope that all MSPs can read and write.

Margo MacDonald: Name them.

I will tell you a true story. When MSPs arrived in the Parliament, we were not at all sure about what the difference was between a sheep and a goat—or a regional list MSP and a constituency MSP. I was a little older—not much, I know—than the constituency MSPs in Lothian region, so I called them together and said, "We will be in here working together for four years. We can do it the hard way or the easy way: either I take all the nice issues and you take all the really difficult constituency cases, or else we work together." They said, "All right."

I have never had any problems, because anybody who comes to me with a case usually falls into some sort of category. If Robin Harper knows more about the issue than I do, I have no problem at all in asking him whether he is willing to help the person, provided that they are willing to be helped by him. The other MSPs have legal

talents and talents in industry, business and all the rest of it. If they know more about an issue than I do, that is fine. The folk will get a better service from them.

Lewis Macdonald: That pragmatic approach is commendable and sensible. The requirement to notify the constituency member is also eminently sensible and it avoids duplication and confusion. It would be a step in the wrong direction to move away from that. Every single person in Scotland has a constituency member; they also have recourse to list members. That is a good provision for the public. The current process is important, partly because it avoids duplication and partly because it facilitates the kind of sensible working to which Margo MacDonald referred. The existing protocol whereby the constituency member is notified if another member is acting on behalf of one of their constituents is essential to the good working of the system.

Jeremy Purvis: The current process is appropriate. I was disturbed that some colleagues used the argument that it should be withdrawn because it is not observed. The fact that the rule is broken—by them—is not a justification for changing it.

The heart of the issue is whether the committee and the Parliament consider that a constituency member is different from a regional member, both in their standing in the constituency and in the duties that they carry out. My view is that they are different and that they should be different. I also believe that we should not permit people who stand in the list also to stand in a constituency. In my experience—I represent a marginal constituency; it was marginal in my first term and it is marginal in my second term—the problem principally arises in areas where there is competition among members. Casework can, on occasion, become part of that competition. The worst aspect is that it creates a difficulty for the receiving public body in respect of how they handle the case; difficulties often arise for individual staff in an organisation.

It is right that when we are in the chamber all members have the same legal standing, but it is recognised that on a practical level the delivery of our functions is different on a constituency and regional basis. That is why I would keep the rule as it is.

I have complained when other members have not informed me of cases, and I consider that on those occasions the complaints process has not been robust enough. I come back to my point that we either have the rule or we do not. If the committee does not retain the rule, it would need to decide that there cannot be any distinction between a constituency member and a regional member in carrying out their functions. That would be a step too far.

Robin Harper: I am marginally in favour of keeping the rule. I do not compete for work—I hardly have enough time in the seven days of the week to complete the work that I have. However, I take a pragmatic view. If someone phones me up at my Parliament office with a problem that can be solved by a couple of phone calls, I will make the calls straight away. I do not feel that it is necessary to notify the other list MSPs or the constituency MSP if I have done something simple, such as put the person in touch with the council, another organisation or whatever. I will contact the person's constituency MSP in relation to more complicated matters and let them know that I am dealing with the issue. I do not have so many of those on my plate, so the situation does not arise all that often. The problem is perhaps greater elsewhere, but it has not happened often in my personal experience.

I have a slight problem in relation to MSPs visiting schools. We do not have to nominate anybody, because everybody gets invited. However, as the co-convener of the Scottish Green Party and as a well-known Green, I am invited to speak to all sorts of groups. I am not sure where such activity sits within the rules. Often people outside my region invite me, out of curiosity, not to a political meeting but to address them on an aspect of the environment. It would be useful if MSPs could be given a clear indication of whether such activity is so important politically that they should advise the list and constituency MSPs for the area of it.

15:00

Margo MacDonald: In my view, attitude is generally more important than codes of conduct, but I do not want something that Jeremy Purvis said to pass without comment. He did not mention what the constituent wants. We can have all the rules and regulations under the sun about the demarcation line between the responsibility of constituency MSPs and that of list MSPs, but the people who voted for us do not drawn the same line. We advertise ourselves as pick-and-mix MSPs—people can choose the MSP who suits their needs of the moment and is best placed to deal with their problem. I would be wary of doing what Jeremy Purvis suggested—having a different job description for the two types of MSP when they are outside the Parliament.

Jeremy Purvis: I am happy with the rules that are in place, but they should be enforced. It is clear that the constituency member should be notified of a case, unless the constituent in question chooses otherwise; my concern relates to enforcement of that rule. I am not suggesting that

there should be separate job descriptions for constituency and list MSPs—although some constituents already have separate job descriptions in their mind. Local bodies, community councils and public sector bodies make their own distinctions. I am happy with the rules that govern our conduct, but they should be enforced.

My experience from speaking with colleagues is that the least friction and competition and the fewest problems occur when regional members generally operate across an entire region, without favouring any part of it. Often difficulties and tensions arise when a regional member shadows a constituency. The problem is not restricted to members. It also affects local public bodies, which do not like being involved in what they see as a difficult political situation and do not want to be caught between two MSPs who are competing over the same territory—a regional member, with a duty to represent the whole region, and the constituency member. The duty on regional members to work in more than one constituency is a solid rule, but it is broken regularly and is difficult to police.

The Convener: We will come to that issue.

Margo MacDonald: I apologise to Jeremy Purvis. I thought that he wanted to expand the code.

Jeremy Purvis: No.

Lewis Macdonald: Jeremy Purvis gave the right answer to Margo MacDonald's point about what the constituent wants. If someone goes to a Labour list member because for political reasons they do not want to deal with a constituency member from another party, they are perfectly entitled to ask that list member not to notify the constituency member. However, that should happen only at the constituent's request.

Like Jeremy Purvis, I have had occasion to raise concerns with list members whose involvement in a case that I was already dealing with was muddying the waters. In the few such cases that have arisen, the problem has been resolved by an explanation. The current protocol acts in the interests of the member of the public.

On the issue of dealing with public bodies that Jeremy Purvis mentioned, the Parliament also has an interest in maintaining its credibility. That credibility is important to me and to all members. However, the Parliament's credibility is undermined if a public body—be it devolved or reserved—receives different approaches from different members of the same Parliament. For example, if a visa application officer in a foreign posting is contacted by several members, the credibility of the Parliament can be affected. We should not welcome or permit that. The current protocol makes it clear that the constituency member should be left to deal with any case that they are already dealing with and should be notified if the constituent approaches a list member, so that we avoid two people taking up the same case.

Cathie Craigie: I will continue on the same theme, as I have found all the comments so far to be very interesting. Should there continue to be a requirement on regional MSPs to ensure that their work is regional in nature? Jeremy Purvis touched on that point.

Margo MacDonald: From my experience—which was not long, admittedly—of being a party list member, I remember that the party's advice on the matter helped us to provide a quality standard of service to constituents. The region was divided equally among the MSPs who had been elected on the party's list. That meant both that list MSPs had an easier way of working and that constituents were probably better served.

As I am now in the business of representing all of Lothian, my work has changed, as has the service that I can provide, because I am trying to service a big constituency. Without going into details and boring people rigid, I can confirm that there is a difference in the quality of work that a single list member such as me can undertake. The difference is not so much in the quantity of work but in the type of work that I can undertake. If a party chooses to divvy up a big regional constituency among its list members, the beneficiaries of that are probably the constituents. That is being honest about it.

Lewis Macdonald: It is a little-known fact that, when Helmut Kohl was chancellor of Germany, he was a regional list member under an additional member system that was identical to the Scottish Parliament's system. I suspect that he did not spend an awful lot of time doing surgery casework in any part of his region as he would have been too busy doing his job as chancellor, but for cultural and historical reasons, regional members in Scotland are inclined to do a bit of constituency casework. They certainly need to respond when a constituent asks them for their assistance, but the regional element of their work should not be neglected.

As the member for Aberdeen Central, I represent a constituency that is at the heart of a region. The institutions in my constituency include the royal infirmary, the police headquarters, two universities, the harbour, the city centre and many things that serve the whole region in one way or another. It is entirely legitimate for regional members to raise issues about national health service services at the royal infirmary and about the universities, because matters that affect the city as the centre of the region are regional issues.

Equally, when issues arise such as the current controversy about the closure of Aberdeen prison, it is useful that they are not just left in the pocket of the constituency member but attract the interest of regional members, including members of other parties. That is the role that regional members should play, although they should of course deal with any constituents who approach them. If regional members act as such, they will take cases from any part of their region but, unlike constituency MSPs, they will not see constituency casework as their primary responsibility.

Jeremy Purvis: I have sympathy for the committee in trying to deal with this issue. The fact is that it is up to each electoral candidate to decide whether to serve their constituents on a constituency or regional basis. Some candidates—and some colleagues—see the list as a platform for winning a constituency, while others appreciate the distinction between constituency and regional members, do not aspire to be constituency members and choose to act as regional members. We are unable to force that distinction, although my personal view—not, I should add, my party's view—is that we should take the Welsh approach and state that candidates cannot stand both on the regional list and in the constituency ballot.

Of course, such a move has practical implications for what happens after the election. Both my principal opponents in the constituency are now regional members. To follow up Margo MacDonald's point, I think that constituents in a target seat or a marginal constituency are very well served, because regional members who want to become the constituency member take an active interest in them. On the other hand, if the neighbouring seat is very safe—if I can be so bold as to say that any seat in Scotland is safe—it is unlikely that the same regional members will shadow it. Members might not welcome such a comment, but it is a fact.

Although the rule that regional members should work in more than one constituency is designed to ensure that such shadowing does not take place, it does not work in practice, because members are allowed to engage in such activity through the allowances system, although not under the code of conduct. For example, before the last election, a regional member issued a survey to every household in my constituency. That practice was permitted through the allowances scheme. Moreover, as a number of cross-border boundaries were involved—after all, there could not be a neat distribution of the surveys to the constituency itself—it was argued that the work was being undertaken in more than one constituency.

That brings us back to the question whether there should be restrictions on members. If there are to be no such restrictions, we should have clear policing—although I appreciate that that would be difficult. In any case, the whole issue should form part of a review of what is permissible under the allowances system as well as under the code of conduct. It is unfortunate that some of the work that the committee is carrying out touches on an isolated issue that pertains to allowances. When I have raised concerns about such matters—indeed, members might also have raised concerns about me—I have noticed that the approach taken under the allowances system seems to be different from the one taken by the Presiding Officer under the code of conduct, and the friction between the two has caused difficulty.

As a result, I believe that the overall rule should be retained and policed. After all, it is pretty clear when surgeries are taking place or when members are working in an area.

The Convener: Before I let Robin Harper answer, Dave Thompson has a point.

Dave Thompson: Lewis Macdonald said that although organisations such as health boards and prisons might be based in a particular constituency, they have a regional impact. However, what about organisations from outwith a region that contact members? Regional members are not allowed to deal with such matters, but I might be contacted in the Highlands by organisations or campaigns based in Edinburgh or Glasgow that have a Scotland-wide remit.

Margo MacDonald: It is simply a matter of working with colleagues. I do not know about the other members present, but given my particular interest in sport and my convenership of the cross-party group on sport, people from all over Scotland—and, I am happy to say, beyond Scotland—contact me about sporting matters. Naturally, you speak to those in the constituency who might be involved, but on a specific matter like that—and it is likely to be specific—you go to someone else who shares that specific interest. That is just working with people.

Before we move off this issue, when it comes to money, I urge members please not to cut list MSPs' allowances. Robin Harper would tell you the same—or perhaps a bit different, because I think he has more money than me.

Robin Harper: I wish.

Margo MacDonald: I have got no money.

15:15

The Convener: That is up to the Scottish Parliamentary Corporate Body rather than us. We have no remit in relation to that.

Margo MacDonald: You are ducking out already.

Cathie Craigie: We are skint.

Margo MacDonald: We only came for the money.

Cathie Craigie: No money. No expenses. You had better enjoy the water.

Lewis Macdonald: I have a brief answer to Dave Thompson's question. If somebody approaches me from an Aberdeen-wide, Grampian-wide or Scotland-wide body, and they are making representations on behalf of the people in my constituency, I treat them as if they are my constituents, wherever their postal address happens to be.

Cathie Craigie: My final point—

The Convener: Sorry, Cathie. I want to give Robin Harper a chance to answer the first question.

Robin Harper: It has been so long—where were we on that one? Mark Ballard and I were the two Green MSPs in Lothian and, to be pragmatic, we divided the region roughly between us so as not to tread on each other's toes—it would have been silly otherwise. We did that not for political reasons but to provide a decent service. The University of Edinburgh, where Mark Ballard is the rector, was in my bit, but I did not complain.

I agree with Margo MacDonald. I have been up to Aberdeen to speak to the Scottish Council for Development and Industry, I go across to Glasgow to talk to people about architecture and I go to conferences all over Scotland. If there is an interest group that wants to show me something, I see no reason why I should not go along and encourage it. If it is a little more formal than that, I will consult the local MSP. I spoke to Jamie Stone when I was invited to open a sewage treatment plant up in the north of Scotland—and a very proud occasion it was for me. That was an official engagement.

Margo MacDonald: You get all the perks.

Cathie Craigie: Margo MacDonald and Robin Harper have raised a perfectly understandable point. Robin Harper has been welcomed to schools in my constituency to offer a green perspective on students' work for advanced higher studies. That is good, and no one should have any complaints about people acting in their role as party leaders, or as spokespeople for particular groups of interests within the Parliament.

On the point about section 8.10 of the code, on regional members operating in their regions, regional members are expected to work in more than two constituencies in their regions. I must confess that I have a similar experience to Jeremy Purvis. Would it be reasonable to consider saying that a regional member must work in two or more constituencies but must avoid a constituency in which they have been an unsuccessful first-past-the-post candidate?

Margo MacDonald: It would be reasonable but it would not be workable. We would have to police it. Why do we not just do something completely different and, instead of the parties choosing who should be on the list, give the constituents a shot at choosing?

Cathie Craigie: Margo, you know that that would give the parties too much trouble. It would give them a fright.

Margo MacDonald: I know that some folk have had happier experiences than others of how the code of conduct is put into effect. We should not skew or jeopardise what ought to be basic good manners, good sense and the ability to see things from the constituent's point of view to meet the needs of the folk who have had the worst experience of working between the two levels of election into the Parliament. That is not to be pejorative about anyone; I appreciate that I have had an easy time and have had no such problems. I know that other folk have not had such an easy time, but we will not sort all that out by changing the code of conduct.

Lewis Macdonald: My view is that the Parliament has got the balance about right as regards the requirements on list members to notify constituency members and to work across the region. Jeremy Purvis has touched on one of the other judgments that must be made—that of who stands for what. However, that is not really a judgment for the Parliament to make; rather, it is a judgment for the parties to make. It is for individual elected members to act in a professional way and to respect the roles of colleagues.

The existing protocols have the balance right, and I see no case for tampering with it in either direction. The protocols are not always observed fully, as has been reflected on today, but people now understand that the right requirements are put on members, and members understand what those requirements are. They should police one another, as well as themselves.

Margo MacDonald: "Respect" is a good word.

Lewis Macdonald: Respect is at the root of it.

Jeremy Purvis: I have sympathy with the specific suggestion that Cathie Craigie made—it would be a compromise on my own view. If we followed what the Welsh do, we could stand for either a constituency or a region—it would be one or the other. That would remove any and all of the difficulties. Difficulties arise when competition for an individual constituency becomes a motive. There could be a compromise approach.

Robin Harper: The code says:

"Regional Members are expected to work in more than 2 constituencies within their region."

As I understand it, that is interpreted as meaning that list members should not concentrate their work in only two constituencies. However, the suggestion is not that list MSPs should be compelled to hold surgeries in every constituency in their region, which would be physically demanding. List MSPs should not be required to hold seven surgeries a week.

Cathie Craigie: I think that the rule was introduced to recognise that political parties with more than one member in a region might wish to split the region for ease of working, as Margo MacDonald explained. However, if political parties are using such arrangements for political advantage, surely that is not what the rules of the Parliament should be; they should be about serving the best interests of communities and constituents.

Jeremy Purvis: I accept the argument that regional members should have parallel status—if people wish to call it that—and respect for their ability to operate for all constituents. They should not subdivide the region and focus on only one part of it. The argument that list members work on behalf of all constituents in a region is undermined if a party with more than one member in the region, or a group of members, subdivides it. That is absolutely against the spirit of the rules, which I think should be upheld.

Jamie McGrigor: On the issues that Jeremy Purvis has been discussing, surely the point of our electoral system is to give constituents as much choice as possible—as many MSPs as possible—no matter which constituency they live in within a region. With the greatest respect, I wonder whether you are not putting your own job and career before the benefits of providing choices for the constituent.

Jeremy Purvis: I understand that argument. If I was doing that, I would stand on my party's list as well, but I have not—twice. If you know the size of my majority, you will probably say that that is not clever for my future career, but I have chosen to be a constituency candidate only, not to be on my party's list. My party would allow me to be on the list—indeed, it would probably encourage that—but I have chosen not to be on the list as well because I do not agree with that.

On choice for constituents, if a regional member shadows a particular constituency and works more in that constituency than anywhere else, de facto there are some constituents in a region who do not have seven regional members and a constituency member. For example, if a party has several regional members in my local region but some of them never appear in my constituency, do my constituents really think of them as their MSPs as well?

That is the difficulty that the committee faces when it comes to considering how one can instruct MSPs to work on a cross-constituency basis, especially in large geographical areas. I am sympathetic to members' position on that; nevertheless, it is a fact that they must do so. My point is that if there are two or three marginal constituencies in a region and some of the regional members shadow those constituencies, parts of the region could be said to be underrepresented as regards the principle of choice on which your question was based.

The Convener: Neither the committee nor the Parliament has discretion over open or closed lists; nor can they prevent a list member from standing in a constituency.

Dave Thompson has a couple of questions.

Dave Thompson: The panel will know that the code of conduct requires members to abide by SPCB policies. This is perhaps a more mundane matter, but it might be interesting. Should specific references to the guidance on office signage and the use of stationery be included in section 8?

Margo MacDonald: If you like.

Robin Harper: The references are there, are they not?

Dave Thompson: They are in the guidance, but not in section 8.

Robin Harper: Are you asking whether they should be shifted from the guidance into section 8?

Dave Thompson: Yes, to give them more weight.

Robin Harper: I do not see that there is any difference, as long as they are there.

Margo MacDonald: Make life simple.

Lewis Macdonald: I am interested to know why they might be thought to have more or less effect in one area than in another. It is a novel question.

Jeremy Purvis: I think that I made specific reference to the issue in my letter to the committee. It is an area that the committee can investigate. In my experience, there is a confusing difference between the way in which the Parliament's publications allow members to show their party affiliation—in the *Official Report* and so on—and the way in which the allowances scheme does not permit constituency members to show their party affiliation.

For example, in my annual report two years ago, I was given permission to state that I was the

Liberal Democrat member for Tweeddale, Ettrick and Lauderdale. Last year, when I went back to the allowances office to get approval for my annual report, I was asked to take out the reference to my party because that was contrary to the allowances scheme rules. The office apologised for letting me name the party two years ago. Subsequently, I saw that another member had released a document that stated that they were a spokesman for their party and named their party affiliation. I learned that the allowances scheme permits members to describe their party post because, it states, that does not show their party affiliation. That is clearly nonsense.

Whether the matter is addressed in the allowances scheme and not in the code of conduct, or vice versa, it should be possible to read across both, at the very least. At the moment, we have a ridiculous situation. I understand that members cannot use the allowances scheme to promote a particular party, but the rules are confusing and need to be tightened up.

15:30

Lewis Macdonald: I would say "clarified" rather than "tightened up". If we interpret the rules as meaning that a Labour MSP is not allowed to tell anyone about the "Labour" bit, it will not make much sense either to members or to the public. We should have clarification so that members know that they can say what their affiliation is and, for example, can indicate their affiliation in their correspondence. However, members must also know that they must not use public funds to promote their party rather than to promote their accessibility to all members of the public.

Such a clarification, together with the kind of consistent application that Jeremy Purvis described, would be welcome. I, too, could recount tales of inconsistent application over the years. Such tales do not redound to the Parliament's credit.

Margo MacDonald: I agree. The corporate body should give everybody stars—one, two, three and so on.

This is politics. The parties will spend their time trying to get round the rules in one way or another, just to give a hint that the member who is sending out the publication represents party X. They will do that no matter what, so I think that we are making life difficult for ourselves.

Jeremy Purvis: I can give a live example. At the moment, I am issuing my annual report. I am not permitted to say that I am the Liberal Democrat member for Tweeddale, Ettrick and Lauderdale, but I am permitted to say that I am the Liberal Democrat spokesman for education. It does not make sense.

The Convener: There has been recent controversy over the employment of family members. In this Parliament, that would come under the rules on allowances and not under the code of conduct or guidance on standards. That raises the question of how such things relate to each other. All that we can do for the code of conduct is to consider whether to include a provision about what is actionable.

Dave Thompson: The witnesses will all know that complaints to the standards commissioner have to meet certain requirements. Should complaints to the Presiding Officer have to meet the same requirements—for example, that complainers have to make their complaints in writing and include the complainer's name and address and so on?

Margo MacDonald: If someone is complaining about the number of gentlemen who enter the chamber without ties, that does not require a letter to Alex Fergusson. I just told him, "Call them out."

Cathie Craigie: Name names.

Lewis Macdonald: Mr Thompson is asking about members of the public making complaints to the Presiding Officer about MSPs. Under the current rules, I think that it would be expected that such complaints should be in writing, would name the person complained about, and would give details of the case. Otherwise, the Presiding Officer could not make any judgment on the complaint.

A bigger question lies behind the question that Mr Thompson raises: is the Presiding Officer the correct person to make such judgments? The answer to that is absolutely yes. The Presiding Officer is the person to whom we collectively give authority to represent the Parliament. The Presiding Officer is the right person to act as a court of appeal if a member of the public feels that an MSP has failed to act properly on their behalf.

The Presiding Officer has authority vested in him or her by MSPs collectively, but the Presiding Officer is also an experienced member of the Parliament and therefore knows and understands the issues well as an MSP. That is an advantage when it comes to making judgments.

Dave Thompson: I understand that, to date, the requirements have not been applied to complaints to the Presiding Officer. Perhaps they should have been.

Lewis Macdonald: Complaints to the Presiding Officer that do not name the person complained about will clearly not go anywhere. The point may therefore be academic.

Jeremy Purvis: I have had an experience—albeit a rare one—that I think is connected with the remit of the committee's review. I have been

approached by a body about how a body would complain about the conduct of an MSP. That takes us into a difficult area. When I inquired about it, I found that there was no capacity for a body to make such a complaint.

We have to be very careful, but when issues arise about the conduct of an MSP—how an MSP has operated in relation to a third party's staff or another body—those issues can be genuine, even if in a grey area. It is not simply a question of the service that we offer as MSPs, about which constituents can decide whether or not we are idiots or are useless at our job. The question arises of how, in carrying out our job, we can affect other parties.

The charitable body that approached me did not have a route to express to the Presiding Officer concerns about an MSP's conduct towards its staff. That situation raised difficulties because the current mechanism for complaining or raising an issue presents no easy way to deal with that. All that is provided for is complaints by members of the public, rather than complaints by public or charitable bodies.

The Convener: I assume that the body was told that a person within the body could complain on its behalf.

Jeremy Purvis: Indeed. That would be difficult, because it would mean that the body corporate could no longer raise a concern on behalf of its staff. If the individual had to complain, that would put them in an invidious position. As the body's constituency representative, I took the complaint to the Presiding Officer, but that was not ideal. The body was then alleged to be politically biased because it had approached me on someone's behalf. The scenario was difficult and the procedures offered no easy solution to it.

Margo MacDonald: Nothing precludes a body or organisation from putting in writing a complaint or comment to the Presiding Officer, who will deal with it in his own fashion.

The Convener: The witnesses have more experience than I have, but I understand that what Margo MacDonald says is right: the Presiding Officer has much more discretion than the standards commissioner had and the Presiding Officer has exercised that. I do not know about the case that Jeremy Purvis described.

Jeremy Purvis: Perhaps it was the former Presiding Officer.

Lewis Macdonald: I will return to Dave Thompson's question. I have checked the paragraph on enforcement in section 8, which says:

"Any complaint against a Member … in respect of this section should in the first instance be made to the Presiding Officer."

The paragraph does not require a complaint to be in writing or anything like that, but it suggests that, where possible, the right outcome is that a complaint is dealt with and resolved informally. It would be a mistake to try to formalise that process. In some cases, a member of the public will phone the Parliament and ask to complain to the Presiding Officer about something such as the dress or conduct of a member in the chamber, about which the member of the public will have forgotten within hours. We should not try to formalise that stage of the process.

When a complaint is more serious and cannot be resolved informally, the current protocol lays down what should happen and how the Presiding Officer should refer a complaint to the convener of the Standards, Procedures and Public Appointments Committee, who will take it from there. That is appropriate, but it would be a mistake to formalise the initial point at which a complaint is made, because many such complaints will be dealt with readily and without a formal procedure.

The Convener: It has been pointed out to me that the guidance in the code of conduct specifies what you mentioned: that a complaint should be signed, that the complainer should be named and that the complaint should be by an individual, which relates to Jeremy Purvis's point. However, the Presiding Officer has exercised more discretion than the standards commissioner could.

Dave Thompson: I have a general point about the conduct of committees. Someone asked me what they could do about a committee's decision. The guidance that I received, and what I found when I looked into the code of conduct, was that the same section of the code of conduct—section 9—covers both the conduct of members and the conduct of committees. If somebody is unhappy with how a committee has dealt with them, they have no recourse other than to approach the committee's convener, because that is what would be done to complain about a member. Do the witnesses have views on that? Should people have another mechanism to use?

Lewis Macdonald: No, because the committees are committees of the Parliament, so they are responsible for their own decisions.

Dave Thompson: Okay—fine.

The Convener: My two final questions are not particularly related, but I will ask them both at the same time.

First, the key principles are currently contained in section 8 of the code of conduct. What are the witnesses' views on whether they should continue to be in section 8? That seems to have caused some controversy. Secondly, does any panel member have any view on whether the title of

section 8 is right? That must be more important to some people than to others.

Lewis Macdonald: It is hard to detect the controversy on either the numbering or the naming of the section.

The Convener: I will clarify my question. Section 8 concentrates on the relationship between constituents and their MSPs rather than the relationship between MSPs. Does the title give the right impression of the section?

Margo MacDonald: I take that point—it is slightly confusing. Have we got to have relationships with everybody? Can we not be choosy?

Jeremy Purvis: I am relaxed about the section name.

Section 8.2.1 lists the key principles. It was interesting to hear the standards commissioner earlier. I endorse his written evidence, which was also interesting. It is hard to enforce a duty of conscientiousness. It is ultimately up to MSPs to judge how conscientious they are. If a constituent raises a complaint about conduct, it is appropriate that that should be dealt with. The question of complaints about how we carry out our duties—rather than our conduct—is interesting. When I was a member of the Justice 2 Committee, we considered the police complaints body. In that complaints process, service and conduct are separated, and we can do the same here. We are ultimately accountable for our service to our electorates—ideally, there would be an open list so that there was proper accountability for regional members too. For our conduct, we have a code of rules that should be policed.

Christina McKelvie: I have a supplementary on the relationships between constituency and regional MSPs and bodies such as NHS boards and local authorities. There is an example in Alex Neil's written evidence of local authorities that invite only constituency MSPs and not regional MSPs to events. Should other bodies, especially publicly funded bodies in local government or the NHS, have an obligation to invite regional MSPs—if not all, perhaps a representative of the parties? In Central Scotland, for instance, there are five Scottish National Party MSPs, so one could be invited as a representative of the party. In the past eight years, local MSPs have received invitations but regional MSPs have not.

Margo MacDonald: That is bad.

Robin Harper: Very bad. Our experience in Lothian is that everybody is invited to such events. I would not have thought that there is a boardroom in the country that could not accommodate all the members.

Margo MacDonald: It is bad that any public body should pick and choose the information that is available to MSPs. Members may process it differently or use it for different specifics, but they need the same information so that there is some uniformity of approach in the Parliament to what is going on in any given area.

There has certainly never been any problem in Lothian—the police, health board and local authorities treat us all as idiots. [*Laughter.*]

Christina McKelvie: But equal idiots.

Lewis Macdonald: To me, the judgments are not particularly for the Parliament to make—including the one that Margo MacDonald just referred to. They are judgments that others will make.

The question brings us back to the credibility of the Parliament and other institutions. For example, I do not think that the Parliament should direct local authorities—which are also elected and accountable to the public—on how they should conduct their relations with MSPs. That would not be appropriate. It will be horses for courses. From experience, I know that a public body might wish to discuss directly with a constituency member issues that are relevant to that constituency alone and are perhaps sensitive. They should have the freedom to use their judgment on that. Equally, there are other cases in which there are regional concerns and, therefore, grounds to expect that all regional members will be informed.

At the end of the day, the relationship is partly about the information that a public body might choose to share with elected members, but it is also about what elected members' commentary on that public body might be. If a public body excites their ire or irritation, elected members have a good recourse in being able to comment on that, and some do.

The Convener: Okay, we will conclude there. We have had a good go at the topic and I am grateful to the members who came along to give evidence. The business managers are coming along to give evidence on, I think, 18 March. If the witnesses are interested in coming back to hear that further evidence, they can do so.

Cross-party Group

15:46

The Convener: Item 2 concerns cross-party groups. Members are aware that, in considering whether to approve proposed cross-party groups, we should 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 proposed cross-party group that we are considering today is on science and technology.

I welcome Elaine Murray, who is the group's convener. I apologise to her for the time that we have taken to get to this point on the agenda. Does she wish to make any comments?

Elaine Murray (Dumfries) (Lab): No, I am happy to take any questions that the committee has. Science and technology are of increasing interest, particularly given the importance of science to the Scottish economy. The proposed cross-party group is an opportunity to speak further with the scientific community about a number of topics, such as education and training.

The Convener: Will you confirm that the group does not receive any financial or material benefits that exceed the £250 registration requirement?

Elaine Murray: It does not at the moment. Our secretariat is provided by the Royal Society of Edinburgh, which will provide tea and coffee at our next meeting, I believe. Should the value of its donations exceed £250, we will of course complete the appropriate form and ensure that it is declared.

The Convener: If committee members have no other questions, do we agree to approve the cross-party group on science and technology?

Members *indicated agreement*.

Equalities Inquiry

15:47

The Convener: Item 3 is consideration of a possible rule change to require committees to produce sessional reports on how they have mainstreamed equal opportunities in their work, with the Equal Opportunities Committee co-ordinating those reports into a review of all committees. The proposal to introduce such reports was submitted to the Procedures Committee in session 2 so, before taking the inquiry forward, we agreed to write to the current Equal Opportunities Committee and Conveners Group to seek their views on the proposal.

Responses have now been received and are attached to the paper that is before the committee. The Equal Opportunities Committee still supports the introduction of a rule to require the production of such reports, while the Conveners Group is of the view that the work should, at least in the first instance, be undertaken voluntarily.

The paper suggests a range of options that we might want to consider in deciding how to progress the inquiry. Those include agreeing to the rule change, agreeing to the voluntary option, and seeking further views. If we agree to the rule change or the voluntary option, we might wish to consider whether guidance could be developed to support committees in the production of the reports, although we can, of course, decide not even to issue guidance.

I ask members for their views.

Marlyn Glen: As I am a member of this committee and the Equal Opportunities Committee, committee members will expect me to support the Equal Opportunities Committee's view that there ought to be a rule change. The Equal Opportunities Committee considered the proposal last session and this session and, both times, recommended a rule change. The voluntary option does not provide enough clarity or direction for committees. Paragraph 10 of the paper notes:

"few Committees include specific equal opportunities sections in annual reports."

When it says "few", it means that two out of the 15 committees had sections on equal opportunities in their most recent annual reports. One other committee used the words "equal opportunities" in its report but went no further. Equal opportunities are such an important core value of the Parliament that we should change the rules to ensure that committees address the issue clearly in their reports. It is proposed that committees should carry out one review per session, which is not much to ask. We should proceed with a rule change.

Jamie McGrigor: I am inclined to support the voluntary option that is suggested by the Conveners Group. That approach could be reviewed at a later date.

Cathie Craigie: The Equal Opportunities Committee in the previous session raised the issue and considerable work was done to back up the committee's conclusions. The new Equal Opportunities Committee has looked into the matter and has come to the same conclusions. I understand that the Conveners Group discussed the matter without taking evidence from any corner; the convener may be able to confirm whether that was the case. In my view, we should agree to the rule change that the Equal Opportunities Committee has requested. The committees of the Parliament are being asked to report on equalities once in a session. Perhaps they can gear themselves up for that when they write their annual reports in the two or three years before the final report is required.

The Convener: When the Conveners Group considered the issue, I did not comment on it. I did not think that it would be right for me to do so, because this committee was due to discuss the matter. However, the convener of the Equal Opportunities Committee did comment on the proposal. She spoke in favour of the voluntary option, although she made clear that she was expressing her view, rather than the committee's view. Only the views of members of the group were sought; no evidence was taken and no inquiry was held. As I recall, broadly the group concurred with the convener of the Equal Opportunities Committee.

Dave Thompson: Option 2 in the paper is for the committee to agree to no rule change

"perhaps subject to consideration of how to secure increased voluntary reporting".

If we went down that road, what measures would we implement to increase voluntary reporting? I am inclined to favour the voluntary route, rather than the imposition of a rule change, but I would like to know what we would do to encourage committees to produce reports.

The Convener: I am not best placed to answer that question and I am not sure how well placed the clerks are. It is hard to specify what measures would be taken in support of the voluntary option. I invite Peter McGrath to comment—I am sorry to put him on the spot.

Peter McGrath (Clerk): I cannot add much to what the convener has said. One option in the paper is for the committee to provide strengthened or different guidance. That work could be undertaken by the Conveners Group, the Equal Opportunities Committee or the two working together. If this committee is not inclined to support a rule change because it hopes that a voluntary option can be secured instead, it can make its view known. It is for the committee to decide how it does that.

Dave Thompson: We have been looking at annual reports. If we opt for the voluntary approach, we can review the matter in a year's time—or put it on our agenda each year—to see what the committees have done by the end of 2007-08. If there is still no improvement, we can toughen up our approach. We could send the message to conveners that we are prepared to do that. Does that suggestion appeal to members?

Marlyn Glen: Dave Thompson has outlined the current position. For the past two sessions, there has been an expectation that committees will mainstream equal opportunities. Unfortunately, sometimes when we try to get bodies to mainstream equal opportunities, the issue is downgraded entirely and slides off the agenda.

I do not know whether it is appropriate to give an example but, during an inquiry, the Equal Opportunities Committee has sometimes asked a committee whether it would put certain questions from an equal opportunities point of view. The response from one committee in this session was that it was sorry, it had already taken the evidence, but it would be sure to include such questions next time. Everybody should be sure to include such questions anyway, but they do not. It is a damning indictment that only two of 15 committee reports had specific equal opportunities sections.

The Convener: I think that Dave Thompson is saying that if committees continued to neglect to report on their mainstreaming of equal opportunities, we could look at the situation again in a year. I should also say that the opinion of the Conveners Group was a wee bit coloured by a similar discussion about sustainability. There were arguments both ways about whether reporting was best done voluntarily or whether a rule change should be made.

Jamie McGrigor: The very fact that the committee to which Marlyn Glen referred said that if it had had the nudge before, it would have included an equal opportunities review—

Marlyn Glen: Committees always need a nudge and that is the point.

Jamie McGrigor: But that is the voluntary approach.

Marlyn Glen: It is not the voluntary approach; it is recognition that people need a nudge to include such a review. Maybe they will not need that nudge in another couple of decades, but at the moment they do.

Jamie McGrigor: Have all committees been written to on that basis? The sort of questions that you want them to ask will not be relevant in every case, will they? In a good many cases, the questions will have to be different.

Marlyn Glen: Of course it would depend on the topic. I am very tempted to ask the Equal Opportunities Committee clerk to come and give me some hard evidence as Hugh O'Donnell is not present. It is disappointing that, although the expectation is that committees should mainstream equal opportunities in any work that they do, the reality is that they do not. They need a nudge to do it. We are not asking very much; we are asking committees to review their mainstreaming only once a session. There is nothing to stop them doing that in their annual reports so that they carry out a review four times a session. I argue strongly that we should be looking at equal opportunities whatever we are doing throughout the Parliament.

Christina McKelvie: I am strongly influenced by Marlyn Glen's arguments and do not disagree with her. However, the discussion has thrown up more questions than answers. Because mainstreaming equal opportunities has been a long-standing legacy issue and there are hard facts, as Marlyn Glen said, I think that we should go for option 3, which is to seek more views. Perhaps we should seek views only from the Equal Opportunities Committee clerk and look at some of the history behind the issue before the committee comes to a decision on what we want to do. Is there a deadline?

Marlyn Glen: No.

The Convener: I am open about what to do and was waiting to see what the committee had to say. Dave Thompson's point is that if we write to all committees saying that we expect them to review their mainstreaming of equal opportunities, but that request is ignored again, we can say to them within a year, "If you have not included a review in your annual report or looked at the matter, you can come back to it." If we do that, we still have the chance to ensure that committees do what we would require them to do under a rule change, which is to carry out a review at least once a session. That allows some scope. That is quite appealing, but I am relaxed about seeking further views. We would have to fix in our minds who we were asking for further views—

Christina McKelvie: I am not looking for a full-panel inquiry, but if previous standards committees have written to other committees to report on the issue and only two of the 15 have done so in eight years, you have to agree that that is pretty poor. If we go ahead and do the same thing again, we will just cover the same ground.

The Convener: If people want to agree to seek further views, we could ask the hard-pressed clerks to look at who we could get to offer a range of views in time for the next meeting.

16:00

Cathie Craigie: I am quite happy to go down that route. We should not leave the matter in the hope that other committees will take on their responsibilities, nor should we seek views that the Equal Opportunities Committee has already heard. Perhaps we should just gather some of the information that led the Equal Opportunities Committee to recommend a rule change, rather than hold a big evidence session. Perhaps we could invite the clerks to other committees to give their views.

I would like clarification on the remit and the standing of the Conveners Group. I would have thought that a convener should go along to the Conveners Group to report on their committee's views rather than to give their own views, but that is an aside.

The Convener: To be fair to the convener of the Equal Opportunities Committee, she spoke to the Conveners Group before her committee had come to a conclusion on a rule change.

Cathie Craigie: Right.

Christina McKelvie: Would it not be simpler just to write to the Equal Opportunities Committee clerks to seek some of the historical evidence on why the committee came to its conclusion?

The Convener: I do not want to create more work than is necessary; it is just that I am conscious that whenever we have asked for evidence as part of an inquiry, we have tried to obtain a balanced response. For example, Graham Blount, whom we heard from earlier, was very much on one side of the discussion.

Marlyn Glen: One reason why it is important that we change standing orders is that, if we had gone along with the idea of waiting for another year to find out whether any of the committees addressed the issue, the committees could always have said, "We have not reviewed our mainstreaming of equalities this year, but we intend to do it in our fourth year." That way, the issue is put off not year by year, but session by session.

Christina McKelvie: And our successor committee would have the same discussion in four years' time.

Marlyn Glen: When work has been done and a recommendation has been included in a committee's legacy paper, it is up to the successor committee to decide whether to push it.

Cathie Craigie: It is a year into the new session before that happens.

Marlyn Glen: Whole sessions could go by without the issue being picked up.

The Convener: In the letter that we send out, we could say to the committees that if they do not carry out such a review this year, we will be prompted to revisit the issue. That would give them the nudge that has been mentioned.

Dave Thompson: I do not know what stage the committees have reached in producing their annual reports for the first year of this session, but we could ask them to address the issue in those reports. Am I correct in thinking that we will not have to wait long for those reports to be produced?

The Convener: I do not know what the timescale is.

Peter McGrath: The reports are published in May.

The Convener: So they will be being put together just now.

Peter McGrath: The wheels will be in motion pretty soon.

Dave Thompson: Would it be reasonable for us to tell the committees that we expect them to comply with the suggested practice and to include the mainstreaming of equal opportunities in their annual reports that will be published in May? If that does not meet with a good response, we could consider the issue again immediately after the publication of the annual reports.

The Convener: That is more likely to produce an early result than a rule change, and it would not rule out a subsequent rule change. We could ask the committees to address the issue as they put together their annual reports.

Christina McKelvie: But the issue might slide off the agenda again next year.

Marlyn Glen: Exactly.

The Convener: But even if we changed standing orders, the committees would be required to carry out a review only once a session. They will do that in the next few months, if we take up Dave Thompson's suggestion.

Cathie Craigie: On reflection, perhaps a combined approach would be best. I will seek a reaction to my proposal from our representative on the Equal Opportunities Committee. We are approaching March and the annual reports will be published in May. Perhaps we could seek views before we come to a final decision, which will be based on what we see in the committees' annual reports. We could make a decision on whether to seek a rule change either just before or just after the summer recess.

The Convener: That is a good suggestion.

Christina McKelvie: That provides a fair balance.

Marlyn Glen: Will we write to all the committees to seek their views? How will we tell them what we expect them to do?

The Convener: We could write to them, as it would help to give us a balanced view and would give them an early chance to prove their worth. As Cathie Craigie pointed out, the letter that will go out to committees will make it clear that, when we revisit the matter, we will take into account what they have or have not done this time. I am happy enough to go along with that, if the clerks can pick the bones out of it and everyone is happy.

Cathie Craigie: But we will come back to the matter.

The Convener: We will come back to it, regardless.

Cathie Craigie: We are not saying at this stage that no rule change is required. We will revisit this request from the Equal Opportunities Committee—I think that we must take it seriously.

The Convener: Are the clerks clear about what we propose?

Peter McGrath: Can I just clarify that, in the letter to the committees, this committee will be both encouraging and seeking views?

Marlyn Glen: Exactly.

The Convener: Yes. We are encouraging committees to take action for this year's annual report, and we seek their views on whether there should be a voluntary approach or a rule change in the future. They can put two and two together and work out what they should do. We have other items on the agenda, so if members are happy with that, we will move on.

Decision on Taking Business in Private

16:05

The Convener: Item 4 is to ask for the committee's approval to take in private agenda item 5, which is to consider a report from the Scottish Parliamentary Standards Commissioner. Is that agreed?

Members *indicated agreement*.

16:05

Meeting continued in private until 16:26.

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