

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 4 March 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

4th 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:

Brian Adam (Aberdeen North) (SNP)

Jackie Baillie (Dumbarton) (Lab)

Robert Brown (Glasgow) (LD)

Robin Harper (Lothians) (Green)

Margo MacDonald (Lothians) (Ind)

David McGill (Scottish Parliament Directorate of Clerking and Reporting)

David McLetchie (Edinburgh Pentlands) (Con)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERKS

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 5

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 4 March 2008

[THE CONVENER *opened the meeting at 13:01*]

Points of Order Inquiry

The Convener (Keith Brown): Good afternoon, everyone, and welcome to the fourth meeting this year of the Standards, Procedures and Public Appointments Committee. I ask all members, witnesses and the massed ranks of the public to switch off their mobile phones and BlackBerrys. Dave Thompson sends his apologies—he is with the Transport, Infrastructure and Climate Change Committee; Alasdair Morgan is attending as his substitute. Cathie Craigie hopes to join us, but she is at a meeting of the Justice Committee.

The first agenda item is evidence from business managers, the Green party and Margo MacDonald as part of our inquiry into points of order. We are joined by David McGill, who is the head of the Parliament's chamber office.

At its meeting on 2 October 2007, the committee agreed that an inquiry into points of order that are made in the Parliament should be included in its work programme. In early January, the committee considered a paper in which the points of order that were made in a three-month period at the start of the second parliamentary session were compared with those that were made in the equivalent period at the start of the third parliamentary session. Members have been provided with a summary of that paper, which also considers the different methods that are used in other legislatures to deal with points of order.

I welcome Brian Adam, Jackie Baillie, David McLetchie—who I hope will join us—

Jamie McGrigor (Highlands and Islands) (Con): He is on his way.

The Convener:—Robert Brown, Robin Harper, Margo MacDonald and David McGill. I encourage members and witnesses to be as brief as they can be in their questions and answers, as the time available is tight and some members have to go off to other meetings. Rather than ask people to make opening statements, we will go straight to questions. If any of the witnesses wants to embellish a particular point, they should feel free to do so.

Christina McKelvie (Central Scotland) (SNP): Good afternoon, everyone. What are your views

on the current timescale of three minutes for speaking to a point of order?

Jackie Baillie (Dumbarton) (Lab): It is interesting that, in practice, members have used an average of about one and a half minutes in this session and one minute in the previous session to speak to points of order. We know to our cost that if a member goes on too long, the rest of the Parliament reacts accordingly, so members have learned to be quite concise. That said, I think that three minutes is an appropriate length of time and disagree with the suggestion that, as in some other Parliaments, no time limit should be placed on points of order. That would be unhelpful. Three minutes is sufficient, particularly if something of substance needs to be said but, in practice, most members are brief in speaking to points of order.

Brian Adam (Aberdeen North) (SNP): The only additional point I would make is that occasionally, when things get heated, a series of points of order is made. On each occasion, the member who makes the point of order has an entitlement to three minutes. One point of order of three minutes might be quite acceptable, but four or five three-minute points of order would not be. Given that, in practice, members take only a minute and a half, I have no objection in principle to the reduction of the time limit to two minutes or to giving the Presiding Officer appropriate discretion to draw someone's remarks to a close, particularly if they were made as part of a series of what may or may not be points of order, but which began as such.

Robert Brown (Glasgow) (LD): I do not agree with Brian Adam. The self-regulatory regime of the chamber—the opinion of members—is important. As someone who has made points of order in various circumstances, I know well that if a member has a good point of order, the chamber listens to them. A slightly more tendentious point of order—not that I raise that kind—can be more troublesome. Members would not, by choice, stand up in the chamber and go against opinion on an issue unless they had a good point.

I appreciate that successive points of order can be an issue, and that members can get a bit heated. However, it would be unfair if the first member to make a point of order got the three minutes, and an even more valid point of order—one that got to the heart of the matter—got less time.

Brian Adam: I can think of a good example of that.

Robert Brown: So can I. We get into abnormalities and oddities in that regard. Like Jackie Baillie, I take the view that the three minutes works okay as an outside limit, and reinforces the opinion of the chamber.

Margo MacDonald (Lothians) (Ind): Judgment is required all round, much more so than in other interventions. The Presiding Officer is in a position to judge whether a member is being repetitive. It is round about the third point of order—that is actually an offence against the standing orders. Presumably, the Presiding Officer can gently say, “You’re being repetitive.” There is always a fail-safe in the standing orders, and the one on this issue is pretty good. We should keep the three minutes in case there is a serious point of order concerning a criminal case or a serious civil case in law. We must have the facility for that.

On the question of judgment, if a member is daft they use three minutes when they do not need to—if they do that, they deserve everything that they get.

The Convener: For David McLetchie’s benefit, the question—he has probably worked this out already—is whether the current three-minute timescale is adequate or proper.

Robin Harper (Lothians) (Green): Three minutes is perfectly adequate. We do not need longer. It would be a little perverse to make the period shorter for all points of order, because sometimes they deal with something more complicated. As Margo MacDonald said, legal matters need fairly careful explanation in a point of order. We got it right the first time.

Alasdair Morgan (South of Scotland) (SNP): The three minutes is for a point of order, but that raises the further point of who decides that it is a point of order. Is it simply a matter of the member standing up and saying, “On a point of order”? Or is the Presiding Officer in a position to judge—after he or she has heard enough—and to say that something is not a point of order and that the member should therefore stop?

Margo MacDonald: That is what happens, which is why I mentioned judgment. It is why we have a Presiding Officer. After listening for a while to what is being said, the Presiding Officer can make a judgment; the current one is pretty good at saying gently to members, “I don’t think that that is a point of order.” There is no clinical way of coming up with the same answer in every circumstance.

David McLetchie (Edinburgh Pentlands) (Con): That is a fair point. Ultimately, we have to get to the point fairly quickly with a point of order, because it is meant to relate to the proceedings in the Parliament. It is therefore entirely right that the Presiding Officer should police that. If the member who raises the point of order fails to get to the point of it, the Presiding Officer is entitled to intervene and to tell the member to sit down.

Others have commented on the self-policing of the system. We need not necessarily change any

of the rules. It is a matter of members conducting themselves well and, in a sense, the Presiding Officer and Deputy Presiding Officers keeping a good firm grip on the chamber. I have not noticed a lack of that.

One of my members said to me that, in the House of Commons, members used to have to wear a top hat to raise a point of order. Perhaps we could make a requirement for a Tam o’ Shanter.

Alasdair Morgan: That was just during divisions.

David McLetchie: Was it, Alasdair? Did you ever wear it?

The Convener: We could make it a baseball cap in deference to Christopher Harvie.

I warn the witnesses that four committee members were on a questioning course yesterday, so they are all ready for today. A sign that I was not there is that I have been left with probably the most obscure question. What are your views on time being given back to a member whose opportunity to contribute to a debate was curtailed as a result of a spurious point of order being raised? Would it be appropriate for time to be given back if a valid point of order was raised?

Perhaps the question is not as obscure as it first looks.

Robin Harper: That raises the question of what sanctions should be applied to members who raise vexatious points of order, which does not happen often. I do not know whether that issue is coming up, but your question raises it. If a vexatious point of order is made, the member whose time was curtailed should have it given back to them; that would be correct.

Jackie Baillie: My understanding is that the Presiding Officers try to compensate and ensure that business is protected, but not on a rigid formula that means that, if three minutes are taken, they try to add them on. The Presiding Officers are sufficiently astute and flexible to manage the business and ensure that members do not complain that a substantial amount of time is taken up with points of order. Points of order tend to be made towards the end of the day, although not exclusively; if anything, members are frustrated at having to keep sitting in their seats while decisions are delayed or after they have been made.

I have not noticed a significant problem in debates, because the Presiding Officers have used their flexibility to manage the situation appropriately.

Margo MacDonald: There is a way round the problem: if points of order, whether vexatious or

not, have taken a particularly long time from a debate, a motion without notice could be moved to extend the time for that debate by quarter of an hour or half an hour. There is always another way of coming at a question, so we do not need to change the rules.

I would like the committee to discuss a matter that members raise in good faith but which is not actually a point of order because of the way in which they raise it; I refer to the claim that the Parliament has been misled. In such instances, members ask the Presiding Officer to request that so-and-so retract or correct what they said. That is not a point of order, but the route through which to raise it would be to argue that there has been a discourtesy to the Parliament. I would like that to be discussed, if that would be all right with the committee, because it concerns members and can make them feel bad.

The Convener: We will come back to that issue.

You made a point about the possibility of a motion without notice being moved to add 15 minutes or half an hour to a debate. However, the question was more to do with individual members being disadvantaged if, for example, a point of order was raised that took a minute or so out of the four minutes that they had been given in which to speak. A debate takes place over a much longer period, so it would not be so noticeable in that context. However, an individual member could be quite disgruntled if their time was taken up by a point of order.

Brian Adam: Although it obviously affects the member who has been interrupted, it will affect the debate somewhere. The Presiding Officers tend to have a little margin within which they work. However, if there are two or three points of order in a contentious debate, the route that Margo MacDonald suggested might be appropriate. Then again, why should we move decision time from 5 o'clock when members may be waiting for the members' business debate at 5 or 10 minutes past 5? Moving that debate by 15 minutes or half an hour might also be disruptive.

We have to take the rough with the smooth. It is a matter for the judgment of whoever is in the chair at the time, and being prescriptive is probably not helpful. The matter is at the discretion of the Presiding Officers.

Unless an MSP was very unfortunate, the fact that points of order kept being made during their speeches might suggest that they are regularly contentious and that their choice of language might be inappropriate. As a result, they might expect points of order to be raised. The occasional member might be provocative and might almost stimulate points of order, so giving a member more time would not always be appropriate. That should be left to the Presiding Officers' discretion.

13:15

Margo MacDonald: Under standing orders, the Presiding Officer has discretion to determine the length of speeches so, if he considers that an interruption was vexatious or unfortunate for whatever reason, he is perfectly at liberty to give a member an extra two minutes.

David McGill (Scottish Parliament Directorate of Clerking and Reporting): The practice of Presiding Officers has been to ensure that when a point of order is raised during someone's speech, that member does not suffer. The member who raises a point of order has an absolute right to do so under standing orders, but Presiding Officers have not taken that time from the member who was originally speaking. That contrasts with the approach to interventions, which are taken at the discretion of the member who is speaking. A member chooses whether to allow an intervention, so time is not added in those circumstances.

Hugh O'Donnell (Central Scotland) (LD): The Presiding Officer wants to minimise disruption to First Minister's question time, so he has said that any points of order should be delayed until the end of that item of business. Would you like that approach to be extended to other circumstances, such as other oral questions?

Margo MacDonald: I would not like the approach to be extended at all. That is the Setanta rule—it tailors the Parliament's proceedings to suit the press and television news. Why does a member raise a point of order? Because they feel that the Parliament's rules have been broken. I return to my example of the Parliament being misled, whether deliberately or not, which a member thinks is important enough to be corrected. The reason for correction there and then is to prevent other members from adding to the mistake and to ensure that that happens before the boys have left the press gallery—they now leave after the second or third question.

Robert Brown: The practice at First Minister's question time should be the exception. Even then, I understand that the Presiding Officer still has discretion. I cannot immediately think of circumstances in which he might want to take a point of order there and then, but I guess that they might arise. I would not like that practice to be laid down in immovable statute; the matter is at the Presiding Officer's discretion. The rule that points of order are normally taken at the end of First Minister's question time is probably reasonable, in the circumstances, but I would not like the practice to be extended and I see no cause to do that.

Brian Adam: I see no need to extend the practice, but not taking points of order immediately has some advantages. Sometimes, points of order are raised not to highlight a technical mistake in

business, but to make a political point. The additional few minutes allow some cooling off to take place. The point of order will be fairly obvious to the Presiding Officer and the member involved will have a moment or two to reflect on it.

The practice at First Minister's question time is not a Setanta moment, as Margo MacDonald described it, but a courtesy. If there are regular disruptions to First Minister's question time, it will come to be seen as a political opportunity to catch the headlines by raising a point of order, which is completely different from questions to the First Minister. It is not just a Setanta moment.

Margo MacDonald: The First Minister is no different from anyone else. He is only an elected member of the Parliament.

David McLetchie: I do not agree with that in the context of First Minister's question time, which is an established procedure of the Parliament to allow questions to be put to the head of the Government or Administration. There is a case for giving the First Minister a degree of special treatment in those circumstances. The present practice of deferring points of order until the end of First Minister's question time is appropriate, as it is highly unlikely that a valid point of order would be raised during that period. Most points of order would relate to one of two issues. If a point of order relates to a misleading answer, the questioner who is allegedly being misled often has the opportunity to respond to what the First Minister has said, if they are clever and sharp enough on their feet.

Margo MacDonald and other independent members have raised points of order in relation to balance and time allocation, but they cannot do so until they have seen the entirety of First Minister's question time.

Jackie Baillie: It has been custom and practice for points of order to be taken at the end of First Minister's question time. There is no reason for that to change, because the Presiding Officer can exercise his or her discretion. Indeed, the Presiding Officer has done so by taking a point of order during FMQs. We should continue to allow the Presiding Officers a degree of flexibility. If there is an incident in the chamber during First Minister's question time, a number of members from all parties will be on their feet raising points of order. The Presiding Officer would be well advised to take such points of order.

Margo MacDonald: It is down to the Presiding Officer's judgment. To be honest, I think that the First Minister was out of order last week on the issue of relevance. I am sure that my saying so will make me enemies—as if I needed any more—but I could refer members to the standing order rule concerned. His comments were very amusing

and everyone enjoyed them thoroughly, but they were not relevant. If I had said that at the time, I would have been cast out into utter darkness. However, if I had waited until the end of First Minister's question time before raising a point of order, it would have sounded a bit petty.

The Convener: Hugh O'Donnell's next question relates to a similar point.

Hugh O'Donnell: Jackie Baillie referred to members getting to their feet to raise points of order. If someone does so, should they be required to specify either the relevant rule in standing orders or to indicate in some way the basis for their point of order?

Jackie Baillie: It would be extraordinarily difficult for members to absorb the entirety of our standing orders and to be able to quote the number, paragraph number and wording of the rule to which their point of order refers; that would be a requirement too far. Members understand the difference between a legitimate point of order and genuine frustration at what they see happening in the Parliament. We will not get round the problem by ensuring that members quote the number of the rule to which their point of order refers. Some rules are quite generic and could be played in aid of several different points of order. That would not necessarily be a helpful approach. Some members quote from the standing order rules to which their points of order relate. The rest look on with a degree of bemusement, because they do not know what is being spoken about.

Margo MacDonald: When members have advised the Presiding Officer in advance that they intend to raise a point of order, it is only courtesy that they should indicate to which rule it refers. It is fair that in that case members should be well prepared, as it enables the Presiding Officer to inform the Parliament of what is happening and why it is happening.

Hugh O'Donnell: Perhaps the obligation to refer to the relevant rule would enable members to make points of order from a more knowledgeable basis than a gut feeling, which is what you seem to be suggesting.

Jackie Baillie: Members might be in a position to do that for points of order that are thought through and taken at the end of the day. However, it would be unreasonable to expect members to do that for points of order that arise from incidents that happen in the course of a debate. It is for the Presiding Officers to exercise their knowledge of standing orders and their judgment on what has happened in the chamber. I would be content to leave it at that.

Jamie McGrigor: Should there perhaps be another form of protest, other than points of order, for an issue that a member knows is not a point of order but which it is important to raise at that time?

Jackie Baillie: The unequivocal answer would be no. The chamber has seen other forms of protest; far be it from me to recall them for the member, but the Presiding Officer at the time, George Reid, dealt with them admirably and swiftly. I would not want there to be a second-class point of order. Members should be disciplined enough to understand what is a point of order and the Presiding Officers should allow appropriate flexibility—sometimes even spurious points of order are helpful in clearing the atmosphere and allowing members to calm down. We have got the balance right and I reject any notion of creating another category of protest.

The Convener: We will come to that issue in more detail.

Jamie McGrigor: I wondered whether anyone else wanted to comment.

The Convener: We will come to the issue in more detail in the next couple of questions. I am aware that not everyone has had a chance to respond to Hugh O'Donnell's original question, which was about whether it would be useful for members to have to specify the point of order that is being made.

Brian Adam: Hugh O'Donnell's question was in two parts. He asked whether a member should have to cite, for example, rule 3.2.4 of standing orders. I agree with Jackie Baillie that that would be inappropriate.

Hugh O'Donnell also asked whether the member should indicate the general area that they were concerned about. That would not be unreasonable. If members had to do that, it might help to focus minds on what is a genuine point of order and what is a political protest that is made when a member does not like the speech that is being made or the answer that they have been given. Obviously, there are ways of dealing with that through the rule on discourtesy. An accusation that a member has been telling lies is the sort of comment on which the Presiding Officers—if they hear it—will probably intervene automatically.

If a member casts aspersions on another member's character or perhaps even their integrity, that is a bit more problematic. A judgment call may be required on whether that is a discourtesy and therefore relevant to a point of order, or just part of the rough and tumble of politics. Presiding Officers have to make such judgments. When a member has concerns about such matters, they should say, "On a point of order, Presiding Officer. I think that the member's last remark showed gross discourtesy to others." It would be helpful if members had to give an idea of their area of concern rather than just say, "I'm upset that he said I was talking mince."

Robin Harper: I support what Brian Adam and Jackie Baillie have said. Points of order are an important part of the way in which we work in the chamber and they deserve respect, as do the Presiding Officers. Before the member launches into their point of order, it is respectful for them to give an indication, with a fair degree of precision, of exactly what the point of order is about.

13:30

Margo MacDonald: We have already had a ruling on the question of allegations being made and whether or not a member calls another member a liar. The ruling was that no one tells lies in here—although they perhaps chance their arm or exercise terminological inexactitudes. I am not exactly sure of the term, Deputy Presiding Officer, but a ruling was given.

Alasdair Morgan: It's the way you tell them. [*Laughter.*]

Margo MacDonald: Within standing orders if I can.

What happens if a member's character is attacked? Standing orders say that members are not permitted to say anything that would, outside the chamber, be a criminal offence. Perhaps the members who are lawyers can help me. What is the situation with civil offences? Standing orders are not clear on what happens when a member defames a member in the chamber, although I may have misread them. That definitely can happen, and I would say that the person who is referred to and who may have been defamed must have the right to correct that—the record has to be corrected there and then.

The Convener: I understand that there is absolute privilege in terms of defamation, but we have with us two lawyers and a clerk from the chamber desk, who will perhaps say otherwise.

Robert Brown: There may be absolute privilege in terms of civil liability outside, but we are talking about the "Code of Conduct for Members of the Scottish Parliament" and whether there is a sanction under the code for members who go over the score. I would have thought that such things would be classified as discourtesy or as being a lack of proper order in the chamber and would therefore fall within the remit of the Presiding Officer.

We run into problems when people have a distinct feeling that ministers or other members have gone over the score and beyond what is reasonable into the realm of terminological inexactitude.

Margo MacDonald: There was an example last week, when the Liberal Democrat spokesperson, I think, was sailing close to the wind. It is worthwhile considering the issue.

The Convener: We have some more questions on the same subject from Marlyn Glen.

Marlyn Glen (North East Scotland) (Lab): We have spoken a bit about spurious points of order. Are there circumstances in which it should be considered appropriate to allow a spurious point of order to be made? If so, can you give an example? People have referred to points of order that are tendentious or not legitimate. Are there circumstances in which they should be allowed?

Margo MacDonald: That is just what we have been talking about. A point of order is one way of defusing the situation and getting out of a problem fairly easily. If A calls B something or describes something that B has done, but which is untrue or otherwise says something that outside Parliament would be defamation, the Presiding Officer certainly has the discretion to allow B to get to his or her feet and put it right for the record. Alasdair might disagree, but I would have thought that that was the case.

Alasdair Morgan: Er—

David McLetchie: I do not think that Alasdair wants to commit himself. [*Laughter.*]

Alasdair Morgan: That is the advantage of not being in the chair.

Jackie Baillie: The committee papers quote a helpful House of Commons report called “Revitalising the Chamber: the role of the back bench Member”, which I will go away and study. It makes the point that spurious points of order can be a safety valve as they allow back benchers an opportunity to express strong feelings on a current issue. If we look carefully at how they have been used here, we see that, even when they have not been proper points of order, the Presiding Officers have welcomed the opportunity to have a period that calms the debate and takes the heat out of it when members may be bordering on trading personal insults, which do not help the quality of debate. I would not want to come down too heavily on them because they serve a purpose, but I am content to leave it to the judgment of the Presiding Officers to police that effectively.

Robert Brown: I agree entirely. Spurious points of order have a useful role. If they are made intelligently and imaginatively, they can contribute to the debate. If they are not, it is a question of the chamber self-policing, with members not liking them and the body of opinion coming down against them. The Presiding Officer is there to hold the coats as far as that is concerned. Such points of order fulfil a function, and I would not like to see them further regulated.

Marlyn Glen: Other than points of order, should there be a mechanism, not necessarily for protest, through which members can seek corrections or

clarifications of points that are made during a debate?

Margo MacDonald: We have a flexible system. We have discussed the issue here and presumably our discussion will leach out to other members who might not have been aware of the importance of the record. We have a way of doing things without too much fuss and allowing the Presiding Officer to calm things down. We should stick with that.

David McLetchie: I agree. We do not need to create another category, as Margo MacDonald and Jackie Baillie said in response to an earlier question. We just have to acknowledge that although rules and procedures have a formal purpose, they also have informal purposes that evolve. If we were to create a new category of rule to compartmentalise everything so that we would have valid points of order and something else for other causes for complaint or comment in the chamber, we would constantly have to formalise rules about behaviour and conduct: to be frank, members will just find even more ways round them. It all comes back to the themes that run through most of the answers to the questions that have been posed today: it is a matter of self-policing and firm chairmanship.

Margo MacDonald: I do not know about “firm chairmanship”.

David McLetchie: It should be firm, but flexible and fair.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I apologise to the convener and our visitors for my being late, but the Justice Committee ran over.

I will continue on the validity of points of order. Some members raise points of order where they feel that a member has misled the chamber. Margo MacDonald was just starting to talk about this when I arrived. Back benchers from all parties have a difficulty with that. The Presiding Officer will use his good judgment but often comes back and says that he is not responsible for what is said in the chamber, or that the matter is one for the ministerial code. Should we be looking into this further? Should the Presiding Officer be able to have an input?

Margo MacDonald: Round the back of the chamber.

Jackie Baillie: I think that the *Official Report* should show that Margo MacDonald is making punching movements with her hands that might not necessarily be captured.

Margo MacDonald: The Presiding Officer must make a determination, but we have already said that he can decide what is relevant, courteous and repetitive. He already has a fair amount of discretion, should he want to use it.

There are still going to be some incorrigible folk, and the Presiding Officer must talk to them in private outside the chamber and explain to them the error of their ways, be they ever so high and a First Minister, or just a noble back bencher toiling in the fields.

Brian Adam: Inherent in Marlyn Glen's question is a suggestion that there should be an opportunity to correct factual errors. However, that might not be necessary because there might be an opportunity to do so during the debate. Points of order are sometimes used to correct opinions or to offer a balance. There have been circumstances in which people external to the Parliament want to have errors of fact corrected in the *Official Report*, and there might well be members who want to do that as well. I do not have a problem with people using points of order as an opportunity to vent steam or to challenge the veracity or otherwise of a statement or an answer, but we need to be careful to understand that the *Official Report* is a record only of what was said, not of what is true or false.

Margo MacDonald: That is true.

Jackie Baillie: Although I accept that, I think that we have a duty to be accurate in the chamber and not to mislead anybody either unintentionally or deliberately. Do not underestimate the extent to which people will study the words that are spoken in Parliament and take meaning from them.

It strikes me that the difficulty arises from the fact that we have the code of conduct for MSPs, which is policed, in effect, by the Presiding Officer through a relationship with the standing orders, and we also have the ministerial code. If members reflected on the past few months, they would notice that when an MSP rises to make a point of order, perhaps because one of their colleagues has got too heated in a debate and made a suggestion that he or she would not have made otherwise, that usually results in the member apologising or withdrawing the remark and Parliament then proceeds. That is helpful and healthy.

Last week, Parliament discussed the question of independent oversight of the ministerial code, resolved that such oversight is required and asked the Government to make a statement to Parliament when its review of the code is concluded, indicating how it would take that on board. Every time a member raises a point of order about comments made by a minister that are alleged to have misled Parliament, the Presiding Officer makes the point, rightly, that that is a matter for the ministerial code. We need to get more robust procedures around the ministerial code, because it is clear that that is where a lot of members' dissatisfaction lies. Parliament made its view on that known last week.

Alasdair Morgan: I return to what Brian Adam said. I do not think that it is so much a matter of the ministerial code but the search for the truth. Although that is laudable, one of the problems is the distinction between the truth and the whole truth. That is often the issue at stake. It will be very difficult for any Presiding Officer ever to regulate that.

Margo MacDonald: That is a fair point.

Brian Adam: I accept that completely. There are circumstances in which people do not like the answer, because it does not tell the whole story or it tells a story that is partial in both senses of the word—it is incomplete and gives a partisan point of view. However, that can happen whether a minister or another member is speaking. Views are expressed and Parliament resolves to do something one way or the other on that basis.

It is crucial that we get things absolutely right when we are dealing with legislation, which others might have to interpret afterwards. Errors of fact or lack of clarity leave matters to the courts to determine. There might be a distinction in relation to how we need to deal with such matters. However, a lot of what we have is just robust political debate. Thankfully, we have the opportunity to have such debate. We should not use the opportunities of points of order to gain an additional advantage in speaking time to put across our point. We have to accept that from time to time we will not get the last word. We just have to deal with that either in the chamber on another occasion or outwith the chamber.

13:45

Robert Brown: Brian Adam's point about legislation is interesting. A debate on legislation can be called in evidence before the court when there is a question about the intention of the legislation. Issues might arise in that context.

Some 99 per cent of points of order about factual accuracy and misleading statements are politically contentious and arguable. When we boil the issue down, such points are not valid subjects for points of order, although they are sometimes made in the context of a debate.

However, if an honourable member were to make a deliberately misleading comment in the chamber, for whatever reason—I presume that that has happened in other Parliaments—such behaviour ought to come within the purview of the Presiding Officer, in some shape or other. To mislead members is no less a discourtesy to the Parliament than is punching someone on the nose or other disorderly behaviour. I do not think that we have quite bottomed out how to deal with such matters and I do not know whether the Presiding Officer's discretion is sufficient in that regard.

Presiding Officers have routinely said that they will not investigate the accuracy of comments made in the chamber. However, on the odd occasion it will be manifest that a lie has been told to Parliament. We might need to give the matter a wee bit of thought.

Cathie Craigie: We are the Parliament of Scotland, as Margo MacDonald reminded us when she gave evidence to the committee last week. People expect us to debate the facts. It is reasonable for parliamentarians to expect that the information that we are given in the chamber, especially in ministerial statements, is factual.

Do Robert Brown and Brian Adam think that we need a link between the Scottish ministerial code and the code of conduct for MSPs, so that the Presiding Officer can intervene when it is clear that there has been a breach or that something that is factually incorrect has been said in the chamber?

The Convener: I ask witnesses to keep their responses on points of order, which are the subject of our inquiry.

Brian Adam: We have moved away a little from points of order. I want to develop what Robert Brown said. As part of our points of order procedure, if things have been said deliberately to mislead—if someone lied—of course the matter should be taken seriously. However, we must be careful about how and how often such accusations are made. If the boy cries wolf too often on a matter of political debate, his accusation might not be taken seriously when it is true. We must be careful not to create a situation in which accusations about deliberately misleading the Parliament are regularly made. I am slightly concerned that such accusations are made rather too often.

Jackie Baillie: The helpful table that is provided in our papers shows that between May and October 2003, 41 points of order were made, whereas between May and October 2007, only 28 points of order were made. The evidence demonstrates that what Brian Adam suggests is not the case. We should deal with facts rather than perceptions.

I think that the question was driving at this: in the context of points of order that are made when it is thought that a minister misled Parliament, there seems to be dissatisfaction with the current operation of the Scottish ministerial code. The code of conduct for MSPs applies to every MSP and links to standing orders. Such an approach to the ministerial code might be a route to restoring confidence in the code, as might the introduction of independent oversight—we will hear whether that will happen when we hear the results of the review of the code.

On a point that Brian Adam made, it is not helpful to have two categories of truth in the chamber; legislation is not necessarily more important than general debate. Accuracy, truthfulness and honesty are included in the seven principles of public life, which were set out by the Nolan committee in 1995. We should hold good to those principles.

The Convener: Jackie Baillie's comment on the number of points of order in the two sessions is correct. However, substantially more time was spent on the 2007 ones even though fewer were raised.

This discussion could go on for some time, but we have four more questions to ask, and some people have to get away, so if members do not mind, we will move on.

Jamie McGrigor: Should standing orders provide that repeatedly raising spurious points of order is disorderly behaviour and that members who do so are subject to the sanction of exclusion from the chamber under rule 7.3.3?

Margo MacDonald: Ultimately, the Presiding Officer has that choice. As we are all supposed to be politicians and fly to the ways of the world, however, it is most unlikely that a Presiding Officer would be faced with having to make that choice.

It could be argued that the track record of one member in the previous session showed that he was prepared to be persistent in protest. The Presiding Officer could have removed him but chose not to do so because that would have upset everything else too much. It is all about judgment.

We must have a set of rules that we all understand and which are dead simple, and we must have a Presiding Officer who is willing to apply them.

Jackie Baillie: I do not think that we need any further sanctions. We have seen that the Presiding Officers can manage individual members, and when there was a group protest and the members involved were subsequently ejected—following, if I recall, a meeting of the Standards and Public Appointments Committee, ably chaired by Brian Adam—the incident showed that our procedures can cope.

I would not want to introduce the sanctions that exist in other institutions. We have got things right here.

David McLetchie: I agree.

Robert Brown: I agree.

Hugh O'Donnell: We have achieved something. The lawyers are agreeing with each other.

Robin Harper: I, too, agree.

Margo MacDonald: Can I give to members a helpful hint that I have found handy? On the day when the Danish people wisely voted against a European measure, I had two wee flags—a Scottish one and a Danish one. I simply waved them when I approved of something. The previous Presiding Officer obviously thought that that was acceptable. I was not upsetting anybody.

Brian Adam: A “three strikes and you’re out” approach is certainly a possibility, but the power to exclude members is already available to the Presiding Officer. Margo MacDonald was right to say that the power is unlikely to be exercised because it would add to disruption to Parliament.

I hope that members will not continually push at the edges of the Presiding Officer’s tolerance. Those of us who were in Parliament in the previous session are aware of the example that Margo MacDonald gave. It is to the great credit of the Presiding Officers in the previous session that they managed that situation. It was only when the situation became outrageous that sanctions had to be applied in relation to members’ using mechanisms to protest within the Parliament.

It would be foolish to produce a set of sanctions that kicked in automatically after a member had raised three frivolous points of order, and which ensured that the member was barred. That would not work. There has to be self-discipline.

The Convener: I think that Jamie McGrigor’s question got the first unanimous response so far. Back to you, Jamie.

Jamie McGrigor: My next question is perhaps not worth asking, given the response to the previous question, but I will ask it anyway. Should a system be introduced to monitor spurious points of order so that any member who persistently raises them can be identified?

Margo MacDonald: No. We all know who they are; there is no hiding place.

Jackie Baillie: It is a matter for the Presiding Officer.

Margo MacDonald: Before we move on, with regard to my reference to the protest in the last parliamentary session that resulted in members being excluded from Parliament, I wish to put it on record that I did not agree with the procedures that were followed. Perhaps the committee should examine them, just in case the same situation arises. You might find that, with the benefit of hindsight and experience, it is advisable to provide some advice to the Presiding Officer on such matters.

The Convener: Your point is on the record and will be taken on board.

Alasdair Morgan: At the moment, the chair is the only arbiter of what is right or wrong. Should there be an appeal mechanism similar to that used in, for example, the United States Senate?

Robin Harper: No.

Jackie Baillie: No.

Brian Adam: No. If people are unhappy with the chair’s decision, it is always open to them to explain in writing why they felt that the decision was inappropriate at the time and to ask for some mature reflection and a written response on the matter. However, I do not think that an appeal mechanism is in any way appropriate. The buck has to stop somewhere and with someone. We have elected three people to deal with such matters, and we ought to treat them with the respect that they deserve—as long as they earn it. *[Laughter.]*

Margo MacDonald: With all due respect, I think that the question raises a serious point that requires a bit more thought. It would take a very strong-minded person to move a motion of no confidence in the chair because of a particular action or decision that referred to them.

Alasdair Morgan: If a way of doing it could be found, would it be helpful to codify the Presiding Officers’ various rulings? It happens in New Zealand, and the House of Commons has Erskine May. Would such a document be compulsory bedtime reading?

Margo MacDonald: If we were getting one, two and three-star decisions.

David McLetchie: It would be quite useful to have a little compendium of commonly applied rulings, as long as such codification did not give those rulings almost the imprint of law, because that would intrude unduly on the discretion that is required in these matters.

Hugh O’Donnell: In other words, it would become case law.

David McLetchie: Exactly. Such a document would not be a bad thing if it assisted members with good conduct in the chamber, let them know where they stood and perhaps went a little bit further than—or helped to explain or interpret—standing orders. However, I certainly would not want to call it a code, unless, of course, it started to be cited.

Margo MacDonald: George Reid was quite adamant that he did not want to have the sort of precedents that are everything in, for example, the House of Commons. However, I just do not know whether he was right.

The Convener: I suppose that such a document might help to explain or could be read as another aspect of the standing orders.

Jackie Baillie: That would simply confuse matters. As members will recall, we spent a considerable amount of time at the bureau bringing all the various bits of guidance, custom and practice together to see whether they really required to be codified, and I have to say that members sitting around this table did not necessarily agree with such an approach. I am not averse to Alasdair Morgan's suggestion that we consider practice in other Parliaments but, having already reflected on the matter at the bureau, I find myself wondering why it is being raised again by this committee.

The Convener: Perhaps because we are not the bureau.

Jackie Baillie: I am just curious whether views have changed.

David McLetchie: I thought that we discussed at the bureau a guide for members on the Parliament's procedures. As I understood it, Alasdair Morgan's question raised the idea of having a document that sets out the chair's rulings, which is different.

Jackie Baillie: That is already provided by the Scottish Parliament information centre, is it not?

Margo MacDonald: Quite a lot of work has been done on that.

Robert Brown: It would be helpful to have a way of gathering together the Presiding Officers' rulings on points of order. That information could be made available as a reference for anyone who wanted to use it. I cannot imagine that it would make compulsive reading, but it might be useful in a general sense.

On codification, the answer is no. In terms of the corpus juris civilis, if I recall correctly my Roman law days, the latter—degenerate—Roman empire introduced a rule under which it counted the people on both sides of an argument to make its decisions, so decisions were made not on the basis of the argument, but on the basis of the number of people who supported or opposed it. For me, the question on codification has a flavour of that.

David McLetchie: That is just like the Government.

The Convener: As there are no further questions, I bring the session to a close. I appreciate that the time of the Parliamentary Bureau's meeting today was changed to accommodate this session. We are grateful for that. I thank members for their evidence.

Budget Process Inquiry

14:00

The Convener: Under item 2, I will report on the budget process. Members will recall that, following the motion agreed by Parliament on 8 November last year, the committee agreed in early December that we would undertake an inquiry into the budget process. Earlier this year, we agreed that I would meet the Finance Committee convener to discuss how our two committees will work together on the inquiry and that I would report back to the committee. Last week, I met the convener and deputy convener of the Finance Committee. I will now give members a short report on that meeting, after which I will be happy to take questions.

The convener, deputy convener and I agreed that both committees had an important and complementary role to play and that we should aim to work effectively with each other and to avoid duplication. We agreed that the Finance Committee was better placed to go into the detail of budgetary arrangements, given its greater experience in the area—including in the consideration of matters that do not necessarily require new procedural rules—and that our focus is on the overall process and consideration of whether rule changes are required.

We agreed on the importance of ensuring that our work is backed up by good research. As a result, I agreed to share with the Finance Committee convener the comparative research on budgetary practices that we commissioned from SPICe. SPICe aims to provide us with its findings just after the Easter recess.

We agreed that one way of avoiding overlap and duplication would be to avoid, as much as possible, our two committees running inquiries concurrently. We agreed that the Finance Committee would do most of the early inquiry work and that this committee would pick up on the work from the inquiry conclusions. That means that our inquiries will probably be short term in nature, which is consistent with our discussion and agreement on the issues.

The Finance Committee convener explained that his committee had not yet agreed its inquiry, but that its starting point was likely to be the memorandum of agreement between the Finance Committee and the Scottish Executive. He said that he thought that his committee would examine the overall effectiveness of the agreement and whether it could be improved by setting standards in areas such as the level of detail in budget documents, timescales for consideration of those documents, and the presentation of budgetary information. We should shortly have a clearer idea

of the exact remit of the inquiry. The convener has undertaken to keep us informed of progress.

The Finance Committee will, of course, take evidence on the budget process. The convener gave me an assurance that members of this committee are welcome to attend Finance Committee meetings and to take part in any evidence-taking sessions. As this committee and the Finance Committee meet on Tuesday afternoons—although not necessarily in the same week—he undertook to try to schedule the committee's evidence-taking sessions so that members of this committee can attend. Work permitting, I hope to attend some of the sessions. I hope that other members will also take up the invitation.

I turn to timescales. At this early stage, the Finance Committee convener was unable to give a clear indication of when his committee will conclude its inquiry. However, he should be able to do so in a week or two. As soon as I have the information, I will pass it to this committee.

In recognition of this committee's unique role in recommending to the Parliament changes to the standing orders, the convener and I agreed that the Finance Committee will clearly flag up any perceived flaws in the current rules in its reports for our consideration. However, he said that he fully recognises that this committee is at liberty to take a different view when it is our turn to consider the evidence.

I turn to the role of this committee. As we agreed in principle when we last considered the matter, we will take the Finance Committee report as the starting point for our inquiry into possible changes to the budget process in future years. At that point, we will also consider whether to publish a consultative report and how best to refine the inquiry's terms of reference. In that way, we can focus on issues that the Finance Committee flags up as requiring attention.

I hope that that is helpful. I think that it is consistent with our previous discussion on the subject. I am happy to take questions from members or to consider points that anyone wishes to make.

Hugh O'Donnell: I am not sure whether I am short of a paper, convener, but I do not have a hard copy of the report that you have just read out.

The Convener: No, you are not short of a paper. I was reading my report of the meeting. I am happy to pass on a copy.

Hugh O'Donnell: It would be helpful if the report was circulated to members. The report is detailed—just as I would expect from you, convener—and we need time to digest it. Having had the report delivered only orally, it is difficult to

digest the implications of the meeting. A hard copy of the report would inform our discussions on how to go forward.

The Convener: I am happy to provide it.

Hugh O'Donnell: Thank you.

The Convener: As is evident from my report, in the short term the focus will switch to the Finance Committee while it carries out its inquiry. We will take up the baton again in a few months. In the meantime, the clerks will keep members informed of any meetings of the Finance Committee at which evidence is taken on the budget process. If members want to attend any evidence-taking sessions and they need a written briefing, the clerks are happy to provide a paper in advance of the meetings.

We will also have a chance to consider the SPICe paper that we have commissioned on comparative procedural rules and practices in the budget process. Prior to that consideration, I will ensure that the paper is issued to members.

Decision on Taking Business in Private

14:06

Meeting continued in private until 14:31.

14:06

The Convener: Item 3 is to ask the committee's approval to take in private item 4, which is consideration of the discussion that we held under item 1. Is that agreed?

Members *indicated agreement.*

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