

# **STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**

Tuesday 18 March 2008

Session 3

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## **STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**

### **5<sup>th</sup> 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)

David McLetchie (Edinburgh Pentlands) (Con)

Alex Neil (Central Scotland) (SNP)

#### **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 18 March 2008*

[THE CONVENER *opened the meeting at 13:03*]

### Code of Conduct Review

**The Convener (Keith Brown):** Welcome to the fifth meeting this year of the Standards, Procedures and Public Appointments Committee.

The first item on our agenda is evidence for our review of section 8 of the “Code of Conduct for Members of the Scottish Parliament”. Members will recall that, at our meeting on 26 February, we took evidence from the Scottish Parliamentary Standards Commissioner and the Scottish Churches Parliamentary Office, and from a number of MSPs, some of whom had also submitted written evidence.

Today, we will take evidence in two stages. First, we have a panel of party whips and business managers. I welcome Brian Adam, Jackie Baillie, David McLetchie and Robert Brown. The committee agreed that it wished to hear the range of views of members of your parties, and I would encourage you to reflect those views in your responses.

We have a copy of the written evidence that was submitted by Jackie Baillie and Robert Brown, and all members have been provided with a copy of section 8 of the code of conduct. Also provided is a copy of section 9 of the code of conduct, on complaints criteria.

We have quite a lot to get through in a fairly short time, so I ask that members keep their questions and answers as brief as possible.

**Hugh O'Donnell (Central Scotland) (LD):** In principle, do the members of the panel agree that the code of conduct should address only conduct issues, with service issues being left to the democratic process?

**David McLetchie (Edinburgh Pentlands) (Con):** Yes, I broadly agree that the code should relate to conduct and that service is a matter for ultimate determination by the electorate, who can judge the performance of a member at constituency and regional level as well as their performance in the Parliament.

One or two members of my party would say that if a member persistently refused to acknowledge a piece of correspondence or a call for assistance or information, that might be a ground for a

complaint. However, once the constituent has got past that hurdle, it is for the member to exercise judgment in dealing with the substance of the case. The problem with having a complaints system relating to service is that you end up getting into a load of judgmental issues.

A solicitor in private practice has to manage the relationship with the client and, occasionally, to tell the client things that they do not like to hear. That is the case with constituents as well, and the Parliament cannot really get involved in a complaints process that is based on the exercise of judgment.

**Hugh O'Donnell:** Would the other solicitor on the panel care to contribute?

**Robert Brown (Glasgow) (LD):** It might not surprise you to learn that I agree entirely with all that David McLetchie said. As I said in my letter to the committee, MSPs are not principal service providers; we are subsidiary service providers who deal with situations in which something involving a third party has gone wrong. I know that we are in an age of complaints, but I think that it is reasonable that conduct should be the main focus of the Parliament's code of conduct and that service should be a matter for the individual member.

Not replying to correspondence and so on almost touches on the area of conduct—it is on the edge between the conduct and service, and it might be appropriate for something to be said about it. However, I am not sure that it would be appropriate to deal with such matters under the code. At the end of the day, the electors have the final say.

**Jackie Baillie (Dumbarton) (Lab):** Far be it from me to disagree with two lawyers.

I agree that there is a benefit in separating conduct from service. Conduct should be governed by the code and scrutinised by the Parliament but, as members know, some constituency casework is hugely complex and it would be difficult to make value judgments about service standards without simply engaging in a tick-box approach.

**Brian Adam (Aberdeen North) (SNP):** Robert Brown touched on the fact that there is a grey area between conduct and service. We do not have available to us a way of making MSPs accountable for the level of service that they give or do not give. If someone came up with an effective scheme, perhaps we should consider it. However, I agree with my colleagues that the code should be about conduct, not service, especially given that each constituent has eight MSPs. If people do not like the level of service that they get in Tesco, they go to Asda, Morrison's or the local corner shop. We are in a similarly competitive

business, and if we fail to deliver what the constituent regards as satisfactory service, they have the option of going somewhere else to have their complaint dealt with.

Some constituents may well feel that the standard of service was so poor that they wish to complain about it. In that case, there is nothing to prevent them from complaining to the individual MSP, the MSP's party or the Presiding Officer. Whether there is a role for any brokerage between the MSP and the constituent beyond that, ah hae ma doots.

We should not absolutely rule out dealing with service complaints in case somebody comes up with an effective scheme at some point, but I cannot envisage such a scheme. Generally, assessment of the level of service provided by an MSP ought to be a matter of judgment by the electorate at the conclusion of the appropriate period. In addition, people have alternative means of resolving those issues.

I concur with my colleagues' views on this issue. However, if someone came up with a scheme, we would be duty bound to consider it. I have not seen such a scheme, though, and I cannot conceive of one.

**Hugh O'Donnell:** Thank you for that. You gave an interesting supermarket analogy, and I look forward to seeing the BOGOF offers—buy one get one free.

Given our electoral system, are list MSPs less accountable than constituency MSPs in the democratic process?

**Brian Adam:** I do not think that there is or should be any distinction between list and constituency MSPs with regard to accountability to constituents. Some people have suggested that a constituency MSP has a different role and that they might be the first port of call for a constituent. Indeed, our current arrangements suggest that approaching the constituency MSP as a first step might be most appropriate. However, it is a matter for the constituent which MSP to approach. They may not like the party that the constituency MSP represents or they may not like that MSP; or a regional MSP may have a well-known expertise in a particular field in which the constituent has an interest.

I do not think that an MSP has a greater or lesser duty according to whether they are a regional MSP or a constituency MSP, or that there is any distinction between list and constituency MSPs. It is primarily up to the constituent which MSP they go to see. We may need to discuss methods for handling relationships between list and constituency MSPs, but that is a different issue.

**Cathie Craigie (Cumbernauld and Kilsyth)**

**(Lab):** You just made the point that the complaint process could take place through the ballot box. Would that approach differ for a list MSP? It can be argued that through the ballot box a voter has less influence on a vote that is based on the larger geographic areas in the current regional system.

**Brian Adam:** People have a variety of reasons for casting their votes in a particular way. You say that it can be argued that a regional list vote might have a lesser impact, but it can also be argued that such a vote might have a greater impact. I go back to the supermarket analogy. If people continue to get poor service from one supermarket, they will not necessarily identify that poor service with the supermarket—the MSP—and might associate it with the brand instead. That association could have a bigger impact on a party, given the nature of our electoral system. It is difficult to assess the eventual impact on a list MSP of the ballot-box process that we have been discussing, but it could be the opposite of what Cathie Craigie suggested, in that the impact might be more severe on a list MSP than on a constituency MSP.

**Jackie Baillie:** The fundamental principle is that, irrespective of differences in the nature of the job and in how MSPs behave, there should be no distinction in accountability between regional and constituency MSPs. I follow what Cathie Craigie is saying, because positioning on a list may be more in the gift of a party leader and the party machine than it is in the gift of the electorate. Somebody suggested in written evidence to the committee, which I read last night, that the complaints system could contain a recommendation that a dissatisfied constituent write to a party leader indicating that they felt that they had received poor service from a particular MSP. That might be an effective way of proceeding.

**Robert Brown:** We are probably introducing an element of unreality, because it is unrealistic to think that an individual constituent's complaint will knock out either a constituency or a list member in the normal way. There was a fair rate of carnage at the recent election, but I do not think that that was based on a distinction between good and bad MSPs or between list and constituency members as much as it was based on swings and party issues.

The important point is that members are elected as representatives, which gives them a role. They are not delegates of their constituents, and the fact that they are elected defines that relationship. The issue for the Parliament is whether it should put in place arrangements to deal with issues beyond MSP conduct, and my personal view is that it should not. Such issues should be sorted out in a

different way for some of the reasons that we have suggested.

13:15

**David McLetchie:** I add only that list members have a high degree of accountability to their party colleagues, and any failings in their performance are quickly reported back and reflected in their assessments. In a sense, list members are quite strongly motivated to be seen to be active and assiduous, rather than as the subject of persistent complaints of poor performance.

**The Convener:** The panel members might be aware that we have heard evidence to suggest that the key principles that are detailed in paragraph 8.2.1 should be left out of the code. Should those principles be retained? If so, should there be sanctions for an MSP who fails to uphold them?

**Jackie Baillie:** I do not know paragraph 8.2.1 verbatim, but I suspect that the issue has arisen from evidence provided by the Scottish Parliamentary Standards Commissioner. His evidence points to an anomaly that seems to suggest that what is a duty has been retained as a key principle.

The principles contained in the five subparagraphs of paragraph 8.2.1 hold good. For example, no MSP has raised any major difficulty with me about the “duty to be accessible”, or about having

“equal formal and legal status.”

The principle that

“the wishes of constituents ... are of paramount importance”

also holds good in the majority of cases. However, in reality, MSPs handle some very complex cases on a daily basis, and their judgment must be factored in as being of equal importance.

**The Convener:** Just for clarity, the question is whether an MSP’s failure to uphold the principles in paragraph 8.2.1 should result in sanctions. Some of the key principles in that paragraph just repeat what is said elsewhere in the code. We are looking at whether the paragraph can be tidied up in some way.

**Brian Adam:** I have no problem with the principles. However, there is some debate about whether they are aspirational or whether they are rules, any breach of which could result in a sanction. I am quite happy that the principles should be aspirational; those that go beyond the aspirational are already noted elsewhere in the code of conduct. I do not think that a breach of the principles in paragraph 8.2.1 should mean that the member is for the high jump.

**Robert Brown:** I am satisfied with the key principles and I accept Jackie Baillie’s point about the balance between the wishes of constituents and the judgment of the MSP. I made that point in my letter to the committee. We might want to tweak things very slightly because the presentational element of the code is quite important—as it would be for any professional code.

I am not entirely clear about the extent to which a breach of the key principles is an issue. I suspect that members who call themselves “local members” when they are regional members have been the subject of complaint to the Presiding Officer, so that might merit a sanction. That approach might need to continue, if that is how the system works, but the matter is probably covered in more detail elsewhere in the code of conduct.

I do not have a strong view, but it is probably quite useful that the code itself states the key principles. People read such documents in sections and would prefer not to have to refer to principles that were contained in a separate document.

**Brian Adam:** If the principles appear in a section of the code of conduct, a complainant or the standards commissioner can cite that as an area in which there has been a breach. The convener seems to be asking us whether the key principles should be in the code of conduct. If they are in the code, a complainant or the standards commissioner can use them to consider whether a particular principle has been breached and whether there should be sanctions.

The key elements appear elsewhere in the code and have led to some difficulties in the past. The standards commissioner, who has had to deal with the matter in practice, has said as much, and I had some experience of it as convener of the previous Standards and Public Appointments Committee.

I do not think that anyone has any issue with the key principles, but I wonder whether there is a difference between regarding them as aspirational and using them specifically to accuse an individual of a breach of the code. Given that the main elements are covered elsewhere, I do not think that the principles should be part of the code. With the greatest respect, I am not sure whether the two colleagues who have just spoken have addressed that issue.

**The Convener:** As you say, the principles are mentioned in the preamble to the code. However, how useful are principles such as

“the wishes of constituents and/or the interests of a constituency or locality are of paramount importance”

and, indeed, having

“a duty to be accessible”

in considering sanctions or giving grounds for complaint? They are fairly nebulous concepts that are, after all, set out elsewhere. I suppose that the question with which we are wrestling is whether they should stay in that section or whether they should be sharpened up if they are to act as grounds for complaint.

**Robert Brown:** I am not so sure that that is such an issue, given that these matters are set out in detail throughout section 8. I do not have any strong view on the issue, apart from the question that you highlighted about where the principles should go. I certainly take the point that we cannot readily found complaints on such general and aspirational principles.

**Brian Adam:** I am trying to recall specific cases, but I know that the standards commissioner has wrestled with complaints that have been lodged on the grounds that we are discussing. Currently, he does not have much option. However, if the principles were regarded as aspirational rather than as part of the code, he would be able to deal with the rather more specific grounds that are set out elsewhere in the code.

**David McLetchie:** I might have misread it, but my understanding of section 8.12 is that responsibility for enforcement lies with the committee, not with the commissioner. Is that correct?

**The Convener:** Complaints made under section 8.12 are dealt with by the Presiding Officer; they are not dealt with by the standards commissioner.

**David McLetchie:** Indeed.

**The Convener:** Any complaints made to the commissioner are dealt with first by him before they come to us. However, complaints about levels of service and so on rest with the Presiding Officer, and part of the reason why we are trying to feel our way through this issue is that he is a bit keen to find out how he should deal with them.

**David McLetchie:** I certainly do not think that such relationship issues should be handled by the commissioner. Ultimately, we members have to sort out our relationships with one another.

As a list member for Parliament's first four years and then as a constituency member, I feel that relationships between constituency and list members are far better now than they were in the Parliament's early years. As the Parliament has matured and people have become more battle-scarred with experience, a *modus operandi* has evolved: people now respect one another's position and relationships have improved. The need for a rule that refers to the key principles in a legalistic way—in the same way that one might refer, say, to article 14.5 or whatever of the European convention of human rights—has died

down a bit. I suspect that we should dispense with people using the key principles as a declaration of rights on which to found complaints and ensure that complaints are based on the specifics detailed in subsequent paragraphs.

Given that the issue is about the relationships between members, using the informal mechanisms through the Presiding Officer and the party managers is the way to try to resolve things. Ultimately, a jury of our peers—you good people on the committee—could knock heads together if things got to that level. I do not think that we can have an external person dictating how we behave towards one another. It would be a real failure if we could not manage relationships ourselves.

**Brian Adam:** The standards commissioner found the issue difficult to deal with and I believe that the Presiding Officer is also finding it difficult to deal with. Currently, the final step is to refer matters back to the committee. That would continue to be the case if the principles remained in the code of conduct, as opposed to taking the form of guidance or something more aspirational. The committee will also find the issue difficult to deal with, given that, as the convener said, some of the current wording is a bit nebulous and imprecise, and it will be difficult to form a judgment on the basis of it. Parts of section 8 are about relationships between MSPs, and I do not know whether it is all that helpful to refer such matters to a committee that could impose sanctions. I would rather leave the principles outwith the code of conduct, which would mean that failure to uphold them was not a matter for the committee. I understand that there are arguments on both sides. Given that both the standards commissioner and the Presiding Officer have found the issue difficult, I am not sure that leaving it to the committee to resolve disputes by applying sanctions would be the best course of action, especially if we are talking about principles that are aspirational rather than precise.

**Jackie Baillie:** This is fundamentally about the difference between placing a duty on MSPs and asking them to abide by a key principle. I do not know whether we could fashion something appropriate. David McLetchie made a good point. Having the Presiding Officer as the first port of call, along with party business managers, to resolve some of these relationship issues is perhaps the best approach.

**The Convener:** Part of the problem is that some things are so ill-defined that constituents, MSPs and those who are meant to safeguard the rules—such as they are—are not clear about them. As a rule, we should define things as well as we can.

**Marlyn Glen (North East Scotland) (Lab):** Do you think that the code of conduct should establish



service levels for MSPs, for instance in relation to accessibility or the duty to represent constituents?

**Robert Brown:** My strong view is that it should not do so. These things can end up being bureaucratic and formulaic. Ultimately, there may or may not be a relationship between high service standards and whether an MSP gets back in. Nevertheless, MSPs are there to do a reasonable job. There is a competitive element in that, vis-à-vis our colleagues of various standings. Establishing service levels and procedures to deal with them would not be workable, helpful to the Parliament or worth the expense. There could perhaps be training to assist MSPs by defining good standards and providing guidance, but the code is not the place for that.

**Marlyn Glen:** How should the Presiding Officer determine complaints that allege that an MSP has provided poor service?

**Robert Brown:** On the whole, I do not think that that should be a matter for the Presiding Officer or the Parliament. As we said before, in such circumstances a complaint should be made to the MSP in question or perhaps the party leader. However, we are not principally service providers and, as long as we are not dealing with serious issues of conduct, I do not think that we should have in place a regime that provides some sort of outside sanction.

**Marlyn Glen:** Thank you. That was very clear.

**Jackie Baillie:** The difficulty in a situation such as this is that the complexity and quality of casework are not recognised. Indeed, people may be interested only in the outcome. We would end up with a sort of tick-box mentality that would do nothing to measure what is actually in place. I accept that the degree of uncertainty about what is written down causes the Presiding Officer difficulties; nevertheless, I think that the more informal route that has been suggested is the one that will address most of the problems.

13:30

**David McLetchie:** If we had service standards, a problem would arise when constituents wrote to all the members in an area and not just the constituency member. In my area, when somebody has a valid complaint that they want investigated, a member will say to the other members, "I'm pursuing this case on behalf of Mr X, and I'm taking it up with the health board"—or the council or whatever the case may be. That is perfectly reasonable, and there is no obligation on anyone else to do the same thing. However, there is sometimes a constituent who does not like the answer that comes back and who thinks that the other seven MSPs are indifferent to the matter and have done nothing about it. That is not a valid

ground for complaint. If all that someone wants—or should want—is an advocate to take up a problem at an appropriate level in a bureaucracy, it is quite sufficient for one member to do that if they do so conscientiously. It is a total waste of parliamentary resources—never mind the resources of the health board or the council—for eight of us to do it. That is the sort of thing that would happen if we got into the area of service complaints. We all know instances of people who would pursue issues to the  $n^{\text{th}}$  degree, so we would become embroiled in some difficult territory.

**Brian Adam:** There is some kind of role here for the Presiding Officer, for example in facilitating mediation. However, given that the service level expectation is not defined, it is difficult to know whether that role would be a filter to determine whether a service level expectation has been breached. I do not know whether it is possible to define that expectation—I would find it extremely challenging—but there may be grounds for it. However, it is for those who believe that we can get that kind of service level expectation to come up with a potential scheme. I do not believe that we have such a scheme before us in any of the documentation. To draw up such a scheme would be particularly problematic, but it might be inappropriate for us to rule it out absolutely.

At the end of the day, we are here to serve our constituents, so we have to think about how best we can do that. Is it by drawing up such a scheme? Ah hae ma doots. If there are difficulties between constituents and MSPs, there could well be a role for the Presiding Officer, party leaders, business managers, whips and so on to try to mediate. Of course, the constituents have another seven MSPs whom they can approach; indeed, they may already have done so in the way that David McLetchie described. It is difficult to be absolute about these things. I tend to agree with those who think that defining service level standards is well nigh impossible in these circumstances.

**Marlyn Glen:** Does anyone else want to comment on the idea of the Presiding Officer having a mediation role?

**Robert Brown:** The Presiding Officer can do his best. He can say, "Look, I've had a complaint from a constituent who says he hasn't had a reply to a letter." Sometimes mistakes are made and things are overlooked, and matters can perhaps be sorted out in that way. Beyond that, I do not think that it is a good idea for the Presiding Officer to mediate between the constituent and the MSP because he would get dragged into the merits of the issue. For the reasons that Brian Adam and others have mentioned, that is not something that he is equipped to sort out.

**Cathie Craigie:** I want to ask all four witnesses a simple question. There seems to be agreement that the service that an MSP provides should be for the MSP to determine and that, if they fall down, they should be answerable for that to the electorate, but that the conduct of an MSP should be a matter for the code and that, ultimately, if there is a breach of the code of conduct or a complaint is made about an MSP's conduct, that should be for the standards commissioner to deal with. Is that what everybody is saying?

**David McLetchie:** Yes.

**Jackie Baillie:** Yes.

**Robert Brown:** Yes.

**Brian Adam:** Yes.

**Christina McKelvie (Central Scotland) (SNP):** In answering Marlyn Glen's questions, the witnesses may have partly answered the next question. The code of conduct says that a constituent has

"the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so."

We heard evidence earlier that it might be appropriate occasionally for an MSP not to take on a case, and that the code should reflect that. What are your views on that?

**Jackie Baillie:** I concur with that view because there will be occasions—I do not have an example of one to hand—when a constituent makes a request that either goes beyond the expectation of what should be delivered or is genuinely unreasonable. I have had instances of people coming to me as a constituency MSP and expecting me to act almost as a lawyer. Unlike the two colleagues to my right—David McLetchie and Robert Brown—I am not qualified as a lawyer, and I would fail in my duty if I tried to fool any constituent that I was. In such a circumstance, it would not be reasonable for me to take up the case. The best advice that I could give the constituent would involve referring them to someone else. We need the flexibility to exercise our judgment, which derives from the experience of doing the job.

**Brian Adam:** The current wording of the code of conduct does not preclude what Jackie Baillie described from happening. Indeed, that is what happens in practice. To take the example that Mr McLetchie gave earlier, someone might write to eight MSPs and get an answer that they do not like from the one who has been quick off the mark. They then come to me with all the paperwork; I look at the paperwork, which seems clear cut, and I concur with the answer that was given and cannot think of anything else to do. It would not be unreasonable then for me to say, "I'm terribly sorry, but I don't think I can take this any further." I

do not think that what is currently written in the code precludes our taking such action. It may well be that having such a statement as part of your consideration is enough to support that interpretation and provide guidance for anyone who wishes to interpret the code in future. That is how it works with the law, and that is how it should work with the code of conduct: what you mean by things will be clear from what you say in your deliberations and in your report.

**Robert Brown:** I am not sure that the current wording of paragraph 8.3.1 does not overstate the matter slightly, to be honest. Most of us would accept that there is an expectation that we would give a reasonable judgment on the paperwork for, or background to, a case but, for the reasons that Jackie Baillie mentioned and others, I do not honestly think that we would always feel ourselves bound to take a case forward. We would not do so if it had been round the houses and if there had been answers that we thought showed that the issue had gone as far as it could. It could also be the case that we simply did not agree with the direction of travel in which a constituent sought to go.

We have an obligation to give a reasonable judgment on all such aspects. I do not suppose that we should substitute our judgment entirely for a constituent's. However, there is ultimately a reservoir of judgment available to an MSP about the proper way to deal with a matter and whether it would be appropriate to take it forward. I am not sure that paragraph 8.3.1 reflects that ultimate point. I think that David McLetchie and I have both had experience of dealing with issues as solicitors in which the same sorts of issues arise in similar sorts of ways, and in which similar sorts of judgments must be made that draw on an ultimate reservoir of judgment about whether to take on a case and how far to take it.

**David McLetchie:** I concur with Robert Brown's analysis, but I add that one of the most overused and abused words in the English language is "right". Most lawyers would accept that if we say that someone has a right, there must be a corresponding duty. The two go together and rights do not exist in isolation. Therefore, if we say in any code that X has a right, we must match that by saying, "And therefore Y has a duty." If we are not prepared to say that Y has a duty, we cannot say that X has a right.

As Robert Brown said, paragraph 8.3.1 says that constituents

"also have the right to expect an MSP to take on a case".

The wording implies that the MSP has a duty to take on the case. However, the code does not say that. It goes on to say:

“though the MSP must be able to judge how best to do so.”

There is a mismatch in that the right is not attached to a corresponding duty. Members have discretion.

**Brian Adam:** Surely the MSP’s duty is to examine the case and reach a judgment about whether it would be sensible to pursue it.

**David McLetchie:** Yes, but the code does not say that.

**The Convener:** Brian Adam is talking about what happens in practice. However, giving constituents a right to expect their case to be taken up does not correspond with giving MSPs a duty just to consider the case.

**David McLetchie:** Exactly. There is a difference.

**Robert Brown:** In the back of my mind when I consider a case is the remedy. I consider whether there is something that I can usefully do that will take forward the grouse that the person has and achieve a betterment of the position in some way.

**Christina McKelvie:** If it is appropriate for an MSP to say that they will not take up a case, how should that be reflected in the code? Paragraph 8.3.1 does not give MSPs that right—I am loth to use the word “right” after hearing Mr McLetchie’s comments.

**Robert Brown:** The paragraph probably does not need a huge change. The addition of a word like “normally” would qualify the position. The wording should allow an element of discretion. The clerks will be able to supply an answer.

**Christina McKelvie:** It is about the language that we use.

**Robert Brown:** Yes.

**David McLetchie:** After the sentence in which constituents are given a right to approach—or rather, in which it is acknowledged that they should be able to approach—their constituency or list member, the code should say that how best to deal with the inquiry should be a matter for the member’s discretion and judgment—[*Interruption.*]

**The Convener:** We must move on, because we are running out of time. I remind people to switch off their mobile phones, which cause problems with the sound system.

**Dave Thompson (Highlands and Islands) (SNP):** What are the witnesses’ views on the consequences of removing the requirement on regional MSPs to notify constituency MSPs when they take on constituency cases?

**David McLetchie:** Removing the requirement would not bother me. List members notify

constituency members as a courtesy, but I am not overly precious about that. In my experience the rule is honoured more in the breach than in the observance. It is considerate of members to go to the trouble of notifying other members, but I am not sure that I want to burden all list members with the bureaucracy of having to do that. I am quite happy for a list member to help a constituent who asked them for help, and I am not particularly possessive of or desirous to know about the case.

**Robert Brown:** I do not have a strong view on the matter. Notifying the constituency member is a courtesy that I have followed for the most part, although I accept that I have forgotten to do so on occasions. It is reasonable to notify the constituency member, because there is a risk that MSPs can go off on different tangents, but I do not think that my doing so has made any difference to the approach that I or the constituency member has taken.

However, I imagine that there might be rare occasions when the constituency member knows a bit about the background to the case. Therefore it is probably useful for members to liaise, so that they remember that there are several angles to a matter.

**Dave Thompson:** The pro forma for notification asks regional members to provide the constituent’s name and a subject heading. How useful is such brief information?

**Robert Brown:** It will ring bells, without question, if the case is well known or complicated.

**Jackie Baillie:** We do not need an overly bureaucratic approach. I have an arrangement with one of the list members in my region, whereby they send me a simple e-mail advising me of the handful of cases that they are dealing with. That is a proportionate approach, because list members deal with a small number of cases in particular constituencies. List members might cover a wider area, but they take on fewer cases. The interesting point is that, as a result of the arrangement, I have twice happily transferred casework to the list member, so that we avoided duplication and they could ascertain the complexity of the case that they had taken on. Given that we are all busy, such an approach is useful and enables the list member to get to the guts of the issue. I would like notification to continue as a courtesy, without the pro forma, which is unnecessary. Members instantly recognise names that come to us.

13:45

**Dave Thompson:** Given that notification has enabled you to avoid duplication, would it help if constituency MSPs notified regional MSPs in the same way?

**Jackie Baillie:** No, because there is a difference of scale. The volume of casework that comes into my office is entirely different from the volume that goes to a list MSP's office. The notification procedure would not work in reverse. The principal point of contact for the majority of constituents remains the constituency MSP, which is how the system was designed.

**David McLetchie:** Confidentiality is an issue. I certainly would not notify a regional member about a case. My starting point is that an inquiry that is made at one of my surgeries is confidential and I should not share it with anyone unless the constituent asked me to do so. In a sense, the notification rule breaches confidentiality, which is not appropriate.

**Brian Adam:** I do not agree with Jackie Baillie's assessment of the number of cases that list MSPs deal with. Like Mr McLetchie, I have served as a regional member and a constituency member—for the same length of time in each case. When I was a regional member, I had a large number of difficult cases from throughout the region. Cases in which people had not been able to get matters resolved to their satisfaction were almost distilled down, so that I would get nine times as many difficult cases as a constituency MSP might get. Such cases took up a lot of time.

David McLetchie made a fair point. The current default position is a breach of confidence, in that regional MSPs must automatically notify constituency MSPs about cases. I accept that, on occasion, a member will recognise a name and that there will be difficult cases in which co-operation is helpful, but I am not certain that notification is of great value. It is certainly a breach of confidentiality and it is probably a breach of the Data Protection Act 1998.

I do not have a desperately strong view on the matter, and I strongly suspect that the notification rule is honoured much more in the breach than in the observance. Robert Brown talked about remedy in another context. Given that there might be no remedy in a case, there is no point in having a notification rule in the code of conduct. The issue is really the relationship between MSPs and might be more appropriately dealt with internally.

**Dave Thompson:** Paragraph 8.4.2 says:

"Ministers planning to visit constituencies should, as a matter of course, only notify the constituency MSP. At their discretion, they may also notify regional Members representing the area."

Should regional and constituency members be treated in the same way? Should ministers notify all MSPs, as a matter of course?

**Robert Brown:** Having been on both sides of the fence, I can say that they do as a matter of course.

**Brian Adam:** The Scottish ministerial code stipulates that they should do so. There is an inconsistency between section 8.4.2 and the ministerial code that you could well tidy up without changing what happens in practice.

**Jackie Baillie:** I, too, must apologise for having to leave, convener.

I think that there should be no distinction in this respect. We should simply ensure that the rules are aligned with current practice.

**Cathie Craigie:** The code of conduct says that regional members are expected to work in more than two constituencies within the region, and there is further, if limited, guidance on what constitutes evidence of such work. Given that regional members are elected to serve all constituents in the region, do you think that a regional member who acts in only one part of the region still delivers the expected level of service?

**Brian Adam:** I assume that by "one part of the region" you mean one constituency in the region. How do you define the term "part" in your question?

**Cathie Craigie:** Well, you are answering the question. How do you define it?

**Brian Adam:** The current stipulation that regional members are expected to pursue issues in more than two constituencies is perfectly right and proper. I believe that one particular region has five regional members from the same party. It would make no sense for each of them to cover all the constituencies; instead, they might well decide to divide the workload on a geographical basis, according to subject areas or a mixture of both. The expectation that members will take an active interest in issues in more than two constituencies covers the point.

As for collecting evidence of such work, you could look at, for example, the surgeries that have been held. If you really want evidence, you might check whether a member only ever asks about one of the eight, nine or 10 constituencies in a region. I do not know how the procedures would be policed, but the present arrangements are quite sensible. If there is very strong evidence that a regional member is working in only one constituency and is, in effect, shadowing the constituency member, that would be a reasonable ground for complaint. Quite what the sanction should be, though, is another matter.

**Robert Brown:** This significant issue has caused difficulties in a number of areas. The Liberal Democrats have never suffered from the luxury of having more than one regional member in any region, but colleagues who are constituency members and have seen the issue from the other side have had their problems.

I agree with Brian Adam that the present arrangement probably works as well as might be expected. If a region has more than one regional member from any one party, it sounds logical and sensible to divide up responsibilities. The regional member is still elected to serve the whole area and should be accessible to all the constituents in the region, but a working relationship that divides things up a bit is a reasonable compromise, as long as it does not go beyond the rule about being responsible for three and more constituencies.

**Jamie McGrigor (Highlands and Islands) (Con):** The code of conduct says that a constituent has

“the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so.”

Does that mean that a constituent has “the right to expect” every single list MSP in a region to take up his case?

**Robert Brown:** The short answer is no. If a constituent wants to go to X rather than Y, he is entitled to expect that MSP to respond and to deal with the issue. He is not entitled to expect the other seven, eight or 10 regional members to take up the issue because, as other members have pointed out, that would involve duplication of effort. Of course, it is not always possible to avoid duplication, but I suppose that that comes down to the working practices of the various members.

**Jamie McGrigor:** If the regional members of the same party split up a region between them, does a constituent have the right to expect only the member who has agreed to be responsible for that area to take on their case?

**Robert Brown:** No. It is all about whom the constituent chooses to approach. If X is responsible for one bit of the region and Y is responsible for the other bit, it is likely that they will be better known in their respective areas and that, as a result, X will be approached by constituents in the first area and Y by constituents in the second area. If a constituent believes that X, Y or Z is best able to represent his views, it is up to him to approach the member. The issue is not decided the other way round.

**Brian Adam:** It is up to the constituent. If they go to a particular regional MSP, there is an onus on that member to deal with their problem—unless, of course, the MSP has good grounds for saying, “I don’t want to take your case.”

Most constituents are perfectly reasonable and understand when an MSP says to them, “This is not my area of expertise,” “I’ve not taken a lot of interest in that subject,” or even, “My colleague has been dealing with your area. How would you feel about them taking on your case?” If, when I was a regional MSP, someone had said, “I want

you to deal with this,” I would have done so. We should not simply presume that constituents are always unreasonable. The great majority of them are perfectly reasonable but, in certain circumstances, a constituent might have particular reasons for wanting an individual regional MSP to take up their case. Of course, that MSP will need to have some excellent reasons for turning them down.

This is a bit of a left-field issue, as it would require having lists of circumstances in which a member would or would not take up a case. It has to be a question of common sense and good judgment.

**Cathie Craigie:** We have to remember that we are looking not at the process for electing constituency and regional MSPs, which is set out in the Scotland Act 1998, but at the question whether the arrangements established by the Parliament since then are working in practice. One witness has suggested that, given that regional members in certain regions have abused the system, it should be stipulated that someone who fails to be elected as a constituency MSP but who subsequently becomes a regional member should not have responsibility for that constituency when responsibilities are divided up. After all, the issue is the way the parties agree to break up regions.

**Brian Adam:** Such an arrangement would be bizarre. Someone elected as a regional MSP after failing to win a constituency seat might well have a lot of local knowledge of which constituents could take advantage. People might find it difficult to understand why we should set out almost in statute that regional members should not be allowed to take on cases in constituencies in which they stood unsuccessfully. It sounds more like a personal and party-political problem than a constituents’ problem. The purpose of this exercise is to find ways of helping constituents to deal with their problems and of guiding MSPs in their work. It would be difficult to enforce your proposal. We are now in our third session of Parliament; the next one will be the fourth. How would we deal with a candidate who, over the course of four elections, was unsuccessful in four of nine constituencies but was still elected as a regional MSP? Would we say that they could work only in the other five constituencies because they had been rejected four times in the others?

14:00

**Cathie Craigie:** I refer you to the *Official Reports* of our previous evidence sessions on this subject, which I assume you have read. I am putting a question to you that has come to the committee from evidence.

**Brian Adam:** I accept that, but—

**Cathie Craigie:** I am not just putting the question to you, Brian. I think that the evidence that we received referred to a particular session of the Parliament rather than to the lifetime of the Parliament. The other witnesses may want to comment.

**Robert Brown:** I suspect that some constituency members in my party would have sympathy with Cathie Craigie's point. The rules about working in two or more constituencies, which we talked about previously, are designed to avoid the problem that she pointed out. My own experience, both in my home area, in which I am better known, and in other areas across the region, is that constituency members' standing is considerably greater than that of regional members, because of constituency members' links with local groups and so on. The issue to which Cathie Craigie referred is a problem primarily in marginal seats. I accept that there is a difficulty, but it would exist anyway, because of the heavily political nature of the situation.

The current parliamentary rules largely deal with the practicalities of the constituency and regional situation. Beyond that, as MSPs we live in a competitive environment that we must put up with. I do not think that it is possible to tackle the grievances and problems that some constituency members have by means of somewhat artificial rules.

**David McLetchie:** I concur with Robert Brown's analysis. I do not have anything to add, other than to repeat that relationships between constituency members and regional members are much better than they were, which I think reflects the Parliament's and members' maturity.

**The Convener:** We are already over our time limit, so we will move on to the last question, which is from Jamie McGrigor.

**Jamie McGrigor:** Should complaints to the Presiding Officer under section 8 have to meet the same formal criteria—they must provide a name and address, be signed, set out the relevant facts and so on—as complaints to the standards commissioner under other parts of the code?

**Robert Brown:** Yes.

**David McLetchie:** I am not sure whether I understand all the technical complexities that underlie that, but the rules for complaints about conduct that go to the standards commissioner require basic information to be provided, which seems reasonable, because we cannot expect anybody to deal with a complaint unless they have such information. Equally, I do not think that the Presiding Officer or anybody else should pursue members until that basic information has been provided, otherwise people will get involved in wild goose chases in trying to establish what is going

on. It is for the complainer to make a proper complaint, not for us to make their complaint for them.

**Brian Adam:** I concur, but a related matter is that all such information, including the complainer's address, should be made known to the member who has been complained about. The current arrangement, according to the interpretation given by the Presiding Officer's office, is that the complainer can retain relative anonymity. The Presiding Officer may know such details as their address, but they are not made known to the member against whom the complaint is lodged, which is unfair.

Let us say, for example, that the complainer is a Mr Smith. Now, there may well be a big difference between Mr Smith of 76 Auchtermuchty Avenue and Mr Smith of 77 Auchtermuchty Avenue, in that the gentleman at 76 may be a persistent complainer. It would be helpful in an investigation if the Presiding Officer knew that. The member against whom the complaint has been lodged may be able to give that information, but only if the complainer is identified. The relative protection afforded to the complainer makes for an unbalanced approach. The committee may wish to consider that and advise the Presiding Officer's office on it.

**The Convener:** Okay. That is the end of the set questions. We are running over time, and I may regret doing this, but does any member have any further pressing questions while we have the panel with us? Members should not feel that they must ask a question.

As nobody has taken the chance, I thank the witnesses for coming along and for their evidence, which will prove useful to us. I say to you, as business managers, that you have left us to make some difficult decisions about proposals, so I may look for your support when the issue comes back to the Parliament in the future.

I welcome Alex Neil to the meeting. Members will recall that we invited Alex to give evidence at our meeting on 26 February, but he was unable to do so because of personal circumstances, so we agreed that he could provide evidence at today's meeting. I inform Alex, as I did the previous witnesses, that we are concentrating on section 8 of the code of conduct, although members have provided much written evidence on other aspects of the code as well. The first question is from Marlyn Glen.

**Marlyn Glen:** Does rejection at the ballot box represent an effective sanction against poorly performing MSPs?

**Alex Neil (Central Scotland) (SNP):** First, I apologise to the convener and the committee for not being able to make the previous meeting,

which was due to family illness. Thank you for giving me the opportunity to participate in today's meeting.

On complaints about MSPs, we must make a distinction between what is a matter of democratic choice regarding an MSP exercising their judgment and what is a matter of an MSP being in breach of the code of conduct or behaving in a way that is contrary to a rulebook somewhere. If the complaint against an MSP is that they have not followed the rulebook, be it standing orders, the code of conduct, an act or other external rulebook, that is a matter for the standards commissioner. He or she, if there is ever a female one, should handle the complaint.

If the complaint is about something that is a matter of democratic judgment, then it is entirely a matter for the electorate. However, I am critical of the current system of electing members. My own preference would be for the single transferable vote system, in which every member would be much more directly responsible to the electorate. If we are to have a list system, however, an open list system would be much more democratic than the current one. Obviously, the committee's inquiry takes the current electoral system as read, so unless a complaint is to do with a breach of a rulebook it is for the electorate to decide whether a member has been right or wrong.

**Marlyn Glen:** Okay. We are just talking about complaints about the level of service from MSPs. Is rejection at the ballot box sufficient sanction for poorly performing regional MSPs?

**Alex Neil:** We should not make a distinction between regional and constituency MSPs. I think I am right in saying that most of the complaints to the standards commissioner have been about constituency MSPs. I remember one complaint in particular, which was against Karen Gillon and was referred to the standards commissioner. I speak as someone who obviously is not in the same party as Karen Gillon, but the general view was that, frankly, it was nonsensical to refer that complaint to the standards commissioner and for him to have a full investigation into it. We must have a proper balance between what is common sense and what is clearly a bit daft. Obviously, if an MSP has acted discourteously, broken a rule or not brought to bear their full resources in dealing with a matter, there are legitimate grounds for complaint.

For example, I did a lot of work on a case last year and recommended a particular course of action to a constituent. The constituent decided not to take the matter further, and I accepted and respected his decision. He came back a year later and wanted me to take up the case again. I told him that I would not do so, given the amount of work that I had put into the case. In my view, I am

entitled to make such judgments. Such matters should not be for the standards commissioner or anyone else to determine; I am elected to make such judgments and I should be entitled to do so.

**The Convener:** I think that Marlyn Glen's question related to a discussion that we had with the first panel of witnesses, which is why she asked about regional members. If we accept that the ballot box is the remedy if an MSP performs poorly, we must also accept that the ballot box is a much blunter instrument against regional MSPs than against constituency MSPs.

**Alex Neil:** The bottom line is that whether someone is a constituency or regional MSP they are elected because of their party ticket—with all due respect to present company. That is realpolitik, and in that sense regional and constituency MSPs are not in a different position. As I said, I would prefer an STV system. If we must have a list system, we should have open lists. However, the committee's inquiry takes place under the terms of reference of the existing electoral system. I was elected as a list member because I was high enough up on the Scottish National Party list. With all due respect, convener, you were elected because you were the SNP candidate in Ochil.

**The Convener:** It was nice of you to allude to your being top of the list, when I was sixth on the same list twice.

**Cathie Craigie:** I do not think that Alex Neil heard the evidence that the business managers gave when we pinned them down on a straightforward matter, which took up much time. We distinguished between the service provided by and the conduct of MSPs. Do you agree that service is a matter for individual MSPs and can be judged through the ballot box, whereas there should be a formal complaints process in relation to MSPs' conduct?

**Alex Neil:** In general terms, I agree with the distinction along the lines that you suggest, but there can be a crossover. Let us suppose that an MSP refused ever to hold a surgery. That would be as much about conduct as about service. That is an extreme example, and I do not think that anyone has ever done it, but it demonstrates that there are grey areas. However, as a general rule, the distinction is fair.

**Christina McKelvie:** Why do you think that it is appropriate for a regional member to focus on only part of their region, when they were elected to represent the entire region? We talked about what happens when five regional members represent the same party.

**Alex Neil:** What you describe happens only if a region has more than one regional member from a particular party. The Central Scotland region

covers 10 constituencies and the SNP has five regional members, as it did in the first session of the Parliament. Under the existing allowances rules, we have only one office, although the region covers Falkirk, Kilmarnock, the whole of North Lanarkshire, and South Lanarkshire with the exception of Clydesdale. We cannot expect people from Falkirk and Kilmarnock, or even from Cumbernauld, Airdrie and Coatbridge, to travel to an office in Motherwell to see their MSP. As long as the daft rules are in place, the reality is that regional MSPs must do much more travelling to constituents. I hope that the rules will be changed.

If we are to create the maximum opportunity for the electorate, parties with more than one regional MSP should allow regional MSPs to prioritise—not focus on, which suggests exclusivity—particular areas, so that we can provide the appropriate level of service not just on behalf of ourselves as elected members but on behalf of our parties. We must deal not just with one-off constituency matters but with local campaigns and issues. We have to visit local schools and colleges.

A first-past-the-post member in the region that I cover—Cathie Craigie is one such member—deals with one health board, one local authority, one or two housing associations and one local enterprise company. Regional members in Central Scotland, such as Hugh O'Donnell, Christina McKelvie and me, must deal with four local authorities, four local enterprise companies, three or four health boards and a multitude of local organisations, such as community councils and housing associations. It is physically impossible for one person to cover the whole region as thoroughly as they should do and want to do, so if there is more than one regional MSP from a particular party, it makes sense to give priority to particular subjects or areas, to ensure that there is much more coverage than there would be if everyone tried to cover 10 constituencies.

14:15

**Dave Thompson:** I think that you heard me ask the first panel of witnesses whether regional members should be required to notify constituency members when they take on cases. In your submission, you suggested that constituency members should also make regional members aware of what is going on—I asked the panel about that. Will you elaborate on your thinking in that regard?

**Alex Neil:** I noted that David McLetchie said in response to your question that it would be a breach of confidence for him to tell a regional member about a constituent. Of course, notification does not mean providing details about a case; it means providing the constituent's name and address and the general nature of the

inquiry—housing, education or whatever. If it is argued that constituency members should not notify regional members because that would breach confidentiality, the requirement for regional members to notify constituency members must also be regarded as a breach of confidence. We cannot have it both ways: either there is a breach of confidence or there is not. If there is a breach of confidence, we cannot continue with the current system. If there is no breach of confidence, why should not constituency members notify regional members?

The purpose of the notification rule is to avoid duplication. When I was first an MSP, many constituents were happy for me to write to the local member, but currently, in the vast bulk of cases that I deal with, people say that they would prefer me not to do so. I check whether the constituency member has been involved in the case, and if so I usually say to the constituent, "With all due respect, I must tell the constituency member, because I do not want to write to the health board or education authority only to be told that a member is already dealing with the matter."

In many cases, people go to see a regional member because they do not think that the constituency member would do as good a job. Sometimes they choose to see the regional MSP because of their party affiliation or because the regional member has a high profile. There are a host of reasons why people go to a particular MSP. There has been a learning curve among the electorate as well as among MSPs. The situation is different from the situation six or seven years ago. The people who come to see me specifically want me to deal with the issue and do not want anyone else to be involved.

**Dave Thompson:** Does notification avoid duplication? It is open to an MSP to ask a constituent whether they have raised the issue with anyone else.

**Alex Neil:** I think that the notification system is pretty redundant. Given that we are saying that notification is a breach of data protection legislation and all the rest of it—which I do not think was checked out at the time—I would scrub it and just place an onus on us all to ensure that we deal with cases only when we are assured that they are not being dealt with by another constituency MSP or regional MSP.

**Dave Thompson:** How would you deal with the growing practice of people e-mailing all seven or eight regional members simultaneously?

**Alex Neil:** It depends on the subject of the e-mail. If it is a general inquiry about snaring, which is a popular topic at the moment, or the campaign on breast cancer screening, I always reply directly as an individual member. The constituent



deserves that, so it is right to do it. Even though 100 or 200 e-mails might come in at any one time, I believe that constituents are entitled to a reply from me, because they have written to me as well as to the other members.

Under our arrangement in Central Scotland, if a constituent brings a particular problem to me, I check with the regional member who prioritises the constituent's area to see whether they are already dealing with it—nine times out of 10, they are already dealing with it—and I write back to the constituent. If the relevant regional member or the constituency member is not already dealing with it, I will take it up. By and large, in such situations, before I take any action I double check with the other MSPs to ensure that there will be no duplication.

**Dave Thompson:** So, again, the onus would be on the MSP to do a simple check, which would cut out all the duplication.

**Alex Neil:** Yes, that is right. Whether constituents contact me by telephone, in person in my surgery, by e-mail or by letter, the first thing that I ask them is whether any other MSP is currently dealing with the matter. Nine and a half times out of 10, the answer is no, but the half time that the answer is yes, I tell them that they have to tell the other MSP—or I will tell the other MSP—that they want me to take over the case to avoid duplication. If the constituent is not prepared to do that, I tell them that, under the Parliament's rules, I am not allowed to take up the case. It is not the system of notification but common sense that makes things work.

**Jamie McGrigor:** I have a supplementary question about duplication. Do you think that it should be considered unusual for a minister to get seven letters from seven different MSPs on the same subject or the same case? I would have thought that that strengthened the case, but I would like your views on that. Avoiding duplication is the excuse for why list MSPs have to contact constituency MSPs. Do you think that avoiding duplication is, in itself, a reasonable excuse for that requirement?

**Alex Neil:** My experience, particularly in the past five or six years out of the eight for which we have been here, is that duplication is not a big issue. I seldom come across it.

**Jamie McGrigor:** Is there anything wrong with duplication?

**Alex Neil:** Yes. I emphasise the distinction between a general issue such as the proposed closure of Monklands hospital accident and emergency unit, and a specific, individual issue. I am sure that the minister received letters from all the constituency members and all the list

members about Monklands A and E on a regular basis.

However, if we are talking about a constituent's individual problem, duplication does not make sense because it creates a lot of extra, unnecessary work. If seven members are dealing with one case, six of them are wasting their time—they are redundant. For the minister to reply seven times on one case is a waste of the minister's and of the civil service's resources and time. From time to time, a case might become so serious that a member tries to mobilise support from other members. I can think of cases involving disabled children in North Lanarkshire in which I encouraged other members to use constituency cases to highlight the general issue of the council not dealing effectively with support for disabled children. We would not all take up the individual case, but we would use it to highlight the general issue.

Having more than one member deal with a case is a recipe for anarchy and mayhem. We would not be providing the most effective service to the constituent, who would end up not knowing whether they were coming or going. If we did it that way, the health board or local authority—or any of a number of organisations that a member might be trying to win a case against—would use the fact that more than one member was involved to undermine the constituent's position and would play us off against each other. That is not only duplication; it is counterproductive.

**Jamie McGrigor:** On that point, the code of conduct says that a constituent has

"the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so."

If a constituent sends an e-mail to all eight MSPs in a region, does he have the right to expect them all to take up the case?

**Alex Neil:** No.

**Jamie McGrigor:** Should that be made plain in the code of conduct?

**Alex Neil:** Yes. We make it plain to individual constituents. I have never come across a constituent who complained that only one member at a time dealt with their complaint. If they are not happy with one member, they are not prevented from going to another. However, the first member has to withdraw from the case. I have never come across anyone demanding that more than one MSP should deal with their individual problem at the same time. In fact, nine and a half times out of 10, it is quite the opposite: they demand that you deal with the problem and that you do not spread it around.

**Jamie McGrigor:** I am interested in what you said earlier about surgeries and that list MSPs

have to go to the constituent rather than the constituent coming to the list MSPs. Are you suggesting that there may be methods other than surgeries by which list MSPs should make themselves available to the public?

**Alex Neil:** I was making two points. First, it is absurd to have in one office five MSPs covering an area the size of Central Scotland. That does not serve the interests of our constituents. When we consider the revision of the allowances scheme, I hope that we will abide by our code of conduct and treat constituency and regional members the same so that, for example, I can have my own office in the same way as Cathie Craigie and other constituency members have their own offices. I do not see why I should not have an office. If we abided by the code of conduct, those five members—from the same party—would have five offices spread around Central Scotland. It is about the physical accessibility of regional members to their constituents and the current arrangement puts constituents at a disadvantage in that respect. Regional and constituency members are not on an equal footing, as we should be under the code of conduct for MSPs. We have not abided by our own code of conduct for the past eight years and the Scottish Parliamentary Corporate Body has breached the code the most.

14:30

My second point is about accessibility under the current system. Because my office is in Motherwell, I hold surgeries in community centres, the arts centre in Bellshill, Tesco, Asda and a range of other places. In a region the size of Central Scotland, people from Motherwell and Wishaw will not in general travel beyond Motherwell and Wishaw to see a regional member. Folk in Cumbernauld will not travel to Motherwell to see a regional member, so if I have to see a person in Cumbernauld I must either hold a surgery in the town or do a home visit. I do a lot of home visits. We serve a deprived area and people often cannot afford public transport—let alone put up with its complications—to the Motherwell office.

The current arrangements are wholly inadequate for constituents and do not allow regional members to serve constituents in the way in which they should be served. There is no real equality between regional and constituency members.

**The Convener:** It will surprise nobody that Alex Neil has managed to raise more questions with his answers. Having a single witness has led to a productive exchange. Three more members want to ask questions.

**Alex Neil:** I am delighted to have raised more questions. I could be here all day.

**Hugh O'Donnell:** That is no surprise.

**Jamie McGrigor:** Mr Neil, are you saying that the code of conduct should emphasise the importance of home visits rather than surgeries for list MSPs?

**Alex Neil:** The code should not be as specific as that. The code and the allowances scheme should ensure that regional members can be as accessible to their constituents as constituency members are. It is absurd to crowd five regional members and their staff into one regional office for the whole of Central Scotland. Such an arrangement contradicts the code of conduct.

**The Convener:** Can we move away from allowances and back to the code of conduct? I acknowledge that there is a link between the two.

**Hugh O'Donnell:** I have enjoyed hearing Alex Neil's arguments about allowances. I look forward to him supporting the setting up of 10 offices for me in Central Scotland. Of course, that will not happen.

On a more serious note, the reality for parties that do not have a superabundance of regional members in a given region is that all surgery work must be done on a home-visit basis. That is straightforward to do. Do home visits provide for better accessibility than does a single office that is located in one part of the region?

**The Convener:** Be brief, Alex.

**Alex Neil:** Both approaches are needed. I am not saying that the solution is to give every member their own office. There could be a regional office in every constituency, which every regional member could use.

**Hugh O'Donnell:** Hot desking.

**Alex Neil:** Yes. You and Margaret Mitchell, who is the only Tory member for Central Scotland, could also use such a facility, which would give constituents in the 10 constituencies in the region equal access to their regional members and to their first-past-the-post member. That is how I would do it.

On the second point, surgeries and home visits are not mutually exclusive. If you are a regional member, you end up doing far more home visits, simply because, particularly in the deprived area that Hugh O'Donnell and I cover, it would be totally unreasonable to expect many people to have to come to Motherwell or any other single point.

**Hugh O'Donnell:** From Kilmarnock.

**Alex Neil:** Yes, exactly. It just cannot happen. The fact that we have one office to cover the whole region is absurd and needs to be rectified.

**The Convener:** I remind everyone that we started this discussion by asking about the notification of constituency cases to regional

members. I invite Cathie Craigie to ask the final question.

**Cathie Craigie:** The question that I was going to ask has perhaps been answered, but I want to turn the discussion back to notification. You and I have worked as constituency MSP and regional MSP for eight years now and there has never been a problem. You have notified me when you have taken up cases and we have talked about cases when that has been necessary.

You talked about regional offices and surgeries which, thankfully, is not something that the committee has to deal with at this stage. We should be going out to the public. Your argument about a region could similarly apply to my constituency. My office is in Kilsyth and I have to go out to people in Cumbernauld and Kilsyth. I would never expect people from Cumbernauld to come down to a surgery in Kilsyth—I go to them. I really cannot see the point of your argument about where the office is. The people in Cumbernauld and Kilsyth would expect their regional MSPs to come to them, rather than having to travel to an office. I was going to seek your thoughts on that, but I think that you have given them already.

**Alex Neil:** I do not think that people expect us to travel to see them. My experience is that people do not understand why the SNP regional members for Central Scotland do not have an office in each of Cumbernauld and Kilsyth, Hamilton North and Bellshill, and Falkirk. That is the feedback that I get. I am sure that Hugh O'Donnell's experience is the same. People expect us to be as accessible as the constituency MSP within a constituency area. I do not see why we cannot have a system whereby constituency MSPs' offices have an annexe or a facility for regional members to use when they are working in that constituency. I take the point that we could end up with an office in every hamlet in Scotland, but we know that that is not the case. The rule is that we are divided into constituencies. The SNP list members in Central Scotland cover 10 parliamentary constituencies. The practical effect of the current allowances system is that the Parliament breaches its own code of conduct because it does not treat regional and constituency members equally.

**The Convener:** We will leave it at that. That evidence session took twice as long as we scheduled for it, but it was useful to have the exchange and to allow people to discuss matters more forensically. Thank you for coming along.

We will take a two-minute break for coffee.

14:38

*Meeting suspended.*

14:41

*On resuming—*

## Cross-party Group

**The Convener:** Agenda item 2 seeks the committee's agreement to establish a cross-party group. Members will be 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 a group is being formed on the basis of public interest.

The group that we are considering is the proposed CPG on disability. Michael McMahon, the group's convener, is unable to attend this meeting, but he has provided me with information. Members will note from the briefing paper that individuals appear to be listed in the non-MSP organisation category, but Michael McMahon has confirmed that that will be changed to refer to only organisations. He has also confirmed that the group does not receive any financial or material benefits because of Remploy's support and services.

If members have no questions on the proposal, do we agree to approve the cross-party group on disability?

**Members indicated agreement.**

## Decisions on Taking Business in Private

14:42

**The Convener:** Agenda item 3 seeks the committee's approval to take in private agenda item 4 and, at future meetings, to consider in private the draft report on our review of section 8 of the code of conduct.

Agenda item 4 is consideration of a request from the Scottish Parliamentary Standards Commissioner for a direction from the committee. As it contains confidential information, do we agree to take in private agenda item 4?

**Members** *indicated agreement.*

**The Convener:** Secondly, does the committee agree at future meetings to consider in private the draft report on its review of section 8 of the code of conduct?

**Members** *indicated agreement.*

14:43

*Meeting continued in private until 16:01.*

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