

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

Tuesday 22 April 2008

Session 3

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## STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

6<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 ALSO ATTENDED:

Nigel Don (North East Scotland) (SNP)

### THE FOLLOWING GAVE EVIDENCE:

Bruce Crawford (Minister for Parliamentary Business)

### CLERK TO THE COMMITTEE

Peter McGrath

### SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

### ASSISTANT CLERK

Catherine Fergusson

### LOCATION

Committee Room 6



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Tuesday 22 April 2008*

[THE CONVENER *opened the meeting at 13:00*]

### Points of Order Inquiry

**The Convener (Keith Brown):** We might as well get started. Welcome to the sixth meeting this year of the Standards, Procedures and Public Appointments Committee. As usual, I ask committee members, witnesses and members of the public to switch off mobile phones and BlackBerry's.

Agenda item 1 is to take evidence from the Minister for Parliamentary Business, Bruce Crawford MSP, as part of our inquiry into points of order. The first question is from Marlyn Glen.

**Marlyn Glen (North East Scotland) (Lab):** What are your views on the length of time that is currently allowed for a member to speak to a point of order? Do you favour any increase—or, indeed, decrease—in the time that is allowed?

**The Minister for Parliamentary Business (Bruce Crawford):** First, I thank the committee for asking me to give evidence.

The committee's background papers are helpful in answering questions such as Marlyn Glen's. From annex A to the points of order analysis paper—paper SPPA/S3/08/4/1—it is pretty clear that most points of order do not take up three minutes: most take about one minute and 30 seconds. My view is that, in general terms, a maximum of three minutes is sufficient to give members the opportunity to raise points of order within an appropriate timescale.

However, for subsequent points of order that are related to the first point of order, we could perhaps consider reducing the time to two minutes. I suspect that few points of order subsequent to the original point of order will have taken much more than a minute. Although the three-minute cut-off point is useful for the initial point of order, subsequent points of order related to the first point of order could be curtailed to two minutes to ensure that we go through business in a proper manner.

**Marlyn Glen:** Thank you for that. From the clerk's analysis, I am not sure either that the time that has been taken for subsequent points of order has been a problem.

Current practice is that members should not generally have their speaking time cut due to a point of order's being made while they are speaking. What are your views on formalising that practice, possibly through a rule change?

**Bruce Crawford:** My view is similar to that of the other business managers from whom the committee took evidence, although I would perhaps deal with the issue slightly differently. I think the time should be reallocated to the member who has been interrupted by a point of order. I realise that that has implications for the remaining time, particularly if a series of points of order are made. When a legitimate point of order is made, it should be accepted that the member who was speaking should continue to have the time that was originally allocated. In such circumstances, the Presiding Officer must use his wisdom to make the reallocation.

However, when a member makes a spurious point of order, we should consider restricting the time that is given to the next speaker from that individual's party, which would put in place a self-policing mechanism. I am sure that if a member's making a spurious point of order had an impact on the time that was allocated to a colleague, that colleague would be the first person to cause the member some aggravation. My approach is that the system should be as self-policing as possible, so that MSPs are responsible.

**Marlyn Glen:** Would a rule change be required for that, or should the matter be left to the Presiding Officer?

**Bruce Crawford:** I think that the matter should be left to the good judgment of the Presiding Officer. The mechanism could be recommended to the Presiding Officer.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Following that, how would such a system deal with an independent member who made a spurious point of order. For example, a smaller political party might have only one speaker in a debate. How would parity be achieved for all back-bench members?

**Bruce Crawford:** Achievement of parity in relation to points of order would be a difficult task for any Presiding Officer. However, at least the Presiding Officers can consider the impact of points of order that members of various political parties make over a period. Recently, the Presiding Officer has suggested to some members that their points of order have not been legitimate. If that was to happen on several occasions, the Presiding Officer has a mechanism to begin to deal with it.

**Cathie Craigie:** In previous sessions, the Presiding Officers set a precedent of not taking points of order during First Minister's question

time. Our existing Presiding Officer has followed that practice. Do you support it? Is the practice working or should we reconsider it?

**Bruce Crawford:** Again, I support the general approach that the other business managers and the SNP's chief whip, Brian Adam, take. There is a special place for First Minister's question time. If it were to be interrupted too regularly, which could happen, that would begin to detract from the process, which is acknowledged as being different in our parliamentary procedures, because it has its own allocation in the week. However, I am not keen to spread the practice out into other items of business, as the business managers suggested.

**The Convener:** Do you support a requirement for a member who makes a point of order to identify, when he or she makes it, the rule or part of standing orders that they consider is being breached?

**Bruce Crawford:** That would depend on how we consider standing orders. The standing orders are the rules of Parliament and how we engage. They are an important factor and background and they are the centre of the committee's considerations. However, points of order can occasionally be useful to allow points to be made and steam to be let off in the chamber. Although that is not legitimate under a strict reading of the regulations, it can be a useful mechanism.

Members need to be a bit more specific about the area of the standing orders to which they are referring, but we cannot expect them to come along to the chamber with the standing orders under their arms to allow them to cite specific rules. However, if a member gives notice to the Presiding Officer that he or she wants to make a point of order, and if there is time, there should be some compulsion on the member to identify the relevant rule. Points of order are sometimes generated as part of debate when no one expected them to arise. In those circumstances, I would not expect members to identify a particular rule, but I would expect them to give a reasoned argument, at the beginning of their point of order, for why standing orders have been breached. Again, I think that I am reflecting what the other business managers said to the committee. I do not demur from that view.

**Hugh O'Donnell (Central Scotland) (LD):** You talked about letting off steam. Will you clarify whether you support the view that there are circumstances in which it might be acceptable for a member to raise a technically inappropriate or inaccurate point of order? Beyond talking about letting off steam, can you give an example of when that might be acceptable?

**Bruce Crawford:** I support the view that the Presiding Officer should have flexibility. For

example, a member may feel that a standing order has been broken because another member has said something about them—we have seen that happen—and then make a point of order. That gives the member who made the comment an opportunity to clarify or withdraw the comment or to ignore the matter entirely. The flexibility allows members to deal with grievances in the chamber. However, I do not suggest that that needs to be, or should be, written into the rules. All the Presiding Officers have allowed enough interpretation of the standing orders within which we work to allow that to happen. That is not necessarily a bad thing.

**Jamie McGrigor (Highlands and Islands) (Con):** In some legislatures, the repeated making of spurious points of order is, in itself, regarded as disorderly conduct. Should standing orders provide that such behaviour is disorderly?

**Bruce Crawford:** Other Parliaments take a tougher line than we do. Australia calls such conduct an abuse of the system and would probably opt for suspension, and New Zealand says that it amounts to disorderly conduct. On occasion, a member has continued to make points of order, but the Presiding Officer has enough powers to deal with that. POs can take action to exclude a member from the chamber and refer the matter to the Standards, Procedures and Public Appointments Committee.

I refer back to a point that I made earlier. If the making of spurious points of order were to reduce the time that was allocated to other speakers from the same party, that might begin to bring more discipline to the situation. Nothing is more difficult for a member than being challenged to justify their actions by a member of their own party.

**Jamie McGrigor:** To repeat my question, do you think that such conduct should be considered disorderly?

**Bruce Crawford:** It depends on the circumstances. We should keep the current rules, under which the Presiding Officer can be flexible in dealing with such matters.

**Jamie McGrigor:** You mentioned the sanction of taking speaking time away from a member of the same party. Are there any other sanctions that could be applied for such conduct?

**Bruce Crawford:** If the conduct becomes so unruly that the Presiding Officer wishes to debar the member from the chamber and refer the matter to the Standards, Procedures and Public Appointments Committee, which has happened, the committee has a wide remit in relation to the punishment that might be brought to bear. Because we have that mechanism, it is not always up to the Presiding Officer to decide on the sanction. The committee has a pretty wide menu from which to draw.

**Jamie McGrigor:** Should there be a system to monitor spurious points of order so that any member who persistently makes such points can be identified and appropriate action taken?

**Bruce Crawford:** I am sure that, if the Presiding Officers were asked that question, they would say that, even if they had not logged mentally the fact that a member had made a number of spurious points of order during a period, they are more than capable of drawing that information from the *Official Report*, pointing it out to the member, and dealing with it.

In the past, we have had guidance from the Presiding Officer. Presiding Officers occasionally draw on examples of good or bad practice from previous sessions, and they have pointed that out to us all by way of guidance in the *Business Bulletin*. In effect, the *Official Report* acts as a register, and the Presiding Officers can pull from that information base whenever they wish. I do not think that we need a formal system for recording such conduct. However, the Presiding Officer certainly needs to be aware of it and to be able to examine the history and bring that to bear in the chamber if a member regularly makes spurious points of order.

**Christina McKelvie (Central Scotland) (SNP):** Should the Presiding Officer be the final arbiter of the validity of a point of order or should standing orders provide an appeal system?

**Bruce Crawford:** I fundamentally oppose the idea of an appeal system because it would undermine the role of the Presiding Officer. Either Presiding Officers are Presiding Officers or they are not. If we had an appeal system, the Presiding Officers would be looking over their shoulders on every occasion, worrying about what the appeal mechanism might bring. Would such a mechanism raise European convention on human rights issues and so on? A lot of things could be opened up that might cause difficulty for the Presiding Officer. It is down to the character and nature of the Presiding Officers, and if they can deal with it appropriately they should. Having someone second-guess them in that way is not appropriate.

13:15

**Christina McKelvie:** Let us imagine that such an appeals system was in place. Who would consider appeals?

**Bruce Crawford:** I cannot envisage any such circumstances.

**Dave Thompson (Highlands and Islands) (SNP):** Some Parliaments publish a list of previous speakers' rulings to which the Presiding Officers have access. Do you think that the Scottish Parliament should follow that example?

**Bruce Crawford:** That mechanism might already exist on a smaller scale because, as I suggested earlier, we have had occasions on which the Presiding Officer has seen fit to circulate in the *Business Bulletin* guidance on what members should do, and has drawn on rulings made by previous Presiding Officers. We should, however, leave it to the Presiding Officer to decide when that should be applied. Should we have a rule book that says we should do X, Y and Z? It is pretty difficult, because most circumstances have a nuance that is a bit different from the time before. We have to leave it to Presiding Officers to judge whether issues that have arisen previously are similar enough to be cited in guidance to members. Not every circumstance will be the same—that is just the nature of Parliament.

**Dave Thompson:** Do you favour the current semi-formal set-up rather than the formalisation of the whole process?

**Bruce Crawford:** If the current system had been shown not to work, I might have a different view, but at the moment the Presiding Officer has enough scope to draw on the experience of previous Presiding Officers and on his own experience from the current session. We have seen that happen already. Members, however, do not always follow the sense of the guidance that is given to them—the Presiding Officers need to examine that more closely and consider how to deal with the situation when guidance has been issued but behaviour does not change. They have the mechanisms, but it is up to them.

**Cathie Craigie:** Do you believe that there should be a mechanism other than the provision on points of order for members to make corrections to, or clarifications of, points that are made during a debate?

**Bruce Crawford:** I accept that, individually, we have to be accurate in what we say, but I do not want to depersonalise our Parliament. We need to bring it alive with personality and debate, and that means that members will sometimes say things they should not have said. On most occasions when something is said against another member, the member who said it will apologise—it is sorted out and we move on. I am not in favour of codifying—if that is what Cathie Craigie is seeking—to such a prescriptive level. Parliament is a living, breathing organic organisation and it needs to act and behave in that way, otherwise it would not be operating as the people of Scotland expect it to.

**Cathie Craigie:** Some of the points of order that were being made prior to Parliament's referring the matter to the committee related to ministerial statements, and comments that ministers made. The ministerial code is not a matter for the Presiding Officer or for Parliament, but when will

the updated code be published? It is important that we have that in place.

**Bruce Crawford:** I do not understand why you are asking me that question. As far as I understand the situation, that is not—unless you are telling me otherwise—within the remit of this inquiry. I have heard lots of spurious nonsense talked about ministerial codes at committees and in the press in the recent past. Most of it has been futile and a waste of time. I have no comment to make on the ministerial code, because this inquiry is not considering it.

**The Convener:** That is the case. We are concerned with points of order, so members should try to constrain discussion to that.

**Cathie Craigie:** The committee has stated that the ministerial code has a bearing on some issues that have been raised in Parliament as points of order. Parliament is expecting an updated ministerial code to be issued; I am seeking information on when we can expect it to appear. I offer the minister an opportunity to clarify some of the issues that have been raised.

**Bruce Crawford:** I am happy to clarify the Government's position. Parliament has made its view known, and the Government will respond.

**The Convener:** The issue does not relate to our points of order inquiry.

My previous question was about whether members should be obliged to state in their points of order the standing order that they believe has been breached. I take the minister's point that, if a member makes a point of order in the heat of a discussion because they feel that they have been offended, they should not be obliged or expected to cite a rule. However, it was also suggested that members who know that they intend to make a point of order at the end of the day should cite the standing order that they believe has been breached.

Each party has appointed a member to make regular points of order on its behalf. Given that that member can be expected to have built up some knowledge of standing orders and breaches thereof, should they be required when they make points of order to attempt to identify the standing order that they believe has been breached? When members make points of order, they are suggesting that procedure has been breached. Should they be expected at least to state that when they start to speak?

**Bruce Crawford:** As I said at the outset, all members need to be more precise about why they are making points of order. However, the danger of what you are suggesting is that it would involve one member of Parliament being treated

differently from another under standing orders. I do not support that.

**The Convener:** As members have no further questions, I thank the minister for giving us his views today. He has provided useful evidence for our inquiry.

**Bruce Crawford:** Thank you for giving me the chance to share my views with you. I wish the committee the best of luck in the rest of its deliberations.



## Cross-party Groups

13:22

**The Convener:** Agenda item 2 is to seek the committee's agreement to the establishment of three cross-party groups. Each of the proposed groups has not previously been active. Members will be aware that, when considering whether to approve proposed cross-party groups, they should take account of a range of matters, such as a group's purpose and whether it is being formed on the basis of public interest.

As Nigel Don has been good enough to come along today, we will deal first with the group with which he is involved: the proposed cross-party group on obesity. I invite Nigel Don to comment on the proposed group.

**Nigel Don (North East Scotland) (SNP):** Thank you for inviting me to appear before the committee. I thought that we should establish a cross-party group on obesity primarily as a mechanism for enabling the professional world to engage with Parliament and, therefore, the Government on policy issues. I made the proposal because there seems to be no other particular vehicle for dealing with what is probably the biggest public health issue of our generation.

**The Convener:** Are members content to approve the proposed cross-party group on obesity?

**Members indicated agreement.**

**The Convener:** I thank Nigel Don for his attendance.

The next proposal is for a cross-party group on China. Tom McCabe is unable to attend the meeting, so it is redundant for me to ask whether members have any questions for him. Are members happy to approve the establishment of the proposed group?

**Members indicated agreement.**

**The Convener:** The last matter for consideration is a proposed cross-party group on life sciences. Joe Fitzpatrick was going to come along today but is at the Finance Committee. He has sent a letter of clarification, which contains points that may be of interest. He states that the cross-party group on life sciences proposes to meet three times each year and, in order to ensure that it is as accessible as possible, it aims to hold the meetings in the evening.

There are three main United Kingdom trade associations working in life sciences in Scotland and each will provide the secretariat for one meeting a year. It has been agreed that the secretariat will provide catering for the meetings.

Estimates from Sodexho indicate that the cost for food and beverages would be in the region of £500 per meeting. The catering costs will be paid directly by each secretariat to Sodexho and after each meeting Joe Fitzpatrick will submit full details of the costs.

I think the note is an attempt by Joe Fitzpatrick to anticipate some of the questions that we may have. Are there any comments or queries from members?

**Cathie Craigie:** The letter helps to clarify a point that is made on page 2 of the registration form that is unclear. It stated:

"Each secretariat will cover one of the three annual meetings".

I wondered whether there would be an annual meeting in each of the next three years of this session of Parliament, but it is clear now that there will be three meetings annually at a cost of £500 per meeting.

**Dave Thompson:** Sounds like a good spread.

**Hugh O'Donnell:** I wonder who is providing the catering.

**The Convener:** Sodexho.

**Hugh O'Donnell:** That is an awful lot of chicken wraps.

**The Convener:** I presume that is the price the secretariat was given when it asked for an estimate of cost.

**Dave Thompson:** Perhaps it needs to speak to the cross-party group on obesity.

**The Convener:** Are there any other questions or comments?

**Hugh O'Donnell:** I will make an observation—I am working entirely from memory, which is not necessarily the best or most reliable source, but this is the only cross-party group application that has come across our desks where, as far as I can see, no individuals are listed. I can see only trade or professional associations on the list. Perhaps we can have clarification from the clerks. Is that normal or acceptable? For example, nobody is listed from higher academic institutions. Consequently, my concern is that this proposed cross-party group looks suspiciously like a lobby group.

**The Convener:** That is a fair question. Perhaps one of the clerks will respond to that point. I cannot recall whether I have seen a similar application.

**Peter McGrath (Clerk):** It is difficult to provide a clear answer as to whether this is setting a precedent because sometimes groups choose to register by means of naming individuals who

belong to groups and at other times they provide just the name of the group. It can be difficult to tell from looking at the form whether in practice it is a series of individuals, all of whom belong to a group or certain groups.

**Marlyn Glen:** I may be able to be helpful. I am listed as one of the MSPs involved. It is possible that the answer is that the group has not started meeting properly yet, in that the initial meeting consisted of some of us getting together to talk about it. One of the reasons why I went along was to ensure it was not just a lobbying group for industry. I am interested in the Dundee connection.

**Peter McGrath:** It is at members' discretion to decide whether they are satisfied that the groups are parliamentary in character. To be fair to Tom McCabe, I think we finished item 1 quite early. He is not here yet but he may arrive later. If you have any further doubts or questions on this matter you can defer making a decision until you have heard from him.

**Hugh O'Donnell:** I do not think it is Mr. McCabe's group.

**Peter McGrath:** I am sorry; I meant to say Joe Fitzpatrick. If you have any further concerns you can defer taking a decision until you have either put questions in writing or heard some evidence from members.

**The Convener:** On the first point that Hugh O'Donnell raised, if the explanation—I know that Peter McGrath was just guessing—is that the group has registered organisations rather than individuals, which some people do because they are pushed for time, I will be less satisfied, because that would still represent a fairly narrow base from which to draw the membership. However, Marlyn Glen's point is that the group is still in its early stages and that many people are likely to join later. Given that, does the committee agree to my writing to ask the joint conveners to update us after three months on whether the group's membership is wider?

**Hugh O'Donnell:** I suggest qualified acceptance. As I said, I would like the group to have a wider base—the members are substantially commercial organisations—which might include universities that are engaged in the life sciences.

**The Convener:** Are members happy for us to write to tell the joint conveners that we are willing to approve the group but that we would like to have an updated membership list in three months, to see that it is more diverse?

**Members indicated agreement.**

## Decision on Taking Business in Private

13:30

**The Convener:** The committee's approval is sought to take in private agenda item 5, which is consideration of our work programme, which it has been our practice to consider in private. Our agreed future inquiries will, of course, be made public on our web page. Do we agree to take that item in private?

**Members indicated agreement.**

**The Convener:** We have agreed to discuss in private a possible report on the Audit Committee's title and remit and we do not need to agree to take in private item 6, as the code of conduct for members of the Scottish Parliament requires our initial consideration of a complaint to be in private. Members will recall that we agreed at our previous meeting to consider in private our redraft of section 8 of the "Code of Conduct for Members of the Scottish Parliament", as what is proposed might not reflect our final views.

I close the public part of the meeting and wait for the assembled masses to leave.

13:31

*Meeting continued in private until 15:32.*

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