

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 3 June 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

8th 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

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 3 June 2008

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

Decisions on Taking Business in Private

The Convener (Keith Brown): Good afternoon, everyone, and welcome to the Standards, Procedures and Public Appointments Committee's eighth meeting this year. As usual, I ask members and everyone else to switch off mobile phones and BlackBerrys. No apologies have been received, so I take it that Jamie McGrigor will appear shortly.

Agenda item 1 concerns decisions on taking business in private. I seek the committee's approval to take in private items 5 to 7. Item 5 is discussion of a draft report on a complaint and our practice is to consider all such reports in private, as the draft might not reflect the committee's final views. Do we agree to take the item in private?

Members indicated agreement.

The Convener: Item 6 is consideration of a report from the Scottish Parliamentary Standards Commissioner. Given that the report contains confidential information, it would be better taken in private. Is that agreed?

Members indicated agreement.

The Convener: Item 7 is consideration of a request for a direction from the Scottish Parliamentary Standards Commissioner. As confidential information is involved, do members agree to take the item in private?

Members indicated agreement.

The Convener: We need not agree to take in private item 3, as the code of conduct for members of the Scottish Parliament requires us to consider in private stage 2 reports on complaints. Members will be aware that we will move back into public session for item 4. When I announce that the meeting is to go back into public session, the public and the press will be invited back into the room.

Difficult Correspondents and Constituents Inquiry

14:16

The Convener: We come to item 2. Members will recall that the committee agreed at its meeting on 22 April 2008 to consider whether to issue guidance to MSPs on handling difficult correspondents and constituents. Our predecessor committee considered the matter but, because of time constraints, it could not incorporate guidance into the code of conduct.

Paper SPPA/S3/08/8/1 contains a copy of the paper that was circulated to the Standards and Public Appointments Committee on 25 April 2006, which details the approaches of other agencies and bodies to dealing with persistent complainers. Appendix 3 to that paper is the policy of the Northern Ireland ombudsman's office on unacceptable actions or behaviour by complainers, which was not available to the committee in 2006.

The paper proposes three approaches to progressing the inquiry for the committee to consider. The committee could seek further written evidence, hear oral evidence or move straight to considering its draft guidance for MSPs. I seek members' views on which of those approaches they are minded to adopt and I invite them to make any other suggestions.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): In previous sessions, committee members and others have done considerable work. We should use that work and the information that is appended to the paper. I suggest that we ask for another paper that proposes a commonsense approach that we can share with members to assist them in dealing with difficult constituents who might approach them. We do not need further written evidence or oral evidence; we can use what we have.

The Convener: That is my view, too. When we first discussed the subject, the aim was to have an add-on, as we were finishing our consideration of section 8 of the code of conduct.

If that approach is agreed, I ask members to think about the relevant issues. Do we want the overarching policy to be that MSPs should always endeavour to represent their constituents but may determine how they engage with persistent complainers—for example, in writing or face to face? The cornerstone would be our endeavour to represent constituents, but we might seek guidance on persistent complainers.

Dave Thompson (Highlands and Islands) (SNP): I agree with that. We should try to keep the paper as simple as possible.

The Convener: For the benefit of the clerks, who will have to put the paper together, should we try to encourage MSPs to separate the behaviour of persistent complainers from the issues that they wish the MSP to pursue? That is not always easy to do, but it seems like a good principle to follow.

Members *indicated agreement.*

The Convener: Do we agree that the policy should reflect the need for each substantial issue of a case to be considered, and that the previous poor conduct of a complainer should not debar them from approaching an MSP again with a different case?

Cathie Craigie: We should focus on the behaviour of the complainer, rather than the cases. The guidance should help MSPs and their staff to deal with abusive or threatening behaviour—someone at a previous meeting mentioned being stalked by a complainer—and cases in which members are inundated with unreasonable and abusive e-mails or letters.

The Convener: The clerks are looking to the standards commissioner's policies and those of the ombudsman in Northern Ireland, which suggest that if a persistent complainer comes forward with a fresh complaint, that complaint should be dealt with on its merits, regardless of the previous behaviour. Are you saying that the previous behaviour should be taken into account?

Cathie Craigie: I would have thought that the previous behaviour would be important. Members want guidance on whether there are times when the police should be called in, for example. That is the main issue, as far as I can see. If someone has exhibited behaviour that has caused a member concern, it is unlikely that they will change in the course of the few months between their first complaint and their next complaint. If we say that we should ignore someone's past behaviour when dealing with a complaint, we could make it possible for someone to continue to harass a member.

Hugh O'Donnell (Central Scotland) (LD): The area is fraught with difficulty. The safety of elected members and their staff from physical assault or verbal abuse must be a primary consideration. It is not beyond any of us to imagine that someone whose track record shows that they are likely to cause fear in a member or their staff might come up with a somewhat spurious complaint simply as a means of gaining legitimate access. Cathie Craigie is right to say that someone's past behaviour is important. We must come up with a form of words that says that members of the public cannot treat people in such a way.

All of our public servants have a right to be protected from abuse, and there are a variety of advertising campaigns that say that abusive

behaviour is not acceptable. I am sorry, but, regardless of our position as elected members, it is no more acceptable for us to be subjected to such abuse on a regular basis than it is for any other individual. We need to be a little bit cautious in case we create a window of opportunity for someone to use another issue as a method of perpetuating an abusive campaign.

Dave Thompson: We have to be careful here. The matter is one of degree. Someone might have gone over the top because the issue at the time affected them in such a personal way—it might have concerned a family member, for example—that they did or said things that they should not have done or said. Six months or six years down the road, they might have an issue that they need to take to their MSP that is not so personal and does not get them so worked up. The first situation might have been a one-off, and it would be wrong for us to debar them because of that. We need to consider the degree of the problem.

Hugh O'Donnell: I hesitate to say this but, with one or two exceptions, ignorance of the law is no mitigation. If people are clear from the outset about the basis of the relationship, there can be no doubt about what the boundaries are.

The expression "over the top" would not stand up in court, as it would depend on who was defining what constitutes an over-the-top reaction. It is natural for people to want to address emotive issues, but I reiterate that if it is not acceptable to abuse a train guard because the train is late, early or cancelled, it should not be acceptable to abuse MSP staff, who are almost certainly the first point of contact, or MSPs. Rather than the onus being on MSPs, we should have clear guidelines on how the relationship will be conducted, which should be known to both parties so that everyone knows where they stand. The guidance should enable MSPs to say, "If you would like me to take up this case, here is the basis on which we will go forward." Somewhere in there, we perhaps need to say that verbal or written abuse is not acceptable and that decisions on whether to progress will be contingent on acceptable behaviour.

The Convener: To clarify, what we are discussing now is guidance for the clerks, who will put the papers together.

Hugh O'Donnell: I understand that.

The Convener: I go back to Hugh O'Donnell's analogy about the train guard. It is unacceptable for someone to be abusive to a train guard because a train is late. However, if the person goes back for a train two days later and asks the train guard why there are delays on the west coast line, should not that request be treated on its merits?

Hugh O'Donnell: If their manner of approach is similar to that in the first instance, no.

The Convener: That is true.

Cathie Craigie: I may be repeating what I said before, but we should not have guidance that says that a constituent should not come to our surgery again with a case. We were elected to represent everyone, all of the time, regardless of their behaviour. I am looking for guidance for me and my staff about what we should do. I am not looking for the bottom line, which is that an MSP can close their door to a constituent altogether. We should not have anything like that in the guidance.

This is my third session in the Parliament and I do not think that we have had any training on how to deal with difficult constituents or been told the situations in which we should call the police. At our previous meeting, one of our colleagues explained how a member had felt intimidated by a constituent. That should not happen. We should be able to call on a part of the organisation to assist in such cases or we should know what to do.

14:30

Jamie McGrigor (Highlands and Islands) (Con): I was going to make the same point as Hugh O'Donnell. It does not make any difference whether it is a guard on a train, an MSP or a member of their staff; abusive behaviour is not acceptable anyway nowadays. The same avenues should be open to anyone. We cannot make ourselves special just because we are MSPs and MSPs' staff, much as I would like to.

The clerk's paper mentions a report by Craigforth Consultancy and Research, which was produced in 2003. It might be worth having a look at that.

The Convener: Which page is that on, Jamie?

Jamie McGrigor: It is in paragraph 4 on page 4. I am not certain what it says, to be honest, but the point is that work has been done on the matter.

The Convener: That is one of the points that I was going to make. There are a number of different models: the standards commissioner's policy, which is on his website; the Scottish Public Services Ombudsman's; and the guidance from the Northern Ireland ombudsman's office, which the previous committee did not have. It is a week or so since I read about them, but the Scottish Parliamentary Standards Commissioner's policy seemed to be a good starting point for the clerks. It is also most relevant to this Parliament. Are members happy for the clerks to use that as a starting point?

Members indicated agreement.

Dave Thompson: The guidance from the Northern Ireland ombudsman's office is big—too big, which is why I call again for simplicity. Let us drill down to make our guidance a fairly tight document. If we try to address every single issue in great detail, we could get into all sorts of problems.

The Convener: There is one final point on which it would be useful to get any strong opinions now. As Hugh O'Donnell said, not only would we take a cue from the guidance, but it would allow complainers to know where the boundaries are. Would it be worth considering whether an MSP could discuss and agree with their business manager cases in which the MSP proposes to cease contact with a constituent? Obviously, it would be quite contentious to cease contact. The idea behind the proposal is that the business manager is relatively independent of the case.

Marlyn Glen (North East Scotland) (Lab): I thought that, in general, we could get individual advice from the Standards, Procedures and Public Appointments Committee clerks, which is a better way. I would expect to get more substantial, backed-up advice from the clerks than from the business managers.

The Convener: Part of the reason why we are discussing the matter is that there is a vacuum because there is not a lot of guidance. Do the clerks want to mention any previous advice that has been given on such matters?

Gillian Baxendine (Clerk): We can always give advice to the extent that matters are covered by the code of conduct and the guidance. Obviously, it is easier to give advice if there is better guidance in place.

The Convener: There does not seem to be a great deal of appetite for the idea of discussing cases with the business managers, and nobody is saying otherwise.

We have provided a few clues for the clerks to start to put together a paper. That is the next thing that will happen, and we will have it after the recess.

Marlyn Glen: We talked about the lack of training. It is not the committee's place to offer training, but staff in all our offices often work on their own and if we are going to issue guidance, we need to give it to them as well as to MSPs. Who would we ask to set up training?

The Convener: That is a good question.

Gillian Baxendine: The personnel office has organised training for members' staff in the past, but the committee might want to recommend training for MSPs' staff when it issues the guidance. We can pursue that.

Christina McKelvie (Central Scotland) (SNP): What guidance and training was given to MPs after the horrific murder of an MP's assistant? There might be something already in place that we can use instead of reinventing the wheel.

The Convener: I have asked about staff before. Even in the short time in which I have been an MSP, there have been scary situations for people in my office, especially my two female staff, who are often on their own.

For now, we are discussing having guidance in the code of conduct that gives members surety that they will have something to back them up if they say that they are not going to communicate with someone any more for whatever reason. Security and training for staff in local offices are separate issues. It might be best if the Scottish Parliamentary Corporate Body considered those.

Christina McKelvie: I have just heard Marlyn Glen mentioning health and safety. I was going to mention that. As employers, we have a responsibility to keep our members of staff safe. If training can be carried out or other things can be done to protect people in the workplace, we have a responsibility to arrange such things.

All new members of staff are given a handbook that contains information on conduct. A new insert could be put into that handbook. Something could bring to staff's attention how they should deal with persistent complainers. There could be an update for all members of staff.

The Convener: That may be outwith our remit, but it would be within the SPCB's remit. I could write to the SPCB and suggest that it should consider training and security measures in local offices. It might be worth asking the SPCB about that, even if we ended up only with guidance, although we might end up with something more substantial than that.

Hugh O'Donnell: Unless the policy has changed, the elected member is the employer. The elected member is the responsible person in such matters and so it is down to each of us to take the necessary steps. Heaven forbid that there should be a problem, but if there is, as employers, we, rather than the corporate body, carry the responsibility for it. From my experience, the corporate body's attitude to allowing any training other than the initial training that is provided to members of staff is that it should be funded not by it but from the members support allowance. The corporate body has no budget for such training, and it will almost certainly bat the issue back to us.

The Convener: In that case, perhaps it would be appropriate to raise the issue with the party groups.

Cathie Craigie: In the past week or so, we have all received an e-mail, saying that a survey is being undertaken and that people from somewhere in the Parliament will come to speak to us to find out how we can be supported. There could be something out there that can be tapped into, although I am not aware of it.

The Convener: I am a wee bit further ahead, as I took part in a face-to-face survey interview this morning. There were a few open-ended questions, but nothing like that was covered in it. Like Hugh O'Donnell, I think that the corporate body would say that it does not provide such a service.

Hugh O'Donnell: From my experience of dealing with it before I was elected, I think that that is exactly what it would say.

The Convener: As I said, it may be appropriate to raise the issue through the party groups.

We agree that the clerks should produce a paper. Do members also agree that any draft guidance should be discussed in private?

Members indicated agreement.

The Convener: We will now move into private session for agenda item 3.

14:38

Meeting continued in private.

14:55

Meeting continued in public.

Complaint

The Convener: I welcome back members of the public and press to the eighth meeting in 2008 of the Standards, Procedures and Public Appointments Committee.

Under agenda item 4, the committee will announce its decision at stage 3 on a report from the Scottish Parliamentary Standards Commissioner. I draw members' attention to my entry in the register of members' interests that relates to the event that we are about to discuss.

The complaint referred to was lodged by Mr Paul Drury. Mr Drury complained that Andy Kerr MSP failed to register in the register of members' interests within the required timescale up to £2,000 of hospitality from the fast-food firm McDonald's. Mr Kerr participated in a community shield football event that was sponsored by McDonald's in London on 4 August 2007. Mr Drury complained that Mr Kerr had registered the interest on 7 September 2007, four days after the deadline of 30 days by which newly acquired registrable interests should be registered.

It was alleged that, in failing to register the interest, Mr Kerr had breached the Interests of Members of the Scottish Parliament Act 2006. Both section 5 of the act and paragraph 6 of the schedule to it require that members register any gift that exceeds £520 and that meets the prejudice test. In this case, the hospitality, overnight stay and tickets fall within the definition of gifts and were valued by Mr Kerr to be approximately £1,020.

In considering the prejudice test, the standards commissioner concluded that the public might well judge that a gift of more than £1,000 to an MSP from a commercial fast-food chain gives the appearance of prejudicing the member's ability to participate in a disinterested manner in the proceedings of Parliament, for example on a debate on the health issues relating to particular types of food. The commissioner states that the gift was, therefore, in his view, likely to meet the test.

Section 5 of the Interests of Members of the Scottish Parliament Act 2006 also requires any member to declare any registrable interest within 30 days of acquiring the interest. In this case, Mr Kerr attended the event on 4 August but registered the interest on 7 September, which is four days after the 30-day deadline.

The Standards, Procedures and Public Appointments Committee has considered the

standards commissioner's report, accepts the commissioner's findings on the facts of the complaint and agrees with his conclusion that Andy Kerr breached the Interests of Members of the Scottish Parliament Act 2006.

Having agreed that there has been a breach of the 2006 act, and in accordance with paragraph 9.43 of the guidance on the code of conduct, the committee must now decide whether to apply sanctions. The committee has agreed that it does not wish to invite Andy Kerr to make any representations to the committee at this time.

I now invite members' views on whether we should recommend to Parliament that sanctions be applied against Andy Kerr MSP.

Hugh O'Donnell: Convener, as a new member, may I have some clarification of what sanctions are at the committee's disposal?

The Convener: I ask the clerks to explain.

Jane Sutherland (Clerk): The committee can consider any sanction that relates to limiting or restricting the participation of the member in any parliamentary proceedings.

Hugh O'Donnell: Thank you.

Jamie McGrigor: After due consideration, I feel that it was more of an oversight than an intended offence. The procurator fiscal has taken a direct measure, and no sanctions are necessary.

15:00

Marlyn Glen: I agree with Jamie McGrigor, particularly since the MSP in question accepted responsibility for missing the deadline and registered the interest when it was pointed out to him. To repeat what Jamie McGrigor said, I think that, as the direct measure has already been taken, there should be no sanctions.

Dave Thompson: I concur with both those views.

Hugh O'Donnell: Who pointed out the failure to record?

The Convener: The statement that I read out mentions that it was Mr Paul Drury.

Hugh O'Donnell: So it was the complainer who pointed out the failure to the elected member.

The Convener: Yes.

Hugh O'Donnell: It is very assiduous of a member of the public to notice a four-day difference.

Cathie Craigie: I am happy to go along with what other members have said. Given that Mr Kerr accepted responsibility and registered the interest quickly when it was brought to his attention and

that the procurator fiscal has taken action, we should conclude that no further sanctions are necessary.

Christina McKelvie: I go on record to concur with my committee colleagues that no further sanctions should be taken.

The Convener: If that is the general view, I ask for a proposer and a seconder for the decision.

Hugh O'Donnell: I am happy to propose it.

Jamie McGrigor: I second it.

The Convener: Thank you very much.

That concludes our public discussion of the complaint. The committee's report on the complaint is likely to be published on the committee's web page on Friday 6 June 2008.

As agreed under agenda item 1, we will now move back into private session to consider a draft report.

15:01

Meeting continued in private until 15:11.

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