

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

Wednesday 25 June 2008

Thursday 26 June 2008

Session 3

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## STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE 11<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

### 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

*Wednesday 25 June 2008*

[THE CONVENER *opened the meeting at 13:09*]

### Decision on Taking Business in Private

**The Convener (Keith Brown):** I am sorry for the delayed start. Our first item on the agenda is to decide whether to take agenda item 3 in private. Do members agree to take that item in private?

**Members** *indicated agreement.*

## Complaint

13:09

**The Convener:** Item 2 is for the committee to announce its decision at stage 3 on a report from the Scottish Parliamentary Standards Commissioner.

The complaint was lodged by Iain Fraser. Mr Fraser complained that Ms Alexander had failed to register in the register of interests, within the required timescales, 10 donations of more than £520 in value that were made to her campaign for election as leader of the Labour group of MSPs in the Scottish Parliament.

Mr Fraser alleged that Ms Alexander had breached the Interests of Members of the Scottish Parliament Act 2006 by failing to register those donations as gifts. Section 5 and paragraph 6 of the schedule to the act require that members register any gift that they have received if it exceeds £520 and meets the prejudice test.

A number of facts emerge from the standards commissioner's report. Between 15 August and 14 September 2007, Ms Alexander engaged in a campaign for election as leader of the Labour group of MSPs in the Scottish Parliament. Donations towards the cost of the campaign were received from individuals and organisations and were paid into the WA campaign account, to which the member was not a signatory. Ten of those donations were of a value over the registration threshold for gifts of £520. They were banked between 31 August and 5 November 2007.

No entry was made by Ms Alexander in relation to the relevant donations under "Gifts" in the register of members' interests within 30 days of their receipt. The guidance to the code of conduct—volume 3—does not currently provide guidance on the registrable category of gifts. Paragraph 1.1.2 of the code of conduct states that members may seek advice from the standards clerks if they are uncertain about the operation of the act or the code. It then states:

"each Member must ensure that the provisions of the Act are complied with and may additionally wish to seek independent legal and other professional advice prior to registration."

Ms Alexander sought and received written advice from the clerks to the Standards, Procedures and Public Appointments Committee on 8 November 2007. The advice that she was given was that the registration of the donations in the parliamentary register of interests was not required.

The standards commissioner sought legal opinion from senior counsel, which led him to

conclude that the donations to Wendy Alexander's party leadership campaign fell within the meaning of "gifts" under the 2006 act. The standards commissioner concluded that although Ms Alexander did not have direct ownership or control of the campaign funds, she had a beneficial interest in them.

On 1 February 2007, when the standards commissioner's investigation was not yet complete, nine donations were registered voluntarily in the register of members' interests and the 10<sup>th</sup> was registered under "Sponsorship". The commissioner then excluded the donation registered under "Sponsorship" from his investigations, given that, under the Scottish Parliamentary Standards Commissioner Act 2002, the commissioner cannot vary the remit set by the complaint and that, in this case, the complaint was that the donations should have been registered as gifts.

In relation to one of the remaining donations, the standards commissioner concluded that he had insufficient evidence to determine whether the prejudice test was met.

In considering the prejudice test as it applied to the eight remaining donations, the standards commissioner accepted that Ms Alexander did not feel influenced by the existence of the interests. However, he concluded that a fair-minded and impartial observer would consider that the interests could influence a person acting as an MSP, or give the appearance of prejudicing that person's ability to act impartially. On that basis, the standards commissioner concluded that the prejudice test was met.

The standards commissioner concluded that Ms Alexander's failure to register as gifts in the register of members' interests, within the appropriate timescale, eight of the donations to her leadership campaign constituted a breach of section 5 of the Interests of Members of the Scottish Parliament Act 2006, together with paragraph 6(1) of the schedule to the act.

The Standards, Procedures and Public Appointments Committee has considered the standards commissioner's report. The committee agrees with his findings of fact, although it accepts Ms Alexander's point that his statement in his findings of fact that the prejudice test is met is a judgment, rather than a finding of fact.

In considering the circumstances of the case as described in the standards commissioner's report, the committee considered the evidence gathered by him, the opinion provided to him by senior counsel, the views and decision of the area procurator fiscal and the representations made by Ms Alexander.

13:15

The committee agreed with the conclusion of the standards commissioner by a majority of five members for and two against. A minority of the committee did not agree that the donations were gifts within the meaning of the 2006 act and therefore concluded that there had not been a breach.

In accordance with paragraph 9.43 of the guidance to the code of conduct, the committee must now decide whether to apply sanctions. The committee agreed that it wished to afford Ms Alexander an opportunity to make representations to the committee. Ms Alexander has provided the following written representations:

"Further to my discussion yesterday afternoon with the Clerk to the Standards Committee, I am grateful for the opportunity to make a further statement to the members of the Committee. I appreciate the time Committee Members are giving to this matter.

With the exception of one small detail in paragraph 91, I agree with the findings of fact made by the Standards Commissioner. As the Committee is aware the advice in the code is for members to seek advice from the clerks and this I did. My actions were guided by the unambiguous written advice I received from the Parliamentary Clerks, which was based in turn on advice from the Parliament's lawyers.

Over my time in the Parliament, my register of interests has demonstrated my readiness to declare all registrable interests. Indeed over the last nine years my register shows that where I or my office have been in direct receipt of gifts and other items I have exceeded the formal reporting requirements and declared items well below the required reporting level. I have sought to ensure throughout the last nine years that I comply with all registration requirements.

In this spirit and on this occasion, I sought advice from the Clerks to confirm whether donations to my Campaign Team, being registered voluntarily with the Electoral Commission, should also appear on my personal register of members' interests. After checking with the Parliamentary lawyers, the Parliamentary Clerks confirmed in writing that these were not registrable on the grounds that I did not receive them, they were not paid to me directly, I was not a signatory to the account and I could not draw monies from the fund. I was guided by their advice in all good faith, which was consistent with the approach that appeared to have been adopted in all other party leadership elections conducted during the lifetime of the Scottish Parliament.

After the Standards Commissioner received the complaint about me, he began his investigations as detailed in his report. He himself conceded early in the investigation that he was not clear whether the donations could be classified as gifts under the Register and he was going to seek independent legal opinion from Counsel. As soon as he advised me of his Counsel's opinion that these should indeed have been classified as gifts under the Code, I took immediate steps to make a voluntary disclosure on my Register, which appeared on 9 February.

It has never been my intention to do anything but comply with the regulations laid down by our Parliament. I have acted with the utmost good faith at every stage of this process and I hope the Committee will take this account when considering their decision."

That concludes this agenda item. As agreed under agenda item 1, the committee will now move into private to consider those representations and whether to recommend the imposition of sanctions.

13:18

*Meeting continued in private.*

13:51

*Meeting continued in public.*

**The Convener:** The committee has agreed to continue its consideration of the question of sanctions tomorrow, and I seek members' agreement to consider the issue in private at that meeting. Are members agreed?

**Members** *indicated agreement.*

**The Convener:** The committee will consider the issue tomorrow. When we have reached agreement on the question of sanctions or otherwise, we will make a public announcement.

*Meeting closed at 13:52.*





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## STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE 12<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 McGregor (Highlands and Islands) (Con)

\*Christina McKelvie (Central Scotland) (SNP)

\*Hugh O'Donnell (Central Scotland) (LD)

\*Dave Thompson (Highlands and Islands) (SNP)

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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

Thursday 26 June 2008

[THE CONVENER opened the meeting in private at 13:00]

15:37

*Meeting continued in public.*

### Complaint

**The Convener (Keith Brown):** I welcome everyone to the 12<sup>th</sup> meeting in 2008 of the Standards, Procedures and Public Appointments Committee.

Paragraph 9.43 of the guidance on the code of conduct for MSPs states that the committee must decide whether it wishes to recommend to Parliament the imposition of sanctions against a member who is the subject of a complaint. Therefore, I invite members to comment and give their views on whether the committee should recommend sanctions against Wendy Alexander.

**Hugh O'Donnell (Central Scotland) (LD):** I have had the opportunity to consider carefully all the documentation that has been presented to us and have previously agreed that a breach did take place. My view is that that breach was sufficiently serious that a sanction should be imposed on the member.

**Christina McKelvie (Central Scotland) (SNP):** I have deliberated on all the evidence that has been presented to us over the past few weeks and I am minded to support the imposition of a sanction.

**Jamie McGrigor (Highlands and Islands) (Con):** I take the opposite view. In light of the member's attempts to register the donations, the fact that she took the advice of the Parliament's lawyers and clerks, who advised her that there was no need to register them, and the fact that the Scottish Parliamentary Standards Commissioner has said that it was dubious whether registration was necessary, there are mitigating circumstances. Although I agree that a breach took place, I have considered the opinion of the Queen's counsel in question and I do not think that blame is attributable to the member, therefore no sanction should be imposed.

**Dave Thompson (Highlands and Islands) (SNP):** This has been a lengthy and complicated

process. The committee has agreed that a breach occurred. The matter is too serious for us to take no action on it, and I agree with the two members who said that we should impose a sanction.

**Marlyn Glen (North East Scotland) (Lab):** Given that the member followed all the advice that was given at every stage, there should be no sanction. Although I accept that the final responsibility always lies with the member, members have a serious problem if following advice results in sanctions being imposed. Legal opinion is divided on the interpretation of legislation and guidance for members is lacking. The member fell foul of a system that is flawed, which is unfortunate, therefore I urge that no sanction be applied.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Like other members, I have carefully considered the information that has come before the committee. The parliamentary clerks go about their business impartially and with integrity. They are trusted by members of all political parties and none to guide members on the matters that we must deal with, which are often complicated.

In this case, I do not accept that the opinion that was given by counsel to the independent Scottish Parliamentary Standards Commissioner represents a better interpretation of the law than does the opinion that was given to Wendy Alexander by independent clerks in the Parliament. I do not accept that the counsel who gave an opinion to Mr Dyer had any more information at his disposal than did the Crown counsel or procurator fiscal.

Perhaps we think that the donations that we have been considering were registrable, but is it right to go back on an opinion that was given and to change the rules without notice? I do not think so. In this case, the member acted on advice that was given to her, as I am sure other members would have done. We should judge the matter on that action and not on opinion, which is clearly divided.

The advice from Parliament officials was that, as they read the law, the donations were not registrable. Crown counsel was unable to be sufficiently certain of the law to agree that the law had been broken and to bring a prosecution, as the standards commissioner's findings would have permitted. A spokesperson for the Crown Office said:

"After very full and careful consideration of the report from the Scottish Parliamentary Standards Commissioner, Crown Counsel has concluded that a prosecution would not be appropriate in the full circumstances of this case. In coming to this decision, Crown Counsel had regard to the fact that: there is a degree of uncertainty surrounding the interpretation of these provisions; Miss Alexander sought the advice of the Clerk to the Standards committee in

relation to this matter; a voluntary disclosure was made to the Electoral Commission”,

and

“the issues raised by the case might more appropriately be dealt with by the Standards, Procedures and Public appointments committee”,

as we are doing.

Mr Dyer’s legal opinion said that the donations were registrable, although he states in his report that it is well established in law that when an opinion has been given,

“imposition of a penalty on a person is possible only if it is imposed by clear words.”

I do not believe that the words were clear. However, the advice from the clerks to the member was in clear words, but the standards commissioner said:

“The Clerks’ advice however cannot affect my conclusion regarding a breach, which must be arrived at according to my independent judgement.”

That stance has amazed and troubled me. How can anyone arrive at a fair and independent judgment or conclusion when one of the main mitigating facts in a defence cannot be considered by the independent commissioner? Such a position is not acceptable and we must consider the issue further as a matter of urgency.

I am sure that any fair-minded and impartial observer would agree with the decision of our Crown Office and Procurator Fiscal Service. As the convener announced at yesterday’s meeting, the committee decided by a majority that there had been a breach of the rules. I do not agree with that decision and, having considered all the circumstances in the case, move that no sanction be imposed on the member. I support colleagues who have taken the same position.

15:45

**The Convener:** Thank you, Cathie—we are still at the stage of commenting on the issue.

I appreciate that every committee member has had a hard time in dealing with the issue for some weeks now. The situation is not easy to resolve. I admit that I found it much easier to reach a conclusion on whether there was a breach than on whether sanctions should be applied.

I accept some of the points that have just been made, including about the ambiguity of the different legal advice. I am not sure whether this point has been made, but I also accept that as a committee we should have considered the additional guidance by this time. That would have made it clearer for the member in question and all members as to when it is appropriate to register interests. Those facts should be taken in

mitigation, as should the facts that advice was sought from the clerks and that clear and unequivocal advice was given by the clerks. I accept all those points.

However, I believe that there is a responsibility on the individual member as we are all told to ensure that our entries on the register of members’ interests are correct. There was a period before the member sought advice from the clerks, and our decision was that a breach had already been committed during that time. It is for that time and the question whether the member exercised due diligence in seeking to find out whether the donations should be registered that I think that there is some responsibility on the part of the member, albeit that there are mitigating circumstances.

For those reasons, I agree that we should consider sanctions. I therefore propose that the committee agrees to recommend sanctions in relation to the breach by Wendy Alexander. I will ask each member in turn to give their vote on that.

The question is, that the committee agrees to recommend sanctions in relation to the breach by Wendy Alexander. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**Hugh O’Donnell:** I agree with the proposal.

**Christina McKelvie:** I agree with the proposal.

**Jamie McGrigor:** I disagree with the proposal.

**Dave Thompson:** I agree with the proposal.

**Marlyn Glen:** I disagree.

**Cathie Craigie:** I disagree.

**The Convener:** I agree.

The result of the division is: For 4, Against 3, Abstentions 0.

Given that the committee has agreed by a majority of four to three to consider sanctions, we will move on to that question.

I ask each member in turn to give their views on what they believe to be an appropriate sanction.

**Hugh O’Donnell:** Given the agreement that we have reached, albeit after a division, any sanction that the committee chooses should take account of the circumstances, the difficulties that you have highlighted, convener, in relation to the ambiguity of the different legal advice, and the fact that the member has had some considerable pressure in relation to the case. Consequently, to recognise that the committee takes such a breach seriously, I propose that the member be suspended from the business of the Parliament for one sitting day.

**Christina McKelvie:** On a similar basis to my colleague Hugh O'Donnell, I believe that the committee has to treat the breach seriously, and the sanction should reflect that. I agree to recommend a suspension of one parliamentary sitting day.

**Jamie McGrigor:** As I have already said, given the mitigating circumstances—the fact that the member did everything that she could to find out whether she should register the donations—I do not consider any sanctions should be applied.

**Dave Thompson:** We have agreed to apply sanctions. As I have already said, this is a serious matter, and any sanction must be meaningful. We have a wide range of choices, from short exclusions from submitting motions, for example, to exclusion from the full Parliament for a lengthy period.

As we have gone through the case, it has been clear to me that there are a number of mitigating factors. Equally, there are factors that the member should have taken into account, and there is therefore responsibility on the part of the member. Balancing all of that, I concur with my two colleagues who suggested an exclusion for one sitting day of the Parliament.

**Marlyn Glen:** I repeat that I do not believe that there should be any sanctions.

**Cathie Craigie:** I do not believe that there should be any sanctions. Any reasonable member would have followed the advice given by the Parliament. I stand by what I said previously.

**The Convener:** For my part, I agree that there has been a serious breach but, for the reasons that I mentioned, I do not think that the member bears full responsibility for that serious breach. For that reason, I go along with the proposed sanction of one day's exclusion.

Let me just clarify the proposal. Is the committee agreed that the committee recommends that Wendy Alexander be excluded from all proceedings of the Parliament for the first Wednesday that is a sitting day following agreement by the Parliament? As you will know, our report must go to the Parliament for approval.

Let me take the substantive vote on that proposal. I will hear from members in turn.

**Hugh O'Donnell:** I agree with the proposal.

**Christina McKelvie:** Agreed.

**Jamie McGrigor:** I wish to take no part in the vote.

**Dave Thompson:** I agree with the proposal.

**Marlyn Glen:** I prefer to abstain.

**Cathie Craigie:** I will abstain.

**The Convener:** I agree with the proposal.

The result of the division is: For 4, Against 0, Abstentions 3.

The committee has thereby agreed the proposal.

## **Decision on Taking Business in Private**

**The Convener:** With that, I conclude this meeting.

*Meeting closed at 15:52.*

15:51

**The Convener:** The committee will need to consider its report on this complaint, which will be published next Friday. Can I have the committee's agreement to consider the report in private?

**Members** *indicated agreement.*

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