

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 9 December 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE 20th Meeting 2008, Session 3

CONVENER

*Gil Paterson (West of Scotland) (SNP)

DEPUTY CONVENER

*Marilyn Livingstone (Kirkcaldy) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

*Aileen Campbell (South of Scotland) (SNP)

*Nanette Milne (North East Scotland) (Con):

*Peter Peacock (Highlands and Islands) (Lab)

*Dave Thompson (Highlands and Islands) (SNP)

COMMITTEE SUBSTITUTES

Alasdair Morgan (South of Scotland) (SNP)

Mary Mulligan (Linlithgow) (Lab)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

Elizabeth Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Williams

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 9 December 2008

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

Decision on Taking Business in Private

The Convener (Gil Paterson): I welcome everyone to the 20th meeting of the Standards, Procedures and Public Appointments Committee in 2008. I ask members to switch off their mobile phones.

The first item of business is to consider whether to take item 5 in private. Item 5 is initial consideration of the approach to our inquiry into guidance on registrable interests. We normally take such items in private so that the committee can decide how to take the inquiry forward. The committee has also previously agreed that items 3 and 4 should be considered in private. They relate to the progress of the members' bills inquiry and the draft report on cross-party groups.

Do we agree to take item 5 in private?

Members *indicated agreement.*

Scottish Parliamentary Standards Commissioner Annual Report 2007-08

14:16

The Convener: At its meeting on 30 September, the committee agreed to take oral evidence from the Scottish Parliamentary Standards Commissioner, Jim Dyer, on his annual report and, more generally, on his period in office. As this will be his last annual report to the committee, it is particularly important to us.

I welcome Jim Dyer to the committee. Would you like to make a short statement? After that, we will pose some questions.

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): Thank you, convener. I do not want to make a prepared statement; I am happy simply to answer questions. As you acknowledged, this is a rather odd meeting, with me going out the door as most of the committee members are just coming in. However, if I can assist the committee in any way in my remaining time, which is now less than four months, I would be happy to do so. For example, I could explain my role more fully to you.

I have one other comment. In view of the Scottish Parliamentary Corporate Body evidence, both oral and in writing, to the Review of SPCB Supported Bodies Committee, I would like the opportunity to comment on the future of the standards commissioner post. If it does not come up in questions, I would like to comment briefly on it later.

The Convener: I am happy to accept that. We may have a slightly different opinion, and we are likely to give evidence to that committee, but I am more than happy to hear what you have to say.

Dr Dyer: It is good if the committee is to give evidence to the RSSB committee.

The Convener: Do members have any questions?

Robert Brown (Glasgow) (LD): I thought that Dr Dyer was going to comment on that matter for the committee's information. I would certainly be interested in hearing his view on the stand-alone existence of the commissioner post. I do not know how legitimate it is to ask about that in debating the annual report, but Dr Dyer's comments will follow from his experience in creating the office and carrying it through during the past few years.

Dr Dyer: I am happy to speak about that now.

As Robert Brown said, I have been the first standards commissioner, so it has been my role to

establish the post and make it operate successfully. Therefore, I have a view on how the post should continue. I have no axe to grind, given that I will stand down at the end of March 2009.

Members might know that the SPCB, in written evidence to the RSSB committee, suggested collapsing the six current office-holder bodies into three bodies, one of which would be a complaints and standards body and would include the functions of the Scottish Public Services Ombudsman, the Commissioner for Public Appointments in Scotland, the Scottish Parliamentary Standards Commissioner—my post—and the Standards Commission for Scotland, which relates to government and not Parliament and deals with complaints about local authority councillors and members of public bodies.

It is difficult to comment on the proposals, because they are light on detail. During this morning's meeting of the RSSB committee, I think that Ross Finnie said that the SPCB had proposed a solution without saying what problems the solution is supposed to address. There are said to be two aims: first, to create greater value for money; and secondly, to create a one-stop shop.

I cannot see how greater value for money will be gained by putting me into an office and giving me staff, given that I currently operate without an office and without staff. I pay for my heat, light and electricity and I do my own typing and filing. In that respect, it might be said that I am a paradigm of a commissioner, in that I offer exceptional value for money. My budget is low—it is £90,000, which is tiny in comparison with other budgets—and has not risen during the time that I have been in post, even to take account of inflation. That answers the point about value for money; I will come back to the arguments for a one-stop shop, which is a more significant issue in relation to my post.

The need for my post was considered carefully by a predecessor of this committee. The Standards Committee in the first session of the Parliament considered the issue in its fourth report in 2000, "Models of Investigation of Complaints", and in its second report in 2001, "Proposal for a Standards Commissioner Committee Bill". The committee studied the situation for nine months and, after conducting a comparative analysis of similar posts elsewhere, concluded that there was a clear need for a stand-alone, statutory standards commissioner. The committee considered and rejected the option of having investigation done by an independent commission. It even considered and rejected the option of subsuming such functions in the role of the proposed standards commission for Scotland. In the conclusion to its 2001 report, the committee said:

"The Committee believes that the establishment of a Standards Commissioner in the Scottish Parliament is an essential step in cementing the public's confidence in the Parliament's ability to ensure that its Members carry out their duties with integrity, selflessness and honesty. The Commissioner will be an important independent element in ensuring that complaints against Members are dealt with in a transparent and rigorous manner. The principal bulwarks of the independence of the post will be the statutory basis on which he or she is appointed and the proposed powers bestowed on him or her by the proposed legislation detailed in this report."

Experience has confirmed that the workload is certainly sufficient to make a half-time job.

My role is different from that of the Scottish Public Services Ombudsman. The standards commissioner has a role in the system for regulating standards of conduct; the SPSO deals with complaints about public administration and services.

Parliament is in a unique position in public life: it makes laws that other people must follow. Therefore, it is particularly important that members are seen to comply with the law and with other rules that they make to regulate their own conduct. The best way of ensuring that is to have a stand-alone, statutory standards commissioner.

The evidence that has been presented by the SPCB is very thin. There are a number of questions that should be asked, particularly in relation to my post. Before I state what they are, I should point out that, as it is aware of the Scottish arrangements, the National Assembly for Wales is engaged in a consultation process that will result in the creation of a statutorily based standards commissioner. It could be a potentially serious own goal if the Parliament moved away from having a dedicated standards commissioner.

There could be advantages to the proposal, such as the fact that it would provide a one-stop shop for complainants. That is a serious issue, as the issue of where to complain is confusing for the public. However, at the moment, complaints that are inadmissible are known only to me, as they go only to me. Would members be happy for knowledge of complaints to be shared around a bigger organisation, bearing in mind the attendant risks?

There might be an advantage in reducing the isolated nature of the post. However, as I said, that could result in increased costs for office space and staff, and a reduction in confidentiality.

There might be a superficial attraction in making the post seem to be more independent of Parliament by distancing it more from the Parliament and placing it in a group with the other bodies. However, that independence would be more apparent than real, as long as the appointment of the relevant office-holder were

done via Parliament. Indeed, amalgamation could reduce the perceived independence of the other office-holders in the new complaints and standards body, especially the head of the body, as part of their remit would involve scrutiny of MSPs, who would be responsible for their appointment to or removal from office. Therefore, a superficial enhancement of the perception of the independence of the standards commissioner would, by the same token, reduce the perceived independence of the head of the new standards and complaints body.

I can think of many possible disadvantages to the proposal, and would ask a few more questions. Who would carry out the investigation of MSP complaints in the proposed larger body, and what would be their pay grade? My experience of life tells me that you get what you pay for, and it needs someone of substance and clout to investigate MSPs. Who would report the result to this committee? To whom would this committee issue directions about investigation? Would the current flexibility and efficiency that come from having a single post holder be lost in a larger organisation? Larger offices tend to have backlogs of work and take longer to deal with complaints. Would a person in the SPSC role still be able to interact directly with Parliament with regard to standards issues, or would such interaction have to go through the head of the larger body? Would there still be a separate annual report, or would it be a paragraph in a much bigger annual report? Would the new arrangements complicate links with counterparts in other countries, particularly in the United Kingdom?

I am sorry for giving such a long answer, but I have thought quite a lot about these issues. I would take quite a lot of convincing that there will be any improved functioning of the standards commissioner post in the proposed set-up.

Robert Brown: It is helpful to have that on the record.

The Scottish Commission for Public Audit did some interesting work on the period of the appointment of the Auditor General for Scotland. Obviously, your post is different from that one but, as you have no axe to grind in this regard, I would like to hear your views on the appropriate length of the appointment of the standards commissioner and on whether it should be possible to reappoint the standards commissioner after that term has finished.

Dr Dyer: I am pleased to see that the SPCB has come around to the idea of having a single, longer appointment, as that is a position that I have argued for in successive annual reports. Going through the experience of reappointment strengthened the view that I already held, which is

that the commissioner must be seen to be independent in his operation and that that independence is threatened by the possibility that the commissioner will hold back when his reappointment is in the hands of the very people who are subject to his scrutiny and his complaints investigations.

Another problem is that, as part of the reappointment process, members can stand up and say unfounded things about a commissioner, without the commissioner having any right of reply. My view on the matter is influenced by the unfortunate and ill-informed criticism to which I was subjected by a small number of members in February of this year, during a particular complaint investigation. That illustrated the improper pressure that can be brought to bear on someone in my position.

The arguments that the Scottish Commission for Public Audit set out in its recent report on the Auditor General having a single, longer term of office apply equally to my post and to the other posts that are being considered by the RSSB committee. Independence is best protected and best demonstrated by having a single, longer term of appointment, rather than by allowing appointments to be renewed.

14:30

Robert Brown: I have another question, but it is on a different area. In the meantime, I will give way to other members.

Marilyn Livingstone (Kirkcaldy) (Lab): Good afternoon. I noted that you mentioned workload in your report. Is the length of appointment correct from a workload point of view? You said:

"in the last quarter of the year ... 12 of the 23 complaints were received; this is twice the usual rate of receipt."

Did that put you under undue pressure? Is that an issue that we need to consider?

Dr Dyer: That did put me under considerable pressure. In the final quarter of the most recent financial year, I worked 69 per cent of full time and in the first quarter of this financial year, I worked 79 per cent of full time. Over a five-year period, the average has been three days a week or 12 days a month, which is more than was anticipated when the post was advertised. The advertised workload was between five and 10 days a month.

To be fair, there might be some reduction in workload as a result of the alteration to the code of conduct for MSPs, which means that the Scottish Parliamentary Standards Commissioner will no longer receive complaints about the level and quality of service. Such complaints made up a substantial proportion of all the complaints that I received during the first four years and I still

receive some. In 2007-08, I received seven such complaints, four of which I dealt with, because they related to conduct prior to April 2007, when the change took effect, and three of which I passed on to the Presiding Officer. I have also received a few in this financial year, but that should tail off over time. When I receive such complaints, I cannot simply pass them on; I must dismiss them as excluded complaints and then invite the complainer to allow me to pass them on to the Presiding Officer.

I have one further point to make on workload, which relates to an issue that arose from the committee's recently issued ninth report in 2008, on the revision of section 8 of the code of conduct. The report contained a paragraph that, in retrospect, was worded somewhat ambiguously, in that it permitted the reading that, in my first four years, I received 108 complaints about the level and quality of service, only one of which went on to be fully investigated. That led *The Herald* and the *Daily Express* to report that only one of the 108 complaints that I received in four years went on to be fully investigated, which must have made people wonder what I did with my time.

The true picture was that one of 54 complaints about the level and quality of service went on to be fully investigated in my first four years, but 15 of the other 54 complaints that I received went on to be fully investigated—in other words, 16 out of a total of 108 complaints went on to be fully investigated. I am happy to put that correction on record.

Aileen Campbell (South of Scotland) (SNP): Your report says that accessibility is one area for improvement. Given that you have particular expertise, how much of the accessibility of the role as it is now is down to you and your areas of interest as opposed to those that a future holder of the post might have? How could we improve the accessibility of the post? You note that it will be quite difficult to do that.

Dr Dyer: Thank you for that question. As my successive annual reports show, I set quite a lot of store by having an information strategy to increase my accessibility to people. I feel strongly that the post will not work effectively unless the public know about it and know how to use it. That point came out when I developed a risk management strategy; one of the top risks that were identified was people not knowing about my existence or my role. Also, when I did a self-audit exercise of my complaints-handling function last year, it emerged that, although I think that I have produced good information in a leaflet and on a website—in 2007, the website had 23,463 hits—there is still some ground to cover to make the public aware.

During the past year, I have revised my leaflet and distributed it with the help of the Scottish

Parliament information centre to partner libraries and citizens advice bureaux. I have also made a point of seizing any opportunity that is created by the media giving misleading information about my role to correct that and give accurate information about my work. Often, one of the best ways of getting information across is when public interest in a particular complaint or issue gives rise to an opportunity to correct misapprehensions and give correct information. That will be a continuing challenge to whoever takes up the post. They will have to pursue those methods and perhaps find new methods of increasing public knowledge about the role.

Most complaints are found to be inadmissible and, of the inadmissible complaints, more than half have failed the relevance test. The relevance test is broken into three parts: the complaint must be about the conduct of an MSP; it must not be an excluded complaint; and it must involve a potential breach of the code. Usually, the inadmissible complaints do not involve a potential breach of the code. If more than half the complaints are being dismissed because of the lack of relevance, that is another indicator that we need to get more information across to the public. I do not think that that will be helped by lumping my post in with a much bigger organisation. It is a challenge for whoever is in the role to get information published in an accessible form, which I have tried hard to do.

Aileen Campbell: Are you talking about any particular groups, or do the public in general lack awareness?

Dr Dyer: The target must be the general public because they are your constituents—they are the constituency of people who make complaints. However, I have tried to target information through facilities such as partner libraries and citizens advice bureaux where people might go for advice, as well as through SPICe. I am happy to receive suggestions of any other possible routes.

Nanette Milne (North East Scotland) (Con): In that connection, I note that the Public Petitions Committee, of which I am a member, is currently investigating why it is failing to reach certain people. The average petitioner is said to be middle aged, middle class, white and male. Does the same sort of thing apply in the context of your function? Should the Parliament be doing something to reach out to ethnic minorities and other groups?

Dr Dyer: That is interesting. You will see from my annual report that I have made a particular effort to go out to ethnic minority organisations and talk to them about my role.

There is a general problem with information. Many people who contact me do not know the

difference between the Parliament and the Government, for example, and they cannot understand why complaints about ministers go to one place whereas complaints about MSPs—an MSP might also be a minister in a different role—go to another. There is a continuing need for public education about the structures of the Government and the Parliament. In that context, I would be interested in finding out the results of the Public Petitions Committee's considerations in due course.

We can try to communicate with people through using leaflets, websites and such things, but using the media is also very effective. Indeed, using the media is probably more effective than using those other means, which is why I have made a point of sending out press releases and commenting to the media when it has been necessary to explain exactly what my role is.

Dave Thompson (Highlands and Islands) (SNP): Hello, Dr Dyer. Your report mentions

"the need for vigilance to protect the independence of operation which is central to public confidence in the Commissioner role."

Do I detect a hint that you are worried that that independence is under threat? Your report specifically states:

"Having independent legal advice is an essential component of the Commissioner's independence."

Dr Dyer: It is clearly important for public confidence in the complaints process that I am seen to be an independent investigator and not under the operational control of the Parliament in respect of the complaints that I investigate and how fully I investigate them, and it is important for the person in my role to defend their independence against any potential threats. We have already discussed one possible or perceived threat: a person having to undergo a renewal of appointment process. It may be perceived that somebody could hold back a little if they were coming up for reappointment so as not to create an unfavourable impression. I hope that people in my role would never do that—I certainly would not—but one can see that such pressure could be perceived. I have already mentioned the critical public comments on my role that were made in *The Scotsman* of 5 February 2008, although I had simply worked according to the rules on referrals to the procurator fiscal that members had set out for me.

My use of legal advice has been subject to undue scrutiny since the completion of a recent high-profile investigation. Such scrutiny did not take place when I spent even more on legal advice in a previous year in investigating two high-profile members, who were both exonerated by me and the parliamentary committee. I read into that the

vaguest of potential pressures on the commissioner having independent legal advice and using his or her judgment to decide how much of that advice he or she needs.

Independent legal advice is crucial. If I am to operate independently of the Parliament, I cannot possibly rely on the same legal advice that is available to the Parliament and the clerks, who have a separate role that involves giving advice to members. I do not give advice to members; I simply investigate complaints. Early on, the Standards Committee decided to separate those two roles lest the commissioner should find himself investigating a complaint on which he had previously given advice. I emphasise the importance of the commissioner having independent legal advice, as well as the importance of protecting and buttressing as far as possible the commissioner's operational independence. However, I am aware that that may occasionally be an issue for MSPs.

14:45

Dave Thompson: Do you accept that that could sometimes lead to difficulties for members? They get one set of legal advice, and you get another. Should the committee be considering that issue as we seek to review our procedures?

Dr Dyer: I can think of only one case in which that has occurred during my nearly six years in post. It is therefore an issue that occurs rarely. However, given the set-up, it is possible for it to occur. A case has been made for members to be able to get their own legal advice, but I do not think that that is a matter for me to comment on; it is a matter for Parliament. My role is to ensure that I have independent legal advice. Parliament may well wish to consider whether members, on some unusual occasions, might need recourse to their own private legal advice.

Robert Brown: This point arises from what Dr Dyer has just said, to some extent. On the difference between the Parliament and the Government, some of us have had queries—I describe them as no more than that—about the operation of the Scottish ministerial code and its insulation in practice from parliamentary scrutiny. Do you have any views about whether there ought to be changes in that regard? Should certain aspects of the ministerial code, which relate much more to the conduct of ministers as MSPs than they do to their conduct as ministers, be moved across? Do you have any last-minute guidance to give us on that?

Dr Dyer: That is an interesting question, on which I commented in previous annual reports. I did so because I have experienced some difficulty in this regard. Without knowing exactly how these

things worked, people would sometimes complain to me about the actions of people in a ministerial capacity. I would respond by saying that I did not deal with that. If the complainant asked to whom they could complain, I would follow the advice that had been given to me, which was to say that they should complain to the office of the First Minister. They might then ask what they should do if the complaint was about the First Minister. What level of independence would there be in the process in that case?

Standing back and considering the matter, I was concerned that there did not seem to be an independent element in the investigation of complaints about ministers like there was for complaints about MSPs. That situation has changed following the review of the ministerial code, which took place about six months ago. The First Minister has asked the previous Presiding Officers to be available. They were regarded as suitable people, because they have not been specially appointed for the purpose of considering complaints under the ministerial code, and they have already established their integrity, impartiality and so on. Since you ask, my view is that that was a considerable step forward in the mechanism for dealing with complaints under the ministerial code. I also recognise that the First Minister is, ultimately, answerable to Parliament for his actions as First Minister.

There is a need for an independent element in order to give the public confidence. Very substantial moves have been made in that direction.

Robert Brown: Is it fair to say that your role vis-à-vis Parliament and MSPs has substantially been an investigative one but that it remains the case that there is no investigative role regarding complaints under the ministerial code? There is a slightly different mechanism there.

Dr Dyer: As I understand it, the previous Presiding Officers would be able to take an investigative role. I do not know whether I have misunderstood, but that is how I read the new arrangements. One would imagine that there is a need for such an investigative role.

The Convener: I take you back to the question about workload. You were talking about a logjam at particular times. I am conscious of what you were saying about the review and I hear what you are saying about being on your own. Is some mechanism required for you to be able to call on an extra resource at any given time, should the need arise and if nothing changes for the future?

Dr Dyer: That is a difficult one. I find my workload manageable with the current set-up, albeit that I have to work extra over a period of months on some occasions. For a volume of work

up to a certain point, I find it as easy to do the clerical and typing work myself as it would be to have somebody in the Parliament do it, which would mean stuff going to and fro, drafts being corrected and so on. If there were a significant increase in the workload, that would have to change—an office and staff would be needed. If there were a very significant increase, investigative staff would also be needed. At present, I do all the investigation, which can be a pressure at times, for example when two or more high-profile complaints are on the go at the same time.

The investigation process is clearly set out. It has various stages, and it takes a certain length of time. I have to consider admissibility and possible referral to the procurator fiscal. I have to conduct an interview and allow the member who has been complained about to suggest corrections to the draft of that interview. I then write the report and let the member see the draft of it.

That all takes considerable time—longer on some occasions than others—and it leads to considerable pressure on workload. I do not see how the SPCB proposals would improve that by moving my post into part of a larger organisation. As I said, my expectation is that the workload will decrease somewhat in the coming years unless, of course, members break rules with greater frequency, which I do not expect. The workload should decrease because of the removal of my remit on complaints about the level and quality of service, and it might get closer to the five to 10 days a month that the SPCB is determined to advertise again.

The Convener: Is there anything that we should learn about the route to you? Is the door open to you and do people understand where it is?

Dr Dyer: People do not always come to me first. They perhaps phone Parliament information. I sometimes get complaints for the Standards Commission for Scotland while it occasionally gets complaints that should really come to me.

A few years ago, the post holders got together to produce a route map to making complaints about public services in Scotland, which we distributed to deal with that issue. However, with the best will in the world, it will be difficult to get the information across to everybody. People may therefore think that it is an advantage to have a bigger organisation, such as the complaints and standards body or commission that the SPCB is proposing, but the danger is that somebody who phones up will get passed from department to department—it could be a case of, “Press button 1 for planning complaints or press button 2 for MSP complaints.”

There are many advantages in my organisation's small size and flexibility. If a complainer has a difficulty in making a complaint, I will go to see them at home to discuss it and agree with them what the complaint is. I can easily give attention to people with disability, which shows the flexibility that is possible in a single-person organisation.

The Convener: That concludes our questions to you, Dr Dyer. I thank you for coming today. We got a bit extra from your thoughts on the review. Let me also put on record, on behalf of this committee and others in the past, our thanks for your work. We wish you well for the future.

Dr Dyer: Thank you for those comments, convener. I sometimes say to people that standards commissioner is a particularly thankless job, so your remarks are very much appreciated.

The Convener: Most of us fully appreciate the position in which we put people such as you, so it is important that we recognise that and thank you for the lonely job that you do.

Dr Dyer: Thank you.

14:54

Meeting continued in private until 16:00.

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