



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 14 September 2010

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2010

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:
licensing@ogps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.

Tuesday 14 September 2010

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	395
COMMISSIONER FOR PUBLIC APPOINTMENTS IN SCOTLAND	396

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
9th Meeting 2010, 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)

*Angela Constance (Livingston) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Peter Peacock (Highlands and Islands) (Lab)

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:

Karen Carlton (Commissioner for Public Appointments in Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 4

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 14 September 2010

[The Convener *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Convener (Gil Paterson): Thank you for your attendance. Welcome to the ninth meeting this year of the Standards, Procedures and Public Appointments Committee.

The first item on the agenda is a decision on whether to take items 3 and 4 in private. Item 3 will involve considering evidence from the Commissioner for Public Appointments in Scotland. Item 4 concerns the committee's work programme and its approach to existing and possible new items of business. Are members happy to take the items in private?

Members *indicated agreement.*

Commissioner for Public Appointments in Scotland

14:16

The Convener: On 10 June, the Commissioner for Public Appointments in Scotland laid before the Parliament a draft revised code of practice on ministerial appointments. On 1 July, the commissioner reported to the Parliament on the appointment of the convener of the Advisory Committee on Sites of Special Scientific Interest. I welcome Commissioner Karen Carlton to today's meeting to answer questions about the two reports. I am glad that she is here.

I suggest that we first take questions on the revised code of practice. Once we have completed our questions on that, we will take questions on the other report. I will ask the first question. Would the proposed changes to the code mean that it would not always be a requirement for ministers to be given a range of candidates when making appointments?

Karen Carlton (Commissioner for Public Appointments in Scotland): The current code requires that ministers have a choice of candidates from whom to make their appointment decision. At the moment, the proposals in the new code confirm that ministers should still have a choice. However, on a number of occasions over the past years it has become apparent at some point during an appointment round that there would not be a choice of candidates for the minister. On those occasions, civil servants have taken the minister's view on whether they would be happy to proceed without a choice. On each occasion, the minister has said yes.

I question whether choice will always be necessary. I wonder whether, occasionally, choice or accommodation of the extra stage to take the minister's view can delay the process. As part of the consultation, I have written to the Scottish ministers and asked them three questions: first, whether they will continue to require a choice; secondly, whether they believe that a choice is no longer necessary; and thirdly, whether they might prefer at the start of every appointment round to be asked whether they wish to be given a choice or whether for the body concerned, at that particular time, and the appointment in question, they are prepared to have just one candidate presented to them.

In my view, there should always be choice, but not if that requires additional stages or takes so long that we delay what is currently an overlong process.

The Convener: Is such an approach likely to disadvantage any individual? Can you provide the committee with an example to indicate where the parameters may change and where it would be advisable for only one candidate to be presented to ministers?

Karen Carlton: I refer to cases where specific scientific or legal expertise is required or where the post, by statute, must be filled by a particular type of individual, such as an advocate or a chief constable. Clearly, if only one person in that category chooses to apply, there is no point in insisting that ministers must have a choice.

The Convener: So they almost select themselves.

Karen Carlton: As long as they meet the requirements of the post. The current and proposed codes make it absolutely clear that the people who best meet the requirements of the post should be presented to ministers. It might well happen that at the end of the appointment round the selection panel is quite clear that one person is much more suited to the post than others and that it might be appropriate simply to present that person to the minister. On certain occasions, it might not be necessary to provide a choice and the minister's view on what is most appropriate to that particular appointment might be taken at the start of the round.

The Convener: I see.

Peter Peacock (Highlands and Islands) (Lab): In the proposed code there is a hint—indeed, perhaps more than a hint—that it is up to the selection panel to choose any fair, open and transparent method of selection for interview, which implies that you might move away from the normal written application. That seems quite a departure from traditional practice. Can you tell us a bit more about the thinking behind that?

Karen Carlton: I have already tried to encourage the Scottish Government to move away from what is the traditional practice—a practice that, I have to say, is not always best suited to the target audience. We carried out a lot of research on this issue in support of my work on the equality and diversity strategy “Diversity Delivers”, and from that it is clear that certain groups of people favour different types of application. For example, some people might not feel comfortable putting their suitability for a post in writing. Indeed, there are certain roles for which that approach would be entirely appropriate. I have already mentioned the statutory requirements for a chief constable or an advocate. One particular body in the regulatory framework requires to have someone with learning difficulties to be on the board. It is really important to tailor the application method to the group of aspiring candidates.

As I say, I have already tried to encourage such flexibility in guidance to the Government, in which I say that it may still choose the traditional application form, but that according to evidence over the five years in which the current code has operated it is not actually all that suitable. The way in which people fill in forms is not the best way of making an application and does not always give the selection panel the information that it requires. Initially, I tried to overcome that by introducing an option to have an additional stage in which, if an application shows potential but does not provide all the relevant information, the panel can ask the applicant for more information. In other words, we are trying to rule more people in rather than rule them out.

I have also encouraged the Government to use a much shorter application form that includes essential criteria and some prompts that set out what applicants need to tell the panel. I have suggested that in some cases a curriculum vitae in a format tailored to the post might be relevant. In addition, I have indicated that with regard, for example, to the post that requires a person with learning difficulties that I mentioned, it might be more straightforward to ask for expressions of interest and then go straight to interview.

It is important to remember that we are all absolutely committed to equality of opportunity. That is not provided by making everyone follow the same route. Having different routes to interview allows people to choose the method that is best suited to their particular needs and, indeed, creates equality of opportunity.

Peter Peacock: I can readily understand that, and indeed I understand why you suggested not having a written application in the case of the post that required someone with learning difficulties. However, I would have thought that such cases were pretty exceptional. Do you see such a provision as being exceptional rather than an overall encouragement to move away from the traditional albeit loosened-up system that you have described?

Karen Carlton: I imagine that the approach of asking for expressions of interest and going straight to interview would be taken rarely. However, the option of a tailored CV or shorter application form could be offered to people more generally.

Nanette Milne (North East Scotland) (Con): I have a question about the competence of panel members to assess applicants and their knowledge of equality and diversity issues. How do you envisage potential panel members being supported and trained to acquire the necessary skills?

Karen Carlton: There are two approaches. One is a form of self-assessment, which determines whether people who are going to participate in panels are already able to do so. You will see that the proposed new code requires those who undertake assessment to be competent in the use of the application and assessment methods chosen by the panel, and knowledgeable about equality and diversity and the impact of the chosen application and assessment method on the group of people whom they wish to apply.

Some people will be more than able to demonstrate all that, while others may need development. The Scottish Government has proposed that some form of fairly straightforward self-assessment be created that panel members would complete. Whether they are competent according to the requirements of the code will be assessed when they participate in an appointment round. If they are competent, that is fine; if not, the Government will provide some form of development. The Government plans to have regular workshops on recruitment and selection and on equality and diversity issues.

You should also be aware that we do not expect everyone to be expert in appointment. That would not be reasonable, but it is perfectly reasonable to ask every panel member to be knowledgeable about the code and able to assess people appropriately. However, if somebody comes on to a panel with particular technical expertise because the post requires assessment of that, they may not be expert in appointment, they may need to be supported and they may only participate once or twice, so training might not be the best route for them.

Also, we should consider what might happen if one of the other methods that we have talked about is used. It may be that no panel member is able to run an assessment centre, for example, but the proposed code makes it plain that such activity could be delegated to people who can do so.

I am not trying to put a straitjacket on the people who wish to participate, but it is important that those who participate are able to do so effectively.

Nanette Milne: Do you envisage a general induction for panel members once they have been selected?

Karen Carlton: At the moment, quite a good briefing happens at the panel pre-meeting. I will run code familiarisation workshops. The code will be published on 1 April but not implemented until 1 September, to allow six months for the training that I will be doing. The Government has not yet indicated whether it wants to do some initial training of the kind that we have discussed but, if it

believes that such training would be appropriate, there would be time to do it.

Marilyn Livingstone (Kirkcaldy) (Lab): I have a question about the introduction of a new requirement for ministers to keep a written record of the reasons for their appointment decisions. You identify that as being intended to address concerns that that part of the process has not been sufficiently open. Will you provide some background details on that so that we can understand the concerns that led you to propose the new requirement and how you envisage the provisions working in practice?

Karen Carlton: Yes, of course. The current code requires ministers to record their appointment decisions, but it is explicit only about recording the reasons for appointment; while they have to record the decision about whom not to appoint, they do not have to record their reasons for that. That is not appropriate for a number of reasons, the main one being that, if we want to give constructive feedback to people who have not been selected, the more information we can provide them with the better.

I issued guidance to the Scottish ministers to say what the code—although not explicit on that matter—was designed to do and to lay out what was required. I did that on the back of a couple of audit rounds in which we found that ministers were not recording decisions in the way that the code required. Part of the guidance was a prompt and part of it was designed to be exactly what it is called: guidance to help them to understand what should be recorded and why.

Building that into the new code makes the requirements absolutely explicit and means that there is a written record. If ever I am asked to investigate, which happens from time to time, the more information that I have on which to make a judgment about the appropriateness of a decision the better. It is clear that the more feedback people can have and the more open that part of the process is the better.

Marilyn Livingstone: Would that information be recorded in a standard format, so that you could judge it? With appointment panels that I have been on, there has been a standardised form for the organisation. Is that the type of thing that you are thinking about, so that you can compare like with like?

14:30

Karen Carlton: At present, it is up to the Government to decide how the sponsor team members record decisions. However, I will produce guidance on the code and I am certain that it will offer as many helpful suggestions as possible. You are right that, at present, some form

of pro forma sheet record is kept that says what the requirements of the post are and how each person measured up at the application and interview stages. That has been a requirement to date. On the candidate submission, although submissions to ministers are private and I do not interfere with how they are presented, I know that they are presented in the same sort of format. They make plain what the minister said was required in the position and what the process was, and they set out the people who best meet the requirements. I am certain that there will be guidance on the format and the way in which the information can best be expressed.

Peter Peacock: To follow that up, from your description, the purpose of the record is twofold. The first is to provide to candidates who ultimately are not successful feedback on the process right up to the minister's decision. The second purpose is so that the information is available if you are asked to investigate a complaint. Do you envisage the information being more generally available?

Karen Carlton: That would be hard to do, because of current legislation. If the record contained personal data about an individual, I would not anticipate its being made public in any way. A candidate submission details reasons for appointing and for not appointing. At present, when a minister makes an appointment decision, there is usually an explanation as to why the person who has been chosen is the most appropriate. That might well be based on information in the candidate submission, and it is presented with the individual's permission. However, I do not envisage the written records being open to the public more generally.

Peter Peacock: I am anxious to ascertain whether, under freedom of information legislation, the information would be FOIable, because given that the code would require that information to be kept, people would know that it had to exist and therefore they would go looking for it. For the reasons that you have set out, on the face of it, the information would not be FOIable, but in certain circumstances people might pursue the information fairly heavily and, if it were not available, they might begin to wonder what the point of the process was if they could not ultimately see what the ministerial decision was based on.

Karen Carlton: My understanding is that any information can be accessed by the individual concerned if they make a subject access request under the provisions of the Data Protection Act 1998. Other individuals cannot, under freedom of information legislation, request particular data about an individual. You will know that, when people are mentioned in material that has been released under freedom of information, there is a

lot of redaction so that they cannot be identified individually. I imagine that, if the information that we are discussing were to be the subject of FOI requests, so much would be redacted that it would not be a useful piece of paper.

Peter Peacock: Thankfully, in Scotland and in the United Kingdom as a whole, public appointments have been largely depoliticised because of the processes that have been put in place, of which you are the guardian. However, that has not always been the case. When the bill that established the public appointments system went through the Parliament, there was a lot of debate about whether there should be confirmation hearings by committees. It occurs to me that if the information is known to be available, there is a danger that that could repoliticise appointments, as those who disagree with a particular appointment might say, "We know that there is a statement somewhere and we will try to get it through the political process." Is there any danger of that?

Karen Carlton: Probably, there is. It is worth considering.

Peter Peacock: Finally, given the point that we touched on earlier about the way in which ministers are advised about appointments and the panel process that leads up to the paperwork going to the minister, there will be circumstances in which the minister is told that two candidates from the shortlist of candidates who were interviewed are completely suitable for the post and that the minister's choice is completely free and open. In other cases, the panel will say that one person meets the criteria slightly more than the other, but it is marginal, so there is a slightly weighted opinion. When the recommendation is exactly equal, in the end, that comes down to very fine political judgments by the individual minister as to whom to appoint.

Do you acknowledge that, beyond a certain point, it may be difficult to write a statement setting out the reasons for a decision? I have great respect for the civil service. Civil servants are masters—I say this respectfully—at writing things that say nothing. I can easily see forms of words being created that meet the terms of the code but tell you absolutely nothing and, at the same time, leave hooks that allow people to pursue public appointments in a political sense. When there is an absolutely equal recommendation—when ministers are told that it is up to them, as the candidates are of equal calibre in the panel's view—what can you usefully add in a written statement to say why you picked A over B?

Karen Carlton: Presumably, the minister will have a reason for picking A over B.

Peter Peacock: Indeed.

Karen Carlton: That is what will be recorded.

Peter Peacock: Or may not be recorded.

Karen Carlton: I have made a note of the point. It is an important point to consider.

Angela Constance (Livingston) (SNP): Notwithstanding what Mr Peacock attributes to civil servants and their talents—or otherwise—I wonder whether such statements will be of any use to individuals who have cause to make a complaint about a public appointment process in which they were unsuccessful and who feel that they were discriminated against in some way or who are unhappy with the process. Will such individuals be able to access the comments and to use them as part of the complaints process?

Karen Carlton: At the moment, if a complainant makes a complaint to the Government and is not satisfied with the way in which it is handled, they come to me. I analyse the information and decide whether each stage of the process followed the code and whether there is evidence that what happened at each stage was appropriate and met the principles and practices that the code sets out. At this point, I intend that process to remain. If a complainant comes to me, I will review what happened at each stage and determine whether decisions and actions were code compliant.

Mr Peacock and I have just had a conversation about whether individuals will choose to access the information in other ways. You are right to say that there may be other opportunities for them to do that, but my intention is simply that statements should be available as an audit trail for any investigation and to enable people who applied and were not successful to get constructive feedback, should they choose to apply in future.

Angela Constance: Could they get a copy of the statement pertaining to them?

Karen Carlton: They could certainly be given the information. It will be up to the Government to decide how to treat that information, but people could certainly be given, as feedback, information about the contents of the statements that were made.

Angela Constance: Would that be given verbally and/or in writing?

Karen Carlton: At the moment, it is given in a mixture of both ways. Often, a standard letter goes out with some information. If people request more detailed feedback, that can be provided by phone.

Robert Brown (Glasgow) (LD): I turn to the question of verification—checking of references and so on—on which there seems to be a subtle change. At the moment, a decision needs to be taken about whether to take references and to make disclosure checks. It is proposed that there

be a general requirement for Scottish ministers to verify that the person to be appointed is a fit and proper person. The draft code requires ministers to verify the information and confirm that the applicant's conduct

"has been compatible with the principles of public life".

What is the reason for the change? How will it improve the procedures?

Karen Carlton: The reason is that I was surprised to find that so few references are taken up—even to check that an individual is who he or she says they are when they apply. Not checking prior to making an appointment does not seem wise in terms of due diligence. It is proposed that it should be a requirement of the process that the minister is satisfied that the individual to be appointed is a fit and proper person. As you said, there is a list of areas on which they must be satisfied before they make an appointment.

Robert Brown: That sounds like a more general and less specific requirement. I do not think that the minister is required to take up references; he is required in a general way to verify information, which is not quite the same thing. Why do you not just say, "Take up references and check the person out," or something?

Karen Carlton: One of the reasons why we did not insist on references in the previous code is that they are notoriously unreliable. References that are written by a third party offer subjective judgment, and the only way in which a reference can be used under the current code is if it provides verification that a person is who they say they are and has done what they say they have done. Subjective third-party inference has no place in the public appointments process. I have not used the word "references" because increasingly in the public and private sectors references are not used. What I am saying is that the minister is now responsible for ensuring that the person is a fit and proper person. You will see that the proposed code states that that requires

"verification of relevant information provided by the applicant",

which is close to what would be done if one were to take up references, but it is more specific about the kind of information that is needed, as opposed to a reference, which might merely be a glowing report from someone in the same golf club.

Robert Brown: And you would audit that from time to time.

Karen Carlton: Yes.

Robert Brown: I would like to ask you a broader question that perhaps goes beyond the code. The code is formulaic, in that it details the

procedures and so on that must be followed. One of the issues that the committee and you have come across in the past has involved the magic circle of people who materialise for appointment and manoeuvre themselves around the available posts. Will the code—or any work that you are doing—be able to widen that pool of applicants? Have you made any progress on that?

Karen Carlton: That is an interesting issue. You will not be surprised to learn that, among the public bodies that fall within my regulatory responsibility, there is a wide variety of views about the importance of equality and diversity. The comment has been made that the only thing that matters is outcome, and that it might not be appropriate for me to have an applicant focus in the code. That is a view from one extreme end of the spectrum. At the other end of the spectrum, some people are more concerned with diversity than merit. It is difficult to determine where the balance lies between ensuring merit, so that the board and the minister get the absolute best person, and widening the pool of potential applicants.

To widen the pool, the code makes it much more explicit that we need a range of application and assessment methods that will apply across the board, to applicants in the private, public and third sectors. The diversity delivers approach makes that much more explicit and lists a set of recommendations for the Scottish Government and the person who does the work that I am currently doing. For example, I ran education programmes for a wide variety of people, for which I was able to attract Equality and Human Rights Commission funding. I now have a mentoring programme for potential appointees. The mentors are the chairs and board members of public bodies, and the mentees come from vastly different backgrounds. One of the people who took part in the mentoring programme was one of two applicants who were recommended to the minister for appointment. On that occasion, unfortunately, that applicant was not successful, but that still represents good progress, given the short time since that person attended the programme.

The code is quite formulaic, as you say. The Public Appointments and Public Bodies etc (Scotland) Act 2003 says that I must produce a document that leads to a fair process. All that I ever talk about when I talk about appointments is the open nature, the fairness and the merit-based nature of the appointment decision, and I have tried to enshrine that in as few pages as possible. However, although the code is the strongest lever that I have, it cannot be the only vehicle for encouraging diversity. We have a wide variety of ways of doing that. The diversity delivers approach is one of them, and the code is another, but there will be all sorts of opportunities that all of you can

take to persuade people to apply who might not have thought of doing so.

Robert Brown: In a sense, it is not just about diversity; it is about widening the pool of applicants.

Karen Carlton: That is another important point. When I talk about diversity, people assume that I mean either the traditional strands or those that are encompassed in the Equality Act 2010, but I am talking about diversity of perspective, of educational background and of geography. People from all over Scotland should be encouraged to apply, not just those who live in the central belt. When I first began my work as commissioner, I was horrified to hear the chair of a public body say that they would not appoint someone who lived on an island, because they did not want to pay for travel expenses to board meetings. Fortunately, that was a long time ago, and we do not have that culture now. However, the appetite within public bodies and the Parliament has perhaps not yet been matched by an understanding among the general population that we are really serious about this.

14:45

Robert Brown: I suppose that the corollary of the argument, with regard to the code, is that it is similar to the situation with in-house applicants. You have a pool of people who have some experience in the type of post, and you might want to encourage a whole range of others to come in. Does anything in the code institutionalise a preference for in-house applicants, if I can put it that way?

Karen Carlton: No, and I can give a good example of that. Recently, positions were advertised for the chairman and board members of the Scottish Futures Trust. Because of the flexibility in the application and publicity methods, the Government took a totally different approach to those posts and actively sought—through the Confederation of British Industry—people who had private sector experience and who may never have been involved in a public sector body before. The fact that we are being much more open in considering which methods are used to target people means that we are not just repeating the same old magic circle.

Understandably, if you are the chair of a public body and you want someone who can contribute effectively, human nature means that there is a level of comfort in knowing that people have done the job before and proved to be effective in the past. However, that has to be married with the need to bring in new perspectives. As I have said in all the documents, unless the people on the boards of bodies understand the needs of the

service users, they will not be the most effective boards.

Aileen Campbell (South of Scotland) (SNP): I want to return to the code. You mentioned that there will be accompanying guidance. The committee is trying to ascertain whether the guidance will have any teeth and how far ministers will be expected to comply with it.

Karen Carlton: There will be three elements, although I stress that these are my current plans for the guidance and that they may change following consultation. The first element relates to what the code requires and what we would expect to see in order to demonstrate that the principle or practice has been adhered to. That would be what the ministers would comply with—or be expected to comply with—and they would be audited to see whether they were doing so.

A couple of other elements would be helpful, one of which would be the underpinning rationale. We briefly discussed the issue of culture change earlier. It is never easy to change a practice that has been in place for some time, especially when people have only just learned how to get it right and we go and change it all again. However, it is always helpful to ensure that people understand the underlying rationale: not just what we are doing, but why we are doing it. The guidance will explain why, and clearly it is only guidance.

I anticipate at this point that there will be a range of options for different approaches that could be used. If those options are totally ignored, and an approach that turns out to be entirely unsuitable is used, I may question that in very great detail. For example, a helpful option would, for example, be to advise that if you want a chief constable, you should write to the only eight that there are in Scotland and invite them to interview, rather than going through a prolonged process. One of the key things that we must be clear about is that any approach must be proportionate and resources must be used effectively. If there are only eight people in a category in the whole country, you would not advertise the post in *The Herald* or *The Scotsman*.

Angela Constance: In many ways the commissioner has anticipated my question. I wonder whether, for the record, she could say something about how the new code will sit alongside the aims of her equality strategy, “Diversity Delivers”.

Karen Carlton: The “Diversity Delivers” strategy talks about the variety of application and assessment methods, so it is complemented by the code. The guidance gives information about the different methods, and the code makes it clear that the selection panel can choose whatever is appropriate.

I also envisage that the requirement to review, at the end of a round, whether the methods chosen were appropriate would tie in well with “Diversity Delivers”, which talks about establishing an information bank so that the Government knows what has been effective and what has not. It may also tie in with the use of the wider application pool. If the Government has a record of everyone who has expressed interest, how might that be accessed the next time that an appointment is being run. The methods that would be used and the review at the end to determine what worked and what did not work would tie in closely to “Diversity Delivers”.

Aileen Campbell: Forgive me if my question is covered in any of the papers. Robert Brown talked about the revolving door problem of the same people ending up on different boards. You mentioned that it may be a source of comfort for someone appointing if they see that a candidate has already been on a board. How can the panel be sure that the individual was effective in that role? Are they allowed to scratch the surface to find out whether the applicant was effective, rather than just say, “They have been on a board before. That’s fine, we’ll put them on this one now”?

Karen Carlton: That is why we need to ensure that the members of selection panels are competent to assess—so that that kind of subjective judgment does not creep into the process. The fact that a person has been on a board may or may not mean that they were effective and the fact that they were effective on one board may or may not mean that they would be effective on another. Although I understand the comfort factor, I do not suggest that I promote it.

The Convener: I am sure that I speak for the committee when I thank you for the information that you provided and the depth of your answers.

I take us from the proposed code of practice to your report to the Parliament on the appointment of the convener of the Advisory Committee on Sites of Special Scientific Interest. We will follow the same format and go straight to questioning.

Marilyn Livingstone: I read your report with interest, Ms Carlton. You express concerns about difficulties in relation to the provision of information by the Scottish Government and restrictions on the use of that information. You say that it was the third time that you had experienced such difficulties and that you intended to hold a meeting with representatives of the Scottish Government in July. Will you give us a bit more background information on how that came about? How did the July meeting go? Was it successful?

Karen Carlton: It all goes back to a report that I issued as a result of the investigation of a complaint. The report contained information that

was in the public domain and which I considered it important to include. The Scottish Government disagreed with my inclusion of that information and decided that it would no longer be happy for me to access information unless I signed an information-sharing protocol that limited the use that I could make of any information that it passed to me.

You will not be surprised to hear that I refused to sign that protocol and be directed by the Government. I made it absolutely plain that the Public Appointments and Public Bodies etc (Scotland) Act 2003 makes it clear that ministers are expected to provide information that I reasonably need in the discharge of my duties. We reached a compromise under which certain information was provided to enable me to continue an investigation and I agreed that I would not publish the report until after the meeting with the Government on 7 July.

The Government had two key concerns—understandable ones—and it was important that we had the opportunity to thrash the matter out with a representative from the Information Commissioner's Office.

The Government's first concern related to the fact that it is bound by a Cabinet Office security policy framework, which means that I should not change the classification of any documents that are passed to me. I repeated that I could not be directed by the Government or the Cabinet Office, although I was willing to talk about particular classifications if I thought that it was necessary for me to divulge some of the information.

The Government's second point was that it is bound by the provisions of the Data Protection Act 1998, as am I. The Information Commissioner was very helpful in that respect. It is not up to the Government to police my compliance with data protection legislation—that is up to me to do and, if I do not do it effectively, sanctions will be placed on me. A review by the Information Commissioner of how I had been using information and how I planned to use it said that that was entirely appropriate and that I should be given such information in the future.

The Government and I agreed the format for requests, that I would discuss any material that was classified in a particular way and that material would be passed to me with a covering note explaining what the material was and whether the Government might have any concerns about the subsequent disclosure of that material. If there is no need for me to disclose it, that is fine, but, if there is, I will have a conversation with whoever in the Government supplied the material. So there is no reason why we should have that kind of impasse again.

Angela Constance: Like Marilyn Livingstone, I read your report with interest. There seemed to be a number of separate strands to it. There was a specific individual case, but there were also broader issues such as the question that Marilyn Livingstone raised. Are you confident that that issue is now sorted?

Karen Carlton: Certainly, the evidence suggests that it is. Whenever I have requested information since, it has been provided.

Angela Constance: The second issue for me was your concern that there had been no open competition for board members of the advisory committee since 2004. I felt that that was a related issue but separate from the individual issue that you raised. If I understand correctly, at various points in November and in the spring, you raised your concerns about the appointment and said that the appointment was proportionate but did not comply with the code.

Karen Carlton: That is not quite what I was saying. The broader point that I was making is that succession planning for the boards of Scotland's public bodies is a responsibility of the minister. It is not up to the Commissioner for Public Appointments in Scotland to set aside the requirements of an act to accommodate a lack of succession planning. I made that statement to the sponsor team and in the report.

From November of last year, I offered the sponsor team a way of making appointments or of promoting a member to the role of deputy convener to enable the committee to review that one final case in a way that was code compliant. I made it plain that they could approach appropriate people with limited publicity—they did not need an application form, they could go straight to interview and they could have the process done and dusted in a matter of weeks if it was an emergency. I made several offers of support, gave guidance and told them what they could do to comply with the code, but none of those offers was taken up and none of those actions was followed until the communication that said that they had decided that the only proportionate way forward was to appoint someone who had been a previous convener. At that time, that may well have been the only pragmatic approach that they could take, but that does not mean that it is wise for the Government to delay running rounds until it is too late to do anything else but pick someone whom it favours for the appointment.

Angela Constance: I read that part of your report with interest. You also expressed surprise at the fact that, although you expected the minister to be informed of the options last November, you were advised that the minister was not informed of those options.

Given the discussions that we have had about the new code of conduct, being proportionate and using resources widely, what are your thoughts about proportionality and resources, given that by November last year, the ACSSSI had seven or eight months to go and one piece of business to do? Obviously, by the time spring came, it had less life in it and only three months left. I am wondering about the balance. I take seriously the principles and the code, but where do you think the lines were drawn for a proportionate approach? I do not know how much recruitment to the post would have cost.

Karen Carlton: Nothing.

Angela Constance: Was the one bit of business that was left a big or a wee bit of business?

15:00

Karen Carlton: I will tell you about the meeting that I had with the sponsor team in November, at which I asked that kind of question. Who might be appropriate to fill the post? What knowledge of the work of ACSSSI is needed to fill the post? Where might we find such people?

It was clear that a previous convener or a member of a particular royal society would be the ideal person, so I said, "Why don't you speak to them, see if anyone is interested and go straight to interview?" That approach costs nothing; it is entirely proportionate. I thought that that was good, sound advice because a range of people would be approached, so the process would be open, and they would be assessed through interview, so it would be fair. The suggestion met the requirements of the 2003 act and the code. I do not think that identifying several appropriate people and contacting them to ask whether they would be interested is an unreasonable burden to place on a minister or a sponsor team.

When it was clear that the sponsor team had neither done that nor taken the minister's view on doing it, and that it had delayed making any appointment, I then asked whether it had to make an appointment. I had already had a discussion about whether it was necessary to make an appointment or whether someone could be seconded in, which would have been the quickest way, although it turned out that the sponsor team could not do that. I then asked whether it was necessary to appoint a convener. Could a member be promoted to the role of deputy convener to lead the discussion? That costs nothing and it is not an appointment so it does not have to comply with the code.

So, having provided many resource-effective, proportionate, code-compliant options, none of which were accepted for no reason other than that

it was too late to do anything else, I believe that an appointment was made in an entirely inappropriate way. If that is deemed to be acceptable and proportionate, we might as well put the code and the 2003 act in the bin.

Marilyn Livingstone: In response to Angela Constance, you said that you are reasonably satisfied that the issues have been addressed and that the same thing could not happen in future. Are you saying that, or could the whole situation come up again?

Karen Carlton: I assume that the exact situation could not happen again, because it has been discussed in detail and the decisions that were made at the meeting were agreed and recorded, but I do not know what will happen if a different situation arises over the provision of information.

Aileen Campbell: On a similar theme, how likely was it that someone would come forward, given the amount of time that was left for ACSSSI to run its course? Would anyone have come forward or was it a case of just appointing someone to fulfil the requirements of the post at the time? How likely was it that someone else would have dropped what they were doing to come forward?

Karen Carlton: I asked that question at the November meeting. If it would be helpful, I can send the committee the minutes of that meeting so that you can see exactly what was discussed. I asked what incentive there was for someone to come forward at this point in time to deal with the case. There did not appear to be any disincentive, and it appeared that people would have been interested. I am only going from memory so I cannot be absolutely sure, but I think that there was also some financial incentive. As I say, that is just from my memory. I regulate so many bodies that I might be mixing that up with something else. However, if it would be helpful, I will let the committee have the details of the meeting that took place in November.

Aileen Campbell: Were there legitimate reasons for the delay? Were things being worked out and so on?

Karen Carlton: My understanding is that the only thing that had to be worked out was exactly what the role of the individual to be appointed would be. I have not been given information about any other business that would have interfered with the appointment.

Aileen Campbell: Going back to Angela Constance's point about costs, do you have any ballpark figures for what the appointment process usually costs and what it might cost if a truncated process was used?

Karen Carlton: I do not have that information, but the Government might. As I said, it would be hard to put a financial figure on the cost of a telephone call and the time that is taken to interview people. However, the proportionate approach—and, certainly, the appointment of the deputy—would not have had significant cost implications at all.

Angela Constance: Perhaps I am being unfair, but I remember that, when another body on which I and other members sit was involved in the question of an appointment to a completely unrelated body, we were given costs—I cannot for the life of me remember what they were, but they were not low—for conducting a process that was OCPAS compliant. I would be surprised if that sort of information was not available.

Karen Carlton: It will be available, in general, for rounds. For example, the costs of publicity will be available. All that I am saying is that, because we would not have taken a traditional approach, there would not have been any need for publicity, detailed assessment centres and so on, so there would have been no cost for those things. How do you put a cost on a telephone call assessing interest, and an interview?

The Convener: Thank you for your attendance and for the full answers that you have given us.

15:07

Meeting continued in private until 16:40.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by RR Donnelley and is available from:

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

Public Information Service

The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000

Fòn: 0131 348 5395 (Gàidhlig)

Textphone users may contact us on
0800 092 7100.

We also welcome calls using the Text Relay service.

Fax: 0131 348 5601

E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

0131 622 8283 or

0131 622 8258

Fax orders

0131 557 8149

E-mail orders, subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:

243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Accredited Agents

(see Yellow Pages)

and through other good booksellers

e-format first available
ISBN 978-1-4061-6718-4

Revised e-format available
ISBN 978-0-85758-095-5