



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 14 December 2010

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
14th 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:

Stuart Allan (Scottish Parliamentary Standards Commissioner)

CLERK TO THE COMMITTEE

Gillian Baxendine
Alison Walker

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 14 December 2010

[The Convener *opened the meeting at 14:18*]

Decision on Taking Business in Private

The Convener (Gil Paterson): Thank you for attending the 14th meeting this year of the Standards, Procedures and Public Appointments Committee. I have received apologies from Aileen Campbell. She has an exceptionally good reason for not being here, having just given birth to a baby son. I am sure that all members will be interested to know that he is called Angus and weighed just under 8lb. We in the Scottish National Party would like to say that it is a gain from Labour, but I am sure that all members would like to wish Aileen and the new baby well. I welcome Alasdair Morgan, who is here as Aileen's substitute. It is good to see him.

The first item on the agenda is to invite the committee to take in private item 3, which is a discussion on a possible future inquiry into plenary debates. The committee has previously agreed to consider in private item 4, on Scottish Parliamentary Corporate Body-supported bodies, and item 5, on minor rule changes. Do members wish to take item 3 in private?

Members *indicated agreement.*

Scottish Parliamentary Standards Commissioner

14:19

The Convener: The next item is evidence from the Scottish Parliamentary Standards Commissioner. I welcome Stuart Allan to today's meeting to answer questions about his annual report and his submission to the committee. We are pleased to see him and I invite him to make some comments before we ask questions.

Stuart Allan (Scottish Parliamentary Standards Commissioner): It is a great pleasure to be here this afternoon. You have before you a brief note that deals in summary form with the annual report. The note gives members an update on events since the close of the financial year in question and comments to some extent on the issues that we are both dealing with.

My first point relates to the principal statutory functions of the code of conduct. The code has set high standards, and in my experience MSPs have demonstrated their willingness to take on those standards. I am pleased with the co-operation and courtesy that I have received from MSPs and all parties, even complainants, which is much appreciated.

In the public sector, we are always looking to improve performance, to see whether we can give the public a better service than we have been able to provide to date. My note identifies a couple of areas that I hope we may be able to develop in the near future. In particular, there is an opportunity to review the directions that the committee issues. It may be appropriate for us to look at a number of areas in which we could effect improvements.

Recently, the committee submitted key reports on Calman and section 2 of the code of conduct, on registrable interests. I support the thrust of what the committee has said in those areas. The reports are significant and will bring about major improvements to ethical standards in public life.

As you know, we are in the midst of preparing for the new commission for ethical standards in public life in Scotland. My office will merge with the equivalent office that deals with local government and public bodies. In turn, that combined office will operate with the Commissioner for Public Appointments in Scotland. Together, we will face a number of challenges, not least of which will be the financial challenges, but we are all confident that we can deliver in the best interests of the people of Scotland.

I am happy to take any questions that you care to put to me.

The Convener: In your covering paper, you note that 37 complaints were received during 2009-10, of which 36 were found to be inadmissible. How do you interpret those figures?

Stuart Allan: Each complaint must be taken on its merits. It is not necessarily easy to draw broad conclusions from the totality of complaints that were received, but the first point is the point that I made at the start: the code of conduct seeks high standards, and MSPs are applying those standards. It is easy to dismiss that point, but it is the key conclusion that I draw.

A significant number of complaints are fairly put to me but reflect the complainant's very high expectations of the MSP. In most cases, the MSP will have done a sterling job in trying to represent the constituent, but it does not follow that the complainant will agree with the end result. However, that is often asking too much of an MSP. An MSP can only do his or her duty in the best way that he or she sees that. In many cases, the complainant has a misconception about the conduct falling within the code of conduct.

The code sets high standards, and they are being applied. Complaints are often excluded. For example, a complaint might be about an MSP's alleged failure to commit himself or herself to a constituent. I can often properly refer such matters to the Presiding Officer as excluded complaints.

Those are my broad conclusions after two years in office. I am not saying that I will be held to them in the future, but those are my feelings in the current term.

The Convener: Is that reflected in your report for 2009-10? Have those views carried on into 2010-11?

Stuart Allan: They have indeed, convener. I am talking about up to the present time.

Alasdair Morgan (South of Scotland) (SNP): I suppose that my question follows on from what has been said. It is clear that a large number of complaints fall at the first hurdle, which is admissibility on relevancy grounds. In trying to establish whether the procedures are satisfactory, do you have any feeling for whether those complaints would have fallen at the second test of the procedure if they had not fallen at the first test?

Stuart Allan: The short answer to that question is no. I am satisfied that the tests for admissibility are rigorously applied. If there is any substance at all to a complaint relating to conduct as specified in the code of conduct, the complaint will be taken to stage 2 and will be the subject of a full investigation.

Alasdair Morgan: Bearing in mind what you have said about people perhaps having too high

expectations of elected representatives, are the various criteria on which complaints can be made set out clearly enough? Can we do anything to cut down the number of complaints that have no chance of proceeding any further?

Stuart Allan: That is a good question. I am not convinced that simplifying the code, for example, would reduce the number of complaints. I think that the complaints would be received anyway. If someone is very bothered about a particular issue and wants to go to the final court on it, they will take it as far as they can. Even if the code was revised, I cannot see that there would be any appreciable diminution in the number of complaints.

It is important that a complaint is given full attention when it is received, so that when the complainant sees the commissioner they are satisfied that they have had a good, solid, fair hearing. It is important to me that people go away saying, "I was given a fair hearing. The matter was looked at thoroughly, and I respect the decision that it was not appropriate to take the case to a further stage of investigation."

14:30

Peter Peacock (Highlands and Islands) (Lab): You mentioned the committee's consideration of member's registrable interests and the Calman commission's work, which has become the Scotland Bill. You said that you were broadly content with the direction of travel. From your developing experience in the job, do you think that further change is required?

Stuart Allan: That question is very broad. The areas that the code deals with are more or less spot on. No further areas should be brought within the code. It covers the key issues of registration, declaration of interests, proper conduct and so on, which is what it wants to be about.

In general, it is easy to draft codes of conduct that start to be too wide. To go out of the parliamentary context and into local government, many people criticise its code of conduct for being confined to conduct by councillors in their capacity as councillors and not when they are on private business. That can be argued both ways, but in my view, for the purposes of regulating conduct, the code should be fairly narrowly drawn. It is up to the public, through the ballot box, to deal with wider issues. That is important to bear in mind.

At the end of the day, the code of conduct for members of the Scottish Parliament covers the principal areas. I might have some reservations about the code's length and its comparative complexity for members of the public, but that is a drafting issue. On the meat of the thing, the code does deal with the principles that must be covered.

Peter Peacock: In your introduction, you touched on directions. Will you expand on that?

Stuart Allan: On some matters, the administrative process could be improved. One example that I set out in my note to the committee turns on the requirement that the committee—not Parliament through an act—has imposed that, when an element of criminality is involved, an investigation must be suspended and the case must be reported to the fiscal. The commissioner should have more discretion to use common sense to judge when a matter must go to the fiscal and when he is content to conduct the investigation and report to the Parliament.

Undue delay because of the process's suspension does not help. It does not help the MSP, the complainer or me, and it is not a great service to the Parliament. I am therefore particularly grateful for the letter that I have received from the convener that proposes how we might suggest further changes to the directions that require me to suspend an investigation.

The Convener: Just before Peter Peacock asked his questions, Nanette Milne wanted to speak, but I caught her only out of the side of my eye and missed her. We might be winding back a bit now.

Nanette Milne (North East Scotland) (Con): In answering Alasdair Morgan's questions, you said that it was important for you that a complainer went away satisfied that he or she had had a fair hearing. How often is that not possible? I know that many complaints to you are probably from people whom we felt that we could not satisfy in some way or other. Does that translate into their dealings with you? Do a significant proportion of complainers not feel satisfied that they have had a fair hearing?

Stuart Allan: Again, that is a difficult question to answer, as it must be judged on a complaint-by-complaint basis. We have certain complainants who will never be satisfied, and it is self-evident from the day that we receive the complaint that it is going to be difficult—that is the nature of regulation. However, if someone comes to us with a genuine concern, we treat it with respect and deal with it thoroughly, and we can pretty well tell that they are content with the process that we have followed. I see that as an important standard for us to set for ourselves. I would be concerned if people were dissatisfied with the process and how we were conducting our business. I see that as very important.

Marilyn Livingstone (Kirkcaldy) (Lab): You highlight in your report the changes that are being brought about by the Scottish Parliamentary Commissions and Commissioners etc Act 2010. What impact might those changes have on the

effectiveness and efficiency of your role? How will the savings that you are required to make affect the work that you are carrying out?

Stuart Allan: The combination of the roles of Scottish Parliamentary Standards Commissioner and chief investigating officer should be welcomed. It is public knowledge that I supported the proposals from the very start. There is a commonality of interest between standards as they relate to MSPs and standards as they relate to councillors and members of devolved public bodies. Having the same office dealing with all those will bring about savings and efficiencies. From the public's point of view, it will also provide a single office that they can relate to, which is helpful.

I would not like to overstate the savings that will be made. Nonetheless, it has been possible to effect the savings that are set out in the note to the committee—savings of 4 per cent in the current year—and I am reasonably confident that, without having a major effect on service delivery, we can continue to make the savings that are sought over the next two or three years.

Angela Constance (Livingston) (SNP): Your report refers to other jurisdictions. I am interested to know about any contact that you have had with other commissioners and whether there are any lessons that we can learn in Scotland from work that commissioners are undertaking elsewhere—in Wales, in Northern Ireland or south of the border. Are there any issues that, as a result of your contact with commissioners elsewhere, you think we should have a fresh look at?

Stuart Allan: That is an interesting question. The Welsh equivalent of the Scottish Parliamentary Standards Commissioner Act 2002 drew heavily on the terms of that act. It is clear that the Welsh saw how the framework operates in Scotland and drew on it in providing their own measure. The Northern Ireland Assembly has introduced a bill that deals with exactly the same situation, establishing a commissioner as a statutory office holder with more or less the same responsibilities that I have in relation to the Scottish Parliament. It is interesting to see how much the Northern Irish bill, too, has drawn on the Scottish act of 2002—you must take quite a bit of credit for that act.

A new Welsh commissioner has just been appointed. The Northern Irish commissioner will not be appointed until the bill has been passed, which is expected to happen in early spring. There has perhaps not been sufficient opportunity to have dialogue with one another, but all commissioners hope to have a meeting early in the new year—it may well be in Edinburgh—so that we can discuss matters of common interest, because that is particularly important at this time,

when the public view ethical standards as being so important. It is important that we do all that we can to learn from one another.

Robert Brown (Glasgow) (LD): Mr Allan, you talked a little bit about reviewing directions. In your report, you touch on the fact that you are looking at the tape recording of witnesses' evidence and at reviewing the protocol between yourself, the Crown Office and the area procurator fiscal. Can you elaborate on that? What are the pros and cons of tape recording witnesses' evidence? How are you getting on with the review of the protocol?

Stuart Allan: The tape recording of evidence is very interesting. There are arguments either way. Should you tape record evidence to ensure that you get the best evidence available? On the other hand, does tape recording encourage a climate that enables you to get as much as you can out of independent witnesses, in particular? If I am seeing someone to gather evidence, as I often do—mainly at the admissibility stage—it is important that they feel relaxed and able to speak to me naturally, without feeling inhibited or as if they are in a police station, because they are often people from whom I just need to get the basic facts of the matter.

I am currently required to tape record such conversations—it is more of a conversation than anything—and I can tell that people feel a bit inhibited by that. I have asked myself, what would be lost if I did not do that? I do begin to wonder. There would be occasions, particularly when I was concerned about credibility, when I would want to tape record the conversation and give the witness no option. However, by and large, that decision is probably best left to the discretion of the commissioner, although if witnesses want the conversation to be tape recorded, they should be able to require it to be recorded. That would be a more comfortable way of dealing with witnesses generally. I do not know whether that satisfies—

Robert Brown: That might be my own instinct, too.

What about the protocol with the procurator fiscal and the Crown Office?

Stuart Allan: It has been put to the area fiscal for Lothian and Borders and the Crown Office that we might jointly review the protocol. It is fair to say that one of the main issues is likely to be the direction that the commissioner must suspend an investigation when there may be an element of criminality. I know from my discussions with the area procurator fiscal, who is my main contact, that she is very favourably disposed to affording the commissioner discretion in the matter, on the understanding that, on occasion, in the public interest, a case may have to be suspended to allow a criminal investigation to take precedence.

That is being actively discussed, and I hope that we will report on it early in 2011.

The Convener: Thanks very much. Before we say cheerio for the time being, I thank you for your annual report and its clear layout, and I congratulate you on the workmanlike way in which you have gone about your business this session. We are very grateful to you. Thank you for your attendance.

Stuart Allan: Thank you, convener.

The Convener: Before we move into private session, I put on the public record our thanks to our colleague Angela Constance. I believe that we may not see you at the next meeting. I am sure that I speak for everybody in wishing you success in your new role. Thanks for your contribution, which has been valuable to us all in conducting our business.

We now move into private session.

14:45

Meeting continued in private until 15:07.

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