



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 24 April 2012



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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**  
**5<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

**DEPUTY CONVENER**

\*Helen Eadie (Cowdenbeath) (Lab)

**COMMITTEE MEMBERS**

\*Margaret Burgess (Cunninghame South) (SNP)

\*Bob Doris (Glasgow) (SNP)

\*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

Margaret McCulloch (Central Scotland) (Lab)

\*Paul Wheelhouse (South Scotland) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Barbara Allison (Scottish Government)

Karen Carlton (Commissioner for Public Appointments in Scotland)

**CLERK TO THE COMMITTEE**

Gillian Baxendine

Alison Walker

**LOCATION**

Committee Room 1



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Tuesday 24 April 2012*

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

### Decisions on Taking Business in Private

**The Convener (Dave Thompson):** Good afternoon, ladies and gentlemen, and welcome to the fifth meeting in 2012 of the Standards, Procedures and Public Appointments Committee. I remind members to turn off mobile phones and BlackBerrys. We have received apologies from Margaret McCulloch. I also believe that John Lamont will be a wee bit late, so we will have to leave agenda item 1, which is his declaration of interests, until he arrives.

I suggest, therefore, that we move to agenda item 2. Does the committee agree to take its draft report on parliamentary reform standing order changes in private at a future meeting?

**Members indicated agreement.**

**The Convener:** Does the committee also agree to take in private item 6, which is consideration of a draft report on standing order changes, and item 7, which is consideration of the evidence received for our review of section 7 of the “Code of Conduct for Members of the Scottish Parliament”?

**Members indicated agreement.**

## Cross-party Groups

14:16

**The Convener:** The next item on the agenda is consideration of applications for recognition of three cross-party groups. Before we do that, I note for the record that since our last meeting Mark McDonald MSP has provided a revised purpose for the CPG on dementia. The purpose has been approved by the committee and the group has been accorded recognition.

The first application is for the proposed cross-party group on arthritis and musculoskeletal conditions. As the committee will see from the clerk’s paper, the group complies with all the registration criteria. Do members have any questions?

**Paul Wheelhouse (South Scotland) (SNP):** I have not so much a question as an observation. Given that the group seems to have the bare minimum of MSPs, I am concerned that it might regularly fall short of a quorum.

**The Convener:** Indeed. If a group does not have two MSPs in attendance, it cannot have a formal meeting, take any decisions and so on. I am sure that the members are well aware of that, but I take the point and I think that we will examine the issue in our review of cross-party groups.

**Helen Eadie (Cowdenbeath) (Lab):** I declare an interest as convener of the proposed cross-party group. I assure members that in informal meetings that we had before we started the group, and in subsequent formal discussions, we have been lucky in terms of MSP representation. There seems to be an appetite among MSPs to get involved.

**The Convener:** Thank you for that. Is the committee happy to accord recognition to the proposed group?

**Members indicated agreement.**

**The Convener:** The second application is for the proposed cross-party group on science and technology. Members will note from paragraph 12 of paper SPPA/S4/12/5/1 that the second part of the group’s purpose does not seem to be relevant. Are members happy to suggest to the group that it leave the part that is italicised in that paragraph out of its purpose but, given that it complies with all the criteria, to approve it and accord it recognition?

**Members indicated agreement.**

**The Convener:** The clerks will contact the group about its purpose.

The third application is for the proposed cross-party group on the Scots language. Members have before them a note of the application, and they will see that it complies with all the criteria. Do members have any questions about the proposed group? I have to declare an interest: I would be its deputy convener.

**Bob Doris (Glasgow) (SNP):** What I will say is just to hold my convener to account, of course. He will understand that. It is just an observation.

There will be 71 non-MSP members of the group, which is perhaps testament to the demand for it. Obviously, it should be parliamentary in nature, but there is a potential management problem if all those people are keen to be active in it. That would be a challenge.

We are, of course, conducting a review of cross-party groups, and we might want to return to their composition and the balance between MSPs, non-MSP individual members, and relevant bodies and organisations. I say “fair play” on demand for the group, with 71 non-MSP members being listed, but it is a matter of getting the balance right to keep it parliamentary in nature.

**The Convener:** They dinna a’ come alang. The point is taken. We need to look carefully in the review at the matter of CPGs being parliamentary in nature. Does that relate to the content of what is discussed or to the people in the group? A range of issues will come up.

**Helen Eadie:** The point is a good one. We are talking about producing a reform paper, and there is an issue that we have certainly been concerned about. When there have been very good attendances at group meetings—in heart disease and stroke CPG meetings, for example—the room has been full and there has almost been standing room only. The physical layout of committee rooms is a constraint for cross-party groups. The heart disease and stroke cross-party group had one of the biggest committee rooms in the Parliament, as heart and stroke issues are obviously a big concern for everyone, and it clearly has an agenda that is pertinent to the business of the Parliament. That is an example of the type of management issue that can arise when there is very good support from patients, clinicians and parliamentarians. Dave Thompson was the deputy convener of the heart disease and stroke cross-party group until recently; I think that Dennis Robertson has now taken on that role.

Bob Doris was quite right to raise the issue. I am concerned about it, too. What can we do to address it? That is not to say that it negates any of the work, but the question is how we can manage such problems.

**The Convener:** That is true. We will have to go into such issues in detail in our review of the groups.

Actually, I am still a deputy convener of the heart disease and stroke cross-party group. Apparently, Dennis Robertson and I are both deputy conveners of it, so you are lumbered with both of us.

**Helen Eadie:** Excellent; I can go away when I want and leave it in good hands.

**The Convener:** That is right.

As there are no further questions about the proposed cross-party group on the Scots language, are members happy to accord it recognition?

**Bob Doris:** Aye.

**Members indicated agreement.**

## Public Appointments Commissioner for Scotland

14:23

**The Convener:** Agenda item 5 is to take evidence on the “Code of Practice for Ministerial Appointments to Public Bodies in Scotland”. Our panel consists of Karen Carlton, who is the Commissioner for Public Appointments in Scotland, and Ian Bruce, who is compliance manager in the Commission for Ethical Standards. I welcome them.

Would you like to make a brief opening statement before we open the meeting up for discussion and questions?

**Karen Carlton (Commissioner for Public Appointments in Scotland):** Yes, please.

In my opening statement, I will reflect on the development of the public appointments system over the past eight years, comment on the implications of the new code and how it has been implemented, and provide an overview of progress on “Diversity Delivers”.

I turn first to the public appointments system. In 2003, the Scottish Parliament recognised the importance of having a separate Scottish public appointments commissioner and a code of practice that specifically addressed the appointments activity of the Scottish ministers.

In the years since then, it has been clear that the Scottish ministers and the commissioner share the same aim: quality board appointments that lead to effective leadership, direction and service delivery by Scotland’s public bodies. The appointments process plays a vital role in enabling the Scottish ministers to create boards that are made up of skilled and knowledgeable people who are in touch with the needs of the communities that they serve.

Since my appointment, I have introduced three codes of practice. Each new code built on the experience of implementing the previous code, and each has been designed to enhance the public appointments process and its operation and to provide the framework to deliver the Scottish ministers’ commitment to diversity in its widest sense.

The code and regulatory regime have been recognised as being a model for other Administrations: where Scotland has led, they continue to follow. For example, the Commissioner for Public Appointments in England and Wales requested advice from me and from Ian Bruce during the development of his code of practice. We provided extensive advice, and the

commissioner’s consultation document referenced our work as being a model to follow. The current Northern Ireland code borrows heavily from my 2006 code, and the Commissioner for Public Appointments for Northern Ireland, who developed it, relied on my advice at the consultation stage. Finally, I was invited to talk to the chairmen of state bodies in Eire about my approach to regulation and my new code, at a conference that was organised by the Institute of Public Administration. The institute publicly endorsed the Scottish model.

During the past eight years, we have moved from a code of practice that had more than 80 pages to a plain English version that has 25. We have moved from a code that contained direction and general guidance to one that is prescriptive in the areas in which that is required in order to meet the requirements of the Public Appointments and Public Bodies etc (Scotland) Act 2003, while providing scope to tailor every appointment to the post, the body and the applicants. We have seen the development of a central team that supports the process across the Government and we have a clear undertaking from the Government on future improvements in how the appointments process is implemented.

In many ways, the applicant journey is improving, with more attractive targeted publicity and a variety of appropriate application and assessment methods replacing the lengthy advertisements and application forms of old. Therefore, although there is room for improvement, the situation in Scotland has moved on significantly since 2003 and appears to be considered to be a model for public-appointments regulation.

As the committee knows, the current code has been in use since 1 September 2011. On 13 September, you invited me to take you through the new code and to answer questions about its contents and implementation. At the meeting, I highlighted my concerns about the preparedness of senior civil servants who would chair appointment rounds. The first few months of the new code’s operation made it plain that the Scottish Government was not adequately prepared for its introduction—a fact that is now acknowledged by the permanent secretary.

I was explicit about the requirements of the new code with the Scottish Government’s central team and at the workshops that I ran throughout autumn. The requirements are not unreasonable, as is underlined by the response to my code consultation. They complement requirements of the Scottish ministers. An example is the requirement for appointment-specific management information to be available to selection panel members, to inform their decisions about publicity

and assessment methods. In 2010, the Cabinet Secretary for Finance, Employment and Sustainable Growth twice issued a note to all cabinet secretaries, ministers and directors general that made it clear that plans for publicity in print media had to be based on a business case. The management information provides the business case, yet it is still not being supplied.

I am puzzled by a number of comments in the written submission that the Scottish Government has provided for today's meeting. In particular, I question three areas: the description of the Scottish Government's input to the code consultation; the reference to the emerging impact of the significant reduction in the resources that are available to my office; and the implementation of the actions that are listed in the letter from the permanent secretary that was received in March 2010. I will be happy to provide the committee with written details about my understanding of those areas of concern, if your questions do not cover them.

14:30

The new code and regulatory framework rest on the view that the Scottish Government is responsible for compliance and for driving improvements to the public appointments process. The better the Scottish Government becomes at the appointments process, the less public money will have to be expended on oversight. That cannot happen without appropriate training. I am pleased to note the intention to provide induction and development for new case managers in the central team and have committed to provide support for their development.

Finally, with regard to "Diversity Delivers", the 2011 code incorporates a number of the strategy's recommendations to mainstream diversity. For example, the code's requirement for a tailored approach derives directly from the strategy's recommendation for alternative approaches to application and assessment.

The committee will have noted, from various reports and correspondence, that the targets that were set for year 3 of "Diversity Delivers" implementation have not been met. I await the most up-to-date application statistics from the Scottish Government; I am sure that the officials will refer to those in evidence.

How was the implementation of "Diversity Delivers" supported? Following its launch in 2008, my office and the Government's central team agreed an action plan, monitored its implementation, revised the actions as required and assessed the impact. The recommendations in "Diversity Delivers" are split into three periods: short term, medium term and long term. At the end

of the short-term period, three years after the launch of the strategy, I produced my report "Diversity Delivers—three years on", which contains a review of the action that was taken and its impact on targets.

Having reviewed the strategy, I believe that the recommendations that it contains are as relevant now as when it was launched. My successor may wish to review and revise it in consultation with the Scottish Government, but my recommendation for the foreseeable future would be to focus on areas that have not yet been addressed and to take action to move them forward. Specific actions that I believe would be of benefit are the finalisation of a competency framework, which the Government has been working on, and appointments-specific training for selection panel members.

In summary, the revised code and the regulatory framework give my successor, the Scottish Government and the Scottish Parliament a firm basis for a public appointments process that meets the needs of this nation. The Scottish Government is committed to an improvement plan. All that is now required is the commitment and ability to implement it effectively.

**The Convener:** Thank you very much for your opening remarks.

I welcome John Lamont to the meeting. Before we move on to questions, I invite him to declare any relevant interests, given that this is his first meeting.

**John Lamont (Ettrick, Roxburgh and Berwickshire) (Con):** I apologise for my lateness. I have nothing to declare.

**The Convener:** Thank you very much.

We will move straight to questions.

**Helen Eadie:** Good afternoon, commissioner. I welcome you to the meeting, give you my good wishes for the future in whatever you do and congratulate you on the work that you have done. I think that all of us round the table realise how vital the issues that you have addressed are for the future of equalities in our country. I am pleased to have you at the committee.

Having read the committee papers, I see how serious what you have said in the exchange of correspondence with the permanent secretary is. When a public official such as yourself uses a phrase such as "grave concerns", that tells me how concerned you are about what has not been done by the civil service. When policies are put in place and civil servants do not enact them, that is a matter of concern for not only the commissioner but every democratically elected public representative. My interpretation is that the issue must be taken up urgently by ministers at the most senior level in the Scottish Government.



You say that

“Scottish Government officials have attributed problems to my regulation when in fact these problems relate directly to their own ignorance or ineptitude.”

Would you like to give examples of that? The statement is serious.

**Karen Carlton:** You will understand that I provided information to support my letter when I met the permanent secretary. He and I have discussed particular appointment rounds. It would be inappropriate to mention them, because it is easy to identify the individuals who are involved in every appointment round.

More generally, a good example comes from reappointment and succession planning, which I have already brought to the committee’s attention. At a meeting of a public body board, two board members who had not been reappointed and who were present questioned the legality of their presence and involvement. When questioned, an official explained that they had not been reappointed because I had not agreed the reappointments. Having looked at the timing, I can say that that statement was not appropriate anyway.

However, it clearly is not and never has been my job to agree reappointments. I scrutinise the process to ensure that it complies with the code and I take action when it does not comply. If there is material non-compliance, the committee gets a report. That was a case of a lack of understanding of my role, which is frustrating since I have been eight years in post. The fact that nothing had happened came from a lack—as I have mentioned—of prioritisation, a lack of understanding or because of ineptitude.

I will highlight another example, because it is in the public domain in the letter that I sent. The role description for the chair of a major public body said that that individual would be required to conduct performance reviews because I require that in my code. That shows a scandalous lack of understanding of the importance of board review. Today, one of my assessors has picked up the same mistake.

**Helen Eadie:** When I read the papers, I was struck immediately by the issue of training. You have said today, and the papers say, that there is now willingness to move forward on training, but am I right in thinking that that training will still involve only the core public appointments centre of expertise team rather than being undertaken more widely among the entirety of those who are involved in the processes?

**Karen Carlton:** That is my understanding—but the Government will be able to put flesh on the bones of the implementation plan with which we have been supplied. I have, over a number of

years, spoken to this and the Equal Opportunities Committee about training and development. That dates back to a clear recommendation in “Diversity Delivers”, and in any literature that can be read about appointment or selection processes, that the understanding of the people involved needs to be developed. Over the years, the convener and I have talked about diversity in public appointments. If someone is unaware of his or her inherent bias and if he or she is not trained to conduct appropriate selection, issues can arise in the process. That was made clear through “Diversity Delivers” and I believed that a commitment had been made to do training. The Government has provided general diversity training to people—it can give the specifics—but I do not think that people have had the appointments-specific training that would be helpful. That is one aspect that could make a difference for the future.

**Bob Doris:** I, too, thank you for all your hard work as the commissioner and wish you the best for the future.

I might come back later to some of the concerns that you have raised, but I will ask about the plan that has been put in place to address the issues that you have raised in respect of reappointments. I apologise if my understanding is wrong—if it is, perhaps you will clarify things for me.

I understand that one of your issues was that, when ministers decide whether a reappointment should go ahead, they must have a real choice to make. However, if a reappointment date is relatively close, there might not be time to go through the appointment process if the minister were to decide not to reappoint. You have flagged up that issue and you have given us helpful statistics on it. The permanent secretary’s plan is for a minimum nine month lead-in time in which to consider whether to commence a process for an appointment if the minister were to decide not to reappoint. Rather than lament your previous concerns, which are on the public record, I want you to look forward. It is all very well sitting on an action plan, but it must be implemented. If the nine-month threshold is actioned, would that satisfy you? The committee could monitor whether that happens.

**Karen Carlton:** It would depend very much on the action that was taken at the nine-month point, when the need for reappointment or otherwise is flagged up. If it is simply noted, and things continue as they are, it will not make a difference. If, at the nine-month point, serious consideration is given to the future of the public body, the requirements that are placed by the minister on both the body and the board, the skills that the board requires, and the appropriate diversity and reflection of the population in the board, the minister has a platform to make the decision to

reappoint or to select someone through open competition. That must be accompanied by effective performance review so that the minister has an inclination to question, pursue or accept what is in that review and a clear picture of what the individual has contributed during his or her time on the board.

The nine-month period seems to be predicated, to an extent, on the fact that an open competition can take up to six months. That would give the Scottish Government three months in which to review what I have described, come to a conclusion and go out to open competition if necessary. However, I would not be true to myself if I did not repeat something that I have said many times over the years, which is that six months seems like an inordinately long time to take to make an appointment.

**Bob Doris:** The speed at which appointments can be made is another issue that we will come to. I am not trying to put words into your mouth, but at face value it appears that the action plan for a nine-month threshold is positive.

**Karen Carlton:** Yes.

**Bob Doris:** Should the committee monitor how that is implemented?

**Karen Carlton:** Yes.

**Bob Doris:** You also mentioned—ironically—the idea of performance reviews to find out whether the individual who has been appointed continues to fulfil their role in the public interest, and to perform as one would expect of them in accordance with the salary that they derive for that public job.

However, you said in your opening statement that you had an issue with civil servants saying that performance reviews would be required as per the relevant code if an individual was appointed. I am starting to see where confusion could creep in: loose lips sink ships. The relevant civil servant could say—I am not trying to defend this at all; people should be clear what the rules are—that there is now a clear public duty on ministers to assess a person's ability while they are in post before they can decide whether to reappoint them. You have said that that would be important, but the next step may be for an official to say that you insist on that happening, which is inaccurate. However, would it be best practice? Are we debating language rather than best practice?

**Karen Carlton:** If the requirement had not been part of the 2006 code, we might be debating exactly what you suggest. However, effective performance—or evidence of effective performance—has been a requirement since

2006. The only difference now is that I scrutinise whether that is provided.

The misunderstanding may be to do with the people who are working in public appointments and their general knowledge of the way in which a public body board operates. I am certain that people are doing what they are doing for no reason other than lack of understanding. It is just unfortunate when that translates into inaccurate statements about the public appointments process.

**Bob Doris:** This is my last question, which is just for clarity, but I may come back to you later, Ms Carlton.

It is already good practice that performance reviews should take place as a matter of course. Those performance reviews should be scrutinised by ministers when deciding whether it would be appropriate to reappoint or not. We agree that nine months out could be a good time to flag that up, but that is not the same as a civil servant or public official saying that you require performance reviews. You may agree that it is best practice to have performance reviews, but it is not a specific requirement that you place on—

14:45

**Karen Carlton:** If we go back to the language that I think you are picking up on, the role description that I refer to in the letter said that the chair would be required to undertake performance reviews to meet my requirements. However, my requirements are that reappointment must be based on evidence of effective performance. If there is another way of a minister demonstrating that evidence without reviewing the performance, that would meet the requirements of the code.

**Bob Doris:** I am not going to ask another question, but I want to put it on the record that I have listened very carefully to what you have said. In your final answer to me, you said that you would require performance reviews, but in your opening statement you said that it was inappropriate for someone to say that you would require performance reviews. I am just left wondering where the difference is.

**Karen Carlton:** I said not that I require evidence—the code requires it but, as I wrote the code, let us say that I require evidence of effective performance. I do not say how that must be generated, but my general understanding, which I think is shared by the people in this room, is that that would normally be generated through a performance review. Who conducts the performance review is not up to me, so to say that I require the chair of a public body to conduct performance reviews is not accurate. I would assume that performance reviews have been

required for quite some time because, when I asked the Scottish Government about reviewing the performance of board members, it described a process that has been in place for a number of years. Therefore, I believe, as you do, that the misunderstanding that we are referring to is just that. It is not correct to say that I require the chair of a national body to conduct performance reviews and to put that into a role description, as though it should be done only for that reason and not to help improve the performance of the body.

**Bob Doris:** I find that very helpful. Thank you.

**Margaret Burgess (Cunninghame South) (SNP):** Does the commissioner feel that there is anything that she, her office or a successor could do to ensure that the Government complies with the code? We have talked about what seems to be quite a lot of misunderstanding and about language problems. Looking back, is there anything that you feel that your office could do to assist the Government more in implementing the code?

**Karen Carlton:** We worked very hard to make the language as straightforward as possible. The consultation was very helpful in that regard because it advised us of what would and would not be understandable generally. Certainly, all the workshops that I ran last year were designed to support that level of understanding. The handbook that I have produced, which I described the last time that I spoke to the committee, is a comprehensive description of how the code might be implemented. However, it is not only a description of that because, to aid understanding, each of the sections is preceded by a rationale that explains why the code requires it, what its link is to the act of Parliament or to supporting diversity and how the Scottish Government might choose to implement it. I would have thought that that is a firm basis to help support that level of understanding.

**Margaret Burgess:** Is there is no additional support that you feel—

**Karen Carlton:** I am not suggesting that. One of the challenges that we have had is that, as in many areas of life, there is a fairly frequent turnover of officials, who often take their knowledge with them. The handover may not have been as robust as it could have been. My understanding is that we will now have a new central team of people who are in more senior grades and who have come from a background of understanding what the appointments process requires and what diversity means in its fullest sense. Because we have committed to supporting their development, we are certainly moving forward positively with training and development. We have never refused any request or not thought carefully about how we might support people. You

have heard me say once or twice, when I have come to speak to you, that it is my duty not only to ensure that my code is complied with but to enable and promote compliance. I do that in a number of ways, one of which is supporting training.

**The Convener:** A moment ago, you mentioned the public appointments centre of expertise that has been created. I believe that there has been an increase in its staffing. Various people have been pulled together and the number of staff has gone up from 8.5 to 10.5. Will that be sufficient to ensure compliance?

**Karen Carlton:** It is hard to say whether that will be sufficient. Until it is fully operational, I cannot make a judgment on the future implementation of the code. It is, however, a welcome move. If it is coupled with rigorous training and—as the permanent secretary has suggested—a real focus on the priority that is given to public appointments, I hope that we will see positive moves forward.

**Paul Wheelhouse:** Welcome, commissioner. I add my voice to those wishing you the best for the future. You have raised concerns about the reappointment process and the number of people who have gone through it. For the record, do you have any concerns about those who have been reappointed or are you happy with the individuals and concerned more about the process?

**Karen Carlton:** Because I do not see what the individuals' performance has been, I cannot comment on their suitability or otherwise. Just as in an appointment process, I can only determine whether there is evidence that the individual who has been appointed meets the requirements of the post. What was lacking was evidence presented to me of confidence that the individuals concerned met the requirements. I had no evidence that they should not have been reappointed, and it is the ministers' decision; it was just that the way in which the cases were made did not meet the requirements of the code.

**Paul Wheelhouse:** That is helpful. I just wanted to establish whether there were any concerns about the appointments.

It may be incorrect, but my understanding is that the role of the assessors on the appointment panel has changed. Can you describe how it has changed in the move from the old rules to the new rules?

**Karen Carlton:** Yes, of course. There was quite a significant consultation on that. I have paid great attention to the developments in the field of regulation over the years—to the work of people such as Professor Lorne Crerar, who identified principles of external regulation and the clear focus of responsibility for compliance and improvement sitting with the regulated.

I will reflect on the way in which we have taken forward the role of the assessor in Scotland dating back to when I was an assessor, all those years ago. The role of the assessor was definitely to enable but perhaps more than was helpful because the more the assessor did, the less need there was for the Government to learn. I understand why public appointment selection panel chairs might be having difficulty now in being expected to take responsibility for a process into which the assessor had much more input in the past.

Over the years, all sorts of issues arose. There were questions about whether it was appropriate for an assessor to validate a process in which he or she had participated so fully and whether it was appropriate for an assessor to make appointment decisions when they would have no involvement at all in the body. As I say, we took into account a variety of regulatory best-practice guides and consultation, and I believe that the regulatory regime to which we have changed is the right one. If nothing else, it separates the individual from the process that he or she is scrutinising and it will help with the development of knowledge in the Scottish Government because, although the assessors will point out areas of non-compliance, it will be up to the Government to address those. I do not have any hard evidence for this, but I have the feeling that, in the past, some assessors have said, "Don't worry—I'll take care of that." I am sure that that was fully intended to be helpful, but it might not have been as helpful as it could have been.

**Paul Wheelhouse:** I am not as familiar as you are with the code and the new arrangements so, for my understanding, will you say whether assessors will still be available to answer questions that are raised? If panels that undertake interviews have any doubts or need advice about whether they are at risk of non-compliance, can they seek that from the assessors?

**Karen Carlton:** Yes. In fact, it is about more than just seeking advice, because the assessors are involved at various stages. At each stage, they give an explicit compliance opinion so that the panel is in no doubt. If a panel has questions about whether a proposed approach meets the requirements of the code, the assessor will be there to say whether, in their opinion, it meets the requirements and to point out areas of risk and concern. However, the assessor will not now say what the panel needs to do. That is partly because of the change to regulation and partly because the process has been opened up to such a wide variety of application and assessment methods that the decision on how to take it forward must rest with the panel.

**Paul Wheelhouse:** So we can characterise the situation as being that the assessors are available to offer an answer if asked a question about compliance, but they do not necessarily offer spontaneously or without prompt a direction that a panel might want to go down a different route if they are uncomfortable with something in the process.

**Karen Carlton:** The assessor might say, "You might want to refer to the commissioner's handbook, where guidance is provided on how to implement the various stages." However, the assessor is not there to say, "If I were you, I would use a competency-based interview. That has worked in the past." That is definitely not the assessor's role.

**Paul Wheelhouse:** That is helpful.

I am not as well briefed on the subject as you are, but it is clear to me that there are elements of interpretation and that people are still finding their way through the issues, so there might be a risk of misunderstanding. Without going into the specifics, do you regret some of the tone of your correspondence with the permanent secretary, which implied that there was wilful behaviour or ignorance? I understand some of your frustrations but, based on your evidence today, which has been helpful and which, for me at least, has clarified where you are coming from, I wonder whether you regret that the issue was not dealt with in a more collaborative manner.

**Karen Carlton:** Absolutely not. That firm approach was needed for action to be taken. As a result of that firm approach, we got the commitment to improvement action and prioritisation across the Government. I used the term "wilfully", and I have spoken to the permanent secretary about that. I do not suggest for a moment that there were not some elements of the behaviour that I found hard to understand and that could not easily be explained by a lack of understanding.

**Helen Eadie:** The permanent secretary has put up his hands and said in a letter to you:

"we could and should have been better prepared for the new Code arrangements introduced last September."

He went on to say:

"This work did not have the impact we expected and it is recognised that more needs to be done to improve the administration of the public appointments process."

I congratulate you on your firm stand. Everyone who believes in promoting the ideals of equality of opportunity has to stand with you on that.

I have a concern and a question for you. The permanent secretary's letter states:

"A new Public Appointment Centre of Expertise (PACE) team was created pulling together the existing support for public appointments into one area."

That is almost saying that that team will do. It is a very top-down approach. Should ministers and any other politicians who are minded to do so say to the permanent secretary that it is not good enough to have only that and that we almost need champions throughout the civil service? The civil service is a massive machine. We know how hard many of the people within it work under extreme duress and pressure. Many civil servants are driven by, and fundamentally believe in, equality of opportunity. Perhaps it is better to get some of those people onside and supporting a bottom-up approach. Has that been talked about and explored with the permanent secretary?

15:00

**Karen Carlton:** I am not sure that the creation of a central team is intended to come across as a top-down approach. That team, which has recently been strengthened—I mentioned earlier the plans for its development—is seen as working side by side with senior civil servants to answer many of the questions that Paul Wheelhouse highlighted might be asked before they need to be asked of the assessor.

Whether the Scottish Government needs champions throughout the organisation is something to take up with the Scottish Government. It is hard to see how effective that approach would be unless we know what their role would be. There may be certain senior civil servants who become adept at chairing public appointment rounds and do more of it than others or are used to support others who are learning. That would be a sensible approach but, as I mentioned before, we must wait and see whether the current structure is implemented and training is given before I can make any judgment.

**Helen Eadie:** You have been in post for a number of years now. There was an expectation that things would happen, but they did not. Then we had a plan, which did not work. Does that give you, or should it give committee members, cause for concern that we might have to revisit the matter again? What more can we do with the permanent secretary and his team to put in place a monitor? What would the most effective monitor be?

**Karen Carlton:** We have been here before, but remember that it is now in the context of a brand-new code of practice. There were good reasons for introducing a new code prior to my departure but, if I had not done so, I could have had a pleasant and relaxed last year in post because, under the previous code, people knew what was happening, the assessors were playing a key role in the appointment rounds and the issues were not

arising. It is not reasonable to suggest that there had been no improvements. A significant change has been made and people still need to be developed to implement it effectively.

**Paul Wheelhouse:** I want to get an understanding of the number of appointments that have happened under the old code and the new one. Have any appointments gone through under the new code yet? If not, at what point would it be sensible for the committee to consider the impact of the implementation of the new code?

**Karen Carlton:** There will be instances of activities that you can consider, such as reappointments, because there were a large number of reappointments fairly soon after the 2011 code was introduced. However, it would normally take around a year before we would start to see the impact of a changed code. A number of rounds have been allocated and some have started, but no appointments have been made under the new code, so it remains to be seen whether it is making a real difference to the complexion of boards and the appointment of more diverse people on them.

You will get reports of material non-compliance from my successor but, to return to the previous question, it would be helpful to be aware of how the development work is progressing, the impact of the training on the officials' understanding of the code's requirements and the way that that is then communicated externally.

**Bob Doris:** I was going to ask the same question. There is a lead-in time for the new code kicking in. It was introduced in September last year, so we are six months into it, and all that we are looking at is reappointments. There are also training challenges. What would be a suitable time to review the new code? You are saying that we should initially look at it again in another six months.

**Karen Carlton:** Possibly, or you could wait until the first half dozen appointments have been made under the new code. My office can give you information about that.

**Bob Doris:** That is helpful.

Earlier, you talked about bearing in mind diversity commitments in relation to reappointments. That led me to think about someone whose performance has been successful but whose reappointment would not be as helpful with regard to diversity as a new appointment might be. What weighting would be given to that issue? I do not think that we are talking about positive discrimination.

The more substantive issue, of course, is how we can get people applying from diverse backgrounds, which involves appointments, as

opposed to reappointments. That is a much more positive line of questioning. You mentioned the fact that six months was too long for the process of appointments and suggested that it could be done a lot more quickly. Is there a suggestion that the hoops that people must jump through—there might be four, five or six steps before someone is appointed—might mean that those who are not habitual board members and would like to become a board member for the first time are at a disadvantage, compared with those who are seeking to move from one board to another, and who go through a sort of carousel process of sitting on various public boards? We need to think about how to get new blood in, in terms of diversity. What could we do to support more of that?

**Karen Carlton:** I think that you have given me four questions. Starting with the first one, I do not state—and I do not think that the Scottish Government has ever stated—that weighting should be given to reappointment versus the opportunity to increase diversity through a new appointment. It is not as simple as that, as you know. What is required is reflection about the role of the body and the skills that are needed on the board, and whether an open competition could bring in skills that a supremely able current board member might not have. There is no weighting, but I ask that consideration be given to the issues that I have mentioned and to the idea of going out to find a new appointee or retaining the skills and knowledge of the existing appointee, depending on the requirements of the board.

The next question was about appointment activity. I have some figures for you about the first stage. There has been an improvement in the diversity of applicants following the “Diversity Delivers” report, the work that has been done around that and the improvement in the applicant journey that I mentioned. For example, last year, there was a 4 per cent increase in the number of women applying, a 1.3 per cent increase in the number of people declaring a disability in their application and a 1.6 per cent increase in the number of people from ethnic minority backgrounds choosing to apply. We are seeing movement.

The point that you made about the length of the process and what you call the hoops that exist is the area that would benefit from scrutiny. Despite those encouraging application figures, when you look at the first stage of assessment, the number of people from currently underrepresented groups drops substantially.

What are the barriers in the process? Like many parts of our life, this issue is iterative. A lot of work has been done to improve publicity, to make the application pack better and to raise awareness,

which has meant that many more people are applying. The question is how the Scottish Government adjusts the assessment process to get more of those people going through to the end of the appointment round. That is an area in which I think that appointment-specific training for panel members would be helpful.

Is the process too long? Again, that depends on the body. If you are trying to appoint a full board to a new body, no, it is not too long. However, I think that a single appointment could be made in a shorter time. I do not think that the length necessarily gives an advantage to particular groups or disadvantages others, unless it disadvantages the impatient, who might decide not to hang around. With regard to the equalities legislation, I cannot see that any inequality is caused by the length of the process. However, I think that, in terms of a professional process that is applicant focused, it is surprisingly long, given that certain stages could be done more quickly.

Again, I have spoken to the Government—and, indeed, the committee—about that and have recently agreed with one of the directors-general that the appointments of two chairs to new significant public bodies will be achieved in much less than the six months between a Scottish statutory instrument coming into force and the bodies in question coming into my regulatory remit, and the appointments being due. I am looking forward to seeing how well things progress. Managing to get two very important posts filled within three months will provide the Government with some huge examples and learning that it can take forward.

**Bob Doris:** That is very helpful.

**The Convener:** I thank Karen Carlton and Ian Bruce for attending this afternoon and—I have kept this until the end of the evidence session—I wish Karen all the very best for the future. Over the years, I have enjoyed hearing the honest and forthright views that she has expressed to the committee.

**Karen Carlton:** Thank you, convener.

**The Convener:** I suspend the meeting for a minute or two to let the panels swap over.

15:11

*Meeting suspended.*

15:12

*On resuming—*

**The Convener:** I welcome to the meeting our second panel of witnesses: Barbara Allison, director of human resources and organisational development with the Scottish Government; Avril

Coats, formerly public appointments manager with the Scottish Government's public appointments centre of expertise; and George McCran, head of the public appointments centre of expertise. I thank the witnesses for coming along and ask Barbara Allison to make a short opening statement.

**Barbara Allison (Scottish Government):** Good afternoon. I welcome the opportunity to provide the committee with information this afternoon. As this is my first appearance as a lead witness before a committee, I am keen to assist members in their considerations.

The Scottish Government recognises the important role played by public bodies in Scotland and the importance of the process for appointing their chairs and the members of their boards. I want briefly to cover the actions that were taken in advance of the implementation in September 2011 of the code of practice for ministerial appointments, the actions that have been taken as a result of experience to date and the reappointment process.

In advance of the implementation of the code of practice in September 2011, the Scottish Government introduced a new public appointments centre of expertise—which we call PACE—to centralise support for and the administration of the public appointments process; created supporting guidance and paperwork for the new process; attended commissioner workshops; and updated sponsor teams on the new code and handbook. The early appointment rounds after 1 September have emphasised the flexibility provided by the new code on making appointments, with the selection panel, supported by the PACE representative, requiring to exercise a greater degree of judgment about what is appropriate in each case.

Moreover, assessors are no longer part of the panel or the decision-making process; their role is to provide a compliance opinion at the end of the process's key stages. Although the Scottish Government is required to implement the code, only the commissioner can interpret it and determine whether the Government's implementation is compliant, and such changes have placed greater responsibility on the members of the PACE team.

As a result, a decision was taken in January to increase the number of staff in the central team from 8.4 to 10.5 and to increase the level of recruitment experience of a number of individuals in the team. Appointments have been made and three new members of the team will start on Monday 30 April; the final new team member will arrive in May. We are prioritising the public appointments process in the Scottish Government.

The increase in staffing comes at a time of overall reductions in staff across the Government.

15:15

The actions that I described have been taken before the conclusion of the new appointment rounds that began after the introduction of the new code and handbook in September 2011. They represent an early recognition, which is based on experience, that more central support is required by chairs and sponsor teams. Each appointment round concludes with a lessons-learned meeting, which we will use to continue to improve the public appointments process.

On reappointments, I acknowledge that the commissioner's report identified that on a significant number of occasions we would not have allowed sufficient time in the process if the minister had decided not to reappoint and to seek new applicants. We acknowledge that that would have been an issue if a minister had taken such a decision. However, cases for reappointment are progressed on the basis that ministers are content that the individual who is currently in place is delivering effectively on behalf of the public body.

The lack of compliance in relation to reappointments relates to the process, the evidence that is provided or the timing of the process and is not to do with the individual's suitability for reappointment. The commissioner has not disputed the suitability of the reappointments. However, we are committed to ensuring that succession planning is dealt with and documented more effectively, and we are taking action in that regard.

The PACE team supports the selection panel, and individual decisions and recommendations to ministers are for the panel to determine. Final decisions on appointment and reappointment rest with ministers. If the committee wants details about individual appointments or reappointments, we will be happy to provide them, but we will want to involve the panel chair and relevant sponsor team in doing so.

Thank you for the opportunity to give evidence.

**The Convener:** Thank you. I invite questions from members.

**Margaret Burgess:** My question is similar to the one that I put to the commissioner. We have seen the correspondence, and there seems to be a lack of understanding between the two offices on some issues. Could the commissioner's office have done more to ensure that the code was followed and to help with implementation when difficulties arose?

**Barbara Allison:** As the commissioner recognised, the introduction of the new code brought challenges. The code provides

opportunities to be more flexible about how we progress an appointment round, draw up the selection criteria, advertise and so on. We are finding that the change in the role of the assessor, who used to be part of the panel, means that we do not have the benefit of the assessor's wisdom. We are getting to grips with the new code.

It would be helpful to have more input from the commissioner's office or from assessors about what is code compliant. On occasions, we find that a panel comes to a conclusion without any indication from the assessor that there is a lack of compliance but then we get feedback—the next day, or whatever—that there is a lack of compliance.

We are still working through the process. We are currently running 15 rounds, four of which have almost come to a conclusion. We will run lessons-learned sessions after those rounds, and we will be happy to share with the commissioner's office lessons that we might all learn.

We took early steps in January, as I said, in relation to the support that the PACE team offers sponsor teams and selection panels. We need to offer more support because of the new code and the change in the assessor's role. By working more closely with the commissioner's office, we can jointly ensure that future appointment rounds have a quicker turnaround and completion.

**Margaret Burgess:** Is it your understanding that the assessor's role is to make no comment whatever during the process? Can you ask the assessor whether an approach is code compliant?

**Barbara Allison:** Our experience has varied. I think that some assessors have commented and provided advice, whereas others have been less willing or able to do so. I think that, jointly, we are all trying to understand how to make the best use of the new code.

**Margaret Burgess:** In cases in which you may have wanted an assessor's advice, were they asked? Was there just a feeling that they were not able to supply advice on compliance or non-compliance, or were they directly asked and they said, "No, I can't give you that advice"?

**Barbara Allison:** I have not been involved with the individual panels, but my understanding is that some assessors are quite forthcoming while others do not feel that it is their role to provide advice.

**Helen Eadie:** I note from our papers that part of the recent history is that

"none of the twenty two cases was submitted in sufficient time for the appointing minister to consider whether the needs of the board would most effectively be met by an appointment, rather than by a reappointment or an extension of an appointment term."

That is a matter of real concern, and it is why we are here today.

I also note that

"there is a plan to produce a guidance pack for Chair and Panel Members".

It would be helpful if you could give us more information on what that guidance will contain and how it will be disseminated.

**Barbara Allison:** There are a couple of things in relation to reappointments. Certainly, we expect the guidance pack to ensure that people are aware of the code of practice and the handbook, and to provide an overview of the public appointments centre of expertise and what the PACE team is here to do. It will also clarify the change in the roles of the commissioner and the assessors, cover the diversity delivers strategy and the importance of diversity on our panels, and address the skills and competencies that are required of the selection panel. It will pull together a number of documents.

We have introduced in the process the extra step of a pre-planning meeting, as we need to ensure that the selection panel is fully aware of the requirements under the code. The documentation will be issued in advance of that meeting.

We have raised awareness of the issues around reappointments with our Scottish Government directors network, and the permanent secretary and I have highlighted the need to ensure that reappointment rounds start in plenty of time. We have issued to directors a list of all appointments that will end in the next 12 months and asked them to ensure that the rounds start in sufficient time.

I am conscious that sponsor teams are busy with a lot of other things. Although they take the appointments process seriously, there are many other competing demands on their time. I have asked the PACE team to follow up with the sponsor teams and ensure that they are moving forwards on the reappointment process. I am trying to make sure that we give out sufficient information to the sponsor teams and directors and that we follow up with them to ensure that they are taking that forward.

**Helen Eadie:** That is helpful.

On the separate matter of the application process, I understand from our papers that the continuous improvement plan

"sets out the intention to introduce software to enable online applications".

What do you hope the impact and benefit of that change will be?

**Barbara Allison:** Currently, people complete an application form, but it is not online so there is no



database. Online applications will, it is hoped, be easier for people to use. They are more effective from our point of view and will allow us to have easier access to information on diversity. The process overall will be much more effective.

The new process should start from Friday 27 April, so the first round of applications that we will run online will be the Creative Scotland round.

**The Convener:** I think that you mentioned 15 rounds. From the commissioner's reports, I think that there are a few more and that 17 board members' terms will come to an end within a six-month period from 1 March 2012. They are ongoing. Are we likely to find any of them in the same position as the previous rounds, or have things improved sufficiently to give the time that is needed for the new rounds that are currently going through the process?

**Barbara Allison:** I will clarify the point that I made earlier. The 15 rounds that are under way are for new appointments. People are going through the full appointment round, with four rounds coming to the end of the process.

On the reappointment rounds to which the commissioner referred, 27 are due between the beginning of March and the end of August. Out of the 27, eight reappointments have been made, and 19 rounds are under way. We will face other areas of non-compliance in those rounds on the basis that, if the minister were to choose not to reappoint, the question would be whether there would be sufficient time to run a full appointment round. That does not mean that we will reappoint people who are not suitable; the issue is the time for reappointment. The boards will still assess whether people are effective and whether their skills meet the body's needs. I do not think that we will meet all the timescales that would allow a full appointment round if people were not to be reappointed, but, as I said, the cases are similar to the previous cases: we are not saying that the people who are reappointed are not suitable.

**The Convener:** Okay. Thank you.

It is useful for the committee to know that a few more rounds will be in the same position as those that have already been drawn to our attention in the reappointment category. I presume that you are confident that the new appointments that are going through are in a different situation altogether and that there will be no problem with any of them.

**Barbara Allison:** As I said, four new appointment rounds are coming to a conclusion. The paperwork is still going through the process. I think that the paperwork for either two or three appointments is with the commissioner's office to allow the commissioner to determine whether the whole appointments process has been compliant. As I said, I sincerely hope that those rounds come

out as being compliant. In all those cases, we will learn lessons from going through the process about where we can jointly improve things.

There are a number of steps in the full appointments process. The assessors—who are part of the process, not part of the panel—will flag up issues to do with non-compliance as we go through the process. We should not get to the end of the process and have a non-compliant round, but as I said, we have not finished a round yet.

**Paul Wheelhouse:** I want to ask a brief question that follows up on what my colleague Margaret Burgess asked about. She referred to the assessors. I am not sure whether you heard the commissioner's response to my earlier question. Suffice it to say that it was stated that the assessor should be available to give advice, but should not necessarily proactively offer advice where they see something happening.

Given that, from your experience, there seem to be variations in assessors' approaches—it is possible that individuals just naturally take different approaches; that can happen—does some clarification need to be given or should steps be taken to ensure that a consistent approach is taken and that the assessors are aware that they can answer questions that a panel raises? Would that help panel members?

**Barbara Allison:** We are still very early in the process, and it is important that we jointly learn lessons from it. It would be useful to have clarification as we go through and learn lessons from the first four rounds about what has worked well and, where different approaches have been taken, what has been more successful and what has been less successful.

As I said, we are early on in the new code and everybody is getting up to speed with it. Within the sponsor teams, the selection panels and our team, there are people who are more experienced and who are comfortable with and confident about making suggestions. The same is true of the assessors—there are new assessors who are still trying to work out what will be compliant with the code. It would be helpful if we could have a consistent approach but, at the moment, individuals are working through the process.

15:30

**Paul Wheelhouse:** You asked for an extension of time and the Government raised its concerns with the commissioner about problems that it saw with the implementation of the code. Can you clarify for the committee what the Government saw as the main concerns, which required the additional time? When the code was applied for the first time, were you satisfied that those

problems had been ironed out, or were there still some that you were worried about?

**Barbara Allison:** The concern that we had—and still have—was about interpretation or how we implement the code. As I said, it is for the Scottish Government to implement the code, but the interpretation lies with the commissioner. Will the action that we are taking—which the staff within the Scottish Government are taking in good faith—be deemed to be compliant? That is the issue that we have had. One of the issues in the run-up to the implementation of the code was what evidence was required to show effective performance, and we tried to clarify exactly what that standard of evidence would be. That was one of the issues that there was a bit of dialogue around.

**Paul Wheelhouse:** In the earlier discussion, I could see where the commissioner was coming from but I could also see a potential risk of misinterpretation of what constituted a review—the interpretation that a review needed to be done by somebody involved with the panel. I could see where that came in, but the commissioner clarified that that was not what was intended. I can see how confusion might have arisen about what constituted the correct evidence.

**Barbara Allison:** One example concerned the signing of appraisal forms. Does a completed appraisal form have to be signed? If it is not signed, is that non-compliant? There are robust processes around effective performance. I am aware of one area where there is a 39-question self-assessment form, an interview with the board chair and an agreed note but the note has not been signed—is that evidence of non-compliance? We are trying to get some clarification, and we have gone back to the body and asked it to ensure that the reports are signed if that is what is required.

**Paul Wheelhouse:** It might be for a panel to ask an assessor at the time, “Is this compliant or not?”

**Barbara Allison:** Yes. In terms of an appointment round, it could go back to the assessor.

**Bob Doris:** We read with interest about the assessors’ new role almost being more about observing the process than interacting with it. We have heard some good reasons why that should be the case. However, it seems odd for an assessor to sit there throughout a process and, at the end of it, be fairly sure that there would be non-compliance without having spoken up during the process—although I am not saying that that is what happens. A board may take a passive approach from the assessor as a tick in the healthy process box. Do you think that there is a

lack of clarity over the assessors’ role at the moment?

**Barbara Allison:** I do not know whether it is for me to say whether there is a lack of clarity in what they think their role is or what we think their role is. If there was a lack of compliance, we would expect them to flag it up at the end of a meeting and so on. We would then determine how we would deal with that lack of compliance. As I said, in some cases they will make suggestions and in others they will not.

I think that although the assessors are working to the best ends of the process, they are still unsure, as we are, about what compliance is for any particular round. Even though they might not have flagged up a compliance issue, they might come back later and say that, despite that, we still have more work to do. I think that that is just because we are at an early stage in the process, when everyone is trying to become more comfortable and confident with it.

**Bob Doris:** I now wish that I had asked the commissioner some of these questions. I know that she is still listening to the evidence and scribbling furiously, so I am sure that she will write back to the committee.

What happens if an appointments process involves five rounds, all five rounds are gone through and the public appointment is made, but the commissioner’s office comes back and says that there has been non-compliance, which you then find existed from round 1 or round 2? Should it be the responsibility of the assessor to flag that up during the process? I am trying to work out what the assessor’s role is, other than to observe, to gather evidence and to certify at the end of a process whether it was compliant or non-compliant.

**Barbara Allison:** As we go through the process, assessors will flag up a lack of compliance at the relevant point, which would stop the process. We would make the round compliant and then move on. I would not expect to be told at the final stage that we had been non-compliant early on. The assessor will work with us all the way through the process.

**Bob Doris:** Am I speaking hypothetically, because no new appointments have been made yet? If there is non-compliance in relation to any of the new appointments, should we ask at what point during the process the assessor raised that? Is that one of the key questions that we should ask?

**Barbara Allison:** No new appointments have been made yet; four rounds are coming to a conclusion.

Yes, from our point of view, we would be very interested to find out at what point there was non-compliance.

**Bob Doris:** I have another question that I wish that I had asked the commissioner. Are you notified of any issues of non-compliance as you go through the process, or do you find that out towards the end of the process? Can you shed any light on the four appointment rounds that are coming to a conclusion?

**Barbara Allison:** The PACE representatives who work with the selection panel and the assessor will come back to the selection panel and make it aware of any issues of non-compliance. The experience to date is that elements of non-compliance have been raised and addressed, so I do not expect that any of the rounds that are coming to a conclusion will be non-compliant. It has taken some time to work through the process. We are building more time into the process early on, because there is a recognition that it takes a bit longer for compliant documentation to be produced for an appointment round.

**Bob Doris:** Instead of asking another question, I will make a brief observation. Something that you said reassured me. You said that issues of non-compliance had been identified during the process and that the process had been amended to make it more robust. I think that that means that the process is robust and that the assessors are doing their job robustly, which, on my reckoning, is what they are there to do. Thank you for giving me that reassurance with regard to the overall process as we go forward.

**The Convener:** I thank the witnesses for coming along, giving their evidence and answering our questions.

I suspend the meeting for a minute to allow the witnesses to vacate their seats, after which we will continue to discuss the matter.

15:39

*Meeting suspended.*

15:39

*On resuming—*

**The Convener:** Now that the witnesses have left, we will have a short discussion on the evidence and on how to move forward. Page 4 of the briefing paper indicates that we must decide on what we want to do.

I have one or two comments following the two sets of evidence, which were very interesting. It is important that we ensure that the new system is working well, that we are improving diversity and that more people from a wider range of

backgrounds are coming forward and being appointed to our various public bodies, quangos and so on. That is what must drive us forward.

A number of issues came out of the evidence session—for example, that the process could be speeded up somewhat in certain instances. A big learning process is going on, but the system has been in place for some time, so people should be—I hope that they are—learning lessons. It is interesting that a few more cases are going through the process that are in the same category as those that were referred to in the commissioner's report. We will not be surprised when we see them, but we hope that those will be the last and that things will move on.

I suggest that, rather than wait for the commissioner's office to come back to us in the future to flag up non-compliance, we include it in our work programme for later in the year, perhaps in six or nine months. By 1 September, a full year will have gone by, so we could look at the matter in October or November to see how the process has worked and take things from there. Those are my views: I would also value members' comments.

**Paul Wheelhouse:** A little bit of work has to be done—perhaps we could write a letter to the assessors or to someone else—to clarify the role of the assessor, what is appropriate advice for them to give and when to give it. There is perhaps misunderstanding of some aspects of the code, so there is a risk of non-compliance. The Government team described circumstances in which people are being asked for information, but the assessor says either that they cannot provide it or that they do not have the information, whereas others are able to be more forthcoming. As colleagues discussed, there must be improved consistency and there must be clarity about the role that the assessor can play. We should pin the matter down so that it is no longer a problem.

**Helen Eadie:** I agree with the convener that the matter should be on our work programme at an appropriate point this year. We should consider inviting the permanent secretary to come along at that time to reassure us that the matter is being given the highest political priority, which he ought to be giving it. He has clearly put his hands up and said, "It's a fair cop", and it is reassuring that he acknowledges that in his letter to the Commissioner for Public Appointments in Scotland. We do not want a falling off in the priority that the matter is given. It is not right for us to be holding ministers to account if they are not getting the help and support that they should be getting.

On Paul Wheelhouse's comments about advice from assessors and the suggestion that we write to the commissioner, there is always a difficulty in that there are regulators and there are people who

do the job, and there is a fine line between them. Should the regulators manage those who do the job? I argue that that is not their function. People should be in post who are professional enough to know what their job is. That obviously means that there must be dialogue, but it is not the committee's job to tell the commissioner what should be done. We should not go down that road.

The commissioner is in a strong position and, indeed, has done a very good job. She has shown strength and courage in tackling the permanent secretary head on. That is no small thing. The fact is that regulators in society regulate what we do; they are not there to manage others in the civil service.

15:45

**Margaret Burgess:** I certainly agree that we should look at the issue again, especially now that the first appointments are being made under the new code. Once those appointments have been made, we will have a better understanding of whether the approach is working.

Given that witnesses seemed to be confused about the assessor's role, I was quite heartened by Barbara Allison's comment at the end, with regard to the four appointments that have been made, that there has been a dialogue with the assessors, that instances of non-compliance have been rectified and that, as a result, the Government is not expecting non-compliance under the new code. We have been told that the process appears to be working, so we should wait and see what happens—perhaps October will be far enough down the line—and raise the question with the permanent secretary or a minister at that stage.

**Bob Doris:** Two issues arose in the very helpful evidence, the first of which was the reappointment process. On one level, it is not really a matter of concern because, as far as altering it is concerned, it would simply be a mechanical process of flagging up the correct time period for informing boards and public bodies that they need to start looking at the matter in order to give the ministers the option of non-reappointment, should they so choose. That should take care of itself, but we should monitor the situation. It would be reasonable to come back to the matter in, say, October or November.

Secondly—and more important—I was left with the impression that the process was new not just to those who are seeking to make public appointments but to the assessors, who are operating under a new code of practice that they have to monitor and, where appropriate, advise on. That is no slight on them; after all, people who are starting a new job need training and support. I

am keen to find out what training and support they have been given to achieve consistency. How do we ensure that different individuals who must interpret the same code for the commissioner are consistent in the advice that they give?

I am also keen to know how formalised health checks are in the process. I have to say that I was encouraged to hear Barbara Allison say that in the four appointments that are being made there have been discussions about what is or is not advisable, and the public appointments body has taken corrective action in that respect. I would certainly expect that to be a vital aspect of the assessor's role. If we can get any more information on that by correspondence, we should ask for it, but we should also take another more formal look at the issue later in the year. Whatever else happens, the outgoing commissioner has created a focus that I suspect the committee will drill down into in due course.

**Paul Wheelhouse:** I apologise for returning to the issue that I raised earlier but, for the sake of clarity, I make it clear that we are not asking the commissioner to do anything different. It is up to her to determine how she organises her affairs and runs her assessors. However, there is a perceived difference in treatment with regard to the working of the assessors. As Bob Doris has pointed out, they are learning about the new code and their role in it and, as Barbara Allison agreed, it would be helpful to have guidance that makes it clear that it is acceptable for assessors to answer specific questions about compliance. Such an approach would be helpful and would ensure that, by the time of our next review, there is only a minimal chance that things will have gone wrong because of the improved chance that non-compliance will be picked up earlier. I am not suggesting that we insist on this, but by encouraging the commissioner to ensure that all assessors are aware that they are able to answer questions we will be able to help the process.

**The Convener:** We need to do two things. First, we should correspond, through the clerks, with the commissioner's office on the role of the assessors in order to clarify that absolutely. Secondly, we need to have the clerks liaise with the commissioner's office later in the year and produce a report to update us on how things have gone. That could be produced in October or November—perhaps November would be better—as the code will have been in operation for over a year by then. We can play that by ear. When we get that report, we can decide what folk to ask to appear before us again. Are members happy with that course of action?

**Members indicated agreement.**

**The Convener:** Paragraph 23 of paper 2 concerns the letter that we received from the

Equal Opportunities Committee regarding "Diversity Delivers". We should respond to the Equal Opportunities Committee in the light of what we have heard today. Do members agree?

**Members** *indicated agreement.*

**The Convener:** The clerk has reminded me to ask whether I have the committee's agreement to sign off the letters between now and the next meeting. Are members happy with that?

**Members** *indicated agreement.*

**The Convener:** We now move into private session.

15:51

*Meeting continued in private until 16:46.*



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