

ENTERPRISE AND LIFELONG LEARNING COMMITTEE

Wednesday 25 October 2000
(*Morning*)

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ENTERPRISE AND LIFELONG LEARNING COMMITTEE 24th Meeting 2000, Session 1

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

COMMITTEE MEMBERS

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

*Nick Johnston (Mid Scotland and Fife) (Con)

*Marilyn Livingstone (Kirkcaldy) (Lab)

*George Lyon (Argyll and Bute) (LD)

Ms Margo MacDonald (Lothians) (SNP)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

Dr Elaine Murray (Dumfries) (Lab)

*Elaine Thomson (Aberdeen North) (Lab)

*Allan Wilson (Cunninghame North) (Lab)

*attended

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Linda Orton

LOCATION

Committee Room 4

Scottish Parliament

Enterprise and Lifelong Learning Committee

Wednesday 25 October 2000

(Morning)

[THE CONVENER *opened the meeting at 10:36*]

The Convener (Alex Neil): Good morning. Item 1 is in public, and items 2 and 3 are in private. Margo MacDonald has sent apologies, and we expect Elaine Murray to join us later. We will proceed to item 1.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Before we do that, I want to ask about item 3, which you said would be in private. Item 3 is consideration of the draft report for the Scottish Qualifications Authority inquiry. I know that a convention has grown up in the Parliament whereby we consider our reports in private, and I understand from the clerks that that has been the uniform practice, but I gather that standing orders have no such provision. As there is huge public interest in the inquiry—arguably more interest than for any other inquiry—I wonder whether there is any reason why we should discuss the report in private. There is nothing that I wish to say in private that I am not prepared to say in public. I therefore suggest that it would be better to discuss the report in public, especially because of the line that some members may take on the withholding of confidential or civil service documents. If the Executive should be open in its dealings, so should we.

Allan Wilson (Cunninghame North) (Lab): On a point of order. I give all due deference to Fergus Ewing's grandstanding, but I understood that we had agreed to discuss the report in private.

The Convener: I am about to make that point. I checked with the clerk, and the committee agreed a general principle that all consideration of reports would take place in private. If Fergus Ewing wants to change that, he needs to give notice and add an item about that to the next agenda.

Fergus Ewing: I give notice that I wish that matter to be added to the next agenda.

The Convener: Okay.

George Lyon (Argyll and Bute) (LD): Fergus Ewing is due to join the Rural Affairs Committee. Will he remain with our committee until the end of the SQA inquiry, or is he moving on?

The Convener: We do not want to conduct the whole meeting through the chair. The timing

regarding membership of committees is still somewhat up in the air.

George Lyon: I just want clarification.

The Convener: We should move on to the substantive issue.

Scottish Qualifications Authority

The Convener: Item 1 concerns disclosure of information. As members know, in consultation with the Education, Culture and Sport Committee, we decided at our previous meeting to ask the Minister for Children and Education to meet Mary Mulligan, who is the convener of the Education, Culture and Sport Committee, and me. The minister responded quickly to our request, and we met him the day after this committee met. We had a reasonably productive meeting, at the end of which the minister made a series of verbal proposals, whose substance has been circulated to committee members. The minister has now put those proposals into writing. The Education, Culture and Sport Committee met on the Monday following that meeting and agreed to accept the minister's recommendation, subject to agreement with this committee.

After Simon Watkins reads out Mary Mulligan's formal letter, which has not yet been circulated, I will open the meeting up to committee members' views.

Simon Watkins (Clerk): I have a letter from Mary Mulligan, convener of the Education, Culture and Sport Committee, to Sam Galbraith, following a meeting of that committee. It states:

"Thank you for your letter to me of 6 October"—

which is exactly the same as the one to this committee—

"concerning access to information in connection with the Education, Culture and Sport Committee's inquiry into school exams results. Your letter was considered by the Committee at its meeting held on Monday, 9 October.

The Committee agreed to the proposal contained in your letter, provided that I am able to check the list of written advice provided by you, against the information that I see in confidence, to ensure that all the information the Committee wishes access to has been provided. This is of course still subject to the agreement of the Enterprise Committee which has yet to discuss the terms of your letter."

The Convener: I will now take committee members' views on how we should respond. Should we accept the minister's recommendations, as the Education, Culture and Sport Committee has done, and move forward? Do members have any other views?

Allan Wilson: I favour the Education, Culture and Sport Committee's approach, which seems to

grasp the issues at stake. However, I am not clear how the advice sits in relation to Mr Swinney's intervention into these affairs by virtue of his public commitment to making an application under section 23 of the Scotland Act 1998 for the release of all information whether treated confidentially by ministers or otherwise. Is that still the position, or will the advice that we discuss today be superseded anyway by Mr Swinney's application?

George Lyon: I also want an answer to that question. Furthermore, I want to restate my position that it is wrong for only the two conveners to see the information. Convener, when I discussed the issue with you in private, I made it very clear that my first preference would be for the whole committee to scrutinise the evidence; however, I was willing to accept that one representative from each of the political parties should at the very least have the opportunity to verify the information. That is still my position.

Fergus Ewing: This proposal means that the conveners would have access to the documentation, but only on a confidential and personal basis. We are elected to represent our constituents; when we were elected, we did not take a vow of secrecy. I do not think that we can say to our constituents that we will receive information in secret. In failing to make public internal documents, discussions and advice, the advice that was received by the two ministers and the letters and reports that were communicated to Mr Galbraith from schools and colleges and to which he referred in the statement to the full Parliament on 6 September, the Executive is in breach of the "Code of Practice on Access to Scottish Executive Information".

I can briefly quote the section of the code that quite plainly indicates that, if the Labour-Liberal Democrat Executive goes down this road, it will be in breach of the code. This is a very serious matter. Part II of the code lists documents that are exempted from the principle that documents will be made public and begins with the following statement:

"The presumption remains that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available."

As the public interest in this inquiry is perhaps greater than in any other inquiry in this Parliament, the presumption is that all information should be made public in the public interest. That principle applies to the second paragraph of part II of the code, which refers to the notion of harm that might be done to the frankness and candour of internal discussion. Where the public interest outweighs the harm, there must be disclosure.

I would say that the Executive is breaching the code and is, in fact, breaking the law. That must

not be allowed. We have heard wrecking questions as to what Mr Swinney will do. I am not speaking for Mr Swinney, but whether or not he becomes First Minister later this week, I would suggest that he will take a principled stand in the interests of full and open government, without which I believe that this inquiry would conclude as a sham.

10:45

Nick Johnston (Mid Scotland and Fife) (Con):

I was under the impression that both the convener and the deputy convener would have access to the information.

The Convener: No.

Nick Johnston: That being the case, and if we follow that principle in future, it leaves an awful lot of responsibility on the convener of a committee to satisfy himself that the memorandum covers everything that is in the documentation. I am slightly uneasy about that because—without casting any aspersion on any committee convener—I feel that two heads are better than one. We should push for both the convener and the deputy convener to see the documents. That would satisfy people that there had been proper scrutiny.

Allan Wilson: I think that it is worth reading out, for the record, the second paragraph of the letter that we are considering from the minister to the convener, which states:

"I want to be as helpful as possible in respect of the Committee inquiries. The Executive has nothing to hide".

As the minister has explained, and as is clear to people whose interest in the effective operation of government is broader and longer term than Mr Ewing's short-sighted interest, there is a wider principle around the receipt of confidential civil service advice and the civil service code.

In response to Nick Johnston's point, I do not see anything here that serves as either a principle or a precedent. As we have discussed previously, and as I assumed we had agreed, this is a matter for wider parliamentary consideration than there has been hitherto—hence my question about Mr Swinney's intentions.

I do not think that George Lyon's proposed solution will be a solution. Our committee structure and parliamentary system are based on d'Hondt principles of proportional representation; the system is not based on party political interest. In the months since this committee was formed, we have striven to adhere to those principles. We have done so fairly effectively. I do not think that splitting things for whatever party political purposes—in Fergus Ewing's case for short-term party advantage, as he sees it; and in George

Lyon's case for more general reasons—is the route that we should follow. I have no objection to the deputy convener having access to information, and I have no objection to members of the committee having access to information. There is provision for that to happen, should it prove necessary. Generally speaking, I still favour the approach that has been adopted by the Education, Culture and Sport Committee.

Miss Annabel Goldie (West of Scotland) (Con): The question to be considered is broad—what is the reasonable operation of government? I find myself out of sympathy with Fergus Ewing in that I acknowledge that, in any Government, a candid exchange of information between civil servants and ministers has to be possible. If neither side can rely on that, the value of the information and advice that ministers receive is called into question. It is important to consider what it is reasonable and unreasonable to ask ministers and civil servants to do in the discharge of their duties. It would be difficult for a civil servant to do his job properly, and to be frank with a minister, if he felt that at some unknown point in the future, depending on the whims of a committee or on a Government decision, information that he thought he had been relaying in total confidence would be disclosed in the public domain.

I do, however, find myself in sympathy with Fergus Ewing in one way. I do not consider the code of practice as law; I therefore do not think that there is any breach of law. It is nonsense to talk of such things. However, Fergus has a point: if the Executive has decided to allow a departure from what we all understand to be the *modus operandi* at the moment and to make this concession by releasing part information, it has to be done openly and without any covert agenda. I have a concern that is nothing to do with the integrity of the conveners but is purely to do with the human element. From my days practising law, I know that Nick Johnston is absolutely right: one mind had a huge responsibility when it was trying to determine what to do about a problem. The presence of another pair of eyes was greatly reassuring and immensely helpful.

I have a slight concern—and not only because I am the deputy convener of this committee and would seek to be allowed to see the confidential information—that what is proposed as a practical departure from the existing protocol is placing a heavy responsibility on individual conveners. If one person can be trusted, I cannot see why another person or a number of people cannot be trusted. However, I understand the need for restricted circulation of what might be sensitive information.

I am in sympathy with the minister with regard to the fact that we are dealing with a sensitive issue

and that it would be dangerous to breach the principle, but I believe that, if we are to make a departure, the public must understand that it is an acceptable departure and not some sort of cobbled-together compromise to get over a difficult hurdle.

George Lyon: I agree with much of what Annabel Goldie said. Good government cannot operate if advice that is given in confidence can be made available to all and sundry at a later stage. That would mean that we would never get advice that was worth the paper it was printed on.

There is an important principle to uphold. Any move towards the general release of information and advice from civil servants is tantamount to an attempt to wreck the operation of good government in Scotland. Neither I nor my party could support that. We have to recognise that the Executive has generously offered to ensure that we see the evidence and advice in a controlled fashion. My view is that that has to apply to more people than the two conveners and I reiterate my point that it should apply to a representative from each party. That would ensure that all parties were satisfied that the advice that had been given correlated with the memorandum that would be sent to the committee afterwards.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): The reason why we asked for the additional information was to enable us to evaluate the independent consultants' report. The information is not being handed over to anyone on the basis that they should mount their own inquiry and come to their own conclusions. The point is to establish some trust in the independent consultants' report—mistrust has been implied.

We must recognise the different situation that we are in. The previous convener of this committee boasts that he got the committee's support for 16 months without having to take a vote on any matter. Now, he sees himself as being in another situation. We are talking about parliamentary business relating to future disclosure of information and how we ensure good government. I expect that that debate will take place in the Parliament. I think that the unfortunate consequences of John Swinney's move were not thought through. He seeks to influence unduly the committee structures, the convenerships and the fact that the committees are not aligned on party lines. We need to get back to the basic principles. On this committee, we have a group of people who were selected by the parties through the d'Hondt system. We have a convener who is not a member of my party and we have a deputy convener who has received our support during the past few months and has done a good job.

We have to place our trust in you, convener. We may have reservations, but we must recognise

that the Executive has moved to provide information to verify the consultants' report. I am quite prepared to progress on the basis that you will be able to come back and inform the committee honestly and openly whether you believe that there are discrepancies between the independent report and the evidence that you have received. I would expect no less than that you would be honest with us, convener. We must put our trust back in the committees and not get confused by what is happening in the chamber.

A debate will take place in the Parliament and we can make party political points during that debate. However, at this point, we have the information and we must trust the convenership.

Fergus Ewing: In response to the comments of Annabel Goldie and George Lyon on my earlier remarks, I would like to say that the reputation and integrity of the Enterprise and Lifelong Learning Committee is important to us all, and it is because I want that to be maintained and preserved that I make my proposal. No member apart from me has read from the code of practice, and with great respect to my colleagues, I believe that they have misinterpreted the code. Annabel Goldie said that the code is not law. I submit that the code is binding; certainly the ministers have argued that they are bound by it. In that respect, the code would have the effect of law. George Lyon suggested that, if the committee agreed with my proposal for full disclosure, we would be wrecking the operation of good government.

George Lyon: It is the general principle.

Fergus Ewing: With respect to George Lyon, I remind members that the code states:

"The presumption remains that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available."

We have not received any legal advice on the interpretation of the code. I am conscious that I am the only member to have quoted from the code. However, it seems very simple: information must be disclosed if the public interest outweighs any notional harm that might result from the disclosure of internal civil service advice. Is any committee member seriously suggesting—

The Convener: Please wind up. We must press on.

Fergus Ewing: Committee members have been given no advice on the matter. Does any member—

Mr McNeil: This is an abuse of the committee's time. It is grandstanding and is outrageous.

Fergus Ewing: I was very nearly finished before Mr McNeil saw fit to make his remarks. I was simply going to ask whether any committee

member disagrees with me that the public interest in the inquiry into the exams crisis could not be greater. Would any committee member argue that there is not huge public interest in the matter?

The Convener: Okay, Fergus. Other members wish to speak.

Fergus Ewing: If nobody disagrees with that point, there must be full disclosure. That is what the code says. I suggest that we cannot make a decision until we have legal advice on the interpretation of the code and whether it is binding in law. If it is, I suggest that the Executive has broken the law; if we proceed down the path that members seem to be minded to follow, we will be party to that.

Marilyn Livingstone (Kirkcaldy) (Lab): I wanted to say that I am very unhappy about some of the comments that Fergus Ewing has made this morning. The Enterprise and Lifelong Learning Committee has a reputation for working well together, but some of the remarks that were made this morning were simply grandstanding and were extremely political. I wanted to say that earlier, but Fergus Ewing carried on speaking.

11:00

The Convener: Perhaps I can make a suggestion. Let me remind members of the situation. At our last meeting, it was agreed that Mary Mulligan and I would meet Sam Galbraith—within 24 hours we had that meeting. It became very clear during the meeting that access to information is a rather grey area. The Scotland Act 1998 seems to indicate that the Parliament can subpoena any document under the control of the Scottish Executive. Before the meeting, I asked the clerk to check with the Scottish Parliament legal office exactly what that meant. The advice that we received was that this was not as straightforward as it appeared and that there might be caveats on such subpoenas.

Secondly, there is the code of practice, to which Fergus Ewing referred. Like any code of practice, it is open to interpretation, or misinterpretation. Thirdly, at the Parliamentary Bureau yesterday, the Executive put on the agenda for discussion in two weeks' time the disclosure of information from the Executive to parliamentary committees. There was also a statement yesterday from Henry McLeish—I will not call him the First Minister designate, because that would be presumptuous—that parliamentarians will have more direct access to civil servants, which brings into question a range of issues.

There is an issue about the lack of clarity, and confusion, surrounding the rights of the Parliament to demand information from the Executive. That is an issue that every member of Parliament and the

committees will have to address, but it goes well beyond the remit of this committee. We should recognise—people in the Executive recognise it privately—that there is a lack of clarity. For example, the Scotland Act 1998 seems to contradict aspects of the code and vice versa. There is a need for clarification on what is and is not possible.

If we tie ourselves down to addressing and resolving the general issue today we will get nowhere. I suggest that we confine ourselves to the question of whether we accept the minister's recommendation, with or without amendment—I sense from Annabel Goldie and George Lyon that there will be an amendment. We should confine today's debate to the SQA, because we owe it to all the parents and pupils who have been affected by this issue to expedite the conclusion of the inquiry and prepare our report sometime in November and no later. If we do not reach agreement today on the acceptability of the proposal on access to information, the inquiry will drag on, which will do the committee's reputation no good inside or outside Parliament. We should confine ourselves to the specific issue, but acknowledge that whatever decision we take does not set a precedent, because the general issue needs to be discussed more widely. We need to agree that we will confine ourselves today to the question of whether we accept the minister's proposal.

We need to be clear that the minister is proposing that the two conveners, who are members of two of the four parties concerned, have direct access to the minutes of meetings on a confidential basis. That is my understanding and Mary Mulligan's understanding. We also need to be clear that summaries of those minutes will be made available to committee members and the public. In other words, I expect the summary documents to contain clear statements on the advice that was given by civil servants, without naming who gave the advice. That is a reasonable compromise at this stage. I do not believe that that will set a precedent in terms of our general approach to the disclosure of information, and we can put that on the record.

Mary Mulligan and I will see the minutes to check that they contain nothing that has not been conveyed in the summary documents that will be made available by the Executive. That is a check to ensure that all relevant information is disclosed, and two minds—my mind and Mary's—will be applied to that task. If that approach is agreed to, the committee will have to decide whether access to those minutes on a confidential basis should be confined to the two conveners; whether access should be extended to the deputy conveners, as proposed by Annabel Goldie and Nick Johnston; or whether access should be extended to

representatives of the parties, as George Lyon proposes.

Before we discuss the specifics, can we agree to park the general issue of disclosure, recognising that it must be agreed in detail by the Parliament and the Executive? There should be some sort of contract between the Executive and the Parliament, which would recognise the rights of the Parliament and leave the code of practice less open to interpretation solely by the Executive, which is the current position. That is a general issue that affects all members of the Parliament.

If we agree to confine ourselves to the specific issue of disclosure, in relation to the SQA inquiry, we can then resolve whether we want to continue to insist on access to the minutes beyond what is granted to the committee conveners. Everybody has made their position clear on the general issue; none of us is satisfied with the general situation, which is cloudy to say the least. However, if we spent the rest of today trying to address that, we would not get anywhere. Are we agreed to proceed on that basis?

Allan Wilson: I am not sure that we can do that, convener. Mr Ewing has asked whether, if we were to park the issue as you suggest, we would be in breach of the law. What is your interpretation of Mr Ewing's interpretation of the civil service code?

The Convener: I will ask the clerk. The legal advice that we have received is that it would not be a breach of the law. There may be a breach of the code, and I presume that that is what Fergus Ewing meant.

Mr McNeil: We are reassured, convener.

George Lyon: Returning to your original premise, convener, I think that it would be right to proceed as you propose, as the pupils and parents in Scotland are waiting for us to come up with some solutions to ensure that the situation does not arise again next year. In the interests of making progress towards that overall goal, which should be our top priority, we must proceed according to your proposition and park the general issues to one side. The question is the extent to which the minutes are to be made available.

The Convener: We can also register our general concern—as has been registered elsewhere—over the lack of clarity and the general principles of disclosure.

George Lyon: Surely our top priority must be to get a solution into the public domain as quickly as possible, so that pupils, parents and teachers can be reassured that the problem will not occur next year.

Fergus Ewing: On 6 September, the Minister for Children and Education said that all relevant

and necessary documents would be made available. It was only on 29 September that we found that that was not the case—and only then in response to questions that I had raised with the civil servants who had attended the committee meeting on 20 September.

Like George Lyon, I believe that we want to get to the truth of the matter and complete our inquiry. However, we do not have the evidence to do so. It is a bit like someone who has been accused of a crime deciding what evidence the procurator fiscal would adduce in evidence—it is an absurdity. I cannot accept your general proposition, convener, although I hope that the process that you have described this morning will lead to full disclosure. I suggest as a counter-proposal that this committee writes to both ministers—Mr Galbraith and Mr McLeish—calling on them to make all internal documents relating to the school exams inquiry available to both committees. The public interest in this instance outweighs any harm that might result from the disclosure of such documents.

The Convener: I am not sure that that is a counter-proposal. I am suggesting that we progress with the specific issue and park the general issue. What must be resolved is who should have access to the minutes. The minister's proposal is that only the conveners should have direct access to the minutes. Annabel Goldie and Nick Johnston propose that the deputy conveners should also have access to the minutes. George Lyon's proposal is that four party representatives should have such access, and Fergus Ewing's proposal is that every member of the committee should have access. Those are four options.

Let us move on. We are at least agreed that we should proceed on this specific issue and park the general issue of access. We have four basic options. I am not going to vote on any of them, as the role of the convener is to represent the committee. Given that I have been put in a potentially invidious position, it would be better for me not to vote. I suggest that we vote first on the proposal of Annabel Goldie and Nick Johnston.

Mr McNeil: I understand your predicament, convener; it is unfortunate that your party colleague is compromising your convenership. However, you said that you felt that the minister's proposal was reasonable.

The Convener: I said that we had a productive conversation. The position that Mary Mulligan and I took was that it would be entirely up to the committees to decide whether to accept, reject or amend the minister's proposal. I understand that the Education, Culture and Sport Committee made a minor amendment to the proposal, which has since been accepted by the minister. What is being proposed this morning is a more significant amendment.

Mary Mulligan and I argued that the deputy conveners should have the same access to the material as the conveners, but the minister was not prepared to accept that. I took the line that it is up to the committee to decide whether to accept the minister's proposal. I would not be presumptuous enough to speak on behalf of the committee.

Allan Wilson: A point of order arises out of that, as you said that you were not going to vote. Does that apply to your deliberative vote as well as your casting vote? There could be a tied vote.

The Convener: If there is a tied vote, I will use my casting vote to break the deadlock. That is reasonable, because we have to move ahead. We have already spent 40 minutes discussing this, so I shall take Annabel Goldie's proposal first.

Mr McNeil: The Conservative members have not yet made a proposal.

The Convener: I think that Nick Johnston suggested a proposal.

Nick Johnston: I do not want to be legalistic about this. I am not a lawyer, although I know that other members are. Is there a motion that we can amend? Is your motion that we accept the minister's proposal?

The Convener: No. I have not moved a motion. The minister has made a proposal.

Nick Johnston: Is the motion before the committee that we accept the minister's proposal?

The Convener: Yes. That will be the formal motion. Your proposal will be an amendment to that.

Allan Wilson: I move,

That the committee agrees that the conveners of the Enterprise and Lifelong Learning Committee and the Education, Culture and Sport Committee have access to the written advice that has been offered to the ministers on the issue of exam results, as proposed in Sam Galbraith's letter.

The Convener: We shall take that as the substantive motion.

Nick Johnston: I would like to move an amendment to that motion and speak briefly to it. Despite what Duncan McNeil said, I think that, by taking a decision today, we would be setting a precedent. In practical terms, whether we like it or not, that decision will be held up in future as having been offered by ministers as a concession on what is, as Fergus Ewing said, a point of great public interest. We are in a peculiar situation, in that two committees are involved, which gives us a check and a balance, as the conveners are of differing political persuasions.

If such a situation were to arise again and only

one committee were involved, there would be a danger that too much reliance would be placed on a convener's view of whether a minister's proposals were reasonable and tied up with the underlying information. I therefore propose that the convener and the deputy convener have sight of the material, as outlined in the fourth paragraph of the minister's letter.

The Convener: Given that we have already spent 45 minutes discussing this matter, I would like to hear the case for each of the three amendments before asking Allan Wilson to sum up the case for the motion. We will then vote on each of the amendments and on the substantive motion. Do members agree to that order of business?

Members indicated agreement.

The Convener: I shall ask George Lyon and Fergus Ewing to keep their comments brief.

George Lyon: I have made it clear where I am coming from. I believe that Allan Wilson is asking the convener to perform an onerous task. Although this is an exceptional case, as it involves two committees, in a similar case in future only one committee might be involved. We are setting a precedent and we should look to what might arise in the future. I believe that we definitely need a wider spread of people to verify the evidence and I suggest that there should be one representative from each party.

The Convener: Do you mean one representative from each party from each committee?

George Lyon: I mean one representative from each party between the two committees.

The Convener: I invite Fergus Ewing to speak to his amendment.

Miss Goldie: On a point of order. Should not the amendments be formally seconded?

The Convener: You are right. They should be.

Miss Goldie: I am prepared to second Nick Johnston's amendment.

The Convener: In fact, I do not know that it is necessary. George Lyon does not have a seconder, but I shall accept his amendment anyway.

11:15

Fergus Ewing: I do not need a seconder as I am moving against the principal motion and, as we all know, a direct negative never needs a seconder.

Members of the public expect us to be able to take back the documents and discuss the

evidence with them. If we depart from the principle of freedom of information today, we are embarking on the wrong course. Not one member has responded directly to the arguments that I put earlier—that will become evident when we read the *Official Report*.

In response to the accusation of grandstanding that has been levelled by several colleagues and friends, I would point out—

The Convener: Not your friends, Fergus.

Fergus Ewing: I stand corrected. Outside the committee room, I manage to get on with everyone.

We are embarking on the wrong course and we will harm the reputation of the committee if we support Allan Wilson's motion.

Allan Wilson: I have already commented on all the suggestions, so I will try to be brief. I do not think that Fergus Ewing's proposal bears close scrutiny. In this case, I think that the charge of grandstanding could be substantiated.

I am unhappy about George Lyon's proposal because—and this is strange, as George is a Liberal—it departs from the d'Hondt principle on proportional representation in the committee structure. We divided the convenerships and deputy convenerships on a party basis. We would be doing a disservice to the Parliament if we moved away from that model now.

I have no personal or political objection to the deputy convener being brought into the discussions in the fullness of time. In fact, had Annabel Goldie remained the acting convener—as she was for part of the process—she would have had access to the information that it is proposed be released to you, convener, and to the convener of the Education, Culture and Sport Committee.

As Duncan McNeil explained, the overwhelming argument for the proposal is that committee members place their trust in the convener to represent properly the interests of the committee and its members. I have great confidence and faith in your integrity in that respect, convener. I do not hesitate in placing my confidence in your ability to verify the accuracy of what is disclosed to you confidentially, to relay that to us and to answer any questions that we may have. We must let the Parliament decide, in the fullness of time, on the proper code of conduct that should exist between Parliament and the Executive in such matters.

The Convener: I intend to take a vote on each amendment and then a vote on the motion. I will take a vote on the amendments in the order in which members spoke to them.

The first amendment, proposed by Nick Johnston, is that access to the written evidence be

extended to the deputy conveners of the committees. The question is, that the amendment be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)

AGAINST

Livingstone, Marilyn (Kirkcaldy) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Thomson, Elaine (Aberdeen North) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Lyon, George (Argyll and Bute) (LD)
Neil, Alex (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 2.

Amendment disagreed to.

The Convener: The second amendment, proposed by George Lyon, is that a member from each party represented on the two committees be given access to the written evidence. The question is, that the amendment be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Lyon, George (Argyll and Bute) (LD)

AGAINST

Livingstone, Marilyn (Kirkcaldy) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Thomson, Elaine (Aberdeen North) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Neil, Alex (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 4, Abstentions 3.

Amendment disagreed to.

The Convener: The third amendment, proposed by Fergus Ewing, is that all members of the committee have full access to written evidence. The question is, that the amendment be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

AGAINST

Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Thomson, Elaine (Aberdeen North) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Neil, Alex (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment disagreed to.

The Convener: Finally, I must put the question on the motion proposed by Allan Wilson. The question is, that the motion be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Livingstone, Marilyn (Kirkcaldy) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Thomson, Elaine (Aberdeen North) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

ABSTENTIONS

Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Lyon, George (Argyll and Bute) (LD)
Neil, Alex (Central Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 1, Abstentions 4.

Motion agreed to.

That the committee agrees that the conveners of the Enterprise and Lifelong Learning Committee and the Education, Culture and Sport Committee have access to the written advice that has been offered to the ministers on the issue of exam results, as proposed in Sam Galbraith's letter.

Fergus Ewing: Convener, could you clarify that there were only four votes for the motion?

Simon Watkins: There were four votes in favour of the motion.

The Convener: There was one vote against the motion and four abstentions.

I suggest that we respond to the Minister for Children and Education today. Time is running out and we must have access to the information as soon as possible. It represents a substantial amount of work.

11:20

Meeting continued in private until 12:52.

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