



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 6 June 2013

Session 4

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
9th Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

*Helen Eadie (Cowdenbeath) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

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

Richard Lyle (Central Scotland) (SNP)

*Margaret McCulloch (Central Scotland) (Lab)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Allan (Acting Public Appointments Commissioner for Scotland)

Ian Bruce (Commission for Ethical Standards in Public Life)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 6

Scottish Parliament
Standards, Procedures and
Public Appointments Committee

Thursday 6 June 2013

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in
Private

The Convener (Dave Thompson): Good morning and welcome to the Standards, Procedures and Public Appointments Committee's ninth meeting in 2013. I remind members and others to turn off any mobile phones and BlackBerrys. We have received apologies from John Lamont and Dick Lyle.

Agenda item 1 is a decision on taking business in private. Are members content to take in private agenda item 3, which is to discuss the evidence heard from the acting Public Appointments Commissioner for Scotland to inform our report on the review of the "Code of Practice for Ministerial Appointments to Public Bodies"?

Members *indicated agreement.*

"Code of Practice for Ministerial
Appointments to Public Bodies"
(Review)

09:30

The Convener: Item 2 is an evidence session on the review of the code of practice. I welcome Stuart Allan, the acting Public Appointments Commissioner for Scotland, and Ian Bruce, the compliance manager with the Commission for Ethical Standards in Public Life.

I ask the commissioner to make a short opening statement, after which members will have questions for the witnesses.

Stuart Allan (Acting Public Appointments Commissioner for Scotland): When Ian Bruce and I were before the committee in October last year, we explained that the intention was to consult on the code of practice on public appointments. That concluded in November last year. The purpose of the review was to establish whether the code is operating effectively and efficiently and whether regulation is proportionate. We had a very good response rate from ministers, Government officials and a range of chairs of public bodies.

I will touch briefly on a couple of general issues from the consultation. The first, which is perhaps one of the most important points, is that the consultation process disclosed that the public appointments system is operating to ensure that people of high calibre are appointed to the boards of public bodies and that therefore the public can have confidence in the system's robustness. As we are talking about change, it is important to bear that in mind. However, there were comments that the application process does not encourage a diverse range of applications and there was concern that scrutiny could be disproportionate and seen as driving bureaucracy rather than improvement in the process, so the code could be made more effective.

The paper that is before the committee, "Enhancing the Public Appointments Process in Scotland", proposes changes to the code and indicates changes to guidance. Recommendations will be made to the Scottish Government, which it will be responsible for considering and, as appropriate, taking action on.

The first main proposed change to the code is to articulate more precisely the principles behind it. I have articulated the first of those principles as referring to merit—public appointments must be made on merit. Secondly, there must be openness in the entire process. Thirdly, the process must promote diversity and afford equality of

opportunity. None of those principles was reflected in the original code, but it is particularly important to have it on page 1 that that is what the code is about. The final principle, which is on promoting diversity and equality of opportunity, is fundamental to the way in which we see the code developing over the next few years.

The second point is that, at present, the code proposes that skills and knowledge are the criteria for appointment, and a considerable number of comments indicated that relevant experience is not sufficiently taken into account. We have tried to address that.

The application process came in for considerable criticism. It was regarded as inflexible, bureaucratic and off-putting. One of the proposals that we set out is that the whole process of submitting applications should be made a comparatively easy exercise.

We propose that scrutiny should be much more geared to the risk element and that there should be full scrutiny of what we call higher-level appointments. We have come up with a broad definition, which will have to be adjusted from time to time in the light of experience. For those appointments, we propose that the assessors should go back to being members of the selection panel. There is strong evidence that people very much appreciated the wisdom that assessors brought to the process. That comment was made by chairs of public boards and by Government officials. We felt that it would be better to grasp the nettle and redress the balance for the higher-level appointments, in which the public have the greatest interest.

As for other appointments, we propose that scrutiny should be undertaken at the key stage, which is during the planning process. If all the key planning is undertaken properly, we can afford to leave it to the selection panel to conclude the interviews and the appointments. For a number of appointments, there is no necessity for scrutiny, and any scrutiny would simply be scrutiny for scrutiny's sake rather than something that achieved anything. Therefore, we propose no scrutiny whatsoever in some cases, unless, of course, there is an indication of inappropriate activity in relation to an appointment.

On ministers' decisions, it is important that ministers are involved at key stages. One of those stages is at the beginning, when they should say what type of candidates they want to attract and whether they want to focus on a particular group. An appointment is made by a minister—that is the law. It is important, particularly for the most senior appointments, that ministers be seen to have a personal responsibility for assessing the final selection report. We suggest that, for those appointments, ministers should carefully consider

meeting the candidate or candidates. I do not want to pre-empt in any way what ministers will say as part of the formal consultation process, but I have been extremely heartened that they have taken that suggestion on board and that they say that they are willing to assume those responsibilities. I believe that I am pushing at an open door on that matter.

On reappointments and extensions, to put it simply, people are allowed only a second appointment under the present system. Of course, the length of a person's appointment is important in that regard—some have a one-year appointment, some have two years and some have four years.

It is rather inappropriate that some appointees are entitled to only two terms of two years, whereas someone whose appointment was for four years could get the benefit of eight years. The key element is how long we want people to be appointed for. A limit should be sought and ministers should be able to appoint at their discretion, subject to that maximum.

The maximum figure that we have proposed is eight years. However, it is a matter of judgment. Many appointments nowadays are four-year appointments, and two times four is eight. Parliament has used eight years for a range of parliamentary appointments, which are executive appointments, of course. By and large, that period is just about right and I commend it to Parliament.

We got a lot of criticism that the process was too bureaucratic and took too long. There is nothing at all in the code at the moment about timescales. We propose that it should reflect the importance of dealing with appointment rounds as efficiently and effectively as possible and that targets should be set out in guidance for that purpose. The targets should be used to help to ensure continuous improvement for public appointments and should be set and reviewed from time to time by the Government and the commissioner jointly.

For the purpose of preparing the first guidance on timescales, we propose that the target for an appointment round would be agreed initially at somewhere between 16 and 20 weeks, which would be a material improvement on current practice. Reappointments would require to be made at least 13 weeks before the end of the first appointment.

The code that is before the committee is out for consultation until 2 August. Subject, of course, to the fullest consideration of responses received from the Government and the Parliament, I intend to introduce the new code with effect from autumn this year—from October, I hope.

The Convener: Thank you very much for that very full opening statement. You have answered

all the questions that I was going to ask you, so you can now go home. [*Laughter.*] No, I am just joking.

It is refreshing to see an approach that is designed to reduce bureaucracy and simplify a process because, all too often in the public sector, the private sector and elsewhere, people tend to want to build on things and make them ever more complicated and difficult. I am strongly in favour of simplifying processes.

You said that the application form is complex, that it puts people off and that you want to simplify it. I presume that you have thought about exactly what the new application form will look like and how people will access it—I presume that they will be able to get paper copies or access it on the web or by email. How little information can you take it down to while keeping it meaningful? How easy will that be in practice?

Stuart Allan: We have to set out the objectives in all this, which must be to attract as many people and as diverse a range of people as possible to apply for posts.

At present, the application process is phenomenally complicated. I heard a great deal of evidence from, I may say, prominent and eminent people that, when they got their application forms to apply for posts, including chairmanships, the bundle was horrific to complete. That took days and the questions were incredibly difficult. There was nothing that asked about what rounded experience they had. There were no questions about what vision they might have or what they could bring to the post. One chairman said that it was so complicated that he put the whole bundle in the bin, but he was finally persuaded to get it out and apply. That view is typical.

09:45

We want more diverse people to apply and we want a simple process so that someone can say, "I think I've got something to offer to the public service in Scotland. I think I'll maybe dip my toe in the water and offer myself up." If they get a thick pile of paper to fill in, that is off-putting. We need to simplify the process as much as possible at stage 1, without in any way diminishing or diluting the interview process, which we understand has to be rigorous. We can get people to apply if the process is simplified.

We have set out principles. The process must be plainly put and easy to understand. The forms must be easy to fill in and we must get more people to apply.

The Government will have to shape the process in relation to the posts that it has in mind. We want to work very closely with the Government to

ensure that the approach comes into effect, because it will mean a change to the modus operandi of Government officials who produce the information, questions and application forms, which will have to be redesigned. We will play a prominent part in that and we will be guided by the principles that we have set out.

The Convener: So no template is being suggested, because the forms will vary depending on the appointments.

Stuart Allan: I think that we can work out some templates with the Government. We would want to do that jointly, to get off to a proper start. There is always a danger that nothing much will change. We have to grasp this and take it to another stage, to ensure that we get more people into the public appointments process.

The Convener: I am encouraged by that. The tendency among officials who do such work will be to welcome the new code, then change nothing. There must be an incentive. Templates that indicate the sort of minimisation of the process would help to focus minds. I suspect that, if it was left to officials to change things, they would look at what they have and think, "Oh, gosh—I don't know what I can take out of this." There will be a reluctance to move to simplifying.

Stuart Allan: That is a very important point.

The Convener: That is very encouraging.

I was interested in your comments about the length of terms, which I accept will be a matter of judgment. You settled on eight years because many appointments are four-year appointments and two terms are the norm. There was nothing more to it than that. You are fairly flexible and you are saying that that will be up to the Government.

Stuart Allan: We had a look at leaving that at two times two. However, the Government has come to us a number of times to say that a person has completed two terms of two years and has the experience, and it needs them to work on longer. I did not see the point in such people having to go through a formal reappointment process, to be frank.

Parliament provided a lead with people such as commissioners. I accept that those are parliamentary appointments, but Parliament has said that eight years is the term and after that it will think afresh.

Most public bodies run to four-year planning cycles and so on, so having a couple of terms is just about right. That does not mean that, if the Government chose to introduce changes to a public body and people were at the end of their second terms, their appointments could not be extended for a year or a couple of years while

legislation was contemplated. We allow for that in the exceptional circumstances section.

Flexibility is built in but, broadly, we are saying that people will get eight years, which should be all that they expect. That will send a helpful message to applicants who ask, "How long will I be expected to give to the public service in this area?"

The Convener: Would the eight years apply to someone who came in as an ordinary board member but was then appointed as the board's chairman or convener? Would there be exceptions? Somebody might have done an excellent job for eight years and the board might think that that person would make a good convener. However, if they had done their eight years, they would be out of the running.

Stuart Allan: The eight years would relate to the post to which someone was appointed. If someone is appointed as a board member and they get two terms, that will be eight years. If in the sixth or seventh year they apply for the chairmanship and are separately appointed by the minister, they will get another term. We do not want to lose that experience; if people have built up experience and they are then appointed to a chairmanship, they can get one term—and possibly two terms—of that as well.

The Convener: I will raise another interesting point. The proposed code and your report are excellent, and I enjoyed reading them. The point about ministers meeting candidates is valid. I do not know whether that happens at the moment. Ministers are given a selection of names and they decide on the basis of a report. Ultimately, it is up to ministers and the Government to decide on their approach, but is there any way that they could be encouraged to meet candidates as a matter of course? You said that you were pushing at an open door. Will you elaborate on your views and on how important it is for ministers to meet candidates and do a final interview of, say, two or three people who are nominated?

Stuart Allan: I attach a lot of importance to that. I will deal with the current practice. There is no pattern: some ministers see candidates and others do not; that varies from department to department for no particular reason. Some ministers take a greater interest in the process.

Some principle has to be introduced. I am not insisting that ministers have to see candidates. However, for higher-level appointments, when there is a big public expectation about what the prospective chairs can deliver for the public, people should be subject to an overview by the minister, so I am encouraging that.

The discussions that I have had at ministerial level have left me greatly encouraged that ministers will respect that and be willing to meet

candidates. There is the idea that it has aye been the way that we do not see candidates. I am saying that ministers should see them. If you see the whites of somebody's eyes, you know what sort of person they are, what vision they can bring to the public body and whether that is a shared vision. People cannot get that from reading a selection panel report. I am very hopeful that ministers will take that on board, particularly for the most senior appointments.

The Convener: I like the way in which you propose to separate the different types of appointments and apply different criteria to higher-level, medium and lower-level appointments, if I can put it like that. Should the code suggest that there should be a presumption in favour of ministers meeting candidates for higher-level appointments, or are you content to leave it more broadly defined?

Stuart Allan: That depends on how what we have put in the code is read. I regard it as a presumption that ministers should meet candidates. Perhaps the way in which that has been put is too subtle, but I am looking for a presumption. A minister will have to come up with a pretty cogent reason not to see candidates for senior appointments.

Helen Eadie (Cowdenbeath) (Lab): Good morning, gentlemen. It is nice to see you here this morning. Are you satisfied that the code gives you sufficient powers in situations where you feel that it is not being complied with?

Stuart Allan: You have to go back to the Public Appointments and Public Bodies etc (Scotland) Act 2003 to see what powers the commissioner has; he has the right to look at non-compliance by ministers at any stage of the process and is, of course, under a legal obligation to report material non-compliance to Parliament, although a lot of the non-compliance reports in the past may not have been terribly requiring of a formal report to Parliament.

The process itself really needs a good shake up; if we improve the process, the need to check for compliance reduces dramatically. More trust should be extended to the people who run the appointments process. Our office to some extent over-regulates appointments at the moment because there is a very clear power in the act to interfere and regulate whenever there is any suggestion of non-compliance with the code.

Helen Eadie: That is very helpful. Given that for some appointments assessors will no longer be required to produce compliance reports, how will non-compliance be identified?

Stuart Allan: That is part of the package that is offered. For the more senior appointments, the assessor becomes a member of the panel and is

there for the entire process, so there is no question that there will be non-compliance in such appointments.

For the middle band of appointments, the assessor will be involved in the process right up to the appointment plan. The planning of adverts, questions, timetabling and all the rest is approved by the assessor, and only the interviews themselves are left to the selection panel and the minister, so there is no need to check for compliance on that score.

In the last category, there is no need for compliance with the code because that is not considered to be proportionate. If someone wants to complain about a process in the third category, we will come in and scrutinise the entire process, but if there is no issue, our involvement is unnecessary and it would be a waste of public funds for us to duplicate everything that the Government had done.

Helen Eadie: That is very helpful. You spoke this morning about reducing the level of scrutiny and the savings that would emerge as a consequence. Have any numbers been put on the anticipated savings?

Stuart Allan: I am looking for savings of 5 per cent to 10 per cent in the public appointments budget, but I think that there are bound to be consequential savings to be made at Government level, because we are simplifying the whole process; we are reducing scrutiny and regulation. I would not presume at this stage to say what those savings will be. We will have to have a bit of discussion with the Government. I am sorry that I cannot put a specific figure on that yet. If I were to give a figure, I would just be pulling it out of the air. I am, however, confident that we can make savings and that the Government will be able to effect savings in the appointments process.

10:00

Helen Eadie: That is fair enough. It is common sense that there would be an element of savings. The committee had hoped for a figure, but I understand your situation. What assurances can you provide that compliance will be rigorously monitored despite the reduced level of scrutiny?

Stuart Allan: In the most senior appointments, it is guaranteed that all appointments will be compliant because the assessor will be there the whole time, as a member of the panel. In other cases, the whole process must be approved by the assessor so, as I have said, there is no need to check for compliance, and no case is being made for applying a duplicating compliance regime. However, if someone comes along with complaints about the process, we will investigate.

We have said that we will carry out an annual or thematic review of cases. I am not sure whether we will do it by considering a percentage of appointment rounds from throughout the year or by directing review at departments where there has perhaps been concern about whether they have been fully compliant with the code. We will have to play it by ear.

However, the commissioner's annual report will include a chapter on compliance, on whether we are satisfied that the code is still maintaining the standards that have been set, and on whether compliance is still not an issue. That is terribly important, but we will learn as we go along.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I would like to explore non-compliance and the risk assessment for involving an assessor. You have said that for high-level appointments the assessor will be on the panel, and that for medium-level appointments the assessor will be involved in the planning process. Would it be unnecessarily bureaucratic for the assessor to do a short compliance report at the end of both those processes, so that you have that on paper? You are saying that the presence of the assessor is enough to show whether there has been compliance or non-compliance, but would a certificate to the effect that the assessor was there and was happy with the process be unnecessarily bureaucratic?

Stuart Allan: The phrase "unnecessarily bureaucratic" is putting it rather strongly, but I do not really see the point in what you suggest. If the assessor has been a member of the panel and has any concern whatever about the process, he or she must report to me and say that there is a problem. I would then come in and say, "Just hold it. Let's correct this."

The same is true of the middle range of appointments, where all the planning is done and the guts of the process are agreed—where to advertise, what the advertisement should say, what criteria should be applied, what skills and experience are sought, and when to advertise and interview—and that whole process must be rubber-stamped. We could ask for a compliance report, but it is up to the assessor to come back and say if there is a problem.

I would prefer that we stood back and respected the Government because, at the end of the day, the Government has paramount responsibility for making the appointments. I think that that is sufficient. We trust the Government to get it right, in the full knowledge that if the assessors are concerned about anything, they can come to me and we will, without any equivocation, go back to the Government and ask it to look afresh at what it is proposing.

To put all this into context, I point out that under the old system compliance reports on cases in the low categories were carried out only at the very end and looked at the entire process from day 1 to appointment. You might then have found that something that had been done on day 1 might not have been compliant; indeed, a year might have passed from something that was non-compliant—and perhaps even materially non-compliant—happening. What on earth is the point of such an approach? It was doing no one any good and was achieving nothing; all it was doing was creating a massive amount of paperwork to no purpose.

If there is a problem, we should identify it and sort it out. For the larger posts, we should be in there from the start to ensure that there is no problem and that the public can have confidence in the system's robustness.

Fiona McLeod: So, you think that assessors should have a much more dynamic role in the process.

Stuart Allan: For the higher-level appointments, assessors are, in effect, reverting to what they were doing before the 2011 code. Every week or so, I get a report from the chair of a public body or of a selection panel about how the assessors have done, and they are almost always extremely enthusiastic and supportive of the assessor. I want to build on that.

Fiona McLeod: Paragraph 4.25 of the report sets out the risk assessment criteria for the three levels of appointment. I have had a couple of thoughts about the five factors that you set out and wonder whether you should also include the recent performance of the body and, indeed, the body's members, which are not mentioned in the five factors. Should the fact that a body or one of its members might have given you concern be flagged as part of the risk assessment process?

Stuart Allan: That is a reasonable point. Although the process is geared towards candidates, the public interest will take into account how well the board has done in the past and, if there have been any problems, that will be a factor.

Factor (iv) in paragraph 4.25 refers to

"the level of public interest in the functions of the public bodies".

In other words, is the public really so concerned about the public body in question that they want to know whether that particular appointment is being scrutinised? I will be happy to expand the factors to include the body's recent performance if that will help to clarify and make things more explicit. You have made a very good point.

Fiona McLeod: My point about taking members' performance into account comes from

experience of having been a board member. If members are not performing well on a board, it flags up the possibility that the board might not be functioning as well as it could be. It was just a thought.

Stuart Allan: Thank you very much for that.

Margaret McCulloch (Central Scotland) (Lab): Good morning. You have given an overview of the assessors' involvement in the appointments process. To what extent will that role change?

Ian Bruce (Commission for Ethical Standards in Public Life): I am happy to answer that. You will probably have gathered from Stuart Allan's comments that assessors are particularly proactive and that their involvement is very much appreciated. I expect that they will play different roles, depending on the appointments in which they are involved. As Mr Allan has pointed out, in senior appointments, the assessor will, in effect, be a panel member and will be involved in the collective decision making for the entire process. For medium-level appointments, they will act to an extent as consultants and as guardians of the code, to ensure that things are done appropriately.

At that point, there is an opportunity for assessors to inject their expertise into the process. We know that there is at present interest among ministers and Government in trying new things to make boards more diverse, so we are encouraging boards to try new approaches. It is important that ministers have access to expertise in the form of our assessors to help them and to encourage them to go down new routes, while ensuring that the code's requirements are still being met. Assessors have a very proactive role—they are not the policeman in the corner. They are there to inject their knowledge and to talk from eight years' experience and expertise in recruitment and selection, and diversity and equality.

We are in a period of transition. We have spoken about reductions in budgets—that is something that we have done as an organisation year on year. We hope that panels will eventually manage things independently and will have that knowledge and expertise. However, at the moment, the role that we foresee for our assessors is to help to create a process of which we can all be proud.

Margaret McCulloch: Finally, what training will be provided to panel members on the revised code?

Ian Bruce: I have already organised training for the central team in Government, which is PACE—the public appointments centre of expertise—and our assessors. We now run joint days for PACE and the assessors to ensure that everyone is on the same page and shares an understanding of

what ought to be done and how to achieve ministerial ambitions for this process.

Independent of that, we have set up a couple of days for the assessors in September and October, when we will chat with them about the revised role in certain circumstances. We are speaking to PACE at the moment about setting up workshops for panels, which we did when the 2011 code was introduced. We hope that PACE will come forward with dates for those workshops quite soon; they will take place in the autumn, and will be just-in-time training, really. Our plan at the moment is for the PACE managers and me to run those sessions jointly. They will be not just on the code but on diversity and equality, and best practice in recruitment and selection at senior level. I hope to run those perpetually, thereafter. There will certainly be a couple in the autumn at Victoria Quay or somewhere like that, which the Government will facilitate. I hope that this time the whip will be on panel members to attend those sessions. Thereafter, they will perhaps be twice a year so that new people coming on board have the opportunity to get that training.

Fiona McLeod: That is really reassuring because I had put a question mark beside paragraph 4.18 in your report, where you say that

“there was no enthusiasm for requiring members of the selection panel to have received specific training on their responsibilities prior to taking up the role.”

However, you have just negated that and said that there will be continuous professional development, to which Margaret McCulloch referred. I found paragraph 4.18 very confusing.

Ian Bruce: The paragraph says what people told us, but that does not preclude us from providing training. My understanding is that a very senior level in Government feels that it is an appropriate thing to lay on and that panel members will be persuaded that it is well worth their while to attend.

Stuart Allan: On paragraph 4.18, the key point was that there was no enthusiasm for requiring people to do training. In England and Northern Ireland, you must receive training before you can be a selection panel member. There was not much enthusiasm for that, but people readily embraced the idea that they would go to training if it was provided.

We are thinking about having a training programme at set times every year, for example in the spring and autumn. We would say to selection panel members, “Our spring induction programme is coming up. Why don’t you come along to that?” We hope that we would, over a year or two, attract everyone who is an active panel member to come along to training and get the benefit of it.

Fiona McLeod: I was a member of the children’s panel advisory committee. I did not have training before I was appointed to the board but in order to stay on the committee I had to attend training. It was not a “hope”. I was selecting panel members, so I had to keep my training in selection processes completely up to date or I would not have been reappointed. I will leave that one with you.

10:15

Stuart Allan: Yes, indeed.

The Convener: I presume that, if a panel member did not go to the training, that would be taken into consideration when the question of reappointment for a second term or session came up. Their CV will look much better if they have attended the training sessions that are offered, because that shows willingness to learn, to change and all the rest of it.

Stuart Allan: That is absolutely right. I agree entirely.

The point about having fixed training days in spring and autumn is that we can go to these important and busy people, and they can plan ahead and say, “I’ve got that in my diary, and if I can’t go in the spring, I will definitely go in the autumn.” Since that type of arrangement has not been available, problems were created. People said, “Oh. There’s a training programme coming up in a fortnight, but I’ve got something else on.” The more we can plan the training, the better it would be for those whom we are trying to encourage to attend.

The Convener: Okay. Thank you. Do you want to come back in, Helen?

Helen Eadie: No, I am fine.

The Convener: In that case—

Helen Eadie: I am sorry, convener—I have question 11. I thought that you were asking for questions on the same theme.

The Convener: On you go.

Helen Eadie: Mr Allan, one of the committee’s concerns was about why you considered it to be important to include experience in the criteria. That was obviously an issue.

Stuart Allan: Any selection panel would want to know what experience a person can bring to a post. I have always found it very narrow to concentrate purely on specific competencies. Of course, that must be the basis of the appointment, because we want to appoint on merit based on the skills that people have.

However, there are wider things to consider in making public appointments. Candidates expect at

some stage to be able to say, "This is what I've done in my life so far that might be relevant to the post."

It is easy to confuse experience with age, but the two things are quite different. A person may be comparatively young and have considerable experience of specific public services. At present, we have very few younger people in public offices. They may have experience of public services, but they are not coming in to put their names forward for boards. As part of our push for diversity, we would like that issue to be addressed.

Candidates expect someone to ask, "What have you done that you think is important that you can bring to the post?" rather than ask very targeted questions that they will have great difficulty in answering.

I have looked at a range of application packs. The packages are enormously thick, and it would take at least a couple of days to fill in the forms properly. That is not what we want. We could have a much simpler system, so that a person could attach their CV and say, "This is what I've done." What would be wrong with that? It involves openness and transparency. People can say, "This is what I would bring to bear", and we can look at that instead of concentrating purely on a competency regime. Competencies are still very important, but are not the be all and end all, and are perhaps not what ministers are looking for. They are sometimes looking for people who have experience in a particular area, whether that is a health board or a college. They are perhaps looking for younger people, more women or disabled people. We should bring experience out in a CV or equivalent, and ensure that we provide the candidate with an opportunity to say, "This is what I think I can bring to the post", because that is missing entirely at present.

The importance of experience is now being reflected in the legislative process. For example, recently the Victims and Witnesses (Scotland) Bill and social care legislation have mentioned the need for people who are being appointed to have experience. I am glad that the trend now includes not only skills and knowledge, but experience. I welcome the Government's extension of legislation in that direction.

Helen Eadie: That is helpful. It is important for the committee to be assured that you are alive to all the diversity issues. What feedback have you had from equality groups? We all want to be sure that the revised code will ensure that we embrace diversity—including all the groups that you have just mentioned—and provide a wider range of opportunities across our society.

Stuart Allan: I was completely taken aback that the code itself made no reference whatever to

diversity and equality of opportunity. I could not understand that, because those are key statutory requirements in making public appointments. They are in the 2003 act, so people must have regard to them. I saw equalities as a key pillar for the code, so we put it in. Inclusion Scotland made an interesting point in its response. It told us that by

"broadening the criteria to include life skills and activities, such as ... engagement with policy processes via disabled people's organisations (which many of our members consulted on the appointment process have plenty of experience of), the appointments would gain the advantage of a diverse workforce that can offer a multitude of skills and experience".

That says it all. It was a useful point that helped us and informed us in coming to the view that we should extend the criteria to include experience.

Helen Eadie: That is helpful, thank you, commissioner.

Ian Bruce: I will make a small additional point. The committee may not be aware that we now regularly run an applicant survey, as a matter of course, and we publish the results on our website. Every applicant who has applied for a public body position has an opportunity to complete the survey, which is done online through SurveyMonkey. One of the messages that has come across loud and clear is that the majority of applicants wanted to let panels know about their experiences, but felt that they were not given that opportunity. We will continue to run that survey; clearly, applicants are key stakeholders and their feedback has to inform developments.

Helen Eadie: I am grateful for that.

Fiona McLeod: The convener asked about the application process and we are talking about how to ensure diversity. I am slightly concerned about the last point that was made. Using SurveyMonkey and so on is good, but a lot of the people whom we want to attract do not use the internet. We need to move beyond application forms, CVs and internet access and work out a way of suggesting how applications can be presented in different formats, because that is how we will encourage more people. Young folk might want to send in a video of themselves as their application process, for example. I hope that we can put out guidance about that.

Stuart Allan: Guidance is one way of doing it, but the key is how we get out to people to say, "Apply." How do we do that?

The Government is convinced that things have to be done more imaginatively. We have been at meetings with ministers and officials, and I think that they are taking on board the fact that they have to think outside the box, because otherwise they will not be targeting a wide enough range of people. The little box advert in the *Sunday Herald*

is all very well, but what evidence is there that that will attract people who are not currently putting in an application? We have to consider how to get much better results. We have to think a lot more imaginatively before we make any inroads in that respect.

The Convener: I will follow up on that general point. You say that advertising will be entirely up to the public body when it is looking for people. Does there need to be some kind of overseeing of how a body does that? That goes back to Fiona McLeod's point about attracting the widest range of people.

Stuart Allan: I am not sure that it is overseeing that is required. In the office, there is a lot of expertise about how to attract more people, and we have to work a lot more closely with Scottish Government officials on that. However, Scottish Government officials must come out of the mindset of just doing everything traditionally, which will not attract more people into the system.

I am heartened by the Government's response to the initial paper. It is coming up with its own ideas, and I have been very taken with them. I hope that, together, we can come up with some more imaginative processes that will achieve a better result.

The Convener: You will be reporting on that in due course anyway.

Stuart Allan: Yes—absolutely.

The Convener: So we will be able to have a look at reports in the future about whether the changes have been implemented and whether they are working.

Stuart Allan: Yes.

The Convener: I was particularly taken by the comment about people applying by video. Folk who are dyslexic, for instance, might have a real struggle dealing with written communication, but they often have excellent memories, are very intelligent and can articulate verbally very well indeed. We need to get them on to various different boards both in general and perhaps especially on to boards that are concerned with the areas in which people have experience of how the system has dealt with them.

Ian Bruce: We have engaged in quite a bit of outreach activity. You are absolutely right about the importance of that, convener. Stuart Allan mentioned Inclusion Scotland. We went all over the country to engage with people who had not previously thought about applying for a board member position. We, along with the Government, need to keep that up.

A whole range of communities are concerned. We ran similar events for the Officers Association

Scotland. People coming out of the services have skills sets that boards might particularly appreciate. I am aware that the Government is planning a significant women's event, which we hope will take place prior to the launch of the revised code. That activity has to be kept up.

The Convener: Thank you.

George Adam (Paisley) (SNP): I take on board what the commissioner said about having trust in the people who are running the process, but we live in cynical times. The report contains a section under the heading, "Exceptional Circumstances", with a list of circumstances in which the process is not followed. The report says that it is not a comprehensive list, but included are situations in which a board member suffers ill health or dies and there is a need to do something to replace them or to change things. Is there a mechanism in place to ensure that exceptional circumstances are not used constantly or as an excuse not to go through the full process—bearing in mind that we live in cynical times?

Stuart Allan: I take that point. It is part of our responsibility, when a minister comes to us to discuss a difficult situation and asks whether we would be willing to go down that route because of whatever the circumstances are, to decide whether that is appropriate and to grant authority to proceed. In turn, we have a responsibility to Parliament to explain when that has happened, and I would be very happy to include that in our annual report.

I am not expecting the exceptional circumstances provision to be used, but I take your point: how can you be satisfied that the provision is not being overused? I can give you an assurance that we will include an "Exceptional Circumstances" section in our annual report, so that you can clearly see when the powers have been used.

10:30

George Adam: Okay. The Scottish Government's practice of anonymising application forms pre-interview is not part of the code. Some respondees said that they found the practice quite unhelpful. What is your view on the matter?

Stuart Allan: To require anonymity prior to interview is quite disingenuous and goes completely against the principles of openness and transparency. There is no requirement in the current code for anonymity at selection panel level. As a matter of simple observation, people know fine well who candidate A is, particularly here in Scotland, where everyone knows everyone.

We must respect selection panels and give them applicants' details, including the name and everything else. Why not? Otherwise, we are saying that we do not trust panels. Is that what we are saying? If so, that is not acceptable.

George Adam: I have been on selection panels in local government, and we found it bizarre to have anonymised applications because we would end up recognising CVs anyway. A certain submarine commander applied for every job on Renfrewshire Council and we ended up knowing if not who they were then at least that they had applied for a position.

Will the revised code be reviewed after a certain time?

Stuart Allan: I thought that I would be asked that question. I set out to make the code a firm foundation for the longer term, but it is for the Parliament to review it statutorily and for the commissioner to review it at any time. I hope that the code will stand the test of time; I would not have written it otherwise. I stand by that.

That is not to say that we will not learn. A number of issues have been raised in today's meeting that I want to think about as I write the final version of the code. Things might not go as planned, and in that case we will of course review the code. However, I am confident that the document will stand the test of time, and I am not looking for an early review, certainly of the major points in it.

Helen Eadie: I have heard anecdotally of instances in which applicants for posts had a response from the Government saying that they were overqualified for the job and therefore did not merit an interview, although an interview would have given them an opportunity to explain why they were downsizing, as it were. What do you think about that? It strikes me that sometimes individuals have sound reasons to go for a job that others might think is beneath them.

Stuart Allan: I am not sure that what you describe entirely reflects appointments to public bodies, as opposed to ordinary appointments in the civil service and so on. Ian Bruce might be able to comment on that.

Ian Bruce: I am astonished by what Ms Eadie said that she has heard anecdotally, and I would love to hear from applicants who have had such an experience of the public appointments process. It is not something that I have heard of. Government is working hard on providing good quality feedback, because that is one of the things that applicants asked for. I have never heard anyone tell us, but please—

Helen Eadie: I will tell you offline.

Ian Bruce: Please do—and ask the applicants to get in touch with us, because I would not anticipate anyone being told that at the end of an appointments process. Anyone who is told that they have not been successful should receive feedback only in relation to the selection criteria. It makes no sense at all for a person to be advised that they are overqualified.

Fiona McLeod: My final question is about anonymisation. Without wanting to impugn the integrity of selection panels, my understanding is that anonymisation was brought in as part of the process of widening who is appointed because there may be inherent biases that we do not know that we have. For example, when we see a particular name, we may not take an application any further for whatever reason. Is that an old-fashioned way to achieve diversity? If we do away with that process, are we sure that we will achieve diversity?

Ian Bruce: Ultimately, anonymisation is only one tool. The code has not changed—it still includes a paragraph that states clearly that the process that is used should seek to eliminate personal bias.

Stuart Allan has acquainted you with the situation that we face in Scotland, but an awful lot of the time at least a proportion of candidates are known and a proportion are not known. What we want is a process that treats people fairly whether or not they are known. Anonymity does not work with regard to known candidates. Panel members ought to be trained, work as a panel and have clear criteria for selection. For example, we involve an assessor in appointment rounds. Those are all additional tools that can be used to ensure that fairness is achieved in an appointments process.

We are familiar with the evidence on unconscious bias. More often than not, the studies involve a single individual looking at CVs who, when they see a woman's or a man's name, score the men more highly because of unconscious bias. Studies also indicate that, when trained panels are involved and there are clear and well-articulated criteria for selection, assessment is done fairly. Therefore, there are sufficient checks and balances to mean that insisting on anonymity—which some people consider to be a fig leaf for reasons that I have articulated—is not necessarily helpful.

Fiona McLeod: You have nearly convinced me, but I am not totally convinced. We are joking about how everyone in Scotland knows everyone else, but we do not. It is only because a small pool of applicants applies for things that we recognise who they are, even when their details are anonymised. We are here to ensure that the pool is so much wider that we stop getting just the usual suspects.

Ian Bruce: I agree absolutely. That is a matter of changing not only the process but what happens thereafter. Boards are boards, and the process is all part of a continuum. However, I have been very encouraged by what the Government has said to us recently about all the things that it is planning to improve the process and bring about significant change.

I fully take on board the point that you are making about anonymity but, as I say, we have sufficient other things in place to ensure that new people get a fair crack of the whip when they come forward. Stuart Allan has mentioned competency-based assessment a few times. To an extent, that has been relied on because people consider it to be a level playing field. However, we have established from talking to a range of stakeholders that not everyone necessarily knows the rules.

Fiona McLeod: Yes—or the language that is used.

Ian Bruce: A level playing field in which a person does not always know the rules means that they might get caught in the offside trap more often than the opposition. There are a number of things that we must do, but anonymisation is not pivotal.

The Convener: Does anonymisation work against those who are anonymised? For example, if there are people who panellists recognise, despite the anonymity, the unconscious bias would take them towards those folk. The people who they do not recognise are likely to be the newer ones that we want to attract, but they might well suffer because of folk thinking, “We’ve got 10 people here to consider. It’s pretty obvious that I know who A, B, C and D are, but I do not know the others and therefore I will stick with someone I know.” If the process is open, there might be less likelihood of that happening. Do you agree?

Ian Bruce: I think that it is down to the selection criteria—if they are properly articulated, all that someone on a panel considers is the evidence that they are provided with. That could be done by way of competency-based assessment, whereby someone has to give a worked example. We know that that proves a barrier to folk from the private sector, for example. There is some inherent bias in the system, as far as people who have experience of completing forms in that way is concerned.

Equally, if one were looking for a particular type of experience, it would be clear that someone either has it or does not. If that is set out on a form, that is what one goes on; one does not proceed on the basis that, “I happen to know A, B or C from working with them in previous positions, and I’d like to take that information into account.” The process would not allow for that. At the end of

the day, it is only possible to go on the information that people provide. That is what being fair during assessment involves.

The Convener: As there are no more questions, I thank you very much indeed for that extremely useful session. The committee will put together a report, which we will place before Parliament. You will get it in due course. We look forward to seeing the final version of the code.

10:41

Meeting continued in private until 11:22.

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