



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 13 March 2014

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
4th Meeting 2014, Session 4

CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Margaret McDougall (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Cara Hilton (Dunfermline) (Lab)

*Richard Lyle (Central Scotland) (SNP)

Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Allan (Commissioner for Ethical Standards in Public Life in Scotland)

CLERKS TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 13 March 2014

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Stewart Stevenson): Good morning, ladies and gentlemen. This is the fourth meeting of the Standards, Procedures and Public Appointments Committee in 2014. Our first item of business is a decision on whether to consider in private at future meetings the next steps in the committee's inquiry into procedures for considering legislation, its work programme, the provision of services to cross-party groups and a draft report on Scotland Act 2012 finance changes. Do members agree?

Members *indicated agreement.*

The Convener: I have been reminded that we have received apologies from Fiona McLeod, who is not well this morning. As it was a relatively late call-off, we are slightly uncertain whether her substitute Colin Keir will be with us today. I hope that he will be, but we will see.

Lobbying

09:31

The Convener: Agenda item 2 is an evidence-taking session for the committee's inquiry into lobbying. Our panel of one is Stuart Allan, the Commissioner for Ethical Standards in Public Life in Scotland. Members might wish to note that Mr Allan will shortly—in approximately a week's time, I think—be liberated from the duties that currently sit on his shoulders. We are particularly grateful that, as he comes to the end of his time in post, he has come before us today, and I welcome him.

As we have your written submission, Mr Allan, we will go straight to questions. At the end of the evidence session, I will invite you to raise any issues that you think we have not covered but on which it would be useful for us to hear your comments.

Cara Hilton (Dunfermline) (Lab): Good morning. To what extent is reform required? Will greater openness lead to greater confidence in the political process?

Stuart Allan (Commissioner for Ethical Standards in Public Life in Scotland): Thank you, convener, for those warm words of welcome. They are much appreciated.

Is reform required? Lobbying is a legitimate and desirable part of the democratic process—that is where we start and finish. Any individual or organisation can lobby their elected members at Parliament or Government level as well as Government officials. As I indicate in my written submission, in the past six years of my period in office there have been only two complaints on lobbying and both were dismissed. I have detected no significant problem in relation to lobbying.

We have a code of conduct that covers not only the lobbying of members of the Scottish Parliament but gifts and paid advocacy, which are dealt with in the Interests of Members of the Scottish Parliament Act 2006. We also have the Bribery Act 2010, which consolidated a lot of the earlier Scottish legislation on the matter. I have therefore come to the general conclusion that the whole framework is fit for purpose and robust. More important, I have seen no evidence of the need for a Scottish bill. I have read with care and attention the evidence that has been submitted, but I have failed to detect any evidence for that, as I would understand the term.

Openness is terribly important. It is a key principle for the Scottish Parliament, and Parliament has been ready to embrace it. However, it is a big jump from that to saying that increasing openness by requiring registration of

lobbyists would increase confidence in the political process. I am not convinced of the link. At the end of the day, if you were to introduce a regulatory regime—let me call it that—any benefits that might come out of it would have to be balanced against the fact that you would be imposing restrictions and regulations on people. We can talk later about how many people would be involved, but it would place inhibitions on people. You would have to assess the extent to which such a regime would inhibit people in exercising their democratic rights to come forward and lobby their MSPs and other representatives. That is the test that would have to be applied.

I am aware of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, which applies in England and which is a complex piece of legislation. Equally, however, it is restricted—it applies only to business lobbyists, there is an exclusion with regard to VAT and so on. It is perhaps interesting to note that, in Wales, an exercise similar to what the committee is doing has been carried out. Largely on the basis of there being no evidence that there is an issue, it has been decided to adopt what has been called the Welsh approach.

I appreciate that the committee is well down the road of thinking about a bill, but I can give you only the benefit of my experience on the matter and my consideration of the issues as currently displayed and the real evidence that exists at the time of speaking, and I have to say that I have reservations as to whether statutory reform is required.

Cara Hilton: In principle, then, should responsibility for ensuring transparency lie with those being lobbied, the lobbyists or both?

Stuart Allan: Essentially, it should be both. To an extent, it depends on whom the lobbyists are seeking to lobby. For example, if they are seeking to lobby MSPs, the code of conduct for MSPs is, I think, quite robust—I might make one or two comments on it later, but I do not want to get into that at the moment—and there is also the Bribery Act 2010. All the areas where it might be thought that there could be undue or improper influence are effectively covered.

It is up to the MSP to apply the code of conduct. As I said a moment ago, I have no complaints about MSPs, and I have no evidence whatever that MSPs are failing to apply the code of conduct on lobbying. If someone has any such examples, let me hear them, but I have not detected any hard evidence in all the submissions that the committee has received, and I am satisfied that MSPs are properly applying the lobbying rules in the code.

Other people such as Government ministers and civil servants are lobbied, and the

responsibility for identifying what lobbying takes place is best placed with them. I cannot tell you the extent to which that information is being made available publicly, but undoubtedly records are kept of lobbyists' meetings with ministers and civil servants, who have a responsibility to do their part.

Lobbyists have responsibility in so far as they are members of the two main organisations that deal with lobbying in Scotland. The great difficulty in saying, "Lobbyists should do this and lobbyists should do that" will come down to the definition of who is a lobbyist.

The Convener: I will play some of that back to you to test what I think that I am hearing. Is the core of where you are coming from that if the Parliament gets this wrong and makes it more difficult to lobby, the lobbyists who are most likely to retire from lobbying will be those who are least well funded and who have the least capability—in other words, those who perhaps most represent the public interest—while those who represent commercial and business interests will be less affected by a regime of greater control? Will we tilt the balance in a quite different way from the way in which I suspect we wish to tilt it? In essence, are you saying that we should beware of putting on too many constraints, as that will reduce good lobbying?

Stuart Allan: Yes. Who is to say what good or bad lobbying is? It is lobbying that is important; it is an essential part of the democratic process and, if anything, more and more of it should be encouraged. It is up to MSPs, ministers and civil servants to take into account what they think is appropriate and to disregard other representations. Lobbying is a fundamental part of the democratic process and we should be very reluctant to impose restrictions on allowing the people of the country to lobby, particularly when there is no evidence that there is an issue.

The Convener: So, we must not make it difficult to lobby. Cameron Buchanan will follow up on that and then proceed to the questions that he was going to ask.

Cameron Buchanan (Lothian) (Con): That issue forms part of my questions anyway, convener.

Good morning, commissioner. Will regulation drive underground the good or what I might call the more amateur lobbyists—in other words, the ones who are not well enough funded? You seem to be saying that only lobbyists who have lots of public funds will be able to lobby in public and that the smaller ones will say, "To heck with it."

Stuart Allan: I had not quite reached that stage, although I might come to it.

My question is: who is a lobbyist? A lobbyist can be anyone: an individual; a company, perhaps with a vested interest; or a public body, which can lobby in respect of its own sphere of operation. Are political parties lobbyists? I am sure that you get lobbied by political groups.

Cameron Buchanan: Yes. Frankly, I think that they are lobbyists.

Stuart Allan: Community groups, advocacy groups and last, but by no means least, your ordinary constituent are all lobbyists. Your constituent might come along on Saturday morning to your meeting in Ecclefechan village church, Dounreay or wherever and say, "The point I want to press is this: we need change here." That is what democracy is all about. If you start to put restrictions on that, you do so at some peril.

I am therefore not making a clear-cut distinction between a readily identifiable category of professional lobbyist, which is what people seem to be more concerned about, and the ordinary man in the street, because everyone is potentially a lobbyist. If we look at it from that point of view, we begin to see the difficulty of creating a statutory framework for regulating lobbying without having an awful lot of complex law.

09:45

Cameron Buchanan: Is it your view, then, that a lobbying register will lead not to greater openness but to more of a closed shop? Will people just keep away from it?

Stuart Allan: That is the great danger. However, it depends on the design of the register. As I have said, I am not advocating the introduction of a register, but if it was designed very tightly, how many people would have statutory duties imposed on them to record information and write down this or that? There will always be somebody who will fail to do that, which then becomes a problem. The problem is not openness but the fact that someone might fail in their obligation to comply with, say, paragraph 22(3)(b) of the register.

Cameron Buchanan: You have said that you had received two complaints on lobbying over the past few years, both of which were rejected. Can you tell us a bit more about them without breaching confidentiality? Why were they rejected? Was it because they were not within the competence of your office?

Stuart Allan: Because of statutory restrictions, I cannot explain them in detail, but they were nowhere near being substantive complaints, if I can put it that way.

Cameron Buchanan: Thank you.

The Convener: Are you able to say what prompted the complaints? In other words, were they politically motivated? We as politicians are sometimes guilty of that.

Stuart Allan: I wonder whether I can just send you a letter about them.

The Convener: Yes, but if you were to do so, it would, of course, be part of the public record.

Stuart Allan: If you want it to be on the public record, I will write in those terms.

The Convener: That is likely to be helpful. Thank you.

In light of the issue that Cameron Buchanan was pursuing, would you caution us to beware of imposing duties on lobbyists but perhaps direct us to consider lobbying? In other words, would you direct us to consider what is done rather than who does it?

Stuart Allan: With regard to lobbyists, what I am saying is that you must be very careful if you say that you are going to deal with only particular lobbyists—for example, commercial lobbyists. That in itself would raise issues. For example, what would you do about other bodies such as big companies or institutions, local government, public bodies, political parties or even community groups that are equally influential or are seeking to influence MSPs and which have a particular link with them? I have not heard much about them in the debate, but they are very influential. Would you exclude all of them and deal just with commercial lobbyists? If so, why?

As I have said, the activity of lobbying is itself a key part of the democratic process, and any restriction on that would have to be seriously considered.

The Convener: Okay.

Richard Lyle (Central Scotland) (SNP): Good morning, Mr Allan.

As someone who has known the standards commissioner for a number of years, including previously, as a councillor, I know that most of the complaints that he received were from councillors about councillors. I look forward to seeing the letter about the two complaints when he sends it to the convener.

I have listened intently to Mr Allan's comments. To my mind, the committee is looking at whether we need a lobbying register. Irrespective of whether the Government wants to have one, we have not made up our minds yet.

Last night, I attended three events in the Parliament and spoke to various people. Would you class that as my being lobbied? Do you think that, given the Parliament's founding principles of

accessibility, openness, accountability and power sharing, we need a register?

Stuart Allan: Paragraph 5.1.5 of the “Code of Conduct for Members of the Scottish Parliament” says that members should

“consider keeping a record of all contacts with lobbyists”.

That seems to have worked pretty well. You might say that, because it just says that you should consider it, it is not worth the paper that it is written on. It might be worth considering whether the code could be amended to say that members should keep a record of all contacts with lobbyists when those lobbyists are making representations. That would mean that records were kept when there was an understanding that representations were being made, which would mean that informal meetings and the information-gathering function would not be caught. I accept that there is an issue around who would decide whether representations were being made and whether an objective assessment could be made. At the end of the day, however, that is what I think that the responsibility primarily is.

You will be able to tell me whether you keep records of your contacts with lobbyists but, if there were a requirement, it would increase the duties on MSPs just that little bit more. If you met someone from a commercial lobbying company in the street, you would not have to record that. However, if you met them to discuss something, the phrasing that I have talked about would mean that you should record that.

The second issue is whether that record has to be made public. Equally important is the question of what we do in relation to ministers and civil servants. Should we require them to keep records on lobbying? My understanding is that ministers will keep records of when they are being lobbied in a formal way, as will civil servants. Again, however, should any of that be made public? I do not have a ready answer to give to you. I think that you could get to a stage at which you were intruding far too much on the ordinary business activities of MSPs, to whom I give a lot of credence and who I think are doing a good job. Is it intrusive to require ministers and civil servants to print all that information? Every time you say that a record has to be published, there will be a dozen exemptions. Where, then, does a requirement to publish those records get you? If you want to widen the goalposts a little bit, you could do that comparatively easily by considering the possibility of making the keeping of a record mandatory instead of discretionary.

Richard Lyle: Whenever I have met a minister, the minister has waited until a member of their staff has come into the room before they have even started to discuss anything with me, apart

from the weather. That is my understanding of what goes on.

Stuart Allan: Indeed.

Richard Lyle: Our members of staff put in our diaries what events and meetings we have to go to and what constituents and companies want to meet us so that we have a record. I will not show it to the camera but, 15 minutes beforehand, my phone tells me that I have to meet so-and-so at such-and-such a time.

I will come back to this later, but do you really think that it will get to a point at which we will be overburdened with recording this and that? Should I go back and record which people I spoke to at the three events that I went to last night? One of those was an event for chemical companies. Should I record that I spoke to Joe Bloggs and Jimmy Soap from such-and-such a chemical company?

Stuart Allan: My answer is that it will get to such a point. Far too much is being asked for—what is proposed is completely disproportionate. That is my view. Another commissioner might have a different view, but I think that you would be requiring far too much.

Every time you require something, somebody will forget to do it. Then, as you mentioned, it is all councillor against councillor and a political opponent will say, “Well, you didn’t register that you saw so-and-so.” That becomes the issue. In that situation, it is the complaint that is the issue, not the openness about meeting and discussing something that may have been of critical importance to the community, such as whether a new hall was going to be built.

I would ca cannie on requiring too much in any register.

The Convener: When the Government makes significant decisions, an equality impact assessment is generally associated with them. There is also likely to be an environmental impact assessment. Should an assessment of influence also be published as part of that process? In asking the question, I am not presupposing the answer.

Stuart Allan: Consultation is big business these days. It is very thorough. People who make representations tend to have them recorded in the consultation so, if individuals or community groups have made their views known, they will be recorded in an appendix in the assessment of the consultation. That works well and I see no particular reason to ask for more to be done.

The Convener: One of the things permitted is for consultees to ask that their identity not be disclosed. We can understand why that might be

the case when private interests are involved and relationships could be damaged.

Stuart Allan: Yes.

The Convener: How should we look at that?

Stuart Allan: That brings us into commercial confidentiality, which is difficult to deal with briefly. However, it is comparatively easy to have a formula whereby the MSP or lobbyist is required to say that they saw so-and-so to talk about X on such-and-such a date. That would probably not breach any element of confidentiality, but I wonder what it would achieve. To come back to a point that I made earlier, if someone does not record that information, the problem is that someone else will say, "Oh, you didn't mention that you saw Jeannie McGuigan on 3 June and you are now too late to do it, so that is a breach of the lobbying registration code. That will be in the paper."

To some extent, all the good works that are being done are being undermined by a totally unfounded issue of confidence or trust in the Parliament.

10:00

Margaret McDougall (West Scotland) (Lab): It is because of the question of trust that we are considering the issue. It is a question of openness and accountability.

In your written submission, you talk about a voluntary register. Why should a register not be compulsory and apply to all lobbying activity? You have spoken a bit about that already, but why would a voluntary register be better?

Stuart Allan: There are very significant concerns about creating a statutory register, with everything that flows from that, including the definition of who a lobbyist is, what lobbying is, what information should be recorded and how it should be reported back. It is quite a complicated parcel of provisions.

There is a voluntary scheme for the two major lobbying organisations. I do not know how successful the scheme is in ensuring compliance, but in the absence of any evidence that there is a problem, it seems to me that it could be tested and given greater status. However, I am not pressing that particularly hard. My own position is that I do not think that the case has been made for statutory provisions in this area.

Margaret McDougall: So would compliance with the voluntary scheme just be left to the individual MSP or to the lobbyist?

Stuart Allan: If you are going to press me on it, I feel that the Parliament could bring in the lobbying associations and that, with the expertise of this committee and the clerks, it could come up

with a code of conduct for lobbyists. In that way, you could set about coming to a definition of lobbyists and deciding who you wanted to include in a voluntary code that everyone could adopt. The Parliament could give its stamp to such a code, and it would bring a great deal of credibility while leaving you with flexibility when things were going wrong. There is something to be said for that.

You have people who have a lot of expertise. The committee's clerks deal with cross-party groups, registration of members' interests and declarations of interests. I am not going to look across at them in case they are looking askance at me, but there is a lot of expertise here. If the Parliament were to take a lead and say that it felt that there should be a code of conduct that everyone in Scotland could sign up to, and that it would be applied on a voluntary basis, I am sure that it could do so.

The Convener: When you praise our clerks to the rafters, Mr Allan, I am sure that there will be little resistance at this end of the table.

Margaret McDougall: If there was to be a register, what information should be on it?

Stuart Allan: That would depend largely on what the Parliament wanted it to include. It could include a large, medium or low amount of information. If you wanted to have a light-touch register, the requirements would be more limited. It could be limited to professional lobbyists, although you would not catch many that way in Scotland. It is a matter for the Parliament to decide.

At the end of the day, in thinking about the issue, the test should probably be what the public need to know. I think that only the Parliament can take a view on whether comprehensive and detailed information, a modest amount of information or a very limited amount of information is needed. Obviously, the more that is required, the more complex the process becomes, and it may well be draconian. If there is a very light-touch regime and limited information is required, the argument will be that the regime is not effective and does not cover or achieve anything—that there is regulation with no end in sight.

I am sorry that I cannot be more helpful, but I—

Margaret McDougall: I am sorry to interrupt, but other panels have told us that there are lobbying registers in other countries and that they work well. Why, then, do we not have one?

Stuart Allan: I am not in a position to say whether they work well or not. There are various regimes. The new United Kingdom regime was set up with the particular purpose of dealing with an identified problem and particular issues that were on the BBC news all the time. However, it is

limited to people who are in the business of commercial lobbying; people who are not registered for VAT are excluded; and the lobbying has to be done for gain. The regime itself is quite narrow. Once that test is met, quite a lot of stuff has to be covered, but many people whom I regard as bona fide lobbyists are not included in the definition.

The Canadian model, which a lot of people are attracted to, largely catches commercial lobbyists, but only if they spend more than 20 per cent of their time lobbying and so on. In that example, someone in a comparatively small charity that has a campaign going might well be doing 25 or 40 per cent of the work on that for a period of time, and they will have to spend time filling in all the material and will also probably have to pay a fee. Unless there is a measurable gain from doing that, you will have to think long and hard about the requirements that you impose.

Margaret McDougall: If there were to be a register, who would administer it?

Stuart Allan: I thought that you would come to that question. If there were the kind of voluntary approach for a year or two that I have been very loosely advocating, Parliament and the clerks would take the lead. That would be sufficient if all you wanted was for people to register as lobbyists. If you wanted a more extensive framework, you would really want somebody independent to administer it, and I accept that it would be appropriate for my office or the Standards Commission for Scotland to deal with that. I am not advocating that, but objectively speaking, I think that that would be appropriate.

On that point, I should note that there are resource issues. The more you ease the definition of a lobbyist to make it as wide as possible, the bigger the register will be, and the paperwork involved will require staff time in my office, at the Standards Commission for Scotland or among the clerks. None of that has been quantified for high, medium or low regulation.

Margaret McDougall: That issue could be covered by a registration fee. Should there be such a fee, or would it be prohibitive?

Stuart Allan: I think that I will avoid giving a clear-cut answer to that, because I have reservations on the matter. The scheme has not been costed yet, and there has been no decision on whether to have high, medium or low regulation. I presume that all those options could be costed to an extent, but only then could a view be taken on whether a fee was required. Personally—and I emphasise that this is my personal view—I admit that I am instinctively not keen on a fee regime, largely because, if smaller organisations such as community groups and

small charities are included, they will have to find a fee on top of everything else that they do. I am not keen on that at all. A fee will be nothing to a big organisation, but if we go back to the very first point, which is that lobbying is a legitimate activity, the question is: will you be taxing democracy?

Margaret McDougall: If we had a register, who would monitor it and what sanctions should there be?

Stuart Allan: I imagine that whoever was in charge of the register would monitor it. If it were voluntary, the clerks would do it. If my office was in charge of the register, we would monitor it as well. I imagine that that would be the most straightforward approach.

I ask the committee to think long and hard about sanctions, and, in doing so, I come back to the principle that lobbying is a legitimate democratic pursuit. If you were to impose sanctions, someone who had failed to register in time would be sanctioned—that would be what it would amount to. People would start to draw comparisons with councillors or MSPs who had been sanctioned and would say, “What? You’re sanctioning somebody for putting in a return late?” Where would the public trust and confidence come from for that type of approach? One’s first reaction is that there has to be some sanction, and there probably does; all I am saying is that you have to be wary when you design it.

George Adam (Paisley) (SNP): At our previous meeting, we heard from Professor Susan Deacon, who, as a former MSP now looking from the outside in, including from a commercial point of view, has a unique perspective on the issue. She said that the way forward might be to adapt and change some of the Parliament’s current practices and processes. Could we look at that?

Stuart Allan: That would be preferable to a wholesale design of a framework for this purpose. For example, you could crank up the recording requirements in the code of conduct for MSPs, which I have already mentioned. You could also ask the Government to consider what the ministerial code says about recording lobbying, and agree to consider the extent to which the civil service code could be tightened up. Those measures are all well worth considering.

George Adam: In my questions, I will go into the concerns that I know you have about a register but, if there were such a register, what thresholds for registration and what exemptions should there be? You have already hinted that that is where the difficulty is, but how should we proceed if there were a register?

10:15

Stuart Allan: Coming back to the earlier question, I think that, if you are going to have a register, you will have to think hard about its design and whether you will have a high, medium or low amount of regulation. You have to design the system to achieve what you think is the right level of regulation.

At one end, you might say that the register will cover only commercial lobbyists who lobby for gain et cetera, but I do not think that such an approach will catch many people. That leaves the question: where is the added value in all of this? I am sure that MSPs and ministers know fine where commercial lobbyists are coming from. I find it very difficult to see that the whole concept of more regulation—

George Adam: But you make a valid point about value. I have referred on a number of occasions to the grey bit in the middle, where things are not black and white. When does something become lobbying? A major employer in your constituency might want to lobby you professionally, but because it supports so many jobs in your constituency the matter becomes a constituency issue. In my opinion, that takes us into a very grey area.

Stuart Allan: I agree entirely. A big employer might be going through a hard time because of competition in Europe and certain issues might have developed, so it wants to lobby you and your MSP colleagues, ministers and civil servants. Why should the company suddenly have to register just for two or three months of lobbying? The issue will be in the newspapers and it will be known that the company is lobbying. When a company is going through a hard time, why should it be prohibited from lobbying until it has registered? If a business is going under, action needs to be taken immediately. That is probably a very good example of a situation in which regulations that would require registration would impede your ability to do your job properly on behalf of constituents and companies in your constituency.

George Adam: You mentioned other countries. Have you had the chance to talk to people who have a similar role to yours? People in favour of registration always seem to give the example of Canada; some witnesses have said that the US system is not bad, while others say that it is a mess; and some have said that the UK system at Westminster is just a box-ticking exercise. Have you discussed the issue with other people who have a similar role?

Stuart Allan: No. I am aware of the broad terms of the United States and Canadian legislation, but in both cases certain major abuses of lobbying provided the starting point. The classic example is

America, where lobbying is an art form on which a huge amount of money is spent. The situation in Canada is similar, in that a lot of money goes into lobbying there, too.

Westminster has now passed the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, which is limited to commercial lobbying and is also a reaction to well-known examples of abuse of power. However, it relates only to the lobbying of ministers and permanent secretaries, not to the lobbying of MPs. How many lobbyists go direct to a permanent secretary? How effective will the act be? It is just a reaction to a problem.

In Wales, which, like us, has next to no record of abuse of the lobbying system, they have looked at the issue and have broadly said—and I am paraphrasing here—“We don’t have a problem. We are determined to ensure that people do not lose their lobbying rights in this democratic institution of ours, and we do not want to make lobbying difficult for smaller groups such as charities, community groups and advocacy groups.” With that in mind, the Welsh have suggested that they look at how existing codes under their jurisdiction can be improved to tighten provisions on lobbying.

Richard Lyle: Mr Allan has mostly answered the question that I was going to ask, but I have just thought of another one. When I attend my party conference, there are more than 100 organisations there with stalls and they are lobbying that political party. They have all paid to be there, so I stop at every stall. Does that mean that I have to report that I have spoken to all those people over the three or four days of the conference?

Stuart Allan: I come back to my suggestion that the committee might want to look at the code of conduct again. At present, the code states that

“members should ... consider keeping a record of contact with lobbyists.”

I have suggested that you take out the word “consider” and make it a requirement to keep records, but you should add a proviso that it refers to contact with lobbyists where representations are being made. If someone takes you aside and talks to you for an hour about a current issue, the conversation would fall within that category.

Richard Lyle: As I said, we keep a diary, and our staff keep a diary for us, and I could publish those diaries at any time. Whenever I have gone to a party conference, people have asked me something like, “Can I meet you at 12 o’clock in the coffee room?” to discuss whatever. That is down in the diary, although generally half the time we are running late. Would that then become a freedom of information situation?

Stuart Allan: One of the difficulties with recording information on people to whom you have spoken is the question of whether the other person is content with the conversation being on a public register. That is a big issue. In addition to freedom of information issues, there are data protection issues if you put down the person's name and address and what they talked about. Do you, for instance, have to get their consent to put the information in your diary?

Richard Lyle: This will be my last chance to ask you a question. Having met you before, I pay tribute to the work that you have carried out in the standards commission over the years. As I said, I know the commission very well from my time as a councillor. I have been reported four times over the years, but I was found not guilty.

Stuart Allan: A 100 per cent record—you cannot beat it.

Richard Lyle: Thank you very much.

I ask you to repeat what I believe that you have said consistently throughout: that you do not favour a bill at all. Sorry—to be more accurate, you have said that you do not see any need for a bill.

Stuart Allan: My starting point is that lobbying is a legitimate part of the democratic process, and we must consider with great care anything that interferes with that. The Parliament should be reluctant to go down any route that inhibits people from making representations to their elected members.

The Convener: I will ask the clerks at an appropriate point to ensure that we understand the impact of FOI legislation on MSPs' activity, because I think that my view is different from the one that Stuart Allan expressed. Broadly, FOI legislation does not capture our diaries. Data protection is another issue, as the data subject, but not necessarily anyone else, would be entitled to see what we hold. We should ensure that we have a proper view on those matters.

That brings us to the end of the questions that we wished to ask, Mr Allan. I invite you to make some valedictory remarks, as you will be leaving office soon and may not be there to pursue the matter. More to the point, if there is anything important that we have not covered in our discussion today, perhaps you could draw our attention to that, as we might wish to think about it later.

Stuart Allan: I had wanted to raise the question of whether there is another way of addressing lobbying, perhaps by tightening up the code of conduct, the ministerial code and the civil service code, but I have had the opportunity to raise those issues in answer to earlier questions. I have set

out—reasonably clearly, I hope—that if it is decided, notwithstanding what I have said, to go down the route of registration, the committee will have to design the regulation, whether it is high, medium or low regulation. If there is any question of going down the route of any form of regulation, that should be properly costed and a business impact assessment should be made. I am not someone who says, "We'll just make this regulation—you will be able to do it within your own resources." I have seen it all before. Regulation takes up somebody's time and there is a cost, as there is with all such things.

I made some valedictory remarks at a previous meeting, as I did not expect to be back in front of the committee so soon. I thank you very much for your kind remarks, which are much appreciated. I would like to say to all the members and the clerks how much I have appreciated the unfailing courtesy that they have shown me at all times.

The Convener: Thank you, Mr Allan. We wish you all the best for the next stage in your life.

We now move into private session.

10:27

Meeting continued in private until 11:13.

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