



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 21 May 2015

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000

Thursday 21 May 2015

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
ELECTION OF COMMITTEE CONVENERS.....	2
DRAFT ANNUAL REPORT 2014-15.....	24

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

9th Meeting 2015, 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)

*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

*Gil Paterson (Clydebank and Milngavie) (SNP)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Henry (Renfrewshire South) (Lab)

Michael Russell (Argyll and Bute) (SNP)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 21 May 2015

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Stewart Stevenson): I welcome members to the ninth meeting in 2015 of the Standards, Procedures and Public Appointments Committee. As usual, I remind everyone to switch off mobile phones as they affect the broadcasting system.

Item 1 is for the committee to agree to take item 5, which is the consideration of a complaint against a cross-party group, in private. Do members agree to take item 5 in private?

Members indicated agreement.

Election of Committee Conveners

The Convener: Item 2 is for the committee to take evidence on its inquiry into the election of committee conveners. With us today we have what I might reasonably describe as two old lags from the Parliament. Hugh Henry and Michael Russell have been ministers, committee conveners and members, so we hope that they will have some good things to say to us. Thank you for coming to the committee and giving up your time to help us with our deliberations.

The way I normally convene the meeting is to go straight to questions. At the end, I will give each of you an opportunity to make, at short length, any further comments that have not otherwise been covered in the questioning. That seems to work quite well for us.

I will kick off the questioning. Most of the questions are probably fairly obvious, but feel free in your answers to expand beyond what might appear to be the remit of the question. We genuinely want to tap into as much as possible.

Would elected conveners enhance power sharing and accountability between members, the Parliament, the Government and the people who elect us?

Hugh Henry (Renfrewshire South) (Lab): We could argue that it would in theory, but whether it would do so in practice is debatable. I floated the idea of elected conveners in 2010 and, as I said in my submission, I have changed my mind about it. I am not so sure now. I still think that the principle is sound, but I am not sure that we can look at such a change in isolation from other changes that the Parliament would need to make.

My starting point for any debate is the enhancement and strengthening of the Parliament's status, standing and effectiveness. The argument about Parliament is different from the argument about the Government and its role, and from the argument about party politics. I have always taken the view that, whatever job I had to do, I would try to do it as effectively as I could. When I was a minister, I worked on behalf of the First Minister who appointed me; I realise that there is a party-political aspect to that. When I was a committee convener, my first responsibility was to the Parliament, not to the party or to the Government.

I have been a committee convener both under a Labour-led Government and under a Scottish National Party Administration. My job is on behalf of the Parliament and my duty is to the Parliament. Without straying into a wider debate, there are issues about the number of committees that we have and the size that they should be in order to be effective and robust. There are constraints

caused by the size of the Parliament, which imposes some limitations not just on the committees but on whether we elect committee conveners.

I suppose that one could argue that there is a debate to be had about whether the Public Audit Committee should be the only committee in the Parliament that has to have a convener from a non-Government party. Indeed, we could think out of the box and consider whether, irrespective of the political composition of the Parliament, certain committees should have a non-Government majority because, without having a second chamber to hold the Government to account, we need to find other ways of revising, checking, constraining and reconsidering. All those things need to be considered.

Finally, as I was saying to George Adam on the way in, we should also reflect and realise that, in historical terms, we are still a relatively young Parliament and are still developing and maturing. We need more time to be able to develop robust approaches. I am not saying that we should ape and mimic Westminster, but that is a larger Parliament with a longer history where committees can develop a degree of independence from the Government of the day. All that needs to come into the mix, and it would probably be a mistake to look at just one facet in isolation.

The Convener: I was particularly interested when you said that the Government should not have majorities on committees. When I was the Minister for Transport, Infrastructure and Climate Change, two out of the seven members on my committee were from the Government party, and the convener was not. I will merely say that that was quite interesting, but it could be made to work.

Michael Russell (Argyll and Bute) (SNP): To answer the original question, I sympathise with what Hugh Henry has said, but I believe that elected conveners would be a good start to a process of change. Having elected conveners would not automatically have the results that you suggested it might have in your opening question. That change would have to be part of a wider process of reform.

I am very much with James Mitchell, who gave evidence to the committee two months ago, and I would like to quote him, because I was struck by what he said. It is exactly the position that I take. On the question of elected conveners, he said:

"I am not so sure that it is an Elastoplast, but it could conceivably be a catalyst—it could contribute to a next stage. I do not think that it would undermine the next stage in any overall review. I would be very much in favour of a review. The Parliament has been pretty good at looking at itself periodically. It would be good if there were a major review, in which the Parliament asks itself how it should go forward—particularly in the light of ... the increase in

powers—but elected conveners would be a catalyst. It would be a good base on which to look at the broader question."—[Official Report, Standards, Procedures and Public Appointments Committee, 26 March 2015; c 20-21.]

The Parliament will undoubtedly have increased powers of some sort, probably after the 2016 election. It is inconceivable that the number of MSPs will increase; that debate is not going to take place, and certainly not in a way that would result in an increased number of members. How then do we cope with the increasing workload if the existing committee system is already somewhat strained? As I said in my letter to you, convener, I now see the committee system—having experienced it over the past six months but not having been part of it since 2003—as very much underresourced in the sense of having an equity of arms when it comes to such things as legislation and amending legislation.

The committee system and the way in which the Parliament functions need to be reviewed and reorganised to put the committee system back at the heart of the process, and I think that Hugh Henry and I pretty much agree on that. The question is where you start and how you get it moving. If you reject the suggestion on elected conveners, you are still casting around for the first step. If you accept it as the first step—I think that it can be made to work, and I do not think that the number of MSPs is particularly germane; Alan Beith's approach was quite helpful—you can get it in place and it will be the first step of the wider review that this committee and the entire Parliament should be engaged in.

The Convener: I have another question for Hugh Henry, partly in light of what Michael Russell just said.

You have changed your mind, which is a perfectly respectable thing to do. Is part of what has moved you to a different position the fact that you have engaged in the detail of how such a change would affect other things? In other words, have you changed your mind about whether it might be a good idea or is it that, when you consider the details of how it might work, you are confronted with some difficulties? It is fair to say that, in its discussions so far, the committee has been engaging with that.

Hugh Henry: No, I have not changed my mind about the principle of elected conveners. Ultimately, we should consider and aspire to such a change. It is more about the practicalities. For example, what would we do if, notwithstanding the fact that the vote was a secret ballot, a majority party took a decision at its group meeting and whipped its members to back a certain person in an Opposition party to be the convener of a committee? If someone like Christine Grahame was a contender for convener of the Justice

Committee and the SNP was not in government, there could be a danger that, if the majority party anticipated a rough ride with controversial legislation, it could decide that the last thing that it wanted was a robust and effective convener.

The danger that a party could influence the decision to have a convener who was not necessarily the best, most effective or most robust could undermine the Parliament. That brings us back to the argument that, if we are going to have elected conveners, perhaps Government ministers should not have a vote in that process, because the function and purpose of the committees is to hold the Government of the day to account, particularly when it comes to legislation.

Michael Russell: If the worst criticism of having elected conveners is that their election could be influenced by the whips, it is no worse than the present situation, because we know that the present situation is a creature of patronage—I am not criticising it—and that decisions are made by political parties. If that is the worst thing that could happen, we need to consider whether there are any opportunities and advantages to having elected conveners, and I think that there are several, particularly in the development of a leadership role for people who do not wish to advance their careers in any other way.

Christine Grahame became a convener—you said “someone like Christine Grahame”, but there is nobody like Christine Grahame—in the existing system. Indeed, she has been a convener for all but two years of the Parliament’s existence. People who have a different, perhaps more radical, approach to convenership can emerge through the present system. Perhaps we could get more of them to emerge and could develop a type of leadership that was, as you said, loyal to the Parliament and the way in which it can develop.

Hugh Henry: Could I just take Michael Russell up on—

The Convener: Can I just—

Michael Russell: This could become a debate.

The Convener: That is precisely what I want to say. By all means respond to each other, but do it through the chair, please.

Hugh Henry: The point that Michael Russell makes that we would be no worse off than we are just now is not entirely correct because, through their own internal system, the political parties decide who would be the best person for a convenership from an Opposition perspective or a Government perspective. It would be entirely different if the majority party were able to determine who, in the present circumstances, the Labour and Conservative conveners were—I do not know whether the Liberal Democrats have any

conveners—rather than have those conveners determined by their own parties. At the moment, Opposition parties pick people who they think will do an effective job of holding the Government to account. That is different from the majority party deciding which of the Opposition politicians it wants to choose to hold the Government to account. There is a slight difference.

09:45

The Convener: Are you attempting to lead us to the idea that, were we to have elected conveners, we should require an element of cross-party support for their appointment, although not necessarily to the extent that would allow a single party to effectively veto the appointment of a convener? Is that where you are taking us?

Hugh Henry: That could be one way of doing it. I have already suggested that another approach might be to ensure that Government ministers do not have a vote. The problem is that we start to get into fairly cumbersome procedural issues that might prevent there being a secret ballot. It is not necessarily easy to do.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Hugh Henry mentioned that perhaps ministers should not take part in voting for conveners. Our understanding is that, at Westminster, ministers whose departments are scrutinised by a committee do not take part in the election of the chair of that committee. Of course, our system is different, because our ministerial departments do not reflect absolutely the remits of the committees. We have ministers who answer to or are scrutinised by three or four committees, which could make the system quite complicated. Alternatively, would you exclude ministers altogether from the election of conveners?

Hugh Henry: It is not my starting point as a preferred method but, if the committee or Parliament were to look at that, I suggest that all ministers should be excluded. To return to a point that I made earlier, we have a relatively small Parliament, which means that the balance can be distorted fairly easily. Patricia Ferguson rightly makes a point about the cross-cutting nature of some of the ministerial portfolios, which means that there could not be a precise identification with one committee.

Michael Russell: It is perfectly possible to devise a set of rules for the election, as it is possible to devise a set of rules for any election. We do not fail to have elections because the rules are complicated; we have the rules that suit the election. There is a strong argument for excluding ministers in those circumstances. Patricia Ferguson is right that the Westminster situation is different. As I understand it, the approach at

Westminster is a voluntary convention and is not part of the rules. I think that it would be perfectly feasible here to say that ministers do not get a vote. Given the number of ministers, that would not take out a huge number. Taking out 16 to 18 members from 128—if we leave out the Presiding Officer—would leave a pool of about 110 votes, which is perfectly feasible.

Patricia Ferguson: What about parliamentary liaison officers, who do a job on behalf of the Government but who are technically back benchers? They clearly have the interests of the minister for whom they work very much at the forefront of their minds.

Michael Russell: I always found that my parliamentary liaison officer had my interests at heart—of course, I say that particularly because he is sitting next to you.

We have to draw a line somewhere. Because those members are not paid for that formally, my view is that they should be allowed to vote. Members have all sorts of affiliations. If somebody is married to a minister, would we have them not vote? We have to draw a line somewhere, but ministers probably should be excluded. That is a debate to be had.

There is another debate to be had when the committee has introduced the measure. Because of the nature of the Parliament, I am pretty sure that you will want to look at having smaller and fewer committees, so we will not be electing 15 or 20 people.

The other thing that we can learn from Westminster is that sitting on a single committee and building expertise as part of that committee is much preferable to circumstances in which people sit on two or three committees. I think that we have stretched people too thinly, and I think that we have to think about that.

Patricia Ferguson: What is Hugh Henry's view on the point about parliamentary liaison officers?

Hugh Henry: It is an interesting point because, even though, as Michael Russell has said, they are not paid, they have a Government loyalty and responsibility and are privy to decisions that other MSPs are not. I agree, therefore, that there is a conflict that needs to be considered.

The Convener: I suspect that there would be no parliamentary liaison officers at the time of the elections at any event, so the issue would arise only in relation to by-elections.

Gil Paterson (Clydebank and Milngavie) (SNP): I listened carefully to the idea about a party with a majority in the committee using its votes to appoint a convener whose appointment might work to someone else's advantage. Given the numbers that we have in Parliament just now, and

the fact that this is such a small Parliament, if ministers were not allowed to vote, the majority would simply be shifted to another party. How would we overcome that?

One thing that you can say about this Parliament is that its members are elected in a way that is more democratic than is the case under other systems. I think that the principle that you stated is strong, but taking the approach that you set out would just shift the majority to another block, would it not?

Hugh Henry: That is a danger. However, it comes back to the difference between Government and Parliament, to whom people are responsible, and where the primacy of their loyalties and responsibilities lie. If one accepts the principle that there should be direct elections by MSPs for convenerships—note that I do not advance that proposition—one would hope that as the Parliament matures and develops the non-Government MSPs, irrespective of their party, would see that their responsibility, at least as regards that function, is to Parliament and not to party. However, as you said, the fact we have a small Parliament means that that is a problem.

Michael Russell: We have seen that being demonstrated in Parliament on one occasion. It will perhaps be illustrative to remind members of it. The case involved a by-election for a Deputy Presiding Officer in which there were two respected candidates. One undoubtedly had the backing of the Government of the day but failed to be elected because there was a secret ballot and Parliament made a decision—quite a clear decision as I remember—that it wanted the other candidate. With a secret ballot the power of the whips in such matters—were that to be established, which I think is unlikely—very much evaporates. As long as it is impossible to identify who voted for whom, members can vote for whomever they want.

When it has had the opportunity to do so, Parliament has shown itself to be very thoughtful about what is best for Parliament. I do not think that the situation would be any different with regard to the proposal that we are discussing.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I want to touch on a point that Michael Russell made, which I think is relevant in the debate about election of conveners. It is important that we think about the number and size of committees. I was interested to read the Presiding Officer's speech about that very subject, in which she addressed the question of reducing the number of committees. MSPs being too thinly stretched has been a problem for some time: it does not help us to run the Parliament, it does not help us to have good debates and it does not help us to run committees well.

The Convener: It would be helpful if you could come to your question, Mr Thompson.

Dave Thompson: I have to set the scene, convener, otherwise members will not know why I am asking what I am asking.

Michael Russell has said that he believes that there is no chance at all of there being more MSPs. However, I believe that that is a nettle that this Parliament will have to grasp. Having more MSPs would help us to deal with business and the problem of committees. There will be an opportunity to do something when the number of MPs reduces to 50, as it will after the passage of the United Kingdom bill to change the boundaries, which will be reintroduced. A modest increase in the number of MSPs at that time, because of the reduction in the number of MPs and because of the new powers, would be sensible. That would help us to cope with some of the other difficulties that we have been discussing. I think that some of those difficulties would go if we had more members.

The Convener: I am still waiting for a question.

Dave Thompson: I wonder what the witnesses' views are on that point.

Michael Russell: I understand where Dave Thompson is coming from, but I think that the possibility of there being an increase in the number of members is remote to the point of vanishing. The only argument that might bear scrutiny in that regard outside this building would be if there were a transfer to another system of proportional representation, which would probably mean a single transferable vote system. If we did that, in order to get manageable sizes of multimember constituencies we would probably have to increase the number of MSPs to 200. I was a member of the Arbuthnott commission on boundaries and reporting systems, which is why I have that arcane bit of knowledge. I do not think that that will happen—certainly not in my lifetime and probably not in the lifetime of anybody else in this room.

We have 129 members: how do we make best use of them and ensure that arrangements are practical and effective for them? Hugh Henry and I have both been ministers, as has the convener—we know the information resource that ministers can draw on. When a minister goes to a committee, particularly when they are proposing legislation, they go well armed with a great deal of information. Moreover, the work that they do, and the facts that they are absolutely steeped in the work of their department and see vast volumes of paper every single day mean that they know their subject inside out. Every committee that deals with a minister should be resourced in the same way; they must be able to get immersed in the subject,

but if you stretch members over two or three committees they do not have that opportunity. This is not a criticism of the Parliament.

I also believe that, with the best will in the world, current resourcing of committees does not allow that to happen. In the legislative process, for example, you would have to provide to committees some extremely sophisticated legal advice about the technicalities of legislation in order to let them compete on anything like a level playing field with ministers—especially at stage 2, when we go into the absolute detail of the legislation.

We need to resource committees better and we need to reduce the number of committees. I do not think that we need to exactly mirror each ministerial portfolio, especially because those change over time—we saw another set of changes last year. We could perhaps have broad-based subject committees that would be built up and developed using Parliament's resources, with limited membership such that every member of the Parliament would sit on just one committee. That would deliver higher-level scrutiny, and the conveners of the committees, who would be elected by Parliament, would become an elite cadre.

Incidentally, convener, when you introduced us, you said that Hugh Henry and I had both been committee conveners. However, although I aspire to those heights, I have never been a committee convener.

The arrangement that I outlined would deliver a better-functioning Parliament. It would take some work—it would not be easy, but it could be achieved. The academics to whom the committee spoke were correct to say that Parliament was advanced when it started, but I think that it is now a little bit behind. It needs to get in front of things again; the new powers and the changes that we are discussing could make that happen.

Dave Thompson: Most committee conveners would argue that the current workload of committees is massive and that they cannot cope with it. How would having fewer committees deal with that point?

10:00

Michael Russell: We should take a long and careful look at that workload, some of which is imposed upon committees by the Government. Perhaps we could deal with that in a different way.

Also, if each MSP was a member of only one committee, some of those committees could meet more regularly. I think that your committee meets twice a month—

The Convener: We meet every two weeks.

Michael Russell: Some committees meet every week. I think that committees would settle into a better and more manageable pattern of work. As a member of the Rural Affairs, Climate Change and Environment Committee, I find that when we get to the third hour of a committee meeting and we have a second panel of people to question, we are not operating at our most effective level. The members of that committee have discussed the matter, so I am not giving away any secrets. If each MSP was on only one committee, we could manage the work better.

The Convener: I appeared in front of a joint committee of the Dáil and Seanad, which was taking three days of back-to-back evidence. I appeared on the second day and I think that your point is absolutely spot on.

Hugh Henry: Dave Thompson raised a number of points. On having more MSPs, I agree with Michael Russell that that is not a realistic prospect and would be a diversion from the main debate.

I raised the prospect of a reduction in the number of committees four and a half years ago. I also raised the issue of how committees operate. I have always held a slightly different view from many of my colleagues on the restriction on committees to meeting only when Parliament is not meeting: I see no problem in allowing committees that are working intensely to meet while Parliament is meeting.

Michael Russell is absolutely right about the resourcing of committees. To be frank, it can sometimes be quite easy for a Government minister—not all the time—sitting there with all the facts, all the support and all the research, being up against people who are struggling to get that information because they are not resourced or equipped, but have only the back-up of a hard-pressed parliamentary support resource that is not staffed or serviced to nearly the extent that the Government is. It can become quite a one-sided argument or debate.

I agree with the idea of members specialising and serving on one committee. When Parliament was established in 1999, I was a committee convener and was also a member of the then Health and Community Care Committee for a time. As members will know, health committees are busy and consider very detailed issues. We were dealing with a range of organisations and people who were immersed in their professions and who had knowledge and expertise about their specific topics the like of which none of us could aspire to.

It is very difficult to try to convene and be responsible for a committee and, at the same time, to play a full role as a member of a major subject committee, and to try not just to hold the Government to account but to do justice to the

aspirations and views of public participants in the committee process. That situation does a disservice to the committee system, so I agree entirely with the view that people should serve on one committee.

The Convener: Hugh Henry correctly referred to the timing of committee meetings and the fact that we cannot overlap with Parliament. We are under the cosh in that respect today, so let us step up the pace a little bit, with concise questions and answers.

Patricia Ferguson: This point is not germane to the subject that we are discussing but we have already ranged a little bit in our questioning. I accept entirely the arguments that colleagues are making about the resourcing of committees, the resourcing of members and the number of committees.

However, both witnesses have been at pains to point out that there is—shall we say?—less than equality of arms in terms the resources of ministers coming to committee and the resources of the committee. Is not that an argument for a Government of whatever complexion—I speak with some experience—being more open and sharing more with the committees in the first instance so that there is less need for some of the processes that we have to go through.

Michael Russell: My experience is that there is more than willingness to share; in recent months, for example, both Aileen McLeod and Marco Biagi have been very willing to share in respect of the Community Empowerment (Scotland) Bill. I do not recognise a lack of willingness to share. However, ministers cannot do for a committee a brain dump of everything that they know about a subject. It is important that the committee develops its own knowledge and expertise in order that it can hold the Government to account and, as Hugh Henry said, contribute to debate that are often dominated by professionals who have worked in the area all their lives. It is quite daunting for a minister, let alone a committee member, suddenly to find themselves trying to question and discuss things with people who know immeasurably more about the subject than they do. It is not possible for committee members to develop that kind of knowledge, but it would be easier for them to try if they were not trying to do it in two or three different areas.

Hugh Henry: I agree. I do not think that it is necessarily about unwillingness to share; it is about the volume of information that we have access to and the staff who are able to marshal that into appropriate functions and sections. A minister can say to their staff that they would like them to go and do this, that and the other, and it will be done. Their staff will have read what is necessary and will help the minister to prepare

lines of argument. However, for a committee member—I know this both as a convener and an ordinary committee member—there is only their own limited constituency resource, which is often overburdened by case work, and there is the limited parliamentary resource—I do not mean that in a disrespectful way.

Michael Russell: No—absolutely not.

Hugh Henry: The parliamentary resource is expert and is very good, but it is nonetheless limited and cannot devote its attention to specific issues that members may want to pursue or to research those issues for members with the same turnaround time as a ministerial team. As Patricia Ferguson said, the process is therefore unequal.

The Convener: At stage 3 of the Climate Change (Scotland) Bill, I needed two people to carry my briefing papers down to the front bench; when stacked, the papers were nearly 2 feet high. I think that those of us who have been ministers absolutely recognise what is being said.

Patricia Ferguson: I agree entirely with what has been said, but I think that it was important to get that on the record.

The Convener: Right. Let us try to break into a mild canter now. Gil?

Gil Paterson: This second substantive question follows on quite nicely from points that have been raised. Would having elected conveners enhance committee scrutiny of the Scottish Government? How would it do that, given what both witnesses have just said? You have more or less shot the idea down in flames already.

Hugh Henry: I say that elected conveners would not necessarily enhance scrutiny. We need more effective and better-resourced committees. Again, I agree with Michael Russell that fewer committees that could specialise would all be able to scrutinise the Government. With reference to what the convener said about his experience between 2007 and 2011, the answer might be about looking at the balance on committees. I think that a range of things—not necessarily election of conveners—would enable Parliament and its committees to scrutinise the Government better.

Michael Russell: I will quote again the last line of what James Mitchell said in evidence to the committee about having elected conveners:

“It would be a good base on which to look at the broader question.”—[*Official Report, Standards, Procedures and Public Appointments Committee*, 26 March 2015, c 21.]

I think that the suggestion offers an opportunity to move forward, but it is not the complete answer. However, without it, I do not think that we will move forward at all.

Gil Paterson: If the intention behind what the Presiding Officer has been asking for is to raise the profile and authority of conveners, what happens to the rest of the members of these small committees that we work on? Does their authority diminish if more authority is given to conveners?

Hugh Henry: Michael Russell is right that this debate should be viewed as part of a package, but my argument has always been about making the committees, which have a very specific job to do on Parliament's behalf, more effective. In fact, it is all about making the Parliament more effective. We always regarded the committees as being the cutting edge of the Parliament and where we were going to be different from the Westminster system, and we had aspirations for pre-legislative scrutiny and post-legislative reflection, but, frankly, we have never really been able to do that, and we do not have a second chamber to do that work, either.

In a sense, our starting point has to be how we help our committees do their job on behalf of the Parliament and the public. The funny thing is that, when we talk to constituents, they know that there is a Scottish Government and a First Minister, but they think that the Parliament is responsible for much of what the Government does and expect us to be able to have a direct influence on things that sometimes never come near Parliament. Those of us who have been ministers know that there are ministerial decisions that do not need the Parliament's consent, but the public think that, in some way, the members sitting around committee tables are actually challenging Government ministers and holding them to account. They sometimes conflate Government and Parliament. My strong view is that we need strong committees for this Parliament to be effective. That brings me back to the issues of resourcing and size and of ensuring that the committees have the opportunity to concentrate on the things that are important.

Michael Russell: You could describe the situation as having four key players. One player is our constituents: the people in each constituency in Scotland, who elect us and who are, essentially, our bosses. They are the most important part. There are three other players—the parties, the Parliament and the Government—and we need to ensure that the balance between all those players is right. Of course, this is not a new problem. Edmund Burke was writing about it 200 years ago and examining the balance between those players; in fact, he was probably the man who first identified them and talked about the balance that they should have.

Given the present circumstances of the Scottish Parliament, it is necessary to strengthen one of those players: the Parliament itself. That is necessary because the Parliament is getting more

powers. It has 15 or 16 years' experience under its belt, and it can consider experience elsewhere and ask whether it could do things better. It has spread itself a little bit too thinly with the committee system, which has probably diminished its effectiveness slightly, and I view the reform involving the election of conveners as part of a process of strengthening the Parliament, because the individuals involved—those who would be elected as conveners—would have a mandate from the Parliament, which would strengthen their actions.

The committees, too, would be refreshed by that mandate. Far from diminishing them, such a reform would strengthen them. There would be an acknowledgement across the Parliament that the Parliament itself, and each individual member of the Parliament, had had a role in selecting the conveners and in deciding how the Parliament went forward with the committees. That strengthens the role of all of us. After all, we as individuals do not influence such decisions at present; we do not even tend to influence what committees we sit on. We can volunteer, but we are sometimes told, "No, you are going somewhere else." I think that the measure would strengthen the Parliament.

Considering those four players, I think that, if we accept that our responsibility is to those who have elected us and to the people of Scotland, the balance between the other players—between party, Parliament and Government—needs to be constantly reviewed and adjusted. On this occasion, there are a number of actions that need to be taken. We need to start somewhere; this proposal is on the table, and it represents a start that can be made and which we can build on.

The Convener: A brief answer to this question will suffice. Are you saying that if conveners are elected and have that enhanced tenure—in other words, if they are more difficult to get rid of—they are stronger as a result?

Michael Russell: Indeed. What you suggest is not impossible, but my point is that the reform will strengthen the Parliament as a whole, not just individual conveners.

The Convener: That is the point.

Hugh Henry: I think that the point is arguable.

The Convener: Let us not get bogged down in the matter.

10:15

Margaret McDougall (West Scotland) (Lab): Sir Alan Beith, a former House of Commons committee chair, told the committee that the election of committee chairs in the Commons had enhanced the authority of chairs and had given

committees greater independence. If we were to elect conveners, would that have the same impact in this Parliament?

Michael Russell: I found Alan Beith's evidence very convincing and strong, particularly because the ability of the House of Commons to change is perhaps not as great as this Parliament's ability to change. It is harder for an older institution to change; indeed, it took the Commons quite a long time to do so.

Let us consider some of the older Parliaments. I remember paying a visit to the Canadian Parliament, which had not introduced electronic voting; it had talked about doing so for, I think, 20 years, but it had not got round to it. The House of Commons had discussed committee reform for 15 years before it got round to it, but what it has done seems to have helped. Such reform is one of the things that could help us move forward. We should be mindful of what others do, and the evidence in that respect is interesting and good.

The written evidence that the academics gave you also provides some interesting pointers to places where other systems have been tried. For example, it was pointed out that, in the United States Senate, the convenership of committees was determined by seniority. I think that the Senate once had a senator who was 100 years old; presumably, he had to chair every committee. Senators felt—and the evidence showed—that, once the Senate got away from that and decided to do things differently, the work of its committees improved. The balance of the evidence from across all the places that have carried out such reform is that it works for them, and I see no reason why it should not work here.

Hugh Henry: Of course, the House of Commons is a very different institution; as I said earlier, it is much larger and more mature. As Michael Russell has said, the Commons probably took as long to reflect on making that change to its committees as our Parliament has been in existence. Undoubtedly, there are things that we need to reflect on and learn and, as we mature as a Parliament, we need to develop and respond in different ways.

One part of the culture at Westminster that is different is that it is not just the committee convener or chair who has a different approach and attitude; the committee members, too, have a contribution to make in that respect. Some quite robust reports are coming out of some of the Westminster committees—as has been the case in the Scottish Parliament—but it would be wrong simply to see that change purely as a result of the convener being elected. Michael Russell and I have both argued that many other things need to be looked at and changed in order to make the committees more effective. We—and I suspect

some committee members—would agree that it is important to Parliament for the committees to be able to do their job properly.

Margaret McDougall: Mike Russell highlighted one occasion when the Parliament did not elect as Deputy Presiding Officer the person who was expected to be elected. I think that you were talking about 2011—

Michael Russell: No, it was much earlier. It happened in 2001.

Margaret McDougall: As someone who was new to Parliament at a time when there had been such a huge turnover of MSPs—I am taking 2011 as my example—I can say that we did not know individuals or their performance rates when we were electing conveners or the Presiding Officer. If we were asked to elect a convener at the outset of a session and with a new Administration in place, how effective would that approach be? If there were a lot of new members, how would they know the individuals concerned? Would they not turn to their parties for advice?

Michael Russell: They might turn to wise colleagues who knew the runners and riders and take their advice, but I do not really think that that should be a major objection. In every franchise, there will be some people who are well versed in who and what the candidates are and there will be others who know nothing about them. The reality is what the institution arranges, how it arranges it and the opportunity that it gives. Presumably each candidate will want to be able to say a word or two, as happens with the election of a Presiding Officer. One might argue that the election of the Presiding Officer is flawed in exactly the same way; I presume that, when you were elected, you did not know any of those candidates particularly well. Am I right in saying that somebody speaks for each of the candidates?

The Convener: I do not think so.

Michael Russell: Okay. I must be thinking of the candidates for First Minister.

The Convener: Indeed.

Michael Russell: It is perfectly possible to arrange some way in which people can get to know the candidates, but there will always be new members who do not know them. For example, there might be individuals elected as independents who have no circle of friends or colleagues, and they will have to base their judgment on what they have heard.

Margaret McDougall: If we are to have elected conveners, should we not also elect committee members to ensure truly independent committees?

Michael Russell: That is a distinct possibility. Indeed, I see no great argument against it. We have to start somewhere; perhaps we should start with elected conveners, but we could have a different system for selecting committee members.

In his first answer, Hugh Henry raised the question whether our pure-ish D'Hondt system, which simply allocates conveners according to the number of votes that the parties have, should be changed to mirror the fact that only one committee requires to be convened by someone who is not from the party of Government. That is one of the changes that we should look at, but my point is that we have to start somewhere and the idea of electing committee conveners is on the table. It has worked elsewhere and it might get us moving and looking at a lot of these other issues.

Hugh Henry: On Margaret McDougall's point about the selection of committee members, the principle is ultimately the same. The convener would have an enhanced responsibility and role—let us not kid ourselves about that—but you would hope that, in order to have strong committees, we would have competition between members aspiring to be on those committees. If we accept that principle, one might also argue that committee members should be chosen that way—which is where, I think, all the problems that I mentioned earlier will start to come in.

The Convener: I exercise my right as convener and say that we will allow the discussion to carry on for another 20 to 25 minutes.

Gil Paterson: I think that my question has already been answered—

The Convener: So you do not need to ask it again, Gil.

Gil Paterson: Perhaps I could get a quick answer. We have had a coalition Government, a minority Government and a majority Government. Is that significant? Does the type of Government make any difference?

Hugh Henry: The convener has suggested that there might have been a difference, given his experience as a minister of dealing with a committee that did not have a Government majority. By that time, however, I was on the other side of the fence. I think that there can be differences and it would be foolish to suggest otherwise. I am talking about differences in the way in which committees operate and not necessarily whether that means that conveners should be elected.

Gil Paterson: I was asking about the principle of electing conveners.

Michael Russell: I do not think that we should bring in reforms solely on the basis of the political circumstances of the moment; after all, things can

change. The election of conveners could work in all circumstances, which is why I support it.

Gil Paterson: I think that you said as much earlier. Thank you.

Cameron Buchanan (Lothian) (Con): How can we make it more likely that the best candidate and not necessarily the party's preferred candidate is selected? Is it more difficult for our small legislature to achieve that? Obviously the elections would take place by secret ballot. Would we therefore reduce the number of members on the committees?

Hugh Henry: I would not necessarily reduce the number of people on committees. Both of us have argued that there should be fewer committees; in some cases, there might be an argument for having larger committees, depending on their specific function. I do not want to be prescriptive about the size of committees.

As for how we get the best person elected, that is the \$64,000 question. The best person might be elected but then again, they might not. Might games be played? They might be. You cannot give guarantees for that system any more than you can for the present system. All I will say is that Opposition parties will probably try to pick people who they think will do the best job of holding the Government to account. The Government parties would look at it from a slightly different perspective and consider people who have not been chosen to be ministers but who might have a contribution to make in the future. I would expect Government and non-Government decisions to be slightly different, but I do not know how you would ensure that the best person got chosen.

Michael Russell: The argument that you might not have the best person is probably an argument against democracy rather than against elected conveners. You take your chance and see what happens. On the wider issue, however, the reality is that election is always preferable to appointment. If politicians are guided by that principle, they do not go far wrong.

Dave Thompson: How should conveners be nominated? Should nominations be restricted to members of the convener's party? Should members of other parties be able to nominate? Should there be cross-party support or only support from the convener's particular party? How should we remove a convener who we are unhappy about?

Michael Russell: Those matters would require work by the committee, were the principle accepted. However, at the risk of being glib, I will respond to each of them.

A procedure would be needed whereby a convener could be removed, initiated by either the

whole Parliament or the committee. It would probably be by the whole Parliament, but I see absolutely nothing wrong with that.

I know from talks in the SNP that people can nominate themselves to be candidates, and I do not think that there is much harm in that system. If somebody says to you that you would make an extremely good convener of such and such a committee and you think that it is a good idea, you can put yourself forward. There is a need to ensure that there are candidates for each position, which is always difficult. If there is only a single candidate for a position, that could be because they are an outstanding candidate or because something is going on. We need to have some checks and balances.

However, I do not think that it is difficult. The approach is taken elsewhere so, once we accept that it should be done, we can draw up acceptable rules to make it happen pretty quickly. The whole Parliament should be involved in the process, probably with the exception of ministers.

Hugh Henry: If we decide to go down the route of elected conveners, we need to look at the rules and the wherewithal to remove conveners, as Michael Russell said. We would need to put in safeguards. Although we would want committees and the Parliament to be able to remove an ineffective convener or someone who behaved inappropriately, we would need to give the convener some protection. If a convener was doing his or her job properly and in doing so offended the Government or the majority party of the day, we would need to be sure that they could not be removed on a political whim. Rules are needed not just to make it easier to get rid of someone but to protect people who are doing their jobs effectively.

Should members of different parties be able to nominate? If we continue with the d'Hondt principle and accept that certain parties have access to convenerships of a certain number of committees and we can identify and agree which committees those are, and if we move to election of conveners, as long as the convener is a representative of the party that is nominated for that committee, I am not sure that we should restrict the nomination process to just people from that party. I do not agree with the proposal but, if we are to go down that route, we should just throw the nominations open.

10:30

Michael Russell: It strikes me that I am not at all sure what the current procedure is for getting rid of a committee convener. I think that there probably is not one. Is there a procedure for getting rid of a committee convener?

The Convener: We will take advice on that.

Michael Russell: The reality is that it probably has not happened. It is difficult to imagine circumstances in which it would happen—Patricia Ferguson and I will be dredging our memories. I can think of one circumstance in which a party attempted to remove a member from a committee and it resulted in that member leaving their party and staying on the committee, so it does happen.

Dave Thompson: Such things as voting systems would obviously have to be considered, but I would welcome the witnesses' views on one final point. If what is being suggested is a good start, and if we go down that road, given what has been said about a wider range of issues that are all linked and necessary if we are really going to make an impact, how important is it to follow through with the other issues? Once we have gone through all the complications of reform such as voting systems and how to get rid of conveners, which will take quite a bit of work, there will be a temptation just to stop at that, but that will not do the job. How important is it for us to build into our report something on the need for the further work that will have to take place?

Michael Russell: It is the committee's decision, but I have made it clear in my evidence that I think of the proposal as the start of a process. It would be welcome to see in your report an acceptance that it is the start of the process, together with what you think is the timetable for that process and how it would be carried through.

Hugh Henry: This is probably the least important of the changes that need to take place. Some of the issues that Dave Thompson has identified are matters that the Parliament should be looking at now anyway. Who knows? In the fullness of time, we might need to return to the election of conveners, but I think that there are far more important things that need to be addressed.

The Convener: On Mr Russell's question about getting rid of a convener, we have checked the detail and it seems that an absolute majority on the motion of the committee can remove a committee convener. That is interesting because, although Parliament elects ministers and can pass votes of no confidence, it has no mechanism by which they can be removed from office, apart from removing them from office in Parliament.

Michael Russell: On Hugh Henry's point about protection, I would have thought that elected conveners would be far better protected, because I cannot imagine that they would be removed except by a motion of the Parliament, as opposed to a motion of the committee. That means that four people on this committee could remove the convener.

Dave Thompson: Do not give us ideas.

Michael Russell: Better protection would come from a requirement to have a motion in the Parliament.

George Adam (Paisley) (SNP): Hugh Henry has already hinted at the idea that I want to ask about, and I think that Mike Russell agreed with him, which is unusual. Should the parties continue to allocate conveners under the present system, or should there be other rules about party allocation of convenerships?

Hugh Henry: The Parliament needs to have a debate about how it wants its committees to operate and what the allocation of political responsibilities should be. I floated an idea that the Parliament might want to look at, about whether committees other than the Public Audit Committee should have to have a convener who is from a non-Government party, or whether certain committees should have a majority of members from non-Government parties, to compensate for the lack of a second chamber. If you do not do that and if you are going to allocate committee responsibilities on the basis of party size, I suppose that the present system is as effective as any other.

Michael Russell: The election of a Government is part of a contract with the voters in which that Government has made certain commitments that it then wants to carry through. Therefore, it has a mandate to do those things. If we were to construct a committee system that made that difficult or impossible, we would be working against that general democratic rule.

The idea of allocating the convenerships by the d'Hondt system to recognise the balance of the Parliament in order to carry through the will of the electorate seems sound. That is why the Parliament's committees reflect the balance that the voters have chosen in the election. However, there is already one exception: the Public Audit Committee, which is a scrutiny committee. It is right that there should be another voice in the scrutiny of financial matters and audit.

As part of the reform process, it is worth having a debate about whether, in a new committee structure, any other committees might require that difference of view. However, we should be careful about trying to construct a system that goes against what voters have chosen. The d'Hondt system attempts to reflect in the committee convenerships the balance of the parties in the Parliament. It tries to reflect what the voters have done and we should be careful about gainsaying that.

The Convener: Our timekeeping is working reasonably well and we have come to the end of our formal questioning so, as promised, I give you both the opportunity to sum up or to draw to our

attention any matters that would be of interest to us in the broader reform of committees, albeit that our inquiry is focused on elected conveners.

Michael Russell: We have had a constructive discussion of elected conveners. It is not a discrete issue and, although your inquiry is discrete, it has opened up the need for wider reform.

Not only Hugh Henry and I but quite a number of members in the Parliament are in agreement that we need to make changes. The best time to make those changes is in anticipation of the election of a new Parliament, because they can then come into effect at the start of that new parliamentary session. It is harder to make changes during a parliamentary session. I hope that the committee is committed to that process of reform. Whether or not it is committed to elected conveners is another matter.

I go back to the point that I started with, which is that James Mitchell is right. The proposal for elected conveners is the start of a process. We have to start somewhere. It shows willing and does not prevent the committee from doing other things. It might just drive the committee forward to do other things, but I would like the report to be committed to a wider and longer process that results in necessary changes for the start of the Parliament that will be elected a year from now.

Hugh Henry: I agree with Michael Russell that we need to consider the wider reform. It would be a mistake if we simply focused on the issue of elected conveners, which is not necessarily the most important one. I am up for change. I have been arguing for it for a number of years and it is in the Parliament's interest to have a debate about it.

The Convener: I thank you both for giving your time and for your good-quality interaction with the committee. You have done what good witnesses do: you have left us with more questions than we had at the outset, which is a pretty good place to end.

Draft Annual Report 2014-15

10:39

The Convener: The third item on our agenda is for the committee to approve its annual report. It is required to produce a report each year under standing order rule 12.9.

Committee members have a draft report in front of them. Do they wish to make any comments on it?

Patricia Ferguson: You know me so well, convener.

I am content with the report as it stands. Paragraph 5 mentions that we published our report about lobbying, which has gone to the Government, which is thinking about it. However, I wondered whether we would have a debate on that report. I know that there was one at the beginning of the process.

The Convener: We are masters of our own destiny in that regard, but we are now waiting for a formal response from the Government. We have not yet had it. We have had an indication that it is not arriving as promptly as it sometimes does, but that is because the Government is preparing to legislate on the matter. The next step is to determine our response to the Government's plans.

The Government will consult on its proposals. We have, in essence, done pre-legislative scrutiny, except that we have not seen the legislation. We certainly expect to see something from the Government before the recess, and the indications are that it will be rather sooner than that. The next step is to wait for that to happen, but I am in the committee's hands.

That is my understanding.

Patricia Ferguson: In the normal course of events, we prepare a report, send it to the Government, get its comments and have a debate at some point. I know that there was a debate at the beginning of the process but, before the Government presents its ideas in the form of legislation, it might be a good idea to have Parliament reflect on what the committee said about the matter. However, I am not desperate to do that.

The Convener: I do not want to give you false certainty, but I think that the response from the Government will arrive on a timescale that does not leave us that opportunity and that we will provide our response to what the Government proposes before the recess. I am in the committee's hands on the matter, but that is where I think that we should go. Of course, provided the

Parliamentary Bureau agrees, we will be the committee that considers any proposed legislation that is introduced. I would be astonished if it were any other committee, but that is not our call.

If there are no other comments on the draft report, are members content for it to be submitted in the form that is before us?

Members *indicated agreement.*

The Convener: That is helpful.

I am looking at the time and I am anxious that we deal today with agenda item 5, which we need to consider precisely and formally, so I propose that we consider the code of conduct at our next meeting. Is everyone content with that?

Members *indicated agreement.*

The Convener: That is helpful. I move the meeting into private.

10:42

Meeting continued in private until 11:30.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICE.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN

Revised e-format available
ISBN 978-1-78568-623-8