



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 6 December 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 6 December 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND	2
CROSS-PARTY GROUPS (ANNUAL REPORT)	22

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
23rd Meeting 2018, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*Tom Mason (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Elaine Smith (Central Scotland) (Lab)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland)

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 6 December 2018

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Bill Kidd): This is the 23rd meeting in 2018 of the Standards, Procedures and Public Appointments Committee. I thank everyone for attending. Agenda item 1 is a decision on whether to take in private item 4, which relates to a paper on parliamentary privilege. Do members agree to take that item in private?

Members *indicated agreement.*

Commissioner for Ethical Standards in Public Life in Scotland

10:00

The Convener: Item 2 is an evidence session with the Commissioner for Ethical Standards in Public Life in Scotland on his “Annual Report and Accounts 2017/18”, and on a review of operation of the 2013 “Code of Practice for Ministerial Appointments to Public Bodies in Scotland”. I welcome the commissioner, Bill Thomson, and Ian Bruce, who is the public appointments manager of the Commissioner for Ethical Standards in Public Life in Scotland. Thank you for joining us. I invite the commissioner to make a short statement.

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you for the invitation to attend the meeting.

I anticipate this being my last annual report evidence session with the committee in my capacity as commissioner. The process for appointment of my successor is under way, and I hope to be able to organise a handover prior to demitting office at the end of March 2019.

For the benefit of those who may be less familiar with it, my role combines two former roles—the Public Appointments Commissioner for Scotland and the Public Standards Commissioner for Scotland. I suspect that members will be more familiar with the ethical standards role, in pursuit of which I report to the committee on complaints about the conduct of members of the Scottish Parliament. Another aspect of that role, and one that demands much more of my time, is investigation of complaints about breaches of the “Councillors’ Code of Conduct”, and about the conduct of people who are appointed to public boards. If, after investigation, I conclude that there has been a breach of the relevant code, I submit a report to the Standards Commission for Scotland.

Complaints generally come to my office from members of the public who have concerns about the conduct of individuals in public life. Around 80 per cent of the total number of councillor and public-body complaints are initiated by members of the public. A further 18 per cent, roughly, are submitted by councillors, and the remaining few are submitted by MSPs, members of Parliament and council officials.

Initial investigations are conducted by five experienced investigating officers, all of whom are employed part time. There is also a senior investigating officer, who assists with difficult issues, monitors progress and is the first reviewer of draft reports.

When a code breach is reported to the Standards Commission, it generally arranges to hold a public hearing at which evidence will be led in support of my conclusion that there has been a breach, followed by any contrary evidence on behalf of the councillor or board member. Responsibility for presenting evidence and submissions at public hearings is shared between me and the senior investigating officer.

I am not normally involved in the initial investigation of complaints, unless the complaint relates to the conduct of an MSP. However, all the reports that are issued by the office are mine, and most of them will have been through several iterations between the first draft and the final version.

I turn to our work on public appointments, which is of a quite different nature, even though it involves a regulatory element and, occasionally, consideration of complaints that have been submitted by applicants. In this capacity, I have a dual role: to ensure that public appointments are made openly and fairly, with due regard to equality of opportunity; and to promote compliance with the statutory code of practice.

The regulatory role applies to appointments that have been made by ministers to the board of any of the regulated public bodies that are listed in statute. There are currently 96 such bodies: they include health boards, national park authorities, enterprise and environment agencies and many others.

Appointment decisions, as members will be well aware, are made by ministers, but the job of attracting and assessing candidates is delegated to an appointment panel. Vacancies are advertised and candidates are assessed on the basis of criteria that are determined at the outset by ministers. Appointment panels are generally chaired by senior civil servants from the sponsor directorate—the minister's directorate, if you like. They often include the chair of the body whose board has a vacancy and they might also have an independent panel member who is familiar with the field in which the body operates.

In addition, the panel may include a public appointments adviser who is drawn from a team of experts who are contracted to my office to provide a supportive role and a regulatory role. The extent of the adviser's involvement varies according to the nature of the position that is being filled. For example, if it is an appointment round to find a new chair for a national body, the adviser will be involved throughout the round, up to the stage at which the panel's submission to the minister has been agreed. However, in some cases, the adviser is involved only in the planning stage, and in other cases, there is no direct oversight. That is

because we want the regulation to be proportionate.

Ministers and appointment panels are expected to observe the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland". The code was drawn up by my office and was, following a public consultation, agreed with ministers and with Parliament. It was last revised fully in 2013, by my immediate predecessor.

The code is a permissive document—despite what you may sometimes hear. It allows considerable freedom to those who are charged with making public appointments, as long as they respect the code's three principles of merit, integrity, and, thirdly, diversity and equality. Appointments must be made on merit. Merit is defined, for each post, by the minister when setting or agreeing the criteria at the start of the process. The panel reports to the minister on the relative merits of the candidates by assessing how well they meet the published criteria.

As I have indicated, the code is a permissive document that does not require appointment rounds to be conducted in a particular way: on the contrary, we are keen to encourage and support improvements to processes and new approaches to attracting more diverse fields of applicants.

The public appointments advisers, to whom I have already referred, and the small team in my office, which is Ian Bruce plus one other part-time person, have considerable expertise, which is available to support and improve the appointment process, as well as to monitor compliance with the code of practice. We also periodically conduct thematic reviews to assess the extent to which the code is being complied with, including in cases with which my office has had no direct involvement.

We have been working with Scottish Government officials on groundbreaking research to gather evidence on the impact of diversity on the governance of public boards in Scotland. That has not been done elsewhere. We have also been working on induction sessions for newly appointed board members, and we have been working with officials and experienced board chairs on a mentoring scheme for board members who might wish to consider applying for a chair role in the future.

That is all I wish to say by way of an introductory statement. Thank you.

The Convener: Thank you very much, commissioner. We would like to ask a few questions, none of which will be too onerous, I believe—but you never know.

We will go through things in a reasonable order and talk about complaints against MSPs first,

which you mentioned. There were 28 complaints about possible breaches of the “Code of Conduct for Members of the Scottish Parliament”. Only two of those complaints were within your remit, apparently.

Of the 26 inadmissible complaints, you referred 11 to other bodies or persons, and 15 were not referred onwards. In order to give us guidance on what your role actually is, can you explain how the inadmissible complaints are handled and why they are inadmissible in the first place?

Bill Thomson: You will be aware that section 9 of the “Code of Conduct for Members of the Scottish Parliament” sets out a number of types of complaints that are excluded from my jurisdiction. For example, complaints about the conduct of a member in a committee meeting are dealt with by the committee’s convener, and complaints about a member’s conduct in the chamber are dealt with by the Presiding Officer. There are other examples, which I will not go through.

I have made a note of the 15 cases that were not referred to anybody else. Five of them involved conduct that is simply not covered by the code—for example, comments that were made on TV during the course of an interview. There was a complaint made about the conduct of two members in the chamber, which I referred to the Presiding Officer, and there was a complaint about the Presiding Officer’s apparent failure to reprimand them for their conduct. There were complaints about statements that were made, or actions that were taken, during the UK election campaign. One complaint was about the leader of a party not taking action in relation to the conduct of two of that party’s members, which had offended the complainer.

Other complaints were made in which there was simply no factual basis for the allegation. Such complaints tend to relate to alleged failure to declare or, in some cases, to register an interest. In such cases, I write to the member who has allegedly failed to declare or register. If the member is able to establish either that they do not have the interest or that it has been registered or declared, there is no basis for an investigation.

The Convener: Thank you. That is quite clear.

Elaine Smith (Central Scotland) (Lab): I have a brief follow-up on that question. Is the information that is available to the public and others about your role not robust enough, given that you are receiving complaints that do not fall within the code? Alternatively, do you think that the code needs to be widened?

Bill Thomson: I think that it is quite difficult for people who are not immersed in it to be aware of what the code does or does not cover. It is particularly difficult for people to understand that

some complaints that come to me should be made to the Scottish Parliament Corporate Body, the Presiding Officer or the First Minister.

We endeavour to make it clear what the role of the commissioner is on our website and in the available documentary material. However, it is not realistic to expect people to absorb all of it. One of the things that we have been doing is updating our website for the first time. The updated website will include an online complaints process, which will take people through the process step by step and will include various pointers that will discourage people from proceeding if they are raising something that I, or my successor, will not be able to take on board as a complaint. I hope that that will help. However, I think that it is extremely difficult to explain the ins and outs of the process in a clear way to the general public.

Elaine Smith: I think that that will help. We will see in future years what happens to the numbers.

The Convener: That was a useful question, and so was the pointer to the online procedure, which I think will help a lot of people. Thank you.

Gil Paterson (Clydebank and Milngavie) (SNP): In that regard, if it was appropriate for a party leader, for example, to deal with a complaint, would you signpost that or would you just not take the complaint any further?

10:15

Bill Thomson: I am required by statute to notify any member against whom a complaint is received. If I were to receive a complaint about a party leader’s actions or failure to take action, they would be notified. In responding to a complaint that is outside my jurisdiction, I do my best to explain why and to say, if there is an alternative, what it is.

Gil Paterson: That is good. Will the online form refer to that facility?

Bill Thomson: Yes. We have to strike a balance between complicating things dreadfully and allowing people to get through the process without losing their rag because of its nature. The short answer is yes, but I cannot remember the detail of what the form will say.

The Convener: The idea, I suppose, is to simplify the system to make it easier for people to understand.

Tom Mason (North East Scotland) (Con): Good morning, gentlemen. You have been quite successful in achieving most of the targets, except the target for initial assessment of complaints. Are there any good reasons why that target has not been achieved? Is it realistic? In fact, are all the

targets realistic? I refer to table 14 in the annual report, specifically.

Bill Thomson: The annual report might be slightly misleading in that respect. Table 14 relates to initial assessments of complaints—specifically, those about councillors and members of public bodies. We have set a 100 per cent target for initial assessment within 15 working days because that is what I would like to achieve. It is probably impossible to achieve that target, but it is a good idea to have a stretch target to try to get as close to as possible.

One of the reasons why we have not achieved the target is that, in order to make the initial assessment, we need to obtain information from other people. That might be the person who has made the complaint, the person about whom the complaint has been made, or the council or public body of which the person is a member. Quite simply, we do not always receive replies quickly, and very occasionally we get replies that require follow-up questions. That is why some complaints do not complete initial assessment within the 15 days.

We do not have a big problem with delays. For all MSP complaints, the stage 1 process—the equivalent process—has been completed within the rather more extended time limit.

Jamie Halcro Johnston (Highlands and Islands) (Con): Your report provides information on the origin of complaints that were made against councillors, but I cannot see anything that identifies the breakdown of where complaints against MSPs came from. Do you hold that information? If so, why is it not included in the report?

Bill Thomson: The simple answer is that I am not required to produce that information, but I have it and I can let the committee have it.

Probably two or three complaints a year are made by one MSP about another MSP. Regrettably, they have tended to include complaints that the person who is complaining has leaked or gone to the press about, which is a breach of the code of conduct. Sometimes, that results in a tit-for-tat complaint with, somewhat ironically, the person who started the process ending up being the only person who breaches the code.

Most other complaints come from the public. Some members of the public are politically active and might have held elected office in the past. However, motivation is not an issue as far as I am concerned.

Jamie Halcro Johnston: I appreciate that.

Have some complainants made multiple complaints, and were they admissible or inadmissible?

Bill Thomson: A small number of people have made multiple complaints, but very few have made multiple complaints against MSPs. In one part of the country, someone has a great interest in making complaints about councillors. However, there is not a big issue with complaints against MSPs.

The Convener: That has covered that issue reasonably well. Can we move on to public appointments, please? Mr Bruce might have a thing or two to contribute on them. I know that Maureen Watt would like to ask some questions about public appointments.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning, gentlemen. For the record, I was an independent assessor of public appointments prior to coming into Parliament in 2006. I really enjoyed that job.

The number of appointment rounds that have been completed in the past year has risen sharply compared with those in previous years. Given that there should be fewer public bodies around, why has there been that increase? Have there been failures to appoint, or are people not serving their full terms? Can you explain why that is the case?

Bill Thomson: There are multiple reasons or factors. The number of regulated public bodies changes. I think that three new ones were created in the past year, although not necessarily in the reported year, and some have been abolished or removed from our remit. Therefore, the number varies.

Another factor is that Governments occasionally contemplate changing the landscape of public bodies, but that does not always follow through. If Governments are contemplating changes, they may hold back on making new appointments. If the changes do not go ahead, there may end up being a little bit of a backlog, in effect.

Some appointment rounds occur unexpectedly because people have left or become unwell. There have been quite a number of them.

There is another factor, which is probably the biggest one in the year that we have reported on. We have had discussions with Government staff about how best to improve the process. From our point of view, one of the big factors is being involved and consulted at an early stage in the appointment process. That allows us to have more influence on what might be appropriate in attracting a more diverse field. In the reported figures, there are at least 12 appointment rounds in which we were involved early on that did not go ahead for whatever reason. There is nothing

sinister in that; actually, that is something that I welcome.

Maureen Watt: You identified constraints on the resources available to advise and support ministers as a risk for 2017-18. In the event, did resource constraints have an impact on what you were able to achieve in that period?

Bill Thomson: I think that resource constraints had an impact. Members will see from the tables in the annual report that there has been a small increase in the percentage of women on boards—the number was up by 0.5 per cent in the year—and another small increase in the number of people under the age of 50 on boards. They are two of the target groups. However, progress has been in the wrong direction for other categories of applicants, particularly those who are disabled. I do not think that, at the official level, the Government has been able to apply sufficient co-ordination to the range of different factors that are involved in successfully attracting more diverse people to boards. It is not a simple exercise; co-ordination at quite a high level over a number of different types of effort is required.

Maureen Watt: It has been a perennial problem. It is not something that has just arisen. I heard a radio interview on the subject a few days ago, and Scotland is doing better than the other nations in terms of diversity, although it is still not good enough.

You have identified Scottish Government restructuring as a potential risk to public appointments activity in the coming period. Will you elaborate on your reasons for that?

Bill Thomson: Yes. It may sound simplistic, but it is not. As I have mentioned in the report and elsewhere, there was a public boards and corporate diversity programme—sorry about the title. Among other things, it was a significant contributor to progress in increasing the diversity of public boards. The main factor was probably the First Minister's profile on gender balance, which I think had a very big effect, but the programme brought together quite different aspects of, if you like, Government effort. In the year or two before the one that I have just reported on, there was really quite a lot of progress in a systemic way.

It is fair to say that the proportion of disabled people on boards is higher in Scotland than it is in other parts of the UK, but it could and should be better. Part of my statutory responsibility and that of my successor is to ensure, so far as is reasonably practicable, equality of opportunity. I think that that means changing the process in such a way that it is more attractive to and easier for people from other groups to put themselves forward and to succeed in appointments. The loss of that co-ordinating programme, which has not

been replaced by anything effective in the past couple of years, is one of the contributors to the progress not being as it ought to be, I think. I had discussions recently with the relevant director general, and I understand that that will be replaced by reporting to the civil service people board, but there has been a gap of a couple of years when nothing effective has been there.

Maureen Watt: Are we relying on Government too much to do this? Should it be the boards and their local communities that make a point of advertising the fact that they want to have a broad range of people on their boards? There is always the thing about women not thinking that they can do things, and perhaps the same is true of ethnic minorities and folk with disabilities. What can we do at a local level to encourage more people to come forward?

Bill Thomson: I will ask Ian Bruce to come in on the detail, but I will comment briefly. There are some very good examples where boards have, as it were, taken the initiative, and because we have the early engagement of public appointments advisers in the process, they have been able to assist, along with Government staff, in making that more effective. There are some really good examples of that. Ian Bruce might be able to give you some.

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): It is a very astute question—unsurprisingly, given your background. It is one of the points that we have made to Government. Clearly, the Government is not capable of changing the profile of all boards in Scotland. We have done great work together in nearing the gender diversity target, but it is a bit harder to get the other groups on board. I am not saying that it is an intractable problem. It is something that we are working with the Government on, and when it works, it works really well. It genuinely is about everyone taking responsibility for what they can take responsibility for.

I will give a simple example. We have been clear about this, and we have seen a lot of changes in the area. When application packs are being put together, people are not attracted by the Scottish Government brand, generally speaking—no disrespect to the Scottish Government—but have a genuine interest in the work of the public body. That is potentially why they want to be a board member. If the board engages with the public, through social media and other means, and with its communities and stakeholders, and if all the branding around the appointment exercise clearly belongs to that public body, people will be much more attracted to apply.

A recent example, which I think is still live, is the board of the Scottish Housing Regulator. It is

doing fantastic work. There is a really accessible pack and it is running open days, because it is keen to have new members who have first-hand experiences, such as tenants of social landlords—that is the kind of group that it is targeting. It all makes complete sense and we anticipate it being successful. We have certainly seen success when boards engage in that way.

10:30

Bill Thomson: That is dependent on the board having a clear idea of what it is looking for. That is effectively done through succession planning, on which the Government has recently issued excellent guidance. The Government is trying to introduce what it calls smarter sponsorship by the sponsor department, which should encourage boards to engage in succession planning of that nature. However, that involves thinking about it sufficiently far in advance and I appreciate that some appointments occur unexpectedly.

Tom Mason: In the debate about getting ethnic minorities and disabled people on to boards, some of the problem may arise because disablement is defined in the wrong terms. Who is disabled? We are all disabled to some extent in that we are all different. Certain categories are included and others are not. How it all works has always seemed to me to be a bit of a muddle. Do you have any thoughts on that?

Bill Thomson: To be slightly controversial, I think that difference is a benefit rather than something to be classed as a disability, but I agree with the point of your question. Ian Bruce may be able to explain in greater detail, but there are issues about what data is collected and how it is used. Trying to apply a one-size-fits-all solution will not work.

Ian Bruce: All the targets in the tables in the annual report were ultimately drawn from the diversity delivers strategy. To some extent they lump people together into groups. The problem is not intractable, as I said, but it is a bit harder to deal with when it comes to things such as black and minority ethnic people and disabled people. Some of the recommendations that we have made are about disaggregating the disability figure of 20 per cent, for example, so that we and the Government have a clear picture about where people are falling through the gaps and what that might be attributable to.

There is a big difference between someone with a visual impairment and someone with mobility problems, and the ways in which a board needs to adapt to accommodate members depending on their disability clearly vary as well. Unless the analysis is done, it will be far harder to redress underrepresentation in those areas, which is why

the past two annual reports have recommended research to help us to understand what the issues are at the granular level.

The Convener: Would Elaine Smith like to ask about the gender aspect?

Elaine Smith: What I was going to ask about gender representation and underrepresentation on public boards has mainly been addressed in answers to other questions.

Do you include religion in the strands that you identify in relation to underrepresentation? Are questions asked about religion? I do not see it mentioned in the report.

Ian Bruce: Yes, we include it. The monitoring form is very extensive and covers all sorts of things, including religion. We do not report on everything that we monitor, but I am sure that we would be happy to provide the figures on anything in which the committee has a particular interest.

We get the figures from the Scottish Government and we review them. The last time that I reviewed them, I did not see any differential based on religion with regard to how people were progressing through the appointment process. I am happy to look those out for you if you feel that that is of interest.

Elaine Smith: Yes, if you could. It would be good to follow that up separately. When I looked at the different strands in the report, religion was not there and I wondered about that.

Under the sexual orientation strand, with regard to non-heterosexual applicants, the report says:

“Assess why such applicants for chair positions fare more poorly than those who declare that they are heterosexual at the shortlisting stage and at interview. Address any barriers identified.”

Do you have any more information on that?

Ian Bruce: We have asked the Government to research it and, in the absence of that research, it is not possible to provide an answer, although I would certainly like to.

Elaine Smith: The committee might want to look at that in the future.

Ian Bruce: By all means, of course.

The Convener: Thank you, Elaine and Ian—that was useful. Mark Ruskell has something to ask about appointment rounds.

Mark Ruskell (Mid Scotland and Fife) (Green): We have already covered some elements of succession planning and good practice around that, but I want to dive a little bit deeper into it.

In the thematic review, you made comments about the importance of individual board member

appraisals. Although the picture looks pretty good, you highlighted the examples of four boards in which the appraisal process is perhaps not being implemented in the best way. Are there lessons or good practice to draw on? For example, there has been a lot of public concern about the board of NHS Tayside and its comings and goings. Is there an issue with the depth of the work that is being done on appraisal by some boards and how that feeds into succession planning?

Ian Bruce: I do not think that the review demonstrated that there was an issue. It was a very small proportion of all the reappointments that we looked at. We thought that the picture was improving, and we saw clear, good evidence that appraisal was going on.

To supplement that, there is a new national health service blueprint for governance, which is a live issue for the NHS in Scotland. One of the recommendations in the review was about improving current practice. I understand that a steering group will be set up to draw in the best practice from around Scotland with a view to improving a number of areas including succession planning and the way in which individuals are appraised.

There should be a thread running through individual appraisals to board appraisals, and, to an extent, people should be brought in from outside to have a look and see whether that is operating effectively. I am aware that the Government is doing some work in that area. From our review, the picture is improving compared with what was happening before, which is heartening to see.

Mark Ruskell: We have had a discussion about improving diversity beyond the protected characteristics and in the backgrounds and experience of those who join boards. Bill Thomson mentioned that there has been a slight increase in the number of under-50s joining boards. To what extent does your work involve engaging with young people to identify the barriers to their direct lived experience being brought into the thinking around good practice? Basically, do you ask young people why they are not joining boards?

Bill Thomson: The short answer is that we do not do that. At the moment, the Government has a pilot scheme with one major employer to encourage younger staff to get interested in being released to undertake work on public boards. We do get involved in outreach work, but not specifically with younger people. Further, we do not do it on our own, because that is not our role, frankly. We support the Government in exercises that it is undertaking.

“People under 50” is quite a broad categorisation for younger people. Some of us are struggling to remember—

Mark Ruskell: Maybe it would be better to ask how many people under 30 are on the boards of public bodies.

Bill Thomson: There are, obviously, particular issues, but it should be possible to make progress in that area. One of the challenges is in making the work that boards do attractive in itself. It has come out of the applicant review that people in that younger age group are particularly attracted by opportunities for personal and professional development, and we flagged that up in our report. Another issue is that of whether the approach to assessment that is taken is rather old fashioned, involving the position that someone has held and how long they have held it rather than being concerned with their experience, which might not be in a working environment but which could be perfectly valid.

There are many issues of that nature. If they are brought together, there will be progress. As I say, there has been an increase in the number of under-50s who have been appointed, which is a good sign.

Mark Ruskell: It shows that we are moving in the right direction.

Ian Bruce: We have done some outreach work with the University of the West of Scotland and with all the colleges, which we hope to extend. That has been attached to the diversity research, as well. We are certainly trying to encourage people from a broader spectrum, as well as their stakeholders.

Although we talked to academics at the University of the West of Scotland, as they might aspire to a role in public life, there are a range of students with different backgrounds there, and we are encouraging the academics to work with their students to encourage them, in turn, to think about having a role in public life at some point in the future.

Gil Paterson: Please do not forget people over the age of 65. That is a serious request, although I declare an interest as someone who is over that age.

Bill Thomson: There is no bar to the appointment of people over the age of 65.

Gil Paterson: Thank goodness.

The Convener: The chance of forgetting someone when that person is Gil Paterson is small, but there you go.

Mark Ruskell: I have a question about the public appointments that require parliamentary approval. That involves an additional process in

Parliament, and I have been a part of such a process in making appointments to the Scottish Land Commission. Do you think that that process acts as a barrier to the diversity of applications? Some people might enjoy the opportunity to make their case in front of a committee, but that might act as a barrier to some people.

Bill Thomson: It is probably too early to say anything on the basis of the experience in this Parliament, but we do not have evidence of that being a barrier here. Research was conducted at Westminster that produced evidence of the fairly comparable—it is not identical—process there being a discouraging factor. Although I agree that some people would love the chance to say something to a committee, the process has to be related to and restricted to the criteria for appointment.

The majority of people would be slightly daunted by the prospect of having to justify themselves in front of a parliamentary committee—even one as polite as this one. The evidence from Westminster was that, although the process started off being quite constrained and contained, as time went on, committees became more relaxed about the issues that they would ask about and they got more political. Such questioning is clearly going to inhibit people who are not so minded from applying.

The other thing to remember is that, given that we are talking about diversity and attracting people from groups in society that do not identify with, first, the process of government and, secondly, public bodies—I appreciate Mr Arthur's point that those groups are not homogeneous—it is going to be particularly difficult to encourage people from those smaller and more marginal bodies to put themselves in front of a parliamentary committee as part of the process.

10:45

Mark Ruskell: Have you seen any good practice in that respect? I referred to the appointment of the Scottish Land Commission. Do you feel that the way in which that parliamentary committee went about its business can be seen as good practice?

Bill Thomson: So far, with the bodies to which this has applied, the process has been able to run within the bounds of the code of practice for ministerial appointment, but there are real risks with it. It is possible that another committee might take a different approach and not restrict itself to the criteria that were advertised at the beginning of the process. That is a big concern for me. Merit is the key principle in any appointment. If questions are asked that do not relate to the definition of merit and somebody fails on the basis of those

questions, they will have legitimate grounds for complaint about the unfairness of the process. That is what we are trying to avoid.

We are also trying to avoid what one might bluntly call political cronyism—in other words, people being appointed or not being looked at because they are either right or wrong according to which people they know. Such risks are increased. Another not particularly attractive factor is that the process takes longer.

My final point—I am sorry to go on—is this: what if the committee decides that it does not like the applicant on grounds that are not specified in the criteria for appointment? What does the minister do then?

Mark Ruskell: I suppose that the question is, what do you do then?

Bill Thomson: I do not do anything—I monitor the process. However, if a complaint comes in, I will have to deal with it on the basis of the criteria that were set out in the advertisement for the post and the code of practice.

Mark Ruskell: You are reliant on the complaint coming to you.

Bill Thomson: It is not for me to go looking for trouble.

The Convener: Thank you. I hope that this will not take us too long, but I want to move to the financial position of the commissioner's office. I know that Gil Paterson is interested in that.

Gil Paterson: There was a significant decrease in expenditure between 2016-17 and 2017-18. In many ways, your underspend looks like good news for the public purse, but can you give us some background to that decrease?

Bill Thomson: I will explain it, but the detail is set out on pages 41 and 42 of the report.

There was a major reduction in staff costs, about half—about £60,000—of which was attributable to the introduction of the new process for the initial assessment of complaints about councillors and members of public bodies. Frankly, I do not know why we did not use that process before. We used to send such matters out to investigators who were employed part time, and it took more time for investigators to do it in that way than it now takes us to do it in the office.

That was one factor. Another factor was that the number of complaints against councillors and members of public bodies, which is the biggest part of our complaints work, reduced by about 25 per cent in that year, which was the year after the election. It appears that people make fewer complaints in the year after an election, certainly about councillors and public bodies.

We also had a number of staff changes, which meant that, first of all, there were little gaps between someone who was being paid going and somebody else coming in. Secondly, the person appointed as the replacement tended to be at a lower point on the salary scale.

Between all those things, we saved quite a lot of money.

The Convener: Is that okay, Gil?

Gil Paterson: That is fine, convener. Can I move on to the issue of lobbying?

The Convener: Okay. Thank you, commissioner, for covering the financial side of things. I wonder whether we can now have a wee think about future work. Gil Paterson has some questions on that.

Gil Paterson: The Lobbying (Scotland) Act 2016 came into force earlier this year, with the issues that it covers coming under your remit. What impact has the commencement of the act had? Do you expect to deal with more cases as a result of it?

Bill Thomson: The short answer is that it has not yet had any impact with regard to the complaints that I have had to deal with. I think that that is partly due to the way in which the act was structured, with a six-month period before anything could really go wrong.

I know that, when the legislation was going through Parliament, the Parliament tried, in general, to take a light-touch approach, even though the process set out in the act is a bit of a sledgehammer to crack a nut. It is quite clunky; in fact, it is modelled on the process for dealing with MSP complaints, which is also quite clunky.

No complaints have come in. I am pleased to say that I have very good relations with the lobbying registrar and his team, so I am aware of what is going on behind the scenes. I hope that there will not be a flood of complaints; I have no reason to suppose that there will be, but it is possible. After all, a very large number of lobbyists are on the register and things could be missed. If they were missed by mistake, that will be rectified, but, if they were missed deliberately, that will be more difficult to ignore. As time goes on, there are bound to be complaints, but I cannot say how many.

Gil Paterson: You said that the system is a bit clunky. Might that be a reason for people not using it to make a complaint? Should someone look at the system for the purpose of refining it?

Bill Thomson: I do not think that that would inhibit anybody from making a complaint. However—I have said this before; it is not a new point—I do think that the way in which these

matters are handled is clunky. If the committee or anybody else were prepared to look at it, I would be delighted, because I think that it could be improved. There is to be a review of the operation of the 2016 act anyway, and the matter could be dealt with as part of that review.

The Convener: Are you finished with your lobbying questions, Gil?

Gil Paterson: I was going to go on to the next issue.

The Convener: Before you do, I just want to say that this element is important to a lot of us, given that we could be targets for lobbyists. What you have said is extremely useful, commissioner. We might come back to the issue at a later stage. As far as—*[Interruption.]* I am going to let Gil Paterson speak, because my voice has just gone.

Gil Paterson: I am struggling to make headway myself, convener, as I have a terrible cold—a man's cold. You know what men are like: we are hopeless.

My next question is very similar to my previous one, because it is about events that have happened and your involvement in that respect. I am talking about sexual harassment. The way in which sexual harassment and other types of harassment of women have been given a higher profile is a worldwide phenomenon—things have reached a crescendo—but I note that you have dealt with only one case of sexual harassment. Do you expect the number of such complaints to go up? If so, are you preparing for that?

Bill Thomson: I have no better knowledge than anybody else in this room as to whether there will be more complaints, but I think that we are already prepared to handle complaints, if they come in.

The biggest challenge will be in reaching agreement on an appropriate procedure for the handling of complaints. As you are all aware, that is quite a controversial issue at the moment. Although I am not directly involved, I am aware that the committee will, at some point in the reasonably near future, receive the report of the joint working group in this Parliament, and I would guess that that will require the committee to take views on aspects of the procedure.

For example, is there to be a time limit of one year for the submission of a complaint? At the moment, if an MSP complaint relates to conduct that is alleged to have occurred more than 12 months before the person who is making the complaint could have been aware of the conduct that is being complained about, I cannot investigate without first referring the complaint to the committee for a view or direction. I read very carefully the report by Dame Laura Cox into issues at Westminster. She argues, quite cogently, that

there should not be such a time restriction on the submission of complaints. That is a matter for the committee and others in the Parliament to take a view on. However, that may well have a knock-on effect on other complaints.

There are also difficult issues about who gets to comment, and at what stage, on the reports that are being submitted. The Scottish Parliamentary Standards Commissioner Act 2002, which covers MSP complaints, would apply at the moment if a sexual harassment complaint were to be made in relation to the conduct of an MSP. I have to allow any witness to comment on the statement of their evidence that goes into the report, and I have to allow the person against whom the complaint has been made to comment on the report before it is submitted to the committee. However, I am not required to pass the report to the person who made the complaint—which would not be acceptable under Laura Cox's recommendations.

If you are minded to go down the road of saying that both the person who is being complained about and the person who complained should have an opportunity to comment, there is a question about the stage at which that should be allowed to happen. For what it is worth—I have not seen what is coming forward—my preference would be for that to happen at the stage of findings in fact. If it happened at a later stage, when I—or whoever was in my position—had added conclusions, you might end up in the curious position of having three or more sets of views on the findings in fact, which I or my successor would have assimilated, taken a view on and drawn conclusions on, as well as at least three views on those conclusions. You would, therefore, be faced with a lot of comments and observations on the comments, which I think would probably be an almost unworkable position.

I therefore make a plea in advance that, if there are to be opportunities to comment on the investigation before it comes to you—I can see the force of that argument—it should be at the point at which findings in fact are being established.

The Convener: Thank you very much. The Scottish Parliament joint working group will give evidence at our next meeting on 20 December, and we will raise the issues that you have highlighted. That might be useful to you in feeding back to us whether such complaints are coming through.

Do members have any further questions?

Gil Paterson: I have a question not about the specifics, but about the procedures. Going back to the point about the time bar that Bill Thomson made in response to my question, I would point out that the time bar is a feature of Scots law. Should there be some change in the architecture

of an investigation—not specifically on sexual harassment; I am talking about across the board—in relation to the seriousness of a complaint? Should there be a differential between certain types of complaints or should there be definitions of seriousness that might affect the length of time involved?

11:00

Bill Thomson: That is a very fair question. It is quite a difficult issue, in part because of the problem of definition. We can talk quite easily about serious complaints, but we could have endless arguments over whether something is sufficiently serious to be treated differently from something that is less serious. That is a real issue, and drawing such a distinction would be a problem for this committee—or for the commissioner, if it was the commissioner's responsibility. You would probably never be finished dealing with challenges to the decisions that had been made. As someone with a legal training, I would ask: if the process is good enough for one category of complaint, why should it not be good enough for another category?

One might argue that sexual harassment is a category on its own. I am not diminishing the importance or seriousness of sexual harassment—far from it. In fact, quite the opposite is the case. However, there are other serious issues that might be the subject of a complaint, and I do not see why the rules for two different types of complaint should be different. After all, we are talking about natural justice and being fair to the person complaining and the person against whom the complaint is made.

Another thing that you will probably find yourselves wrestling with is whether the process is an investigation or an adversarial process. Some of the arguments that I have read in the press as having recently been made in the House of Lords confuse the two things. At the moment, the investigatory process is conducted by me—or whoever succeeds me—and is then reported to you. You do not have the kind of properly adversarial process that the Standards Commission for Scotland has in dealing with complaints about councillors. The rules of engagement are different according to whether you have an investigation or an adversarial process—or some amalgam of the two, which is what we have here. These are quite difficult issues that will have to be addressed.

The Convener: I do not know whether he is going to address those issues, but Jamie Halcro Johnston wants to ask a quick question.

Jamie Halcro Johnston: It is about the key risks for the commissioner's office in 2018-19 as

set out in the annual report. I am interested in the risk you describe of

"The Commissioner's systems"

suffering

"a significant cyber-attack."

Given the nature of some of the things that we have been talking about today, how confident are you that the systems will be in place to ensure that this information, which can be very sensitive, is protected?

Bill Thomson: We are doing everything that we can. We have already achieved the Government's cyber essentials accreditation for the security of our system and we are trying to achieve what is called cyber essentials plus accreditation. We have been trying for weeks now and, ironically, the external body that is assessing our cyber security apparently cannot get into our system to test it. I find that quite a relief, in a sense.

Jamie Halcro Johnston: Do you think that that is a good sign?

Bill Thomson: I think so, but I am not complacent about it at all. We are very well aware of the issue, and we are doing everything that we can to make sure that we are as well prepared as we can be.

The Convener: Thank you very much. I think that you both stood up to the rigours of our questioning extremely well. I thank Ian Bruce for coming along and for the in-depth discussion that we had, and I would particularly like to thank Bill Thomson as the Commissioner for Ethical Standards in Public Life in Scotland, as this might well be the last time that he appears in front of this committee. As a committee, we would like to thank you for all your work as commissioner and we wish you all the very best for the future. Whatever you do, you will always be welcome back here.

Bill Thomson: That is very kind and it is much appreciated. Thank you.

The Convener: We will suspend for a moment so that our witnesses do not have to charge out the door.

11:04

Meeting suspended.

11:07

On resuming—

Cross-party Groups (Annual Report)

The Convener: We have two more items to get through, one of which is item 4, which is in private.

Item 3 is consideration of an annual update on cross-party group compliance with the code of conduct. At the moment, there are 106 cross-party groups, and as members will see from the report, compliance with the code is high. Are there any comments from members?

Elaine Smith: It is good that compliance is high. Would it be worth asking some groups that have not submitted an annual return in time to explain why they have not done so?

The Convener: That is a good point. We have an annual monitoring report, and we want to make sure that we take that monitoring seriously. If some of the 106 groups—which is a lot—are not meeting the compliance standards, we should take that issue forward. Perhaps we can bring the issue back at a later meeting when we might have a chance to look at it in depth. Is there anything else that you have pulled up that you want to discuss at the moment?

Elaine Smith: No. All I would say that is explanations are often given but when an explanation is not given, we should ask for it. Most of the groups do give explanations that are perfectly reasonable and understandable, but where there is no explanation, the onus is on the committee to ask for one.

The Convener: As we know, our clerking team is very strong on ensuring that people comply with the code and chases people up if there are issues. We know that three groups have folded recently, but they had decent reasons for doing so. Our clerks are very much on top of the issue, but we could bring the report back if there are any specific issues that might not have been covered in people's responses on why they might not be meeting the code.

Can we note that, Elaine?

Elaine Smith: We should also thank the clerks for their work in making sure that members who are conveners comply, but things are often difficult when they have busy timetables. As I have said, there are often good and understandable reasons for these things, so we should put it on the record that the clerks do a good job in alerting cross-party groups and making sure that they comply.

I am happy to note the report just now.

The Convener: We would all go along with what you have said. As far as I can make out, the clerking team has been pretty successful in its efforts. We can have a wee look at the situation on our own behalf and see whether there is anything that we would like to raise.

Are there any other points?

Maureen Watt: A group should provide clerks with 10 calendar days' notice of meeting. I can see that, when clerks are not informed, that might be an oversight, but I get the impression from my inbox that MSPs often do not get 10 days' notification either. Something needs to be done about that. People need to be aware that it is not acceptable just to say, "There's a meeting of such-and-such cross-party group tomorrow night."

There are also those who seem to think that it is okay to always meet on a Thursday night. That is not acceptable to me, anyway. Groups should not always be on a Thursday night—they need to meet at different times.

The Convener: We could certainly put those well-made points to the groups, and we can notify them of their responsibilities to ensure that their MSP members are taken into consideration and not taken for granted when meetings are set up.

With those useful comments, we will take the issue forward. Most groups are aware that members have a lot of other issues and items to attend to, including other cross-party groups, but it does no harm to make everyone aware of their responsibility for ensuring that the groups carry out their duties and meet their MSPs. We do not want to make it difficult for MSPs, particularly those who come from some distance away, to meet their groups.

Tom Mason: Is there a one-sheet guide to what the groups should be doing?

The Convener: It is all set out in the code of conduct.

Tom Mason: Is it readily identifiable?

The Convener: I personally do not know that. We will let members see what the code of conduct actually says, because I am as guilty as anybody of not looking at it. We will then be aware of what is in it, and we can draw on our experience as MSPs to look at what requirements are not being met by the cross-party groups and then help them meet their duties.

That discussion went faster than I expected, but it was worth having. I thank the clerking team again for the annual monitoring report, which requires a lot of work. Now that we have it, we can take those items forward.

11:15

Meeting continued in private until 11:23.

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