



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 9 September 2021

Session 6



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
2nd Meeting 2021, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

*Paul McLennan (East Lothian) (SNP)

*Edward Mountain (Highlands and Islands) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Ian Bruce (Acting Commissioner for Ethical Standards in Public Life in Scotland)

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Standards, Procedures and
Public Appointments Committee

Thursday 9 September 2021

[The Convener opened the meeting at 09:30]

Decision on Taking Business in
Private

The Convener (Martin Whitfield): Good morning, and welcome to the second meeting of the Standards, Procedures and Public Appointments Committee.

Our first agenda item is a decision on whether to take the final agenda item—item 4—in private. Under that item, we will consider the evidence that we are about to take from the acting Commissioner for Ethical Standards in Public Life in Scotland. Do members agree to take item 4 in private?

Members *indicated agreement.*

Commissioner for Ethical
Standards in Public Life in
Scotland

The Convener: I thank Ian Bruce for joining us. Ian is the acting Commissioner for Ethical Standards in Public Life in Scotland. If it is all right with you, Ian, given that we have already had the pleasure of talking to you and reading through your report, I would like to go straight to questions from members, two of whom join us remotely. Members who have any follow-up questions should indicate that to me and we can take it from there.

The first question comes from Bob Doris. I am not sure whether he can hear us. Are you all right, Bob?

Bob Doris (Glasgow Maryhill and Springburn) (SNP): —*[Inaudible.]*

The Convener: We can see you talking, but we cannot hear you. I will pass over to Paul McLennan to ask his questions, and the broadcasting team will get back to us about your connection. I am sorry about that.

You are up sooner than we thought, Paul. Over to you.

Paul McLennan (East Lothian) (SNP): Thank you, convener. It is good to see you back again, Ian. This leads on from a question that was asked last week about the revisions to the “Code of Practice for Ministerial Appointments to Public Bodies in Scotland”. Will the revisions support the improvement of training and support? In what way do you think they will do that?

Ian Bruce (Acting Commissioner for Ethical Standards in Public Life in Scotland): That is a good question. Good morning, convener and members. Thank you for giving me the opportunity to talk about the work of our office today in public. It is very much appreciated.

My bailiwick covers the appointments process. Once people are in post, in effect, my involvement ends. That is not to say that I do not take considerable interest in the development and support of board members—I certainly do—nor is it to say that the Government has not worked with me and with other stakeholders to discuss such matters with a view to improving the overall journey of applicants and, ultimately, once they are appointed, board members. I am able to provide some information on that, although the extent to which the code might be prescriptive about board support is debatable from the perspective of the Scottish ministers, given that the provisions of the Public Bodies and Public

Appointments etc (Scotland) Act 2003 restrict me to the appointments process itself.

It might be helpful to give you some information on the sorts of activities that are currently under way and where we dovetail with those. The Scottish ministers have established—this has been the case for some years now—new board member induction events, which take place three times a year. Currently, they are being held online. They were previously held in person, and I anticipate a return to that, in due course. New board members and chairs receive a presentation from a minister about the aspirations of the Government for boards and the way in which they ought to work. They receive a talk from a representative of Audit Scotland about governance on boards and financial accountability. They also receive a talk from me. I have agreed that we will run our next talk jointly with the Standards Commission for Scotland. We talk about the code of conduct for members and the ethical standards to which they are expected to adhere.

Board members also get talks from sponsors, who provide the direct link between ministers and boards, and from the public appointments team and the public bodies unit. Centrally, the public bodies unit has responsibility for the activities that you have expressed an interest in. It has created a governance hub for members with a private area. There are resources on that hub that cover things such as succession planning.

Over and above that, I am also a member of a steering group for national health service improvement. Although its remit is wider and encompasses the topic that you have asked about as well as appointments, the activity there was discussed at a meeting this week, and the public bodies unit came along to talk about the work that it is engaged in at the moment, which is around increasing board members' and chairs' understanding of diversity and the difference that that makes to the governance of boards. That is a very important topic.

How did that arise? Our office, the Scottish Government and Inclusion Scotland, which is an organisation that represents disabled people, worked together on a project for disabled people who had an interest in becoming board members. That was a two-way street, so the Government and boards—the people concerned shadowed current boards—learned a great deal about the experience of disabled people and how they might adapt their practices to be more inclusive. On the back of that, training is to be rolled out—we heard about that just this week. I am sure that the public bodies unit would be more than happy to provide more information, and I would be happy to provide contact details.

Paul McLennan: Thank you for that. I have a supplementary question. Is there a formal process in place for new board members to give feedback on their induction and their on-going training? Is there a stage—after, say, three months, six months or a year—when they can feed back and, if the feedback is positive or negative, that can be amended or changed? Is there a formal process whereby board members have that opportunity?

Ian Bruce: That is a very good point. I think that the code is potentially engaged there. We anticipate that members should not be reappointed unless they can demonstrate not only that they have the skills, knowledge, experience and so on that are required by the board at the time, but that their performance has been effective. We have previously audited that, and we established that the practices were quite good in that area. If you feel that the code could or should be more prescriptive in that area, you should certainly consider that in coming to a decision about responding to the consultation.

The Convener: I understand that the sound is back up and running. If I go back to Bob Doris, it might give those who are watching a more holistic picture of what we talking about. With trepidation, I hand over to Bob Doris.

Can you hear us, Bob? We cannot hear you. He can hear us, but we cannot hear him. We are clearly having technical difficulties.

Without stepping on Bob Doris's toes, I will ask a question. Today, we are discussing the revised code of practice and our response to it. One of the purposes of the code of practice is to hold ministers to account. How will the revised code do that without stifling innovation through overprescription? There has been a lot of discussion about overprescription in the code and the accompanying notes. Will you explain that to us? More importantly, will you explain your view of how the recommendation on the code, which seems to be opposed by some people, was reached?

Ian Bruce: Is there is a particular recommendation that is of concern?

The Convener: It is really just a generic question about whether the revised code of practice can successfully hold ministers to account, bearing in mind the counterbalancing factor of the complaint that, if the code was overprescriptive, it would not work.

Ian Bruce: I am happy to take that view on the chin but, equally, it is clear from the analysis of responses that something had to change. I said this to the committee previously and I am happy to put it on the record again: I think that the current Administration has done very well in respect of public appointments with the achievement of

gender parity on boards. That is an incredible thing to have achieved, which is great, but there are areas in which no progress or very little progress has been made. The rate of progress is terribly incremental and, in some cases, we have gone backwards on occasion. Practices, as they stand, have not led to our meeting our joint aspirations.

You spoke about holding the Government to account, which is right and proper. A proportion of what I see on appointment rounds—I say “I”, but I am talking about the advisers I allocate, who report to me—does not represent good practice. Yes, the code’s requirements are met, but it is not good practice. We know, and the Government knows, that it is capable of exceptionally good practice. We have lots of case studies on our website that demonstrate that the Government does that.

I understand and accept that there is an argument that the code should not be prescriptive, but I believe that the provisions that I have included in it, which are about evidence-based decision making and ensuring that good practice is used on each occasion, will make a difference. I see that making a difference on a round-by-round basis.

It is also worth saying that it is possible for the commissioner to not set aside but relax any provision in the code—that is built into the code itself. If ministers want to take a particular approach that they believe is innovative but that is not currently covered by the practices or would appear to be precluded, as long as it is compatible with the principles, I am more than happy to set that particular provision aside. You will see from my annual reports that I do that very frequently. I am very pragmatic and I have encouraged innovation, alongside my advisers, for years and years. From my perspective, there is nothing in the code that precludes the Scottish ministers innovating. If they have any ideas that are compatible with the code, I would be more than happy to consider them and to set aside the provisions as I have done, and as my predecessor has done, historically.

The Convener: Do you feel that the criticism of being overprescriptive is unfair because, within its own confines, the code allows for innovative thinking? As you say, the approach, which is based on the very foundations of the code, is about getting the right person in the right place, and the code would allow that to happen.

Ian Bruce: I would suggest that it is already incredibly flexible. Indeed, I would go further than that: the code encourages innovation and good practice, as well as enabling it. I have gone further on this occasion in relation to the Scottish ministers having plans for individual appointment

rounds and nationally, and for all of that to end up in the public domain. The committee will be aware that I am particularly interested to know what ministers would like to see in order to give assurance to the committee and to the wider public that the Government’s plans are sensible, smart and achievable, and that they will achieve their objectives. Where they do not work, we need to be made aware of that, as well. I do not think that my reporting annually is sufficient at the current time.

The Convener: I am grateful for that comment. Are you back with us, Bob?

Bob Doris: Hello.

The Convener: Hello, Bob. Excellent. We are up to question 2. I am not sure how much you have managed to hear.

Bob Doris: Although I am not responsible for the information technology, I apologise for the inconvenience to fellow members and the commissioner.

I think that I heard the convener ask a question that I had been going to ask about the conflict between being prescriptive, to achieve good outcomes in diversity and to ensure best practice, and the flexibility and innovation that the Government had said that it wanted. I think that you got some good stuff on the record in relation to that, convener, so there is no need for me to ask about it. That is what I picked up from the bits of sound that I could make out.

09:45

I will ask the follow-up question. Will the revised code help with finding a balance between achieving diversity—we want diversity to be achieved, of course—and ensuring that boards retain their range of essential skills? As well as achieving diversity from the point of view of protected characteristics, including people from various income backgrounds—it is good to hear what you have said about that—and having a diversity of opinion and views, we need people to have the relevant skills. There can be a tension between achieving diversity and getting the relevant skills. How do we get that balance?

Ian Bruce: Again, that is a good question. I encourage members to think about diversity in two ways. This is an on-going dialogue that we have had with the Scottish ministers, officials and boards themselves. There are two aspects to diversity. You mentioned specialist skills, but they do not necessarily have to be specialist. From my perspective, what matters is a board’s needs at a given time. Boards need different experience, different skill sets, different types of knowledge, different backgrounds and different perspectives.

That is the first aspect of diversity. The second aspect is protected characteristics—the demographics. Is there a tension between the two? There is not necessarily a tension, but a decision about how to plan for succession will have a knock-on effect on whether, and how, diversity of protected characteristics will be achieved.

I will use an example. Let us say that an NHS board decides—this has been piloted recently, so it is a live example—that some form of digital transformation that will assist with its service delivery is absolutely vital. That will be the skill set that it will look for in order to plan for succession. The demographic of people who have that knowledge will be different from that of the general population. Immediately, the board will be looking at what we classify as younger people. We know that there is a dearth of younger people on boards, but people under the age of 50 are more likely to have the up-to-date skills and knowledge—the right skill set on digital transformation—than over-50s are. Therefore, it will be known immediately that, potentially, there will be a change not only in the board's diversity in terms of knowledge of digital transformation but in its composition as regards the age of its members overall.

That same argument applies each and every time the process is undertaken. Sometimes, a particular skill set will be sought. It might be human resources related. We know there are more women than men working in human resources, so that will have an impact. Certain professions tend to be less diverse—for want of a better expression—in demographic terms than others. In that case, it is incumbent on the Scottish Government and its officials to take positive action measures. If there is only a limited pool of visible ethnic minorities in a given profession and that is the profession that you are looking to fill your board's position from, you will know that you need to reach out and target people who have the protected characteristics that you know are currently underreflected.

Bob Doris: Thank you. I will let other members come in. I again apologise for the disruption at the start of the meeting.

The Convener: That leads us on to Paul McLennan's area of interest.

Paul McLennan: Yes—it leads on to my question. The "Diversity Delivers" strategy is important and was the first equal opportunities strategy on ministerial appointments. I understand that a change to primary legislation is needed if it is to be updated. What process would that entail?

Ian Bruce: I think that it would be relatively straightforward. It would be for the Government to bring forward measures and for this committee to

consider those. Today, we are talking about revision to the code of practice. There are already straightforward provisions in the Public Appointments and Public Bodies etc (Scotland) Act 2003 that say that the commissioner is to keep the code under review and may, from time to time, revise it subject to consultation and approval by ministers and Parliament. There is no equivalent provision for the strategy.

The Convener: You mentioned your annual reports, but what would be the advantages of placing annual planning and reporting requirements on the Scottish Government? Would that not be too onerous?

Ian Bruce: The Government already does that to an extent. It has a three-year public appointments plan held centrally that sets out all the things that it is going to do. I think—I assume that the committee would also think this—that the Scottish ministers would want their officials to have that in place because, at the end of the day, we have objectives and we know that we are not going to achieve them simply on a round by round basis.

That is what "Diversity Delivers" told us. We did all the research, we worked alongside the Government and the report made recommendations about national campaigns. How much public awareness is there of the positions? Do people really see themselves as potentially being in the roles? I am not sure that we are in that space in which people see being a board member as civic participation, with the potential to make a real difference to their communities.

We all expect the Government to have plans in place, and those plans are in place. I am not asking the Government to do any more than it is already doing. I am suggesting that we put it on the face of the code that the Government should have plans in place and everyone should have access to them. We should know what the Government has planned, and people should have an opportunity to comment on that. None of us has all the answers to everything, and I think that it would be very helpful if all of that was in the public domain.

We spoke earlier about the accountability of the Scottish ministers. We need to know whether the plans have been successful. If they have not, let us have a look at them again next year and see what the Government might do differently to achieve the objectives.

The Convener: As part of spreading the understanding of board roles across Scotland's civic society and beyond, an annual publication will always give the advantage of press interest in these events. If people understood more of what the roles on boards were, perhaps we would see a

wider pool of people putting themselves forward. Is that fair?

Ian Bruce: Absolutely.

The Convener: With fingers crossed, I am going to come to Edward Mountain.

Edward Mountain (Highlands and Islands) (Con): I think that it has worked—I have unmuted.

Good morning, Ian. I have been hearing you and I hope that you can hear me. I have a series of questions. The first one is a simple yes or no question. Do you think that there is a problem in Scotland with serial board members?

Ian Bruce: No. I am happy to elaborate if you want me to.

Edward Mountain: That is interesting. Maybe I can just make a comment. Yesterday, I was doing a bit of research, as you would expect, and I looked at one person who for 31 years has sat on boards across Scotland. I think that the person has been on six or seven boards and currently chairs two. They would appear to be a serial board member. Tell me why you do not think there is a problem.

Ian Bruce: I think that there is a problem—the convener spoke about it just now—with people's understanding of board roles and willingness to put themselves forward. That is about the pool of potential applicants. If people are not aware that they will be treated fairly and that there is potential for them to serve, they will not put themselves forward. My role is about providing assurance and saying, "If you want to put yourself forward, by all means apply and you will be treated equitably." The issue that you have just described to me is based on something else entirely—it is about how ministers traditionally have defined merit and, in some cases, continue to define merit.

Those two things are interlinked. If you keep asking for the same thing, the process will keep delivering that same thing. For example, if you say, "I'm looking for someone with experience of chairing boards"—that is quite unusual, but it is a very narrowly defined skill set—the likelihood is that someone who has done it previously will be more successful than others who apply in competition with them. That is the issue.

I know for a fact that my predecessor prior to my immediate predecessor discussed that with ministers—this is going back about five years now—and we came up with guidance that has been helpful. We said, "If you have particular priorities for a new board and the sort of person that you want to lead that board is different from what you have been used to, it is up to you to specify that." On occasion, we see very different appointments to boards because ministers have taken the time to do that. For example, the head of

the Poverty and Inequality Commission had never held a board position previously, never mind chaired a board, but the particular attributes that the minister was looking for on that occasion led to a different appointment.

It is worth saying on the record that we are talking about ministerial appointments. It is not for me to determine who should or should not be appointed; it is for ministers to say, "This is what I need for this board." Statutorily, that is their role. I cannot say that there is an issue with that, because it is up to ministers to determine what they need. However, if ministers want more diverse boards and people who have not held lots of roles previously, the way to address that is to ask for something different.

Edward Mountain: I take your explanation, but to me it is a very small pool and the people in the pool keep getting picked. I would not accuse them of wanting to be serial board members but, if someone has been a board member for 31 years, they are obviously doing something. I can give other examples. One person morphed from the Deer Commission for Scotland to Scottish Natural Heritage to Scottish Water. Just as one appointment expired, they seemed to pop up in another one. Expanding the pool might be the answer, and I am sure that the convener will push on that.

I have a further question to do with ministerial appointments during the previous parliamentary session. I sat on various committees that were given the chance to interview people who were being appointed by ministers. I have to say that it was a tick-box exercise. Do you have any evidence of the Parliament ever rejecting somebody, and do you think that the parliamentary committee system of interviewing people who are appointed by ministers is sufficiently robust to ensure that ministers do not shoehorn in the person they want?

Ian Bruce: That has certainly not been my experience at all. I can only talk to those ministerial appointments requiring parliamentary approval that are regulated. I do not know what your experience is, but, on every occasion that a new regulated appointment was to be made, the people were interviewed by the parliamentary committee. What I have sought to do—perhaps slightly ultra vires for me—is to engage meaningfully with every parliamentary committee, as I am sure Mr Doris will be able to verify. My view is that the Parliament decided that those appointments should be subject to parliamentary approval for a reason and that whomsoever is appointed to those roles has to meet ministerial and the Parliament's ambitions for the person who is sought. I have more than encouraged the Scottish ministers—I have actively encouraged

them—to consult meaningfully with the committees on their plans before anything ends up in the public domain about what is required for the roles.

The system here operates very differently from the way in which it operates south of the border. It is absolutely vital that the Parliament is properly consulted on those roles, which is why I have proposed putting that on the face of the code.

10:00

Edward Mountain: Are you aware of any circumstances in which somebody has not been approved by the committee that has interviewed them? One of the problems is that, because the committees are appointed and run on the d'Hondt system, there is a natural bias towards the Government, as you are aware. In the previous session of Parliament, the examples that I saw and took part in were perfunctory.

Ian Bruce: I am very sorry to hear that, if that has been your experience. As I say, it has not been mine for regulated appointments, but I do not know what goes on in private session. All that I can guarantee you is that, for appointments in which my office has been involved, the purpose of having the ministers meaningfully engaged with the committees is to ensure that those committees have a say in the type of person that will be appointed. In those cases, when the best candidate is put up, I anticipate that the committee would inevitably say, "Well, that is exactly what we asked for," so why would the committee want to reject them? That is very different from a situation in which there is no engagement during planning, in which case I would quite understand that a committee might say, "This is not the person we were looking for at all." However, that is not the reality from my perspective.

Edward Mountain: Thank you. I think that we may have to agree to differ.

The Convener: I just want to get an answer on that. Are you saying that you are not aware of a situation in which a committee has said no to a proposed appointment?

Ian Bruce: Just to be clear, I am not aware of that in relation to regulated appointments.

The Convener: So it is in relation to those very specific areas that committees involve themselves in.

You have talked about the very small pool in which people go fishing for board members. Are you confident that the revised code can break that dam or widen the pool?

Ian Bruce: The code encourages and enables the practices that will achieve the objectives that

we want to achieve. Assuming that everyone I am consulting agrees that this is an appropriate way forward, it will include provisions that mean that the Government has to be transparent, so that national activities can and should take place that will encourage a wider pool of people to come forward. With the code, I cannot guarantee that any of those things will achieve those objectives. My powers are limited: I can draft a code that can require certain things of the Scottish ministers and their officials, I monitor how they do against that, and I then report to the committee. That is the system.

The Convener: Are you confident that the amended code will facilitate that if the intention is there?

Ian Bruce: Yes, I believe so—absolutely. In particular, the requirement for an annual plan will do that. If we want to go further and ensure that the likelihood of success is much higher, a refresh for "Diversity Delivers" is also a requirement. That would take us beyond what I have put on the face of the code.

The Convener: Absolutely. I understand that Bob Doris has a supplementary comment.

Bob Doris: The commissioner has probably dealt with the issue in his exchange with Mr Mountain. I just wanted to put on record that it might be worth seeking information on the role of the Social Security Committee in the previous session in relation to the appointment of commissioners to the Poverty and Inequality Commission. I do not want to tie up the meeting with this, but that might give a real-life example of a committee not going through a tick-box exercise or jumping through the hoops but, instead, having a dynamic and practical process.

The Convener: Thank you. That has been raised by a number of people as a fine example of how the process should work. You are right to put it on the record.

I now turn to Alexander Stewart—thank you for your patience, Alexander.

Alexander Stewart (Mid Scotland and Fife) (Con): Commissioner, you have given a very broad view this morning of your intentions with the code and how you want to encourage individuals to come forward and boards to be much more diverse. I think that that is starting to become a reality now.

It is also very important that we try to get the best individuals and that there is a good calibre of candidate coming forward, but not all candidates will succeed. Looking at those who do not make it, what are you doing in the code to look at what happens to candidates who go through the process and fail? Are they encouraged to come

back? What role do you have in that? You have talked today about how you are very involved in the application process, in which those individuals progress only so far. It would be good to get a flavour of what you are trying to do there and how you are revising the code to encourage people to come back.

Ian Bruce: Absolutely—again, that is a very good point. We track how people get on in the process and we report on that in our annual report. It is fair to say that people from certain backgrounds are less successful than others when they apply, and that is an issue. It is something that I hope to tackle head on. I have revised the code to include a new principle. It is entitled “Respect” but, fundamentally, it is about customer care for applicants. It is about treating them respectfully for making an application and for taking the time to apply, and the intention is that, when they have been unsuccessful, they will get meaningful feedback about why they were unsuccessful as opposed to a template letter.

I understand that that has resource implications, but I think that it is very important for people to understand why they did not do as well as they might have done and what they might do differently the next time to improve their chances of success.

Alexander Stewart: There may be an interview in which a candidate goes in front of a number of individuals, but there is usually an application form to complete as well. How do you encourage and support individuals to fill in that form? I know from seeing such forms in the past that they have a one-line question that applicants are expected to write maybe 300 or 400 words in response to. That is the topic and the style, but that style can sometimes be quite restrictive as to what individuals can say. How are you planning to broaden the whole idea of that to ensure that the application form and the interview are much more aligned? Sometimes, they can be quite rigid or stuffy, and people do not feel comfortable in that environment. How do you change that?

Ian Bruce: Again, that is a very good question. The application and assessment methods have always been the responsibility of the panel. The code is being revised, and my suggestion is that, ultimately, it is the chair of the panel on behalf of the Scottish ministers who is responsible for ensuring that every appointment round delivers. We expect the chair to design application and assessment methods that will meet the objective. The revised code talks about an individual plan that the chair of the panel is responsible for writing, which says, “These are the methods that I am going to use and this is why I am going to use them, because I know that they will deliver.” Then, at the end of the appointment round, the chair has

to say whether or not they have been successful. That revision will fundamentally make a difference.

Alexander Stewart: The standard or template that you are putting together will give them the opportunity to develop that. Is there also the opportunity for things to be expanded in different boards when they are looking for different people? If the criteria are too rigid and people do not fulfil the criteria, they are bound to fail, but if the criteria are widened and people feel that there is a bigger opportunity to develop that, that may encourage more people to progress.

Ian Bruce: Absolutely, but we need to take a step back there, because that is a ministerial responsibility. The minister says, “This is what I need for that board,” and sometimes it will be quite narrow and sometimes it will be very wide—it depends on what is being looked for. Let us say that a national health service board is looking for someone who has experience of accessing the services from the perspective of someone who is underprivileged or who faces barriers in healthcare. It will be looking at a wider pool than when it is looking for the chair of an audit committee, inevitably. That does not mean that those are different classes of board member—they absolutely are not; they both have an important contribution to make to the thinking of the board overall. However, that is a ministerial responsibility.

Once the minister has said, “That is what I want,” it is incumbent on the chair of the panel to adopt good practice and to use methods that are suitable for those people. Given the examples that I have just used, we have—and we have had for years—good-practice advice on our website about all the range of different things that panels can do, but quite often it is easier, because of resource constraints or time constraints, just to go down the tramlines and do what they did the last time.

We are trying to be transparent in saying, “These are your decisions to make, but they will have an impact.” If you were looking for the chair of an audit committee, what would you do? How would you assess someone? You would give them a balance sheet, present them with a board paper that was directly relevant to that role and get them to give an assessment of it. If you were looking for someone from the other background—the user background—you would want to make it as accessible as possible, which might not be about an application form at all. The code does not require an application form. We need to gather people’s demographic data and we need to know where they are, but it could be a wee letter in which they describe themselves and their experience of accessing healthcare. That is absolutely fine. That is what the code anticipates, whether or not it happens all the time.

The Convener: I am going to swap hats slightly now. We also want to take evidence from you on your strategic plan for 2021 through to 2024. We have had the benefit of looking at that and, again, the members have questions. I will take the privilege of convener and kick off and ask for an explanation. The words “case” and “complaint” are used a lot. Could you explain the difference between those terms, or could you give the definition of what a complaint is for the purpose of the numerology that we see in these reports and explain how it becomes a case?

Ian Bruce: Yes. I am working on the assumption that we are talking about MSP complaints and cases, although the way in which we operate applies very similarly for board member complaints and those relating to councillors.

A complaint is a single complaint from a single complainer about a single member. A case is where multiple complaints may have been made against a single member or potentially, in some cases, multiple complaints have been made about multiple members. Where those share similarities, we group them together into a case and deal with them as a case. It is about our being consistent as an office. Everyone deserves consistency from us.

If lots of people have made a complaint about an instance of a particular type of conduct that is of concern to them, we will put them all into the same case and the member will know, because the obligation under the act is that we will let them know the names of those who have complained and the nature of those complaints. We group complaints together if they are all very similar. That is the way it works.

I am not going to talk to our annual report, which is yet to be laid, but I can talk to last year’s if that helps, just to give you an example.

10:15

The Convener: It would. To clarify in my own mind, in essence, a complaint is when someone corresponds with you about an event that they wish to complain about.

Ian Bruce: Indeed.

The Convener: Then, in some circumstances, that will become a case in its own right as a one-off and there will be a response made by whomever the allegation is made against. However, there are occasions when there are a number of different complaints, perhaps from a number of different sources, and, for the purposes of reaching an equitable and legal conclusion, it makes sense to deal with them together, and that then becomes a case. When there are large numbers of complaints and smaller numbers of

cases, it is not that things have vanished; it is that they have been brought together for the purposes of justice. Is that right?

Ian Bruce: Absolutely.

The Convener: Okay. I will move on, which will probably help to facilitate discussion of what you intend to do. There has been an increase in the number of admissible complaints that you receive. Are you in a position to express a view as to why that number is going up? What would you like the committee to know, from your point of view, about why it is going up?

Ian Bruce: I said that I would give an example from the last time our report was published. It looks as though, from the figures, there was a significant rise in the number of complaints—that is setting aside cases; I know that there was a rise in the number of cases, but it fluctuates and the numbers are relatively small, so I do not think that we can draw conclusions from that annual report. In the particular case, which I handled, 67 members of the public all complained about a single tweet by a member, so you can see that something that is relatively straightforward can lead to an apparently significant increase in the number of complaints. Generally, though, there is a trend—it is fair to say that this applies not just to MSPs but equally to councillors under section 7 of the code, about treatment of others—in complaints about how members treat others, particularly under the respect provisions.

I am not convinced that the rise in the number of admissible complaints is significant at this point. You have asked what the reasons behind the rise are. I think that, for the past year and a half, people have had a lot of time on their hands and there is an exponential rise in the way in which members engage with the public via social media. These are important factors that the members may want to take into consideration.

The Convener: It is not a simple process of things getting worse. It is more complex than that and there are more nuances in it, but it is interesting that you have seen a rise in a particular view that people have of the respect that, in essence, citizens are showing each other in this place, in councils and elsewhere. Do you think that the figures are sufficient to make a strong conclusion that that is where it is going, or do we need more time?

Ian Bruce: I think we need a little more time, but not a great deal. I am monitoring that situation very closely and, as members will be aware from the strategic plan, I have staffed up because I do not anticipate diminution based on what I know at the moment.

Paul McLennan: I have a little bit more to discuss and ask you about in this area. The

changes to the code have been in place since late 2019, but the revised act was passed only last year. I think that you touched on the question of whether the changes to the code resulted in an increase in the number of cases. Do you think that the 2021 act will result in a further increase in the number of cases?

Ian Bruce: Potentially. It is fair to say that it has not been my experience that the change in the legislation or the changes in the code have led to a rise—they really have not. I am not sure what will come forward, but it is incumbent on me to prepare for it. That is what I have been doing and am in the process of doing.

It is also fair to say that, if a number of cases of this nature—for the record, so that people are aware of what we are talking about, they are historical cases involving sexual harassment or bullying by members—came before us, even if it was a relatively small number, the complexity involved and the time involved in investigating those properly to a conclusion would be high.

Paul McLennan: On that point—and this might be anecdotal—when complaints and cases come in, does the member of the public who is complaining understand the details of the 2021 act, or does the complaint come in and you then have to say that it relates to paragraph 7 or whatever of the code of conduct? Do complainants quote the act? I am just trying to get an understanding. Is there a better understanding of the code itself or is it just that, as you said, people have had more time and send in something general that they think is out of order? I am trying to understand the balance.

Ian Bruce: In the majority of cases, the member of the public is not familiar with the code and is certainly not familiar with the legislation. We absolutely must be even handed as an office, but, equally, it is all about public trust and confidence, so we enable people to make complaints if they have fallen at the first hurdle. If they do not understand the act and the code—which is perfectly understandable, because those are quite complex things that members themselves struggle with—that is not an issue from my perspective. My role is to help them to understand, in very simple terms, whether the code or the act is engaged and, if not, why not.

Paul McLennan: I take it that there is appropriate feedback. If a case or a complaint comes in, there is feedback as to why it not possible to go any further.

Ian Bruce: Absolutely.

Paul McLennan: You do not want facetious complaints coming in. If there is that feedback to members of the public, and if they understand it, that is an important part of the service.

Ian Bruce: Absolutely, and it is important for members, too. Everyone needs to understand what the view is and why I have reached the decision that I have reached. That is very important. I go beyond that: I always add an offer to discuss the decision if people would find that helpful. Again, that offer is open to complainers and to members. It is important that they understand and that I am transparent about my decision making and how the code and the act are applied.

Paul McLennan: Thanks for that.

The Convener: I now hand over to Bob Doris.

Bob Doris: I am going to move on to another line of questioning, but I offer a brief reflection. Commissioner, I think that, in the way that you are navigating these questions, there is a diplomatic corps job for you as well as a commissioner's role.

If you want to reflect on this, that would be interesting. Clearly, the role of the Commissioner for Ethical Standards in Public Life in Scotland should be about making sure that the public are aware of your office, that they can complain to you if they believe that those ethical standards are not being met and that the process is open, transparent and accessible. The more effectively your office does that, by the nature of things, the more complaints will come in that may not meet the criteria or that may be inspired by an individual tweet or a campaign for people to complain about an individual MP, MSP or whatever.

I think that you are in a very difficult position, because, even if you were to get many more complaints coming in that were not upheld, that might be deemed a success for your office. It would mean that your office was more open, transparent, visible and accessible, even if the complaints that were coming in were not of a substantial, material nature. I am interested in your comments on that before we move on to the next line of questioning.

Ian Bruce: I absolutely agree. Part of my reason for bringing forward the new strategic plan ahead of the time when members and others might normally anticipate such a major change is to be much more open and transparent about the work that we do, not just before the committee but much more broadly for all our stakeholders.

To give a simple example, not all our procedures are currently in the public domain. I am having them all redeveloped to reflect the way in which I require the office to work and everyone in the office to work. That is about accessibility, but it is also about consulting everyone—all our stakeholders—about those procedures and asking, "Are these right? Do you think our key performance indicators and our response rates are appropriate? If not, I need to know and we will

improve on them.” Once we have finished that consultation, the information will all end up in the public domain. It does not matter who comes to the office and for what reason—they will know absolutely what to expect and they will be given an opportunity to hold me to account if the expectations that they have and that we have set out publicly are not met.

Bob Doris: That is very helpful. Sometimes a significant increase in complaints does not mean that something untoward is going on with an elected representative. It might actually be a success in that the office is more accessible to people who want to complain, as difficult as that is for elected representatives.

I was pleased to see in the draft plan that there will be a new statement on purposes, values and strategic objectives. I suppose that it is stating the obvious to say that that is a good thing, but it does beg a question. If that statement did not exist before, what was missing and what added benefit will the new statement give?

Ian Bruce: I speak to that in the plan. There was a clear statement of the purpose and a clear statement of objectives—I think that they were there, although they have been revised—but our values were not on the face of the plan and they absolutely had to be included. Given the nature of the office, people rightly have high expectations about not just what we do but how we go about doing it, and that had to be on the face of the plan. Some things you would anticipate anyway—we need to act ethically, and we need to be responsible in our stewardship of public resources—but some of the things that are in there perhaps would not have occurred but were absolutely vital to me. That is about acting with empathy and kindness towards people who come into contact with us. I apply that not only to members of the public but to members. It can be very hard when people make a complaint or have a complaint made against them.

We have been through a very difficult and challenging period, and it was absolutely vital to me that everyone in the office was on the same page. I have run induction for three new investigating officers this week, and my starting point was to say, “Here are our objectives and here are our values. You need to act kindly towards people.” For me, it was really important to get that out there, and, in due course, we will ask people, on an anonymised basis, “Is that your experience of coming into contact with our office?”, and we will report on that.

Bob Doris: I find that last comment very helpful. Can I infer from what you are saying that the purposes, the values and the objectives are things that your office may have been doing anyway but that people cannot just take that for granted? It is

about putting that out openly in the public domain, and, as you expand the staffing team in your office, making sure that staff are clear about what it means. I particularly like the bit about whether members of the public feel you are upholding your purposes, your values and your strategic objectives. I think that that is really helpful—it was a helpful answer.

Page 5 of the draft strategic plan sets out some key changes that you wish to deliver, such as

“Recruiting and developing staff to ensure consistent high quality of our professional skills base”.

I think that there are six or seven key changes. I will not run through them all because of time constraints and the fact that my eyesight probably will not allow me to see the tiny typing on the handout that I have. How do you think that the key changes that you have set out will improve the quality of the outputs from your office? You may want to pick one or two of them and flesh out the differences that you think they will make.

Ian Bruce: I will start with staffing. I need to say thanks to the Scottish Parliamentary Corporate Body for its support in this area. I felt that we did not have sufficient resource to move through the complaints that we receive at a rate that was appropriate and that took account of the feelings of those who come into contact with us. I am talking about not only complainers but members. It is not right that people should have complaints hanging over them simply because our office does not have the resource to get through them timeously. For me, that is a vital point.

10:30

You will have seen from elsewhere in the plan—and it is true of most organisations—that we rent offices and we have IT equipment. However, the resources of our office are the staff—that is it. They need to be supported and to have a good work-life balance. I want them to be happy so that they can do the things that we need to do in the way in which we need to do them. That is absolutely vital. The SPCB agreed the increase in complement. Our budget bid for next year, which will increase, goes in soon, and I am hopeful of, and anticipating, support again for me to make the changes that I need to make.

The other change—I am going to expand on this a bit more even though I have mentioned it already—relates to transparency for our office. Not everything that I am putting in place is covered in the draft plan; I also have an extensive two-year business plan that I will provide to the committee in due course once our annual report is published, and all the detail is in there. I anticipate that everything in those plans will be implemented. I

will publish all of that, and they will make a difference.

Over and above that, I absolutely plan to consult on our performance and then publish that information as we go along, so that the committee and everyone else can see whether we are achieving our objectives and the extent to which we are achieving them. All of that will be in the public domain and in a much more comprehensive way than you have seen in previous annual reports. If I am not doing the job, it is absolutely the role of this committee and others in the Parliament to hold me to account.

The Convener: I am slightly conscious of the time, so I will jump to Alexander Stewart.

Alexander Stewart: I think that the strategic objectives that you are putting forward, Mr Bruce, show that you are attempting to have greater accountability and transparency, and even stakeholder engagement. That is welcome, because we want people to feel that they are able to engage. How are you balancing that attempt to have that meaningful relationship against your existing resources? You have indicated that you have some new roles and have taken on some new people, but your budget constraints are still there and your workload is increasing. In trying to ensure that you do all of this, how have you managed to square that circle?

Ian Bruce: As I have said, I got agreement from the SPCB for additional staff. That will have ramifications and our budget is yet to be approved. We certainly worked well within our means in the current year, but staff are our primary resource. I have a job to do. I intend to do it well, and I anticipate that I will have the support of the Parliament to do what I need to do.

Engagement is not necessarily resource intensive. I will give you a very simple example of one of the small things that I have changed. We have changed our SurveyMonkey licence in order to add additional users. For public appointments we have, for a good long while, surveyed applicants to allow them the opportunity to provide their views anonymously on the appointments process. All that we are doing is expanding that approach to cover all the work of the office. In future, people, including members and complainers, will get a link in letters that I send. We will ask, "How did you find the process? You can tell us anonymously, and we promise to report on it."

Over and above that, I have personal responsibility for engagement with our stakeholders—with the Standards Commission for Scotland, the Convention of Scottish Local Authorities and the committee, for example. I am not going to say that I am cheap, but I am more

than happy to dedicate my time to that activity because I recognise its importance.

Alexander Stewart: It is about avoiding the tick-box exercise or just going through the motions.

The pandemic has meant that staff are not able to meet as they would normally in an office environment. Has that given you any difficulties in fulfilling your role and responsibilities and in ensuring that you can still have engagement and transparency? It would be good to get a feel of how you see that developing.

Ian Bruce: I mentioned the induction of the new IOs. It has not been straightforward. Staff turnover in our office—as you will see in the annual report when it comes out—has not been good. It was 70 per cent in the year before last and 60 per cent in this past year.

Alexander Stewart: Do you think that that is to do with pressure of work, or is it just the environment that you are in?

Ian Bruce: There are a number of factors. I have been acting commissioner since 20 April. I saw what needed to be done and I had a number of recommendations from auditors, which I welcome, about what needed to be done with the office. Those are the things that I am putting in place, and the staff are absolutely pivotal to that. I think that they appreciate the way in which I engage with them, but they will be the judge of that—they may vote with their feet. However, it was about saying, "We have these values; this is us as an office," and everyone had to sign up to that. No one who came forward for any of the new roles was in any doubt about that being the expectation. I think that we are all on the same page and that we are all dedicated and looking forward to working together in the time ahead.

The Convener: Given the time, I will push for a yes or no answer on this. There are clearly changes in the way that you are reporting, through the contents of the annual reports and the publication of your minutes. We are not going to lose any information that was previously reported in a way that means that trends are no longer trackable over a period of time, are we?

Ian Bruce: Absolutely not. In fact, I have instructed an audit this year covering the last two annual reports to ensure that information that was not in those reports but that was in previous reports is reinstated.

I am sorry—I know that you asked for a yes or no answer, but I want the committee to be aware of this. If there is anything that the committee feels should be in the public domain and would be useful for the committee or the public to see, the committee needs only to ask and I will ensure that

that is done, subject obviously to the restrictions that are placed on me by the legislation.

The Convener: I am very grateful for that. I would say that it was a kind offer but, from listening to your evidence, I think that it is the sort of offer that we expect and can expect.

On behalf of the committee, I thank you for your time, acting commissioner, for coming in on a slightly dreich day and for your evidence.

Ian Bruce: Thank you for the opportunity.

Cross-party Group

10:38

The Convener: Agenda item 3 is on cross-party groups. We are asked to consider a change of purpose for the proposed cross-party group on independent convenience stores.

Paragraph 40 of section 6 of the code of conduct requires that any proposal to change the purpose of a group must be drawn to the attention of the committee, and the committee can then decide whether the group should be accorded recognition. Paragraph 6 of the clerk's paper sets out the purpose of the group in session 5, and paragraph 7 sets out the proposed new purpose. There has been a change, and I am very grateful to Gordon MacDonald, who is the convener of the group, for providing an explanation for the change, which is set out on page 8 of the paper.

Before I invite comments, I want to float a challenge that I see developing. In setting out its purpose, the cross-party group stated various facts, and those facts have now changed. As a result of that, the convener has—rightly—written to us to say that things have changed and, therefore, the group's purpose needs to come back before the committee. I think that it would be beneficial to discuss whether, going forward, we should provide more guidance on that aspect of setting up a cross-party group, to prevent a factual change—be it in the number of people who visit an area, the produce that is landed somewhere or even a style or fashion—requiring the matter to come back before the committee, for discussion of the reasons why the MSPs have formed the group, and whether the purpose of a CPG should be set at a higher level.

I invite comments on the application that sits before us on the change of purpose.

Paul McLennan: Convener, I seek your guidance, and we can probably get guidance from the clerk as well. I attended the first meeting of the CPG on independent convenience stores, but not as an office bearer. I arrived at the meeting late and was not party to the discussions. However, we should probably take a view on whether I should take part in this discussion—I want to check that.

The second point that I want to make, before we get on to the discussion, is about our own role in CPGs. We will all be involved in various CPGs—maybe as members, maybe as conveners—and I think that, for the clarity, openness and transparency of this committee going forward, it would be good to discuss our own positions as either conveners or members of CPGs and to have guidance on that.

The Convener: Absolutely. I have spoken to the clerk about my role as the convener, and I have indicated to a number of CPGs that I will not take part in them simply because of that role. That is not a requirement; it is just something that I feel would be beneficial, so that CPGs understand that there is an even-handedness.

Attendance at, and membership of, a CPG by any member of this committee is perfectly fine. I think that it is good practice to point out—exactly as you have, Paul—when you have a specific interest in something that is before us, but that certainly does not preclude your involvement in the discussion.

Paul McLennan: Okay. Thank you.

Bob Doris: Convener, you make a very important point about putting statistics, data or facts that change over time into the purpose of CPG. Gordon MacDonald was quite right to draw that issue to our attention and to seek permission to change the group's purpose.

I note that the sector employs 47,000 people, has sales of £4 billion and contributes £40 million in gross value added to Scotland's economy per annum. I am delighted to put that on the record for my colleague Gordon MacDonald, but I suppose that it is also a snapshot of time. What if a new report comes out and that data changes? If we have such data within the purpose of a CPG, should there be a reference to the nature of those figures? They could be from one year ago, two years ago or a report that was published last week—I have no idea. So, as soon as we approve the purpose—and I think that we should do so—they may be out of date.

My second point is about the procedure. If such things are put into the purpose of a CPG and the statistical data changes but the group wishes to keep that information within the purpose of the CPG—in this case, I think it is to draw the importance of the sector to the attention of Parliament quite clearly up front, and I get why they wish to do that—we could simply note the change and it could be a procedural matter rather than needing to be a formal agenda item. However, I am not sure of the process around that.

I hope that those two points are helpful.

The Convener: That is very helpful. The only thought that I have about pushing that forward is that monitoring such things and providing guidance on them would be a very heavy draw on the committee's resources.

I echo your thanks to Gordon MacDonald on this, but is there not a process by which we could have the purpose of a CPG plus the ability, which

a lot of CPGs require, for it to call out from the highest mountain the benefits of that group?

10:45

Alexander Stewart: Specifically on this group, it is only right and proper that there is the change. I concur with and accept that. However, you make a very valid point, convener, about the resource and timescale that we have. There are a large number of CPGs, and they are quite diverse in their roles and responsibilities and the curriculum of activity that they may get involved in, depending on the topic.

It would be best practice if we had some structure that meant there would not be a tsunami effect on the committee clerks in having to manage it. Perhaps we can tailor a structure in which some formulation is put in place that helps the CPGs but that also helps the committee and its officials to manage the process. I am aware that they put a lot of effort into all of this, and we cannot have them being engulfed. We have hundreds of CPGs. If they all did this, we would spend our complete working lives dealing with it, and that cannot be the case.

The Convener: Absolutely. That was very succinctly put.

Is there any desire among committee members not to allow the CPG to reregister? I see no suggestion of that, so I formally ask whether members agree that the CPG on independent convenience stores should still be accorded recognition with its new purpose.

Members indicated agreement.

The Convener: Thank you. My apologies—Edward Mountain wants to speak.

Edward Mountain: I definitely agree—I am not going to disagree—but I just want to make the general point that CPGs are a way to get people to involve themselves in the Scottish Parliament and what it does, so it is very difficult for us to ever say no to them. However, I am with Alexander Stewart on the need for a formulaic process that would allow them to continue, because it would be only in very exceptional circumstances that we would stop people engaging with the Parliament, which I think is our priority and the priority of all parliamentarians.

The Convener: Thank you. We now move to the next agenda item, which the committee has agreed to take in private.

10:47

Meeting continued in private until 11:08.

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