



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 25 October 2012

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CONTENTS

	Col.
DECISIONS ON TAKING BUSINESS IN PRIVATE	481
“CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN SCOTLAND” (REVIEW).....	482
REFORM OF PARLIAMENTARY BUSINESS (CORRESPONDENCE)	492

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
13th Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*Helen Eadie (Cowdenbeath) (Lab)

COMMITTEE MEMBERS

*Brian Adam (Aberdeen Donside) (SNP)

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

*John Mason (Glasgow Shettleston) (SNP)

*Margaret McCulloch (Central Scotland) (Lab)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Allan (Public Appointments Commissioner for Scotland)

Ian Bruce (Commission for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 25 October 2012

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

Decisions on Taking Business in Private

The Convener (Dave Thompson): Good morning, members and guests, and welcome to the Standards, Procedures and Public Appointments Committee's 13th meeting in 2012. I remind members and others to turn off mobile phones and BlackBerrys.

Agenda item 1 is to decide whether to take in private items 5 to 7, which are, respectively, to consider the evidence heard on the review of the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland"; to consider a draft report on, and draft standing order rule changes in relation to, orders under the Public Bodies Act 2011; and to consider a note by the clerk on the Interests of Members of the Scottish Parliament Act 2006. Does the committee agree to take those items in private?

Members indicated agreement.

The Convener: Item 2 is for us to decide whether to take two items in private at future committee meetings. The first is consideration of a draft report on the consultation on the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland" and the second is consideration of issues papers on the Interests of Members of the Scottish Parliament Act 2006. Do members agree to take those items in private in the future?

Members indicated agreement.

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

09:31

The Convener: The purpose of item 3 is to take evidence from the Public Appointments Commissioner for Scotland, Stuart Allan, on his consultation on revisions to the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland", and from Ian Bruce, who is compliance manager at the Commission for Ethical Standards in Public Life in Scotland.

I welcome Mr Allan and Mr Bruce. It is good to see you here this morning. I am sure that we will have an interesting and useful session. I invite the commissioner to make a brief opening statement, then we will have general questions and discussion.

Stuart Allan (Public Appointments Commissioner for Scotland): Thank you, convener, and good morning. Committee members have before them a note of the main points that I want to make to the committee this morning. I think that I can be brief in my opening remarks.

In August this year I issued a consultation paper on the 2011 code of practice to establish whether the process was operating effectively and efficiently and whether the regime was operating proportionately and contributing positively to the code's aims. I have sought views on the consultation paper from the Parliament—I note that the committee will consider it later this morning—and from the Scottish Government and the chairs and chief executives of all the regulated public bodies.

The consultation period ends on 31 October. We have already received quite a number of responses and are getting a feel for the issues that respondents are identifying. One of the main issues is the length of time that it takes for the public appointments process to operate. It can take 12 months from start to finish, but there are many examples of much shorter timescales—that can apply even to the most important appointments.

As part of the consultation exercise, I have met many chairs of health boards and other public bodies. The feedback that I have got from them is that, first, the appointments process overall is too bureaucratic and needs to be streamlined. I have already dealt with the second issue, which is that the appointments process as a whole takes too long. Thirdly, scrutiny—including scrutiny by my

office—can be excessive and disproportionate, particularly in respect of reappointments.

Another matter that seems to be very much in people's minds is that the application form system can be terribly complex. That must be putting people off, which is a problem if we are trying to attract as many and as diverse a range of people as possible to apply for public appointments. I have some anecdotal evidence about that, which I can perhaps refer to later.

That said, the Scottish Government is doing a great deal to improve matters and the public appointments centre of expertise—PACE—is responding extremely well to the challenges that it is facing. I have met people from that group on a number of occasions and I am impressed that they appreciate the importance of the need for them to effect improvements, within their remit.

We hope to conclude the consultation period on 31 October. Subject to the obvious need to take all the views into account, I imagine that we would want to produce a more detailed paper suggesting changes to the code early in the new year. We would bring that to the committee and invite Parliament to approve any changes to the code.

On diversity, we have been looking to the Scottish Government to bring about improvements. "Diversity Delivers" is the main policy document that deals with that, but it is now somewhat dated, as are the targets. Slightly disappointingly, there is no statutory mechanism to review "Diversity Delivers", which is an issue that we might have to take on board in the near future.

We expect the Scottish Government to make progress and we recognise that the current diversity targets in "Diversity Delivers" need to be reconsidered in the context of the understanding of the current board profile as compared with the demographic profile of wider Scottish society. The Government has confirmed its commitment to that and it is working to develop a programme of outreach and other diversity-related activity to broadcast the messages. I am pleased about that.

The key question is this: are we satisfied that we are getting the most able people for public appointments? The answer today is, unequivocally, yes. I have no reservations about the quality of the people whom we are getting for public appointments or of those whom ministers are selecting for public office. However, I am concerned about the length and complexity of the process and I question whether those things are helping with diversity. Is the process too complex? Can we make it easier, to encourage more people to apply for public appointments?

The Convener: That was an interesting introductory statement. I was pleased to hear you say that the Government is doing a good deal to

improve the situation because, when your predecessor came before us earlier this year, the committee was concerned that there had been problems at the end of last year. I am glad that you feel that those issues are being addressed and that things are moving in the right direction.

I am also pleased to hear that you are quite satisfied with the quality of the people who are being appointed, but the whole issue of diversity is crucial. The whole purpose of the "Diversity Delivers" document, process and targets was to broaden the range of people and to attract other able people to apply for positions on public bodies. Even though we have good people at the moment, it is important that we ensure that we have a broad—or perhaps broader—cross-section of society on such bodies.

I will focus on the specific point that you made about the complexity of the application forms. What do you think you might do about that? Obviously, quite a lot of information is needed from people, but I imagine that the length of the form—I do not know how long it is—would put off quite a number of folk, who might just take one look at it and think, "Whoa—this is not for me, if this is a measure of the bureaucracy and paperwork that I am getting into. That is not what I want to do. I want to get in there and use my experience and knowledge to try to help the situation."

Stuart Allan: There is no doubt that that is a key issue. The code does not require any particular application process to be followed. In fact, it allows and affords ministers a wide variety of approaches for the application process. However, the main method is by application forms, and they are complex.

We are looking for well-rounded and experienced people to apply for public appointments, but I have met a number of chairs of public bodies who have said that, when they got their application form, they were horrified by how complicated it was. I know that a couple of them put the form aside and said, "No, I am not going to bother applying," but they were encouraged to keep going, so they filled it in. It was a difficult task that took time to do, but they eventually put in their application. If people who have been appointed ultimately as chairs of public bodies are saying that the application form is too complex, it is too complex—end of story.

How many people who feel that they have time to commit to public service and who say, "I would quite like to offer what I can to a particular body, so I think that I will apply," are put off when they see a terribly complex application form? I suspect that that happens a great deal.

The main point about diversity is about encouraging as many people as possible to apply for posts, but we have put in a blockage from the very start by making the form so complex. We are working hard with the Scottish Government to try to lighten up the application system and make it easier and more customer friendly, as it were. We are beginning to make inroads into that. That is one issue on which I think we will really have to make recommendations regarding the new code.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Can I pursue that a wee bit further? I filled in such forms—not at chair level—when I was out of Parliament and was applying for such posts. I know that application forms are complex, but what worries me about moving away from them is this: what alternative to an application form would be used to deal with diversity? If we went for CVs, that would not help to encourage diversity either, because we cannot be sure that we can compare like with like across half a dozen CVs, whereas I understand that having an application form allows answers to be checked against questions.

09:45

Stuart Allan: I go back to the first point that I made. The code does not specifically require ministers to seek applications by way of application forms or whatever. That is a matter for ministers, and the process has to suit the appointment.

However, most appointments are done through application forms, and most application forms are unduly complicated. We need to provide a bit more balance; perhaps requiring an application form along with a CV, so that someone can demonstrate their experience as well as their skills and expertise, is the way to do it. We need to try to work through a system that is more accommodating while still ensuring that the most able people apply for posts.

Fiona McLeod: You do not have any feel for what that system should be.

Stuart Allan: I am reluctant to be too specific, because that is not our role. It is the ministers' role to say which particular skills and expertise they want in candidates. It is not for me to tell ministers how they should go about the process but, by working closely with PACE, we are beginning to get a clear understanding of how we could promote diversity in a more meaningful way.

Helen Eadie (Cowdenbeath) (Lab): Good morning. You might want to elaborate on the issue that I will raise, or you might feel that you have covered it sufficiently. You said that you had another comment on the anecdotal evidence. Do you want to expand on that?

Stuart Allan: Yes. I was referring to the fact that a number of chairs of public bodies had said to me that the application forms system was very complex and that it had put them off applying.

The people to whom I spoke are of the highest calibre, yet they were put off by the process. If they were put off, what about the person who might be willing to put their hat in the ring for the first time? The process must be extremely off-putting for them. An issue is whether we are attracting the required numbers of people for posts.

Helen Eadie: In your opening remarks, you said that the process was excessive and disproportionate. Will you define what is proportionate?

Stuart Allan: It is perhaps easier for me to give an example. Most public appointments are for three or four years. Normally a person is entitled to offer themselves up for a second term if they are available, and a large majority of people take that up. People who offer themselves up for reappointment have been subjected to performance appraisals over the years, and the chair is usually satisfied that they are doing a good job.

However, reappointments take a long time to come to fruition. My office is involved in the process, and the scrutiny of that aspect seems disproportionate. If the person who is up for reappointment wants to be reappointed, and if the chair and the ministerial advisers are content that that person is doing a good job, is such scrutiny really necessary? What added value does my office bring to the process?

There are examples of people being told the day before they are about to end their term of office that they are being reappointed. That is unacceptable, and if the problem is the bureaucracy that is involved in reappointing people, we have to rethink the process and make it more manageable.

I am not saying that people should be reappointed automatically. They must be subjected to reappraisal, the chair must be happy and the minister's office must be happy. If those criteria are satisfied, we should be able to facilitate early reappointment. I think that that would be warmly welcomed, particularly by chairs of public bodies.

John Mason (Glasgow Shettleston) (SNP): Good morning, Mr Allan; I think that we have met before.

I am fairly new to the committee, so some of my questions may have been answered previously. I was interested in your point that in some cases the appointment process is very long and complicated,

whereas in others it is relatively short. Why are there such differences?

Stuart Allan: That is a very good question. It has puzzled me why some appointment processes are extremely long, while others are carried out very quickly. Much depends on the priority that ministers attach to specific appointments.

My colleague Ian Bruce can give you more detailed information on that.

Ian Bruce (Commission for Ethical Standards in Public Life in Scotland): I would be very happy to do that.

Thank you very much for the invitation to speak to the committee. It is the first time I have done so, and I feel quite honoured to be here. I hope that you will forgive my voice—I was in Barcelona a couple of days ago. [*Laughter.*]

As well as dealing with Mr Mason's question, I will pick up on one that his colleague Fiona McLeod asked. The code requires that the appointment process be tailored to fit the target pool—that picks up the point about diversity. It is perfectly possible for the Scottish ministers and the officials who act on their behalf to ask for a process to be run that includes, for example, just expressions of interest. That is perfectly acceptable with certain target pools, so that everyone who expresses an interest in a role does not have to complete an application form, but may merely say, "I would like to be considered for the appointment." They will be invited to interview and a competency-based interview will be run, on the basis of which a decision will be made on who is suitable for appointment.

When that happens, it is clear that the process will be considerably shorter than one that includes written application forms. We have tried to get officials to move away from what they have done traditionally towards types of application and appointment processes that are suitable for getting the right people from target pools into roles. Target pools will vary from position to position.

The process that is chosen has a direct impact on the amount of time it takes for a decision to be made about who is suitable for appointment. That is the key factor. Traditionally—in part, this goes back to the 2006 code—applicants had to demonstrate on paper that they met all the criteria for selection, which meant that certain types of applicant got through to the end of the process and were interviewed. They tended to be people from the public sector who were used to completing competency-based application forms. We changed the code in 2011 so that a more inclusive process would be designed.

Another thing that was introduced in the revised code was a part of the process at which additional

information could be sought. To seek extra information will add time to the process; if you are not clear from an application whether a person meets the criteria, you can go back and ask for more information to supplement the application.

We are now encouraging the Scottish Government, if it is committed to using an application form, to go with something much shorter that tests perhaps only one competency. That will be quicker for panels to check, but it means longer interviews. There might have to be a week of interviews, whereas previously they might have taken a few days. We have produced a handbook on application of the code. For those of you who have a real interest in the subject, a range of alternative application methods may be used by the Government to suit particular circumstances.

John Mason: Is there more than one problem here? Posts are different from each other because organisations are different from each other.

Ian Bruce: Yes.

John Mason: Is it inevitable that there will be a wide range of timescales and, probably, complexity? How much is down to the discretion of the individual minister?

Ian Bruce: Such things are delegated—the discretion of the minister is perhaps not always the overriding factor. There will always be some variations in the times that are taken for appointments to be made; one would expect that. When a technical expert is appointed to an advisory body, for example, there will be a limited number of applications because there will be a limited number of applicants who could fulfil the role. That is different from, for example, the appointment of a chair of a territorial health board or members of such a board, for which there might be a larger pool of applicants. Some process is needed to narrow down the number of applicants who will make it to interview. There will always be some sort of written application process or an online application process.

John Mason: At present, the maximum time allowed is 12 months. Would you like to suggest what the maximum should be?

Stuart Allan: That is a good question and it is something that we have been thinking about. There is nothing in the code that sets targets for times—in fact, there is nothing in the code about timescales. Our consultation paper asks stakeholders whether that is an issue. I think that it is. We have to think hard about whether we should suggest targets for the Government for appointments and reappointments.

Ministers must be afforded some flexibility, depending on the level of the appointment—

whether it is a chair or a member—and whether it is a reappointment. I will be interested in any feedback on whether stakeholders feel that we should require that in the code. I would be interested to hear what the committee thinks.

Brian Adam (Aberdeen Donside) (SNP): On reappointments, I understand the concern about the timeframe. Other than through a blackball, I do not know how you would do it. I am not sure why it is necessary to revise the code at such an early point, especially as it appears to be delivering, in spite of itself, the quality and quantity of candidates that are required. If you are concerned about targets for the timescales, you might also be concerned about targets for quotas in terms of diversity. Would you care to share your thoughts on those issues?

Stuart Allan: I will not be drawn into quotas and diversity this morning, if that is okay. I come back to the simple question whether there is a need to revise the code. Virtually everyone whom I have consulted and all the feedback that I have received has welcomed the fact that there is a code. It is an improvement on the previous one, but there is still a lot to do. Let us do it; let us address it. Let us not say that, because we have good candidates, there is nothing wrong. There is something wrong and we need to face it, do something about it, correct it and make the process one of which we can all be proud. As I said, I do not think that I have had a single comment to the effect that we should not be consulting on changes to the code.

John Lamont (Etrick, Roxburgh and Berwickshire) (Con): John Mason touched on the complexity of the application process; I want to understand why it has become so complex. Is it because the people who make the appointments are doing a points-scoring exercise on a complex form and it is easier for them to assess on that point-scoring basis? Is it because they are concerned about future come-back or scrutiny of the process that they have adopted? Is it that the quality of the people who make the appointments is not as good as it should be? What are your thoughts on that?

10:00

Ian Bruce: The situation is a bit of a hangover from the 2006 code. As I said, that code was prescriptive and was based to an extent on what had gone before it in England and Wales.

The code has been a progression. Previously, it insisted on an application form and an interview to establish the most meritorious applicants for a given role. We wished to move away from that in the 2011 code, but people are frequently used to and comfortable with a pre-existing system,

regardless of whether it delivers all the results that are wanted.

As the commissioner said, there are no concerns about the appointments that are being made, but there are general wider concerns about the number of people who put themselves forward for positions, which has a knock-on effect on diversity in appointments. We wished to offer greater flexibility by saying to the Government, "Please use the process that you believe is most appropriate for the target pool." However, the pre-existing system is, to an extent, still being operated.

The new code was promulgated in April 2011 but did not come into force until September 2011. When it was introduced and when we said that greater flexibility was available, we found that, rather than starting from scratch—as we expected—and saying, "Let's design a much more streamlined process that will get the people we need," people bolted on additional bits to accommodate the revisions in the code, some of which has caused particular problems.

The commissioner picked up on the introduction of a paragraph on management information. Centrally, we felt that that was well understood, and we ran workshops on what we meant. All we expected was that panels would make decisions on the basis of evidence. We wanted people to look at the appointments process for their body and similar bodies and to work out whether their adverts in *The Scotsman* and *The Herald*, which have traditionally been used, did well in attracting the people whom they wanted to attract. We wanted people to look at their application forms and to consider whether testing 10 criteria on paper had proved to be a barrier to people from particular backgrounds.

Those issues have not been well understood, and a bit of an industry has grown up around management information, what it means and how panels should base their decisions on it. Our perspective is that, in an ideal world, we would have a central team of experts who handed over an A4 sheet of paper that said, "Don't advertise here or here, because it's not good value for money. Publicise your opportunities in this way. Don't use a lengthy application form, because you'll find that that proves to be a barrier for women in getting to an interview, for example. Why not test just a single competency?" We are not at that stage yet, although we expected that we would be.

Some of the new requirements were bolted on to the existing requirements, so complexity has grown. Change is always difficult and not everything can be attributable to a revision to the code; a lot is to do with the pre-existing process

and how it has been altered to accommodate revisions that we have made.

The Convener: The session has been interesting. I have a final question for the commissioner. From the 2006 code to the 2011 code, the role of your public appointments assessors changed. I see from notes that you sent to us that that has created concerns and that you are considering reverting to their previous role or changing it again. Will you elaborate a wee bit on their role in the appointments process?

Stuart Allan: The 2011 code removed assessors from membership of appointment panels. Some might say that they are now compliance auditors who ensure that things are being done properly. That can involve a lot of retrospective operation, so an assessor might say at the end of the day, "This hasn't been done according to the code."

Also, because the Government had to apply the new code and learn as it was going along, there were difficulties. The Government and the chairs of public bodies told me that they missed having the assessors there at the proper time from the word go to give them advice on how to go about appointments. So, although we envisaged that the assessors would act in that audit capacity, people have welcomed the fact that we have asked them to go back in and provide a full advisory role. The people who were responsible for the recent appointments that were made in the summer have welcomed that. We now have to appraise whether that approach is appropriate for the longer term, but the early indications are that it is being welcomed.

The Convener: Thank you very much for appearing before the committee and for being so frank and open with us about the review. The committee is required to consider your consultation, which we will do formally later this morning. I am sure that the evidence session has helped all members to get their heads around some of the issues that you are considering.

We now move to agenda item 4, although you are welcome to stay where you are, commissioner, because we will speak to you again after it.

Reform of Parliamentary Business (Correspondence)

10:06

The Convener: Agenda item 4 is to consider correspondence from the Labour Party business manager, Paul Martin MSP, on the timetabling of Opposition business. The committee previously agreed to review the progress of implementation of the parliamentary reforms that came into force in September once they had been in place for six months. The Scottish Parliament information centre is collating information for that review. I wonder how members feel about getting SPICe to pull together information on the timetabling of Opposition business so that, when we come to review the matter early in the new year, we have full information on when Opposition business took place historically and what has happened since September. What do members feel about that approach?

John Lamont: For the record, I share Paul Martin's concerns about the issue. It would be helpful if SPICe could collate the data, particularly on a historical basis going back to 1999 so that we have it from the start of Parliament.

Helen Eadie: That is more or less what I wanted to say, so that is fine.

Brian Adam: I know that this is an issue that concerns Mr Martin and Mr Lamont but, as far as I am aware, the Parliament has never had as part of its standing orders a specific time for such business. It would be inappropriate for us to try to tie Parliament's hands in any way. I am certainly aware that the Minister for Parliamentary Business has allocated Wednesday in recent weeks to the Labour Party. The current arrangement, whereby it is up to the minister and the Parliamentary Bureau, should be left. Mr Martin is perhaps a bit premature in writing to us on the issue. I am content with your suggestion, convener.

The Convener: We will have the debate in the new year once we have the facts before us. I believe that a Tuesday afternoon has been allocated, as well. It will be interesting to see how things work in the next few months. We will come back to the issue.

John Mason: I certainly support the issue being looked at. I note that Opposition business is being held next Tuesday afternoon.

Having come here from another place, I think that Tuesdays, Wednesdays and Thursdays here are treated pretty equally. I do not see a big range or think that one day is better than another, which is a contrast to Westminster, which technically sits Monday to Friday, although Friday is really treated

as the end of the week and hardly anyone is there. Monday is similar; it is a bit second rate, if you like, and Tuesdays, Wednesdays and Thursdays are the main days. It is quite positive to see that all the days on which we sit are treated equally, especially since September.

Helen Eadie: We assured all members of Parliament and the public that we would review the situation. The convener is right that we should gather the information. We would welcome feedback from everyone across Scotland about how they perceive the parliamentary week to be working. Let us gather and collate the information and take a view after that.

The Convener: Is the committee happy to go down that road, get the information, and have a look at it in the new year?

Members *indicated agreement.*

10:11

Meeting continued in private until 11:15.

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