



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 10 December 2020

Session 5



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Pàrlamaid na h-Alba

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
24th Meeting 2020, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (Green)

COMMITTEE MEMBERS

*Neil Findlay (Lothian) (Lab)

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

*Gil Paterson (Clydebank and Milngavie) (SNP)

*John Scott (Ayr) (Con)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Anderson (Commissioner for Ethical Standards in Public Life in Scotland)

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

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 10 December 2020

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Bill Kidd): I welcome members to the Standards, Procedures and Public Appointments Committee's 24th meeting in 2020. Agenda item 1 is a decision on whether to take in private item 3, which is a discussion of the evidence that we will take from the Commissioner for Ethical Standards in Public Life in Scotland. Do members agree to do so?

Members indicated agreement.

Commissioner for Ethical Standards in Public Life in Scotland

09:30

The Convener: Item 2 is evidence from the Commissioner for Ethical Standards in Public Life in Scotland on her "Annual Report and Accounts 2019/20". We have with us Caroline Anderson, the commissioner, and Ian Bruce, the public appointments manager. I welcome you both to the meeting and ask the commissioner to make a short opening statement.

Caroline Anderson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you for the opportunity to present evidence to the committee today. As you mentioned, I am supported by Mr Bruce. During my first evidence session with the committee in late February, I informed you of progress in the restructuring of the complaints-handling function of my office. The restructure was necessary to address historical inefficiencies and a number of key legacy issues regarding councillor complaints and public body complaints, including an aged backlog of investigation cases. The restructure progressed during the months that followed, despite the challenges of the pandemic, and has since been concluded.

The restructure has secured a number of benefits for the office. In budgetary terms, savings of approximately £450,000 are projected in the five years from 2020-21, which equates to a saving of about 48 per cent of my annual office budget. The legacy of investigation cases that I inherited has been addressed and concluded, with on-going investigations now few and very recent. The long-standing issue of protracted investigation times and the consequent duration of associated stresses for those involved have been overcome as a result of the restructure. That has been achieved without any change in the number of full-time equivalent staff in the office.

The new staff complement was modelled to deliver the skillset and capacity that are needed to service a complaints population of increased complexity and gravitas. Overall, the restructure has successfully created a modern and efficient complaints handling operation that produces robust, high-quality outputs in discharge of the statutory function.

The implementation of the restructure was, of course, punctuated by the pandemic. I invoked the office's business continuity plan on 16 March 2020 and successfully relocated the office to a wholly remote operation over the coming days. Throughout lockdown and thereafter, the remote

office provided a continuous and full service in discharge of the statutory functions. That was achieved while facilitating what was, at times, a reduced capacity arising as a result of staff changes in family responsibilities and similar considerations. I have continued to support the staff throughout, encouraging optimal self-care, supplying home office equipment and promoting good mental and physical health.

With regard to our stakeholders and service users, I contacted local authorities and parties to complaints to offer extended time periods for responses in recognition of the unique challenges attached to the situation.

MSP complaints are up to date and have been responded to in a timely fashion throughout the period. My annual report provides details of the increased volume of MSP complaints received and cases undertaken during the 2019-20 financial year. The number of MSP complaints increased by almost 500 per cent, and the number of cases increased by 77 per cent in comparison with 2018-19.

The number of complaints remains quite high compared with 2018-19 and, given the upcoming election, they may not abate through to the end of the current reporting year. MSP complaints have been, and continue to be, made almost exclusively by members of the public.

During lockdown, a significant proportion of new public appointment activity was put on hold. I granted variations to the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland" to allow term extensions and reappointments of current board members beyond the eight-year maximum that is normally permitted, thereby ensuring board continuity. The latest set of those requests was responded to in August and allowed for term extensions up to August 2021. As a result, officials and boards have had the leeway to maintain continuity while dealing with the outbreak and on-going aftermath of the pandemic.

The office is keeping under review the situation regarding on-going appointment activity. I issued a consultation on the revision of the code of practice in August 2020 and later extended the consultation deadline to facilitate responses from the widest spectrum of stakeholders. I am grateful for the many responses that were received—in particular, those from bodies with an interest in equality and diversity. I greatly appreciate the committee's very helpful response, and I note members' support for revision of the code to address the problems that were previously commented on in my annual report and updates. I note, in particular, the committee's reference in its response to the participation of those in remote and rural areas.

I draw the committee's attention to the consultation response that was received from the Scottish Government, which is an outlier response and a cause for concern. It suggests a move to principles-based regulation and, further, that the methods and practices that are used by the Scottish ministers in making appointments be completely removed from the code. That proposal is wholly incompatible with the Public Appointments and Public Bodies etc (Scotland) Act 2003 and with the intentions of the Scottish Parliament.

The Government has posited that the current code is stifling innovation, which is most misleading. It appears to favour following the civil service recruitment model, which is wholly inappropriate and is the opposite to the practice that was anticipated by Audit Scotland in its report "The role of boards".

The Government's response has also posited that the Scottish ministers might draft their own code of practice or that the role of appointments regulation might sit with another regulatory body entirely. Overall, that points to a preference for the avoidance of scrutiny on the part of the Government in that regard. The suggested approach would preclude the Parliament from holding the Government to account for a lack of progress on diversity or in following the code-driven procedure on appointment activity in general. Essentially, appointment activity would fall below the radar. To me, that is an incongruous response on the Government's part, given the lack of progress in diversity beyond gender parity, with a stalled or declining position in relation to disability, for example.

My intention is to revise the code by including value added provisions to drive appropriate appointment activity to ensure that public appointments are open to people from all walks of life. My next step will be to produce a draft of the code that reflects those intentions, for further consultation with the Scottish ministers and the committee. I have other on-going concerns around public appointments, which I have noted and acted on to the extent that that is possible in my statutory role.

With regard to the achievement of gender parity on boards in 2019, I was interested to explore the associated intersectionality of that metric. An analysis of associated data in terms of household income revealed that the bulk of board applicants and appointees remained unchanged in that regard. Although gender representation might have changed, societal representation in terms of income appears to be almost static.

In addition, the low numbers of applicants for chair roles, in particular for health boards, continue to be a matter of concern. My office has raised the

issue repeatedly with officials, but there has been no substantive solution in response. Failed appointment rounds represent a period of uncertainty for the boards in question as well as being a waste of public money.

To address those and other concerns, at least in part, my recent survey of public body board members raised a series of questions that were aimed at uncovering the reasons for the aforementioned and other perennial appointments issues. I look forward to reporting on the results of that survey and related conclusions in 2021.

I thank the committee for the opportunity to make those introductory remarks, and I look forward to answering members' questions, with the assistance of Mr Bruce.

The Convener: Thank you for your statement, commissioner. Members will now put some questions to you both, starting with a question from Neil Findlay.

Neil Findlay (Lothian) (Lab): Thank you for the report. My first questions relate to what you inherited, which is of concern to us. The report refers to legacy issues, such as a vacancy rate of 71 per cent, a backlog of complaints, no temporary cover and serious delays, all of which point to an organisation that was dysfunctional. Who was overseeing the organisation at that time? Who was monitoring the organisation's performance?

Caroline Anderson: There are various strands associated with the monitoring of all office-holders. The Scottish Parliamentary Corporate Body has the budgetary control, which is the greater extent of the oversight. A functional review would have discovered the issues, but it is an independent office, and the commissioner makes the decisions about the operation of the office. The SPCB looks after the financial accountability—the budgetary aspects of the organisation—and the auditor looks at the finances to ensure that expenditure during the year concerned aligns with the expected budgetary expenses that were granted by the SPCB in the first place.

Neil Findlay: As long as the budget balances, the corporate body and the Parliament will sign that off, but there is no independent person or organisation to oversee your organisation. Therefore, if we went back to a situation in which there were 71 per cent vacancy rates, no temporary cover, serious delays and a backlog in a dysfunctional organisation, no one would really know unless somebody blew the whistle.

Caroline Anderson: That is the impression that is given by the situation that I inherited. I was certainly not aware that the problems existed in the organisation, despite performing extensive due diligence before I took over. I asked the questions, as it were.

Neil Findlay: Does it concern you that there is not a pair of eyes watching and, in effect, holding your organisation to account for what it is doing?

Caroline Anderson: I have observed that, in England, periodic reviews are performed of independent offices such as mine. They have the function that I think that you are seeking, Mr Findlay, whereby someone delves into the operations of an organisation to establish whether everything is going well and whether the organisation is operating in an efficient and effective manner. I am aware of such reviews being carried out in organisations between one office-holder demitting and a new officer-holder coming on board. The review report can recommend certain milestones and changes that must be made and set a timeframe for those changes. That is a much more transparent situation, in which everyone knows what will be involved and required of them, the problems in an organisation are transparent, the situation is accounted for in the public domain and the incoming individual is aware of what they must deliver. That is a more accountable way to operate, with stronger governance. I can speak only for what I have inherited, but the situation at that time was that the auditor would come along and audit the finances. No one looks under the bonnet, as it were.

09:45

I have taken steps to bring in an internal audit function, which would be the other way to bring to account, to some extent, the concerns that Mr Findlay has voiced. There was no internal audit function.

The work has been punctuated by the pandemic, of course, but I had taken steps fairly early on to look to bring in internal audit, to assist me. It is always good to have a fresh pair of eyes, even if you think that things are going well. I am very open to any way to improve the operation, and we have therefore been looking to bring in internal audit.

Neil Findlay: I am happy if you want to bring in John Scott before my next question, convener.

The Convener: No problem—thank you for that, Neil.

John Scott (Ayr) (Con): Thank you for your opening statement, commissioner. It is the age-old question: who guards the guardians? It appears that there has been no one guarding the guardians. I believe that, historically, there used to be someone who guarded the guardians in reviewing the work of commissioners. Has that fallen by the wayside, or does the buck now stop entirely with the Scottish Parliamentary Corporate Body? It appears that somebody has been asleep

at the wheel. There has not been any performance-related assessment at all—or, if there was, people would not necessarily have been satisfied with it.

I agree entirely with Neil Findlay's line of questioning. You have probably given the answers, but I am horrified by the situation.

Caroline Anderson: I have been in post only since April 2019, so I can report to the committee only on what I have found. I would not have been happy to continue as was—I felt that the problems were severe and that I needed to move on them. As a result of the transformational work that I have now put in place, there have been two restructuring phases to date, and we are up to date.

We are a volume-driven organisation. We could come into the office in the morning and find 100 complaints, and we would not be able to move through them by the end of the week. We will always get such fluctuations, which means that we will have very busy times. However, that is not the totality of what I inherited, unfortunately. There was a backlog of work and the office was not performing in the way that one would hope.

The Convener: Before we go back to Neil Findlay, Jamie Halcro Johnston will come in on the same line of questioning.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have two questions. First, will you confirm whether you think that an independent review, similar to those undertaken in England, could be of benefit for ensuring that there is proper oversight?

Caroline Anderson: Absolutely. No one is looking under the bonnet, if I can say it like that. At present, we are just looking at the finances. As members will know from their extensive experience with finances, the problem is broader than that. It is about the way in which the money has been spent; it is a matter of looking at the operation of an office and ensuring that it is being run in an efficient and effective manner, delivering the statutory function as quickly, effectively and cost-effectively as possible.

The functional review—or the tailored review, or whatever you want to call it—is a way to look at how things have changed over time. The demands on not just my office, but on various office-holders and the nature of the work will have altered. In my previous evidence session, I mentioned that the complaints and the subject matter seem to have more gravitas, to be more complex and potentially more contentious than in the past. Therefore, the reviews that you have alluded to are a way of looking at the function that an office-holder is performing and what that means in today's world. We should remember that my office has its roots

in and around the year 2000, which was almost a pre-digital world. Obviously, it is very different now compared with at its naissance. Therefore, it is essential for the reviews to be carried out periodically by individuals with operational expertise, who know what good operations look like. That gives the opportunity to modernise the office and make sure that the budget from the public purse is being applied in the most cost-effective and efficient way.

Jamie Halcro Johnston: Thank you very much for that response—and for the candid approach that you have taken on that issue. You said:

“No one is looking under the bonnet”

That is extremely concerning, probably for all members of the committee.

Secondly, you have talked about the legacy issues, the backlog of cases, the stress that that caused for some members of staff and the fact that the office was not performing as well as it should. Do you have any concern that historical cases before your time might not have been investigated and concluded as they should have been?

Caroline Anderson: No evidence has come to me that suggests that that was the case, so I have focused on the backlog that I inherited. That was all in a very draft stage, so my staff have reviewed and worked through that as necessary to bring it to conclusion. My focus has been on the completion and conclusion of that work. Nothing has come to my attention from any previous parties to complaints that has given me cause for concern that anything major had gone astray prior to my term.

Jamie Halcro Johnston: Okay; thank you very much, indeed.

Neil Findlay: I have one more question about the legacy stuff before I move on to the work that you have done. Did your predecessor resign or retire?

Caroline Anderson: He was in place for his full term. He did not resign; he just retired.

Neil Findlay: Did he receive a financial pay-off?

Caroline Anderson: No, my predecessor stayed for the full term of five years. He did not leave early.

Neil Findlay: Okay—thank you.

In the report, you say that, as part of your reorganisation, you have doubled the hours for investigation work, you have not required additional full-time staff to do that, cases are being processed quicker and, over the piece, you will save £450,000. I have two questions. First, how

did you do that? Secondly, are you any good at building ferries? *[Laughter.]*

Caroline Anderson: How did I do it? My focus is on outcome and service delivery—that is where my interests and personality lie. My interest is in the highest quality of work, and I could see that the work was not progressing with the very limited input of zero-hours contract people who were working only a day a week or so.

I saw that I needed my investigation officers to be full time in order for us to be able to move through the work in a quick and thorough fashion, and also to share learnings and so on. Therefore, I reviewed the staff complement and revised it. I saw that with the heightened complexity and volume of work, I needed to bring those individuals in on a full-time basis.

As a result of that, the former zero-hours contractors, who had preserved rights from previous public sector organisations, departed from our organisation. The new staff started at the correct salary grade, according to a revision of the grades that had occurred prior to my term. As I worked through the restructure, the entire investigations team was replaced, in essence, and the new team were all on the revised grades, as approved by the SPCB prior to my time. That has enabled me to make that cost saving.

Neil Findlay: Without identifying individuals, can you give us the numbers of people in the organisation working at specific salary ranges prior to your coming in and since you have come in?

Caroline Anderson: I honestly cannot remember those figures off the top of my head. Could I provide that answer in writing?

Neil Findlay: Yes.

Caroline Anderson: We will do a full analysis of that and give you the information that you ask for.

The Convener: Following on from that discussion, I emphasise that one of the roles of this committee is to take evidence from the commissioner on a regular basis, which provides a form of scrutiny.

The next question comes from Patrick Harvie, who is joining us remotely. Patrick, can you hear us?

Patrick Harvie (Glasgow) (Green): I had not requested an opportunity to ask a question at this point, convener.

The Convener: I apologise—I had a note of your name in front of me. We will come back to you later. The next question is from John Scott.

John Scott: What has been the impact on your workload following January's code of conduct

revision, which brought complaints about MSPs' conduct towards their staff and the staff of other MSPs under your investigative remit?

Caroline Anderson: The code of conduct revision extended the respect and courtesy provision to include bullying, harassment and inappropriate behaviour, including sexual misconduct. It appears that the code of conduct revision has not been picked up on by the media or interest groups because it has so far not had an impact on my workload at all. Of course, I note that the code of conduct revision occurred just weeks prior to the outbreak of the global pandemic, which likely decreased the optics around it.

In putting together my response to your kind invitation to contribute to the financial memorandum on the committee's proposed bill to amend the process for complaints against MSPs, I did a bit of research. One of the questions that I asked was about the independent support service that had been put in place for SPCB and other parliamentary staff to raise complaints about those sorts of behaviours. I have to admit that I was surprised to hear that, by August 2020, there had been no calls at all to that support line, which was set up in early 2019. I read that in other jurisdictions there is a culture of silence or back covering in relation to those sorts of behaviours, and I wondered whether that was an issue closer to home, too.

However, the committee based the code of conduct revision and the legislative change on a huge amount of research, much of which occurred before my time. The committee will no doubt have a view on the likely impact on my workload in the coming months and years. I thank Dr Katy Orr and her team for her kind assistance in helping us with our contribution to the financial memorandum.

10:00

John Scott: According to figures 14 and 16 of your report, there was a dramatic increase in the number of cases that were processed by your office in 2019-20 compared with previous years. How do you account for those figures, and how confident are you that you are comparing like with like? In effect, there were twice the number of cases, albeit that there were 109 complaints.

Caroline Anderson: I will turn to my compendium of figures. On figures 14 and 16, and on figure 13, I point out that nearly all of complaints about MSPs were made by members of the public. That reflects a high level of scrutiny by the public in this jurisdiction, which represents, potentially, a soundly functioning democracy.

The activities of the Parliament are a big stimulus for the complaints that I receive. For

example, in the year about which you are asking, the proposed gender recognition reform (Scotland) bill was a contentious matter that gave rise to a number of complaints.

General MSP commentary on social media also gives rise to complaints. I recall that in the year concerned, there were more than 60 complaints in relation to a single post by one MSP. Such things really increase the figures.

In other jurisdictions, there are high volumes of complaints about members. At the weekend, in preparation for this session, I searched the media for anything relevant. There was coverage of the Welsh Standards Commissioner, and I saw that the volume increase that was experienced in Wales in the last reporting year was the greatest ever—it was the highest on record.

I turn to the numbers that were recorded. I received 109 complaints, but if we take out the 63 complaints on that single MSP post, that brings us down to 40-odd complaints, as opposed to 20-odd complaints in the prior year. I therefore do not think that it is a huge jump. At that level, the numbers are so small that we cannot really say that there is a particular trend. I assure the committee that the complaints are being processed and recorded in a manner that is consistent with that of previous years.

John Scott: I hear what you are saying, but, notwithstanding that, your case load has gone up from 22 to 39, which is close to double the number. Is there any particular reason for that? I note that many complaints are being referred to the Presiding Officer, rather than through other channels. Will you comment on that?

Caroline Anderson: On the figure for the Presiding Officer referrals, I often receive complaints that are conduct breaches but are not for me, so they are described as outwith jurisdiction. In cases where a complaint is not for my consideration but is for the Presiding Officer or the SPCB, we advise the complainer that that is the case and give them the contact details, should they wish to send a complaint through to the Presiding Officer.

Of the 67 complaints that went to the Presiding Officer, 63 were related to that one MSP post. If we take them out, we see that only four ended up going to the Presiding Officer, so it was a small number outside that one odd case about that single post.

John Scott: You have probably answered the final question that I had. A total of 42 complaints against MSPs were found by you to be inadmissible. From what you have just said, those would be the ones that should properly have gone to the Presiding Officer.

Caroline Anderson: No. The level of inadmissibility is very high in all jurisdictions. Inadmissibility would imply that a complaint does not involve a code breach. For example, I mentioned the Welsh Commissioner. In Wales, there are 60 members of the Senedd, but it had 84 inadmissible complaints, which is double our number. The English commissioner shares her annual report with me. In the first report that she sent through, she said that she had received, I think, 2,500 complaints regarding Brexit, all of which were inadmissible. Inadmissible complaints are a fact of life, so I do not think that 40 is an awful lot, to be honest. There is an inherent value in having a portal where the public can complain and hold elected representatives to account and exchange and enter into dialogue.

John Scott: So you are generally happy with the system.

Caroline Anderson: Yes, absolutely. I do not think that there is any getting away from inadmissibility.

John Scott: I understand. Thank you.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning to the commissioner and Ian Bruce. It is nice to see you both.

You mentioned the fact that social media attracted a considerable number of complaints in relation to one member. At the present time, complaints about social media are not part of the code of conduct. If we normalised that and made them automatically part of the code of conduct, what would the parameters be and what workload would that bring to you?

Caroline Anderson: In various ways, such as the language that is used and the views that are stated, social media posts are a huge source of complaints across the board for public bodies, public body board members, councillors and MSPs. That is simply the platform from whence the complaints are derived; 20 years ago, it would have been statements given to newspapers and printed. Statements in relation to political dialogue and opinion are a source of complaints, but often they will not be a breach of the code, because MSPs are within their rights to express how they feel on various political topics and they are allowed to state their opinions. Does that answer your question?

Gil Paterson: Yes, it does, to some extent, but if we were to change our practice by informing the public that utterances on social media now come under the code, would that attract malicious complaints based on an MSP's political opinion on a given matter, which is different from how they act?

Caroline Anderson: Mr Bruce has been assisting me with MSP complaints, so I will ask him to contribute to that.

Ian Bruce (Office of the Commissioner for Ethical Standards in Public Life in Scotland): For some time, I have taken on the triage or initial assessment of complaints about MSPs.

Sorry, good morning, convener and members, and excuse me for not saying hello. This is an unusual situation for us all. Thank you again for the opportunity to give evidence.

My initial assessment of complaints confirms what the commissioner said. Far and away the majority of complaints related to social media are about MSPs expressing views on political issues. That generates a significant amount of public interest on social media platforms, particularly Twitter.

The code covers the sorts of things that MSPs might say. Clearly, there are respect provisions in the code but, generally speaking, people react to political opinions, as opposed to things that an MSP might say that are covered by the provisions on a lack of respect. I am not sure that a code revision is necessary or appropriate, because the behaviours that are of concern and are set out in the code are still covered, regardless of whether an MSP makes a statement in a public forum or on social media. I am not sure that saying anything specific about the platform would be necessary or would change the outcome.

Gil Paterson: Thank you for that. That was very clear.

The Convener: Thank you for that. Patrick Harvie has a supplementary question.

Patrick Harvie: The witnesses know that complaints about parliamentarians have been in the news recently. Ken Maginnis has been subject to a serious sanction in the House of Lords on the grounds of his homophobic and bullying behaviour. I wonder whether you could reflect on that issue of the balance between acceptable and unacceptable behaviour versus free speech. For example, Caroline Anderson mentioned the GRA, and we are all able to reflect that that debate is one that gives rise to accusations of transphobia versus accusations of misogyny, but there will be acceptable and unacceptable ways within the code to express political views.

10:15

In relation to the code of conduct and your work, where does the balance lie in the issue of free speech versus hate speech? I hope that the example of Ken Maginnis is pretty clear and that most people would reject the way that he behaved.

There is ambiguity. Do we need to more clearly define the balance or to more clearly understand what it currently is?

Caroline Anderson: Each complaint that I receive is considered on its own particular facts and circumstance. When it is in the domain of political opinion and the expression of strong views, I refer to article 10 and the views of the court in regard to article 10.

There is little leeway to interfere with political expression. However, it is a different matter if it crosses the line and goes into gratuitous personal offence—that is the balance that I consider. As far as I can recollect, any MSP complaint cases that we have received in my term to date have not been marginal; they have been about the expression of a political view, rather than anything personal, which would not be covered. That is our reference point. Every complaint is considered against the code, the guidance, the legislation that created this office and, if needs be, article 10. That is what we consider to determine whether the statement that was made by the MSP concerned is covered. If it were a marginal situation, or if there were any doubt, we would investigate further and I would provide my findings to the committee. That is the situation.

The act prevents me giving my opinion on a hypothetical. As complaints come in, I consider their context and nuance and the particular facts and circumstances; I apply all the relevant reference sources to the information that is complained about; and I decide how to proceed properly from there.

Patrick Harvie: In short, if an MSP, for example, used the same language as Ken Maginnis, which I will not repeat, but they did not show the same bullying behaviour, do you see any risk of someone in that circumstance relying on a free speech defence?

Caroline Anderson: Again, I do not have the details of that particular case in front of me. However, where there is an element of gratuitous personal offence, it would not be covered under article 10. The act prevents me making a statement regarding a hypothetical situation, Mr Harvie—I am not allowed to do that.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I understand that there is at least one MSP complaint in the system. Are you confident that the committee will be able to deal with that before dissolution?

Caroline Anderson: I am sorry, but I am not comfortable talking about any specific complaint in a public forum. I will write to the committee outside this forum in relation to a specific complaint.

Maureen Watt: I am not asking you to do that. Obviously, we would like to get our work completed before the end of term, so I wondered whether you felt that you were able to have that work done before the end of term. However, I will move on.

In your opening statement, you said that the Scottish Government wants to remove various things from the code, which sounded quite disturbing. Why do you think that the Scottish Government wants to do that? What discussions have you had with the Government in relation to that?

Caroline Anderson: Thank you. I refer that question to Ian Bruce, because he has been dealing with the details of the consultation.

Ian Bruce: The Scottish Government's response to our consultation is in the public domain and available to view on our website, as are all the other responses, including the committee's, and we are grateful to everyone who provided a response. The 2003 act intimated that the code of practice should include "the methods and practices" that are employed by the Scottish ministers in the making of public appointments. The Scottish Government's response suggests that all the methods and practices that currently sit in the code should be stripped out, because the Scottish Government describes those as "operational" matters. We feel that doing so would be incompatible with the legislation.

I had an early discussion with a Scottish Government official about what the Government might consider setting out in its consultation response. We did not have a great deal of time, as is often the case; my meetings with officials are generally restricted—not at our end—to an hour or so. The official said that she had a number of questions about what we had set out in our code consultation. Given that we did not have much time, I asked whether she could put those in writing to us, so that we were in a position to give a substantive response, but those questions were never forthcoming. The next thing that we saw was the consultation response, which was sent to us on the date of the deadline.

Maureen Watt: In your annual report and accounts, you found that the Scottish ministers' performance in relation to achieving diversity on public boards is patchy. Why do you think that "clear and convincing plans" for achieving parity are lacking in some areas?

Caroline Anderson: Those issues have their roots in events that occurred prior to my term in office, near the start of the previous commissioner's term, so, again, I ask Ian Bruce to answer that question.

Ian Bruce: It has been interesting, let us put it like that. Some years ago, there was a significant level of governance around public appointments, which followed on from the First Minister's very public statement that she wanted to see 50:50 gender parity on boards by 2020. That was great and was of significant benefit to us more generally, because resources become marshalled behind a ministerial commitment. The Scottish Government established its public boards and corporate diversity programme board to provide strategic oversight of appointment activity. A smaller board, to which we also belonged, was set up below that to assess progress in relation to gender parity in particular, which was the outcome that everyone was focused on.

Activity was being closely monitored and there was lots of flexibility in the current code that was being capitalised on. New approaches were being taken, which was great, and the results of those were being reported up to the strategic board that provided oversight. It was a bit of a virtuous circle, and we saw success in that area, which was fantastic. At the same time—more than three years ago—we were saying to the Scottish Government, "This is great, but we are not achieving that same success in other areas and we need to make provisions to do that." So, we agreed with the Government—it was happy to agree—on bespoke plans for disability and younger people. You will be aware from the report that those are areas in which we have not seen the progress that we might have. About three years after that agreement, the Government said that it was reneging on that promise. I am sorry to put it that way, but that was the reality.

We believe that bespoke plans for disability and for younger people are necessary. A central plan was produced, with the idea that that would be sufficient. There have been iterations of that but, from my perspective, the actions that are set out in that plan are quite vague and are not SMART—specific, measurable, achievable, realistic and timely—so it is difficult to see how they will deliver, and it is difficult to hold the Government to account on them. Over and above that, the programme board and the board that sat below it were disbanded, so it is hard to see where the clear and strategic leadership for the improvements in those other areas will come from. That is the position that we are in.

Maureen Watt: Were they disbanded pre-Covid or during the Covid period, because of huge amounts of commitments for Scottish ministers and the civil service? I notice that you intend to have more frequent and public reporting on Scottish Government appointment activity. What will be achieved by doing that?

Caroline Anderson: I will answer the first part of the question—[*Interruption.*] Sorry, I think that Ian Bruce would like to finish his response.

Ian Bruce: The programme board was disbanded some time ago and the board that sat below it was disbanded two years later. It is appropriate to add at this point that I genuinely do not wish to be overly critical of the activities of officials—they are stretched in many different directions. We have a shared outcome with ministers, which is to ensure that boards are reflective of society. We are obliged as a regulator to observe when we think that that particular target is not going to be met, but we empathise with officials. Many things have arisen and gotten in the way—first Brexit then a pandemic—and we realise that the resources that are available to officials are exceptionally stretched. I will hand over to the commissioner.

The Convener: Before you come back in, commissioner, we have two short supplementary questions from Gil Paterson and John Scott that will build towards the end of the section.

Gil Paterson: My question is on that point. I notice that table 6 in the annual report shows a slight improvement in the situation, with numbers of appointments of people on low earnings coming up and those of people on higher earnings going down, if I am reading that right. I take the point that, if people were set up specifically to drive that up and they are not there, that is something that we should consider. Can we pick up on improvements that other jurisdictions have made? I am talking about not only young people but people from poorer backgrounds across the board, who are missing from public service.

Caroline Anderson: I ask Ian Bruce to answer that question on my behalf.

10:30

Ian Bruce: That is an interesting question. We do not necessarily have to look elsewhere, because the reality is that the Scottish Government has done exceptionally well—[*Inaudible.*]

—appointment rounds, and we would not be able to produce the good-practice case studies on what it is doing if that were not the case.

We can use disability as an example. There is a clear intersection between disability and low income. We have good-practice case studies about the Mobility and Access Committee for Scotland on our website. Given that it is obliged to appoint members with a disability, officials and our office go the extra mile. They revise practices and the attraction, and how those roles are filled in quite a different way. Open days specifically for

disabled people are run, and there are positive-action measures such as making the packs more accessible and making it easier for people to apply. That led to successful outcomes and disabled people being appointed.

In relation to income, one of our more recent case studies was on the Poverty and Inequality Commission. Again, different practices were used and there was excellent outreach. The previous time that I appeared before the committee, I spoke about the importance of how merit is defined. One of the things that has come across clearly to us from the equalities organisations that have responded to the consultation is that the way in which merit is defined makes a big difference to the types of people who are appointed.

Good practice is taking place, and the Scottish Government is responsible for that good practice, but it is not necessarily being codified and rolled out so that it becomes the norm in all appointment rounds. There are myriad reasons for that, one of which is that, as we have touched on, that needs to be resourced differently. In comparison with other parts of the United Kingdom, generally speaking, Scotland is doing well, but we understand that, collectively, we need to do better.

Interestingly, Lord Holmes was commissioned by the UK Government to conduct a review into the lack of disabled people on boards in England and Wales. He made some recommendations but, to be honest, they were not entirely new. Collectively, we know the measures that need to be put in place so that more disabled people are appointed. Lord Holmes made his recommendations two years ago. Very recently, we received his report two years on from his review, and I think that only two of his recommendations, which were relatively straightforward ones, had been implemented in that time. Implementation matters. It is not that we have not done the research or do not know what needs to be done—we do—but actually doing it is what makes the difference.

John Scott: I have a general question about public appointments. In her annual report and accounts, the commissioner says:

“Diversity enablement activities have continued to be diffuse, with the Scottish Government reaffirming its commitment to some activities but with no clear and convincing plans for achieving parity in other areas.”

She goes on to say:

“Without sustained effort in areas other than gender, we will either maintain the status quo or go backwards in respect of other protected characteristics.”

Would Ian Bruce like to expand on the commissioner’s remarks? What will happen if the Scottish Government, in essence, does not pay more attention?

Ian Bruce: If you will excuse me, that seems self-evident to me. I referred to the lack of concrete plans in relation to certain protected characteristics. I am not sure that I buy the argument that bespoke plans are not required.

I will use a simple example. The Scottish Government had already published a commitment to have a bespoke plan for people from a black and minority ethnic background. We were provided with the latest iteration of that plan relatively recently. Some clear actions have been agreed with groups that represent BME communities in Scotland. It is great that there is a bespoke plan but, over and above that, the actions in it need to be implemented.

We talk about activities being “diffuse” because they are diffuse. There is a very general central plan, which does not include the SMART actions that are required in order to elicit the changes that are needed. Over and above that, implementation is required. We have run thematic reviews and—I am sorry to be beating this drum again—the Government needs to learn from experience. When things go very well, that practice needs to be codified and rolled out. It is no good doing the right thing once; we need to ensure that that happens across the piece. That is when we will see changes being made and the difference that we need to see.

I am not sure whether that answers the question.

John Scott: I would have liked specific examples of where things could be done better immediately, but I appreciate that we are short of time.

The Convener: We are a wee bit short of time. On that basis, I wonder whether it would be possible for Mr Bruce or the commissioner to send us some information on that.

Ian Bruce: Yes, of course.

Caroline Anderson: Surely.

The Convener: Thank you. That would be great. We need to curtail things a wee bit because we need to finish the session by 11 o'clock at the latest. On that basis, I ask for focused questions and answers, but we do not want to curtail elements that require good coverage.

Patrick Harvie: Some of the issues that I was going to raise have been covered already, so I will try to compress my questions to save time. The discussion about knowing what we need to do to improve recruitment to boards of people with other protected characteristics is very familiar. I seem to remember having the same discussion last year. We know what we need to do; we just need to do it. The issue is not really about trying to understand the barriers.

Are there organisations that have been more effective? That might relate to recruiting people with a wider range of protected characteristics, getting women to take up chair positions—the numbers are still quite low in that regard—or attracting younger people. Are there organisations that are getting it right, but that good practice is not being shared?

Caroline Anderson: I will defer to Mr Bruce, who is involved in the diversity research and has knowledge of organisations that might be able to assist the committee.

Ian Bruce: I am sorry to repeat myself, but I think that the Government gets it right, but not all the time. The type of recruitment that we are talking about is quite rarefied. We are talking about the recruitment of non-executive directors and chairs to boards. That is not entirely comparable with other types of recruitment, although it is certainly possible to share good practice across different types of recruitment exercise.

This year, we refreshed our guidance on good practice in recruitment and selection. We always use the latest research on what “good” looks like. We have referred our public appointments advisers—who, in turn, advise panels—to the work of a relatively new organisation called Applied, which uses behavioural science to determine the best techniques in order to secure good diversity outcomes at the conclusion of a given recruitment process. We also refer to the Chartered Institute of Personnel and Development for similar research on what “good” looks like.

Again, we would not be publishing those case studies if the Government was not successfully employing those practices on given appointment rounds, but the issue is that the success is patchy and the reason that it is not done all the time, more than anything, comes down to time and resource. You need to take the time to plan and design a barrier-free process. Sometimes, that is successfully done but, at other times, the time and resources are not available, so the status quo on diversity is maintained. However, we know what good practice is and what it delivers.

Patrick Harvie: I have a final question. Can Ian Bruce comment on the role that could be played by public appointments advisers and by working more effectively with voluntary organisations? At one of the recent focus groups, the committee heard that voluntary organisations could be used more effectively to source people with relevant experience.

Ian Bruce: Happily; I will talk about the advisers first. We recruit them—we have just gone out for another three. They are not policemen in the corner; they are there to advise panels, not just on

the bare minimum of how to comply with the code, but on how to go the extra mile. They are there to give advice on good practice in recruitment and selection, with a particular focus on equality and diversity.

Of our three new folk, one is currently a consultant in her own right and was previously at the Equality and Human Rights Commission; another, as a consultant, used to provide training and advice to the Scottish Parliament on equality and diversity. We have people who provide advice to the CIPD and another who provides advice to FTSE 100 companies on equality and diversity issues—that is the calibre of the people we look to get involved in the public appointments process. When their advice is taken on board, we see that making a difference. As she said, the commissioner is all about adding value, and that is one of the places where we see that we can do so.

With regard to voluntary organisations, I think that the third sector does relatively well. I do not know whether it is appropriate to mention this but, in our consultation document, we made reference to the figures in relation to the public, private and voluntary sectors. The voluntary sector is just over 4 per cent of the Scottish population. In 2019, 13.2 per cent of applications were from and 14.1 per cent of appointments went to people in the voluntary sector, so I do not think that there is a particular issue there.

It is also worth saying that we have done some work with the voluntary sector. Two years ago, alongside the Government, we ran training for independent panel members, and they were all senior figures in the voluntary sector, so not only do they do well in the process but they are represented on selection panels.

The Convener: Thank you for those questions, Patrick. We will go to Gil Paterson.

Gil Paterson: I have covered the points that I wanted to raise.

John Scott: I would be interested to know why, when he last came to the committee, Ian Bruce said that people from the private sector were not applying in numbers, and that when they do, they fare more poorly than their public sector counterparts. Why do you think that it is important to increase the proportion of people with private sector backgrounds who serve on public boards? I agree with the sentiment, but I would like you to explain why that is the case.

Ian Bruce: I think that—

Caroline Anderson: Thank you for that question. I beg your pardon, Ian.

Ian Bruce: I was simply saying that that is a question for the commissioner.

10:45

Caroline Anderson: Indeed. The overall aim is to produce public boards that are reflective of society. Mr Bruce has just referred to figures; the consultation document shows that although 80 per cent of the Scottish population have private sector backgrounds, in 2019 less than 30 per cent of people in our public appointments rounds had such a background. Therefore, we are not representing the prevalence in society of folk who have private sector backgrounds. There seems to be a huge predominance of people with public sector backgrounds on boards; although they make up only 20 per cent of the population, they account for 45 per cent of the appointees to public body boards.

There are a number of potential ramifications of people with public sector backgrounds being dominant on public bodies' boards. In the absence of private sector outsiders, there is a greater propensity for groupthink, which could result in minimal challenge, and we could end up with a club-like environment on public bodies' boards. The opportunity is being missed for fresh input from people who have another type of work experience. When it comes to issues such as risk management, entrepreneurship and novel problem solving, a private sector background brings a fresh attitude and a fresh pair of eyes.

We have been working on a survey of applicants who have come through various rounds that have been run. Recently, I was provided with a draft version of that report by Mr Bruce. I note from it that people with private sector backgrounds felt that public body board rounds are a closed shop, and that a person would be successful only if they were in the know and had the inside track in order to know the buzzwords. Those feelings were communicated by people from private sector backgrounds who answered the survey.

Ian—do you have anything to add?

Ian Bruce: I think that you have covered it, commissioner. We will happily provide the committee with the full report, as and when it is published, so that the committee can reach its own view.

The issue has been a particular focus of our new commissioner, so we are now disaggregating some information that we get in relation to things including income and the sector that was worked in, which will shine a light on the matter. That is relatively new for us.

John Scott: We would be very grateful if you could supply any information in that regard.

What can be done to encourage individuals from households in lower-income groups to apply? Could you briefly tell us more about the case study

on the appointment round for the Poverty and Inequality Commission?

Caroline Anderson: Thank you for that question. I will make a few brief comments, before I bring in Mr Bruce to provide further detail.

You are quite right. When I saw the achievement of gender parity on boards, I was interested to look further and to ask for data that would show household income in the context of that achievement. I was very interested to see that there had been very little change—the household incomes that we were seeing were more or less static and gender parity was within the higher-earning group.

When we started to receive responses to the consultation, I noticed that equality and diversity advocacy groups were pointing out that the lived experience of people in lower-income groups was not being valued properly in the public body board appointment process. The key barriers, which Ian Bruce referred to earlier, are the definition of merit, because lived experience should be considered to be of equal merit to qualifications, corporate skills and so on; the time commitment and remuneration—remuneration is potentially even more important to people in lower-income groups; and the support that we give individuals to make them ready for application and, if appointed, to ensure that their voices are heard. Those are my introductory comments on that question. Perhaps Ian Bruce will expand on the case studies.

Ian Bruce: John Scott made reference to the Poverty and Inequality Commission case study that we published. It is a concrete example of good practice and of what can and should be done, so it is probably best that I refer to it. The early engagement in that example was tremendous. The public appointments adviser whom we allocated was already committed to the issue, and the chair of the panel was equally committed. Given the subject matter that the committee is engaged in, that is important. The chair of that commission was also committed to it.

There was early engagement with our office from those parties, and there was engagement with the Social Security Committee. The Poverty and Inequality Commission is one of those unusual bodies that is subject to parliamentary approval. As I said, there was early engagement, there was commitment on the part of the involved parties, time was taken and there was good planning. The parties realised what sort of people they needed for that board to be successful. There is clearly scope for the practices that were used there to be used in other appointment rounds.

The commissioner mentioned the definition of merit. If the committee will give me a moment, I will give you an example of how that was done for

the board of the Poverty and Inequality Commission.

John Scott: We are terribly pushed for time. Perhaps you could send that to us.

Ian Bruce: I am sorry. Yes, of course.

The Convener: Not at all. As John pointed out, we are pushed for time. You have been helpful this morning in saying that you will forward information to the committee. If information on that board would also be helpful to us, it would be great if you would send it.

Ian Bruce: I will happily do that.

The Convener: That is kind of you.

Neil Findlay: In the annual report on public appointments, there is reference to the household income of applicants and those who are appointed. The median income in Scotland is £24,000 or £25,000 a year, yet the numbers are low—only 12 per cent of applications and 6 per cent of appointments are from people with that income or less. It is good and appropriate that, for example, the Poverty and Inequality Commission is going through a process to engage and recruit people who have relevant lived experience. However, we will see progress only when people from that background, with that income level and of that class are on the boards of economic, arts, culture and education bodies. At the moment, I do not see those people in such positions and I see no real effort being made to make that happen.

The class division is the biggest division in society, so I think that you should be reporting on that up front, as the first and most obvious way in which we are failing to represent and be reflective of society—which, to be frank, should be the objective of public appointments.

Caroline Anderson: Basically, my powers are given to me under the Public Appointments and Public Bodies etc (Scotland) Act 2003. The power that I have to report to Parliament is limited to reporting on material non-compliance with the code of practice. Although many serious events might occur that cause concern, during my term of office such events have rarely surpassed the level of material non-compliance that would allow me to report to Parliament, as defined by the act. Because of that, I decided to report more regularly to the committee, as the subject committee that acts on behalf of Parliament to hold Scottish ministers to account for correct and proper progress in the public appointments arena.

I will take into account the points that the committee has kindly raised today and in its response to me on the consultation, when we are looking at how we can revise the code, within my powers, to ensure that maximum value is added to

the efforts to achieve the diversity aims that Mr Findlay rightly referred to.

The Convener: I thank everybody, especially our guests. We are drawing the meeting to a close at about the time when we were supposed to do that, which is good. I thank the commissioner and Ian Bruce for kindly joining us today and for being so helpful, including being willing to forward further information that we have not had time to cover this morning. That is very good of you. We look forward to seeing you again.

Caroline Anderson: Thank you very much.

10:57

Meeting continued in private until 11:44.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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