SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER

Supplementary Submission to Finance Committee

re its Inquiry into

Accountability and Governance

16 June 2006
INTRODUCTION

1. I wish to give supplementary written evidence to the Finance Committee subsequent to my provision of oral evidence on 6 June 2006. My reason for this is that I do not think that there is as yet sufficient clarity on the difference between a reasonable and proportionate degree of Parliamentary oversight of financial and efficiency issues in relation to post-holders, the need for which to my knowledge no-one has contested, and arrangements including direction by Parliament which would interfere with the functional or operational independence of the post holders, without which their posts would lose credibility with the public. There appeared in the session on 6th June to be a suggestion coming through some questions that since Parliament pays the piper, it should call the tune, down to suggesting some of the words and music. I will argue particularly in relation to my own post.

2. I refer specifically to the convenor’s comment (Official Report, 6 June, Col 3692) that “...the defining characteristic of a parliamentary commissioner... is that they serve Parliament...” I am not sure that this will assist the public to trust in the independence of my complaints investigations into the conduct of MSPs. If I am a servant of Parliament, how can I take an independent view? There is clearly a difference between a Parliamentary appointee, or in the case of the other posts, Parliamentary nominees and Crown appointees, and a Parliamentary employee, whose duty is to serve Parliament.

3. I wish to remind the committee, and the public, that it was the wish of Parliament that I should be able to investigate complaints independently.

The Standards Committee’s proposals for the post

4. After a 9 month inquiry, the Standards Committee produced its proposals for a mechanism of complaints investigation in its 4th Report 2000. The Committee summarised its view on the appointment of an independent Commissioner thus:
“At its meeting on 14th June, therefore, the Committee agreed to recommend the appointment of a Standards Commissioner, with a view to maximising public confidence in the Parliament’s commitment to maintaining the highest levels of probity in conducting its affairs. The critical factor in the Committee’s decision was the degree of independence which a Commissioner could apply to the investigation of complaints about the conduct of MSPs.”

5. Standards Committee brought forward its Proposal for a Standards Commissioner Committee Bill in its 2nd Report 2001. In the conclusion, it noted that:
“The Commissioner will be an important independent element in ensuring that complaints against Members are dealt with in a transparent and rigorous manner.”

Stage 1 debate on the Bill/
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6. There is an interesting reminder here that the powers of the posts in question were created, or voted into effect, by Members of the Parliament, even though the full governance framework might not have been considered as each post was set up. In the Stage 1 debate on 28 February 2002, Des McNulty MSP, a member of Standards Committee until January 2001 (as he indicated at Finance Committee on 6th June) said; “After a long process of deliberation, we decided that we wanted to have an independent Standards Commissioner. I warmly endorse that decision and the fact that it has been carried forward into the bill. There is a broad measure of cross party support for that role and for its being filled by an independent person. …We have established clearer principles and a better procedure for dealing with complaints [compared to Westminster], whereby the person investigating the complaints will be clearly independent and the Parliament itself will transfer its statutory powers to allow that person to carry out their function. Those are good principles.”

The Scottish Parliamentary Standards Commissioner Act 2002

7. Section 4 of the Act generally makes the Standards Commissioner subject to directions given by Parliament about the conduct of investigations or provision of reports. However operational independence is established by subsection 3 which provides: “However, any direction to the Commissioner by the Parliament under this section shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.”

Other posts

8. I note in passing that the legislation setting up the other posts under consideration protects operational independence by explicitly stating that: “…in the exercise of that officer’s functions, {the officer] …is not subject to the direction or control of: (a) any member of Parliament” (b) any member of the Scottish Executive (c) the Scottish parliament Corporate Body” (with some exceptions such as needing approval of SPCB to appoint staff).

Conclusion

9. I hope I have furthered my aim of stressing the need to protect Parliament’s original intention for operational independence for my and other related posts while putting in place appropriate mechanisms for oversight of financial and efficiency issues. I hope I have also reinforced to any member of the public who may have been in doubt that in conducting complaint investigations I operate, as intended by Parliament, independently of the Parliament, rather than being there to serve it.
10. I am confident that the Committee will find a way to put a comprehensive governance framework in place which will not compromise operational independence and which will optimise the interaction between Parliament and the office holders to the benefit of all.

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Scottish Parliamentary Standards Commissioner
16th June 2006