RESPONSE FROM LEWIS MACDONALD MSP

Draft Revision of Section 8 of the Code of Conduct

Thank you for the opportunity to comment on the above. You will recall that I responded and gave evidence to the Committee in carrying out the review of Section 8, and explained my view of the importance of the protocols governing the relationship of regional to constituency MSPs, given the very different bases on which they are elected.

The draft which you have distributed appears to lose sight of this distinction, which is fundamental to the proper working of the Parliament and its Additional Member System of election. I believe the Committee should instead build on the existing approach, in order to reflect in the Code of Conduct the very clear difference between the roles and responsibilities of constituency and regional Members.

The difference in roles is reflected in the fact that it is possible to stand both as a constituency and as a regional list candidate, where it is not possible to stand as a candidate for more than one constituency. In the first three Scottish Parliament elections, many candidates from different parties have been successful in constituency elections, and at the same time have been well enough placed to be elected from their party’s list as a regional representative. In every single case where a candidate has had the choice, he or she has chosen to represent the constituency rather than to be elected from the list. There has even been one case where a Member resigned a regional seat in order to contest a constituency by-election.

This of course does not mean that there is a difference in status between constituency and regional Members: all MSPs have the same formal and legal status. It does mean that MSPs recognise that there is a difference between the job of a constituency Member, which is much more analogous to the traditional role of a Westminster MP, and the job of a regional Member, which is different in some essential respects. It is important to recognise that distinction in order to ensure that the formal and legal equality of MSPs is reflected in practice.

That is partly because parliamentary regions are up to ten times as large as parliamentary constituencies. It would be a fiction to maintain that regional members could or did serve their regions in the same way as constituency MSPs serve their constituencies. If the distinction between the two were removed, as your draft revision suggests should happen, constituencies would be reduced to sub-sections of regions, which clearly was not the intention of the legislation and clearly is not how the electoral system works either in theory or in practice. The reality is that constituencies are intended to be the usual units of representation, as reflected in the current Section 8 of the Code of Conduct, and that regional Members have a different role to play in representing the public.
Your draft at 8.1.1, for example, says that a Member should be free to decline a constituent’s case because the case seeks action which “is contrary to the Member’s political beliefs.” That is perfectly reasonable, in the context of the role of regional Members, most of whom are elected to Parliament in order to ensure their party’s electoral support is proportionately represented within the membership of Parliament as a whole, and who are elected from a list put forward and ordered by their party for that purpose. This drafting does not reflect the responsibilities of constituency Members, who are nominated and elected as individuals (whether or not as party candidates) in first-past-the-post elections and who have a duty to act on behalf of all of their constituents, of whatever political views, in other than the most exceptional circumstances.

Regional Members are expected to respond to a far greater number of voters than constituency Members; it follows that in general the level of expectation of what they will do must be less, and that they are more likely to be asked to respond to lobbying on policy issues or to campaigns than to take up individual cases in the way a constituency MSP or a Westminster MP is expected to do. It must of course be open to members of the public to seek representation from a regional rather than a constituency Member, as the current Section 8 allows. Equally, that must continue to be regarded as unusual, and at the behest of the constituent, rather than treating regional Members as additional constituency Members, which they are not. The approach of your draft revision of Section 8 purports to treat MSPs equally but actually does the opposite. It creates two classes of MSP, because it obliterates the distinction between the two roles and therefore relegates constituency Members to a local version of a role which is otherwise the same as that of regional Members, rather than recognising that constituency Members represent fewer people but do so in a different way.

I therefore believe that the current requirement, that regional MSPs should notify the relevant constituency MSP when approached by a constituent, should remain in place. This should happen in every case, except where the constituent explicitly withholds consent for that to happen. As at present, a regional MSP should concentrate on regional and national concerns; should notify the constituency MSP if raising an individual or local concern, as at present; and, if he or she chooses to hold advice surgeries, these should not be concentrated in any particular area of the region in question.

Ministers are of course also Members of the Parliament, and should act in accordance with the principles of the Code of Conduct as well as in line with the Ministerial Code. Ministers should as at present notify the constituency MSP (and the constituency MP) when visiting a constituency on government business, and may also notify regional MSPs. Ministers approached directly by members of the public on constituency matters should refer them to their own constituency MSP as the usual point of contact, and may in addition notify them of their regional MSPs.
I attach a set of alternative provisions which I believe meet the need for continuing clarity about the roles, responsibilities and relationships of constituency and regional MSPs.

**DRAFT REVISED SECTION 8: ENGAGEMENT AND LIAISON WITH CONSTITUENTS**

**8.1 Representation & Casework Management**

8.1.1 An MSP is entitled to take an interest in or take up a matter affecting the constituency or region for which they were elected.

8.1.2 An MSP must not deal with a matter relating to a constituency case or constituency issue outwith his or her constituency or region, unless by prior agreement with the MSPs representing the area.

8.1.3 A constituent has the right to raise a specific personal or local constituency matter with his or her constituency MSP or one of their seven regional list MSPs.

8.1.4 It is expected that the usual point of contact for a constituent raising a specific personal or local constituency matter will be his or her constituency MSP.

8.1.5 In the event that a regional list MSP does raise a constituency case (for example with a Minister or Local Authority), the regional MSP must notify the relevant constituency MSP at the outset unless the consent of the constituent is withheld. A suggested pro forma for this purpose is attached at appendix A.

8.1.6 In the event that a regional MSP is made aware that a constituent’s case is already being pursued by another regional MSP, it is recommended that the member notifies that MSP in addition to the constituency MSP. Adopting such an approach should avoid duplication of casework.

8.1.7 MSPs are reminded of the requirements of the Data Protection Act when processing personal data and sensitive personal data. Members must not provide personal data about constituents without the agreement of the constituent. In corresponding with Ministers or other agencies, MSPs must ensure that any initial written or oral communication makes clear the basis upon which any personal data and sensitive personal data about a constituent is being provided.

8.1.8 Regional MSPs have a responsibility to all those in the region for which they were elected. It is important therefore that they recognise this in the way in which they operate within the region and they must therefore work in more than 2 constituencies within their region. Evidence that they were doing so would
include holding surgeries in more than 2 constituencies (though regional MSPs do have the option of holding surgeries in their Party’s regional office only) and dealing with local authorities and other agencies and constituents in more than 2 constituencies within their region.

8.2 Describing Members

8.2.1 MSPs should not misrepresent the basis on which they are elected or the area they serve. Regional members and constituency members must describe themselves accurately so as not to confuse those with whom they deal.

Constituency Members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [x] constituency.”

Regional Members should always describe themselves as:

“[Name], Member of the Scottish Parliament for [y] region.”

8.2.2 Regional members must not describe themselves as a “local” member for (or having a particular interest in) only part of the region for which they were elected. Constituency members should not describe themselves as the sole MSP for a particular area or constituency.

8.2.3 Further guidance may be issued by the Presiding Officer as appropriate in the context of a period prior to an election.

8.3 Ministerial visits; and MSPs’ staff

8.3.1 MSPs who are Scottish Ministers who are planning to visit constituencies should, as a matter of course, notify the constituency MSP. They may also notify regional Members representing the area.

8.3.2 Members must ensure that their staff in the Parliament and locally, and others working on their behalf with constituents and agencies, are aware of, and conform to, these rules.

8.4 Making a complaint

8.4.1 Any complaint against a member (including one about their staff or others working for them) in respect of this section should in the first instance be made to the Presiding Officer. Any complaint made under Section 8 of the Code of Conduct should meet the requirements set out in paragraph 9.1 of Volume 3 of the Code of Conduct for Members of the Scottish Parliament. A complaint which does not meet the requirements set out in paragraph 9.1 may be dismissed by the Presiding Officer as a ‘Procedurally Defective Complaint’.
8.5 Procedure for dealing with a complaint

8.5.1 In considering a complaint the Presiding Officer may contact the member(s) concerned to seek a response to the conduct complained about.

8.5.2 The Presiding Officer will, if necessary, contact the respective Party Business Managers in relation to a complaint.

8.5.3 Where the complaint cannot be resolved in this way, where the matter is of sufficient seriousness to warrant a more formal investigation, or where any MSP directly involved remains dissatisfied, the Presiding Officer will raise the matter with the Convener of the Standards, Procedures and Public Appointments Committee.

8.5.4 The Standards, Procedures and Public Appointments Committee would then consider the matter as it judges appropriate, in accordance with its procedures and its remit to consider and report on the conduct of members in carrying out their Parliamentary duties.

8.5.5 It is fundamental to the success of this section that the Standards, Procedures and Public Appointments Committee will, as a matter of course, treat all breaches of these rules with the utmost seriousness. Members should not raise complaints under Section 8 of the Code of Conduct in any way other than that described above (in particular via the media) to avoid any suggestion of prejudging the issue.