



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Standards, Procedures and Public Appointments Committee

Thursday 29 February 2024

Session 6



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
5th Meeting 2024, Session 6

CONVENER

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DEPUTY CONVENER

*Ivan McKee (Glasgow Provan) (SNP)

COMMITTEE MEMBERS

*Stephen Kerr (Central Scotland) (Con)

*Evelyn Tweed (Stirling) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Johann Lamont

Professor Adam Tomkins

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 29 February 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Martin Whitfield): Good morning, and welcome to the fifth meeting in 2024 of the Standards, Procedures and Public Appointments Committee. This is only the second time that the committee—or its predecessors—has sat on a leap day. I have received no apologies.

Agenda item 1 is a decision on whether to take in private item 3, which is consideration of the evidence that we are about to hear from our witnesses. Is the committee content to take item 3 in private?

Members *indicated agreement.*

Committee Effectiveness

09:30

The Convener: Agenda item 2 is our first evidence session on committee effectiveness. The purpose of today's evidence session is to get reflections from former conveners on the effect of committee structures, the balance of work and making space for innovation for committee effectiveness.

We are joined by Johann Lamont, who was an MSP from 1999 through to 2021, covering sessions 1 to 5—I think that you were convener of four committees over that time—and Professor Adam Tomkins, who was an MSP between 2016 and 2021 and who convened the Justice Committee. Good morning to both of you. I hand over to you for a five-minute introduction, to give your initial thoughts on committee effectiveness.

Johann Lamont: Thank you for the invitation. I am very conscious of how I felt, in my time as convener, about people who ran over time and indulged themselves, so feel free to cut me off without any worries at all. If you want me to expand on certain points, I am more than happy to respond to them in writing later.

I also give a health warning: I might have a view on how committees operate but, like everybody else, I have my own baggage. I have political baggage and a history of how I conducted myself in committees, and I do not pretend that everything that I did was a model way of behaving in committee. However, I offer you my experience.

I underline how important committees were—or were regarded to be—in the very early days. The explanation of why we were to have a unicameral Parliament was that we would have committees that would be very strong. They would have a permanent, solid membership that could not be changed at the whim of the parties, and there would be an emphasis on accountability and responsiveness to what was happening. There was a seriousness about the committees.

I took the view that committees would provide an opportunity for people external to the Parliament to influence its thinking. You might want to reflect on the extent to which that has been successful, but it is worth reflecting on the idea that the committees were to be a place where politics was done differently and where you tested ideas and arguments as opposed to performing as a politician.

The big challenge for an MSP—it is not easy to resolve—is how, as an MSP and a committee member, you manage all the bits of yourself that you bring into the room. Nobody can deny their

party affiliation and political priorities or the priorities of their party in the Parliament at a particular time. However, the truth is that, as an MSP, you must recognise those tensions between what your constituents might want you to do and what your party might want you to do. We need a constitutional role in the Parliament to give confidence to MSPs that they can conduct that process. I have a strong view that, at the very minimum, committee members should not be whipped—they should not be disciplined for not doing as the whips in their party want them to do.

When the committee is considering issues, people external to the Parliament should feel confident that evidence other than that which MSPs agree with is being heard seriously; that written evidence is looked at; that oral evidence follows from the written evidence that has been contributed; and that, when witnesses come before a committee, the job of members is not simply to argue with the person who has given evidence but to reflect on what they say. Members can challenge witnesses, but they should not simply continue the normal political arguments through the committee process.

I have questions that I want the inquiry to answer. How is the balance in the work of a committee resolved between holding the Government to account and running its own inquiries? How many committees have introduced their own legislation? That was previously held up as an important role. What balance is there in the burden of legislative responsibilities?

To what extent are committees able to respond flexibly? For example, at Westminster, although we do not always use it as a model, when there is a crisis because something has happened, somebody comes before a committee right away. There are reasons why that cannot happen so easily here, but it is something to think about.

You also have to think about the capacity of MSPs to do their job seriously in committees. A question to flag up is the balance between the power of the executive as against that of MSPs and that of committees, in particular. If a quarter of MSPs are Government ministers, what are the implications for the governing party back benchers who fulfil committee responsibilities? We need to wrestle with that.

Parliamentary scrutiny cannot simply be about Opposition scrutiny. There is legitimacy if all members who sit on a committee, across parties, argue a position. However, if there is pressure on Government back benchers because only half of the Government's group can sit on committees at all, that tilts the power balance way too much towards the Executive, and it is probably already tilted too much in that way.

There are questions about pre-legislative scrutiny and post-legislative scrutiny, about being honest about where we have got things wrong, and about having the intellectual curiosity to ask questions that your own party does not want you to ask.

My final point, having thought about it, is that we cannot teach, direct or regulate an MSP to be a responsible committee member but we should celebrate that role and recognise that it is fundamental. We should come into committee to do our job on behalf of our citizens and communities, not just on behalf of our party. That means understanding and managing the tensions in our roles and responsibilities.

The Convener: Thank you. Your timing was perfect.

Professor Adam Tomkins: One of your challenges today, convener, is to get me and Johann Lamont to disagree with each other. I disagree with nothing in what Johann just said. I do not appear in front of you as a politician. I am not a politician any more. I carry the flag for no political party. Two of you might be upset about that, and three of you might be relieved.

I was a member of this Parliament for a while. Before that, for a longer while, I was an adviser to the House of Lords Constitution Committee. I therefore have quite a lot of direct professional experience of working in and with Parliaments. However, I have also been a student of Parliaments for 30 years. I teach and write about Parliaments. Most of what I have to say to you this morning, therefore, will be from that professional perspective rather than any party political perspective. I hope that my evidence will be received in that spirit, and I hope that it will be useful.

I will go right back to the beginning—back to basics. In a parliamentary democracy, Parliaments exist to do three things, albeit that, first and foremost, they represent constituents. Johann Lamont is always very strong on that. I remember her last speech in the chamber, when she gave advice to anyone who was listening that they should follow their postbag. That is exemplary advice and is typical of Johann.

Parliaments exist to represent people, but, within that, they have three functions. The first of those is to debate issues of public importance that are faced by the nation. The second is to hold the Government to account. In this country, we do not elect Governments; we elect Parliaments, and Governments emerge out of and are accountable to Parliaments. Parliaments exist to hold Governments to account. Thirdly, Parliaments exist to make law. You are all law makers—legislators.

When it comes to committee effectiveness, effectiveness is not a free-standing value. We need to consider what it does or achieves, and holding in mind those three different functions of a Parliament is a useful way of thinking about measuring effectiveness.

Committees do not really have anything to do with the first of those three functions. They do not exist to rehearse arguments that should be heard downstairs, in the chamber—debates on general matters of public policy or those that affect the nation. That is not the function of committees. I agree with Johann Lamont that anybody who uses a committee meeting to rehearse some kind of party political debate is misusing that committee.

Committees exist to help Parliament with the other two functions, however. They are central in the task of trying to hold the Government to account for its policies, administration, decisions and mistakes—for what it gets right and what it gets wrong—and, particularly in this Parliament, they exist to help Parliament to make law. In fact, the burden of legislative process in this Parliament is with committees: stages 1 and 2 take place primarily in committee rather than in the chamber. Of course, there are stage 1 debates, but they are—or, at least, are supposed to be—debates about a committee report.

When we think about the effectiveness of committees, we want to think about that in relation to their helping Parliament to hold ministers to account. Separately, we want to think about the effectiveness of committees in relation to their helping to make good law.

Although there are, of course, exceptions to both things that I am about to say, my view is that, generally, the committees of the Parliament are absolutely lousy at helping to hold the Government to account. It is one of the great failings of devolution that, after 25 years, we have a Parliament that really does not do that job very well, particularly in comparison with what happens down south. However, this Parliament should be proud of its record on making good law. Of course, occasionally, bad laws slip through and some laws have to be corrected by the Supreme Court—we can talk about that if you want—but, by and large, the law making process in this Parliament is really quite impressive. I have one or two specific criticisms to make about it, but they are not particular to committees.

The law making process is certainly much more impressive here than it is in the House of Commons, but it is less impressive than the process in the House of Lords. The House of Lords is the best legislature that we have in the United Kingdom, because it does not do anything else. It does not spend much time holding the Government to account; it is really just there as a

revising chamber for legislation. Johann Lamont mentioned the absence of party loyalty. In the House of Lords, there is not the absence of party loyalty but it is not so important and very little is whipped—certainly, committees are not whipped. That lends the air of an ability to think about legislative policy in its own terms rather than that always being filtered through or distorted by a party political lens.

On the mistakes that the Supreme Court has corrected—if I can put it like that—the provisions of legislation that have been quashed by the Supreme Court have been quashed not because of any failure of legislative process in this place, really, but because political will has carried the day in a manner that has allowed legislators to sign into law provisions that go beyond competence or infringe rights, or whatever it is. It is not a failure of process; it is a failure of politics.

I hope that that helps with the thinking about what it is that we want committees to be effective for. I am gloomy about the prospects of committees in the Parliament being useful in relation to one of those constitutional functions—namely, holding the Government to account—but I am quite optimistic about the other. I seek to paint a rather mixed picture.

The Convener: Those introductions are incredibly helpful. I hear what you say and the concerns that you have about the legislative process, but I suggest that we park that issue—although other members will perhaps look at it. I know that it is sometimes a challenge to not deal with some of the problems that witnesses throw up, but we want to concentrate on the effectiveness of committees.

09:45

Before I throw you to the wolves of the committee on various questions for 10 minutes each or so, I will pick your brains about committee numbers. It is interesting to look back on the previous sessions. We had 26 committees in the first session; 27, excluding ad hoc committees, in the second; 23 in the third; 27 in the fourth; and 29 in the fifth. In this session, we have 17, and the workload of that smaller number of committees falls on a smaller group of back benchers, because—this is not a political point—there is an increasingly large number of members of the Government. It would be helpful to explore your views on that.

Is there a perfect number of committees? I presume that the answer is no. Is there something about committee numbers that either prevents or promotes the effectiveness of committees?

The number of members of committees is also an important issue, and that is something that

changes from session to session. This session, we have some large committees and some small committees, whereas, in previous sessions, there were odd numbers of committee members drawn from a narrower range.

Johann, I invite you to comment first, because of your experience of a number of different types of committee. Is the effectiveness of a committee directly affected by the size of a committee and by the amount of work that it is expected to pick up?

Johann Lamont: I was the convener of the Public Petitions Committee, which had a small membership. It was hugely effective precisely because a lot of the dynamics of an ordinary committee did not apply—the agenda was determined by petitioners and the evidence came from petitioners. As a consequence, the approach to business was fluid and people learned to work together. It is not always the size of the committee that is important, because the confidence of the membership and their capacity to work together also make a difference.

People should perhaps be a bit more relaxed about the need to strictly apply d'Hondt in some areas. If we can get people to buy into the idea that they have a collective responsibility as a committee, we might see that we do not really need 13 members to prove that a committee is balanced. We have all been in committee sessions where we have sat through every member asking questions, even though the number could have been halved. However, that would require the parties to have confidence that they do not need an exact replication of the balance of representation. Essentially, that is about what work committees are doing.

There is also a question about the extent to which committee membership is constant, which relates to the idea that whips can jump in and move members about. There should be a default expectation that people serve on committees for a reasonable length of time. I am old enough to remember when one party tried to remove its representative from a committee and she would not go. That sort of thing is probably unheard of in recent times, but it speaks to the idea that someone's membership of a committee is important, that stability is important and that people working together is important.

On the question of legislation, people must have confidence that, when a committee is considering legislation, its members are not buying into the notion that the piece of legislation is all about good intentions. The responsibility of a committee is to consider unintended consequences. If people are not confident that a committee is hearing from the people who want to talk about the unintended consequences rather than the good intentions,

that undermines confidence in the committee process.

Again, on the size of the membership, we need to be more relaxed about having the membership of committees exactly replicate the balance of representation in the Parliament. I understand that that is important on some committees but, if there is enough maturity among the members, it is possible to have quite small committees that are hugely effective because the members have more influence on what happens during a committee session than they might have otherwise.

Professor Tomkins: I served on four committees in my time here. I was the deputy convener of the Finance and Constitution Committee for, I think, four years—Bruce Crawford was the convener. It had 11 members, and I think that all the other committees on which I served, including the Justice Committee, which I convened for six months or so, had nine members. I do not think that I ever sat on a committee that was as small as this one is, with just five members. However, rather boringly, I agree with what Johann Lamont just said. What matters more than size is the commitment of the members of the committee to work together as a committee, to leave their party loyalty at the door and to recognise that they are there to serve something more than party, although, of course, there is always an extent to which that cannot be done.

That is one of the things that works well in the House of Commons—Stephen Kerr will know that, as a former MP—

The Convener: Me, too.

Professor Tomkins: I am sorry; I did not know that—I apologise.

I have never worked in the House of Commons, convener, so you will know more than I do about it. However, one of the things about the House of Commons is that the culture in the committee corridor is different from the culture in the chamber, and a member can almost be two things at once: they can be a party attack dog in the chamber and not behave like that in the committee rooms. That is partly a function of size and partly a function of architecture, but it does not happen to the same degree in this Parliament. Here, people bring their party politics into committees more than they should. I do not know what the solution to that is—I certainly do not think that the solution is to have more MSPs.

The Convener: Do you think that that has always been a characteristic of all the committees, or has it crept into the Scottish Parliament over time?

Professor Tomkins: It is probably more likely to be the latter than the former. I was not around

at the beginning of devolution, but, from what I have read and what I remember, there was quite a collective spirit across the whole Parliament about just making the damn thing work. That position certainly evolved, shall we say, over time.

More than numbers, it is the spirit of a committee that matters. That spirit can be set by the convener and deputy convener, but it is something that every member of a committee is responsible for.

Johann Lamont's point about longevity of membership is important. One of the first committees that I was on, at the beginning of session 5, was the Social Security Committee, which was, obviously, a new committee, because social security had only newly been devolved. It was a hot political issue; welfare reform was a weapon that was being used by the Scottish Government against the United Kingdom Government at the time, and the Social Security Committee got caught up in the crosshairs of all of that. However, despite that overheated—in my view—political climate, that committee produced unanimous reports on the Child Poverty (Scotland) Bill and the Social Security (Scotland) Bill. Its report on the Child Poverty (Scotland) Bill, in particular, had the result of changing the legislation and Government policy.

That was a real moment of triumph for that committee, because there were members on it, including Scottish National Party members, who were prepared to work with Opposition members to make what was imperfect legislation on child poverty substantially better. Notwithstanding the fact that there was a heated political climate around the issue—it was not something that was being debated in an empty room with no members of the public present; it was a big political deal and had real political salience—the members of the committee managed to work together to make better legislation. That is an important example of what can be done if the members of a committee decide that the politics of an issue are getting in the way and that what they really want to do is get as effective a piece of legislation on an issue as possible.

The Convener: Johann Lamont, you experienced those first five sessions of Parliament. Did you feel that, after session 1—when, in essence, everyone was desperate to make the unicameral system work and to acknowledge the value of committees—party politics came into committees more? Did you notice that change, or is it something that is maybe more indicative of certain committees at certain times?

Johann Lamont: I would not want to represent what happened in session 1 as some kind of golden castle on the hill, with everybody hugging

each other and saying, “Isn't it wonderful? The rebirth of democracy in Scotland is fabulous.” It was not like that at all; there was a steep learning curve. It was a Parliament that was born under siege. You have to remember that we thought that everybody really wanted the Parliament but, when we came in, we found that people reacted differently from how we had expected they would, and it was just horrendous. Because of that, people kind of came together in the Parliament.

It is also true that the thing that people learned in this place was that they could not hide behind tradition. We could not say, “Well, we don't normally do it that way.” If you said that, people would say, “What do you mean? We're deciding now how we're going to do things.” Because of that, Government ministers attending a committee could get what I would call a right good kicking—I remember that happening to me. However, we have lost that; I do not think that that happens much now, as back benchers from the governing parties now feel that they have a responsibility to protect their minister. In the early sessions of Parliament, there was a queue to give ministers a hard time, and it was our own people who gave us a hard time first. As I say, we have lost that, but I think that we should get back to that, in the interests of accountability.

There was also a debate internally—I remember it clearly. We were being told, “Listen, you have to understand. We have a programme of government. Our expectation is that, as a committee member, you have a role in that,” and people were pushing back and saying, “No, we have this role of independent scrutiny,” and so on. That debate captured the fact that there was a tension there.

I would want people at least to wrestle with those different roles rather than it being accepted that, if you are a Government back bencher, you will be advised on what questions should be asked and what the outcomes should be. The best advice that I ever gave to my members when I was party leader was, “Follow the evidence.” If you follow the evidence, you will not go wrong. If we are introducing legislation that will not work, it is better to find out now rather than when we are sitting in front of the Supreme Court, being humiliated.

There was nowhere to hide and no tradition then; now, the danger is that the Parliament has traditions behind which people hide. We just need to go back. I would like there to be an assertion of first principles, such as, “You have a role as a committee member. The committee is not a platform for your politics. There's somewhere else for that.” Fundamentally, if you are going to produce good policy and good legislation, you

have to ask the hard questions that people do not want asked but are obliged to answer.

Stephen Kerr (Central Scotland) (Con): I have a question about the changes that have occurred over 25 years. Certainly, Johann, you are well placed to offer observations on them. One of the things that I struggle with in this Parliament is the degree to which parties control everything. They control who is on the committees and who speaks in the chamber—just about everything. Is that how it was originally? Has that evolved? Has that stranglehold of party business managers and leaders evolved to what it is now, or was it like that from the beginning?

Johann Lamont: In truth, there always was and there will always be a tension; there is no point in pretending that it is not there. People can make their name by being a maverick, and there is nothing more annoying than having a maverick kicking about who makes you look bad if you are just trying to do your job. The tension is always there.

I do not think that I got this point into the commission on parliamentary reform that Ken Macintosh, the previous Presiding Officer, convened: there is an issue about d'Hondt being a stranglehold rather than a baseline. We went to visit a Parliament in, I think, Brussels—no, in fact, it was in Quebec—and they laughed at us. They laughed at the idea that Government back benchers would have a right to ask questions. They thought that it was ludicrous, because they saw it as enabling Government back benchers to ask patsy questions, filling up time until people asked the hard questions. You have a choice in committee, in the chamber and elsewhere even when you are a Government back bencher. If you say that you are an accountable and responsible MSP, you either conduct yourself in that way or, if it looks as though you are simply doing what you are told, you revisit your conduct.

It becomes a burden on the process when you insist that everything be divided up to the nth degree and according to what people voted for four years ago. There is too much emphasis on that point, and there has to be a relaxation around it. The tensions that existed in the very first session of Parliament are still there. Being honest about recognising that balance of responsibility would probably make the situation easier.

I know from conversations that I have had subsequent to my retirement that people are frustrated that committees can convene and look at legislation without appearing to engage in any way with what people external to the Parliament currently feel about that legislation. For the Parliament, that is a problem. You might not agree with what people are saying about your bit of legislation, but you must give space to it and test

the arguments. Too much dismissal of evidence and dismissal of, or not calling, witnesses, reinforces the notion that the Parliament is perhaps not taking concerns that are external to the Parliament seriously.

Professor Tomkins: That is right. Johann is absolutely right to say that committees must follow the evidence. However, there can be a lot of politics around selecting the evidence that comes in front of a committee. Ensuring that the evidence pool does not get distorted by a desire to either hear one particular thing that is convenient or not hear one particular thing that is inconvenient to Government policy requires strong leadership from conveners and deputy conveners.

Stephen Kerr: Should the parties themselves appoint the conveners? That, in itself, is problematic, from my perspective.

10:00

Johann Lamont: On balance, I would probably support elected conveners, but my caveat to that is that you would need to strip out the Government payroll vote to do it properly. It would have to be a back-bench vote. As someone who was leader of an Opposition party, I can assure you that there are very few carrots and even fewer sticks, so you can see the point of view of the leadership in any party: they want to have some kind of control or capacity to determine what their colleagues are doing. However, with elected conveners, the strongest party gets to choose who the representatives of other parties are, and that is not fair either.

There is another thing that you may wish to wrestle with or examine: the possibility of paid convenerships. Ken Macintosh's commission did not go there, and I can see why it would not do so. Personally, I think that the idea that a quarter of all members of the Parliament are Government ministers is laughable. That should be looked at somewhere. There could, however, be a notion that there is some kind of progression in a member's career that is different from that. That would mean that a member would not have to keep in with their party leadership, and they could build credibility across the Parliament and then get elected to do a job. You can see how different and attractive a notion that is.

On elected conveners, it cannot be that the leadership of any of the parties directs their membership on how to vote. That would mean stripping out the people who were deemed to be on the front bench. That becomes complicated in a multiparty system, in which a small party can have an awful lot of people on its front bench, because it is filling roles. That presents a different set of challenges.

Evelyn Tweed (Stirling) (SNP): Thank you both for joining us again, having been away for a long time, as you said in your initial comments. It must seem quite strange and perhaps a wee bit daunting to be here. Thank you for your comments so far.

I am interested in what a really effective committee would look like. You indicated in your previous comments that some committees are more effective than others, but what is a recipe for a really good committee that is strong on scrutiny and strong on holding the Government to account? What does it look like?

Professor Tomkins: There is no one-size-fits-all answer to that question. The plural of “anecdote” is not “data”, but I will give you a couple of anecdotes from my experience. I was on the COVID-19 Committee from when it was set up, in the late spring or early summer of 2020, during lockdown, until I became convener of the Justice Committee. What the COVID-19 Committee needed to do was entirely different from what the Justice Committee needed to do. To judge the effectiveness of the COVID-19 Committee, we would look at very different metrics from those that we would consider if we were judging the effectiveness of the Justice Committee.

There are lots of reasons for that, but the most important one is that, by and large, the COVID-19 Committee was not considering primary legislation—it was considering lockdown regulations—whereas the Justice Committee was hardly doing anything other than considering primary legislation. I was convener of the Justice Committee for only six months, but, in those six months, we took three bills from beginning to end, considering them at stages 1 and 2 in committee. One of those bills, the Hate Crime and Public Order (Scotland) Bill—now the Hate Crime and Public Order (Scotland) Act 2021—was incredibly controversial and required a lot of committee and parliamentary time.

I would need to break that question down into the different components of what it is that committees are here to do, and they are not all here to do the same thing. The most important thing that was dealt with by the Finance and Constitution Committee—as it was called when I served in the Parliament—was the budget. The budget is, of course, legislation, but it is not normal legislation. Most of the time, the finance committee deals with fiscal policy. What makes such a committee effective might, again, be very different from what makes committees such as the COVID-19 committee or the Justice Committee effective. Therefore, the answer to your question—not a very helpful answer, but the only one that I can give—is that it depends on what committee you are talking about. One size does not fit all.

Johann Lamont: Evelyn Tweed suggested that it might be daunting to be back here. However, as somebody who is retired and spends her life shouting at the telly and not being attended to, it is quite nice for me to come somewhere where, potentially, something that I say might have an influence on anything.

A good committee is efficient and serious. For example, it does not have performative, set-up “gotcha” moments against witnesses. It is serious and professional, and all members are engaged. I would be interested to see a wee snapshot of some committees in which folk are on their phones, are not engaged and do not ask questions but are there in case there is trouble—in case there is a vote.

You can test a committee by how respectful it is towards witnesses. On the other hand, albeit that I, as a Government minister, did not like being kicked around the room, that did not half concentrate my mind, because it made me feel, “Well, I’m not going back in there. I’m not going to have that happen to me again.” When it comes to that kind of robust accountability, tough questioning and holding somebody properly to account for their responsibilities, I make an exception for Government ministers—but not for Government officials, who should be treated differently.

A good committee is also purposeful. It is working towards an outcome. There is no sense that, “Well, we have to fill up the time because we’re here.” A good committee carves out time for serious pre-legislative and post-legislative work.

My time in the Parliament became too much about sending messages rather than being accountable for delivery. All of us can hold up a poster—I was as good as anybody at doing that—but that is no substitute for substantial policy making, in which you can reach out and touch the differences that are made in communities. If the committees have that focus, that can help.

The public petitions committee is different. I am concerned that its remit has been broadened so that, somehow, it is the committee that is responsible for civic participation. That should be a matter for all committees. If the public petitions committee only takes petitions, it does a very good job. That is precious and should be held on to. It is a good example of a committee that is driven entirely by an agenda that is external to it. That rigour—that model for how people work together, in which their focus is not on what each of them brings in but on what other people bring in—is a good example to follow.

Good committees are at their best when they are well served by their clerks. People probably do not acknowledge that resource sufficiently. A

good-quality clerking team that is properly resourced will support your professionalism. Your role in asking questions in a stage 1 inquiry is very different from another kind of inquiry, because you have to ask all the witnesses the same questions and make sure that areas are covered. A good committee will be well resourced by proper clerking time. I do not know how the committee would do so, but it might want to engage with the clerks about the extent to which the clerking process is properly resourced.

Evelyn Tweed: Thank you for that. In a similar vein, what does a good inquiry look like, and how do we make sure that there are good outcomes from inquiries?

Professor Tomkins: That is a really good question. The power that committees have is the power to take evidence—to call in people whose voices are not normally heard in the budget process, in making criminal justice legislation or in whatever the context might be. The effectiveness of a committee is in what it does with the evidence that it garners.

Johann Lamont and I keep coming back to the courage of committee members to follow the evidence rather than the party line. We are all going to meet evidence that makes holding our party line a little uncomfortable. What do we do with that? What makes a good inquiry is a group of people sitting around the table week in, week out for a number of weeks, who are focused on the evidence and on what they want to do with it in the interests of the committee, the Parliament and the public, rather than in the interests of the party line. That is the key thing.

As I said in my introductory remarks, there are remarkably good examples of the Parliament doing that job well, even in highly charged contexts that are full of partisan rough and tumble. The early work of the Social Security Committee is a good example of that. I hope that the work that I convened when I was convener of the Justice Committee is another example, but that is not for me to say.

It is not that committees cannot work well when they are dealing with a highly charged, partisan matter in the heat of the moment. I do not think that at all. However, the real power that a committee has is to determine whom it wants to hear from. The test of the committee is the extent to which, having heard from the people it has heard from, it follows the evidence rather than allowing that evidence to be filtered through—that is to say corrupted by—the party line.

Johann Lamont: One thing that struck us in the early days of the Parliament related to the legislative lag—legislation that was required but that it was not possible for the House of Commons

to get through. There were a load of issues in relation to mental health, learning disability, education and other matters on which people were waiting, ready to be asked. A good inquiry is about knowing where there are people with expertise—not just the experts and the friends of the committee.

Another area that would be worth looking at—the Conveners Group did this at one point—is who is called to give evidence, and breaking it down by sex, geography and profession. For example, if you call for evidence from people who are wholly funded by the Scottish Government, their evidence should be regarded differently from that of a volunteer group. That information might be worth putting into the system. People have argued that, if someone who comes before a committee is funded by the Government, that should be made obvious.

There are a couple of really good examples of inquiries in the Scottish Parliament in the early days, such as the one on the contamination of blood. At Westminster and at the UK level, they are probably only now catching up with the compensation schemes and other things that were discussed in the first session of this Parliament, when the then Minister for Health and Community Care—I think that it was Malcolm Chisholm—said that he could not stand in the face of what had happened, that something had to be done and that it was a scandal.

Another good example, which is still working its way through the system, started off in the Public Petitions Committee, which is a great place to look for good inquiries that could be pursued. The issue was the way in which women with mesh implants were treated. I am proud of MSP colleagues across the parties who, when they came into contact with that issue, said, “This can’t go on” and pursued it over a long period.

The common feature of those examples is that the inquiries were not created in committee rooms by MSPs but from what the system brought in from the outside. A good MSP picks that up in their surgeries. To me, a good inquiry is not dreamt up in the Parliament but emerges out of people saying that they want the Parliament to examine a certain issue in detail.

A related issue is the extent to which MSPs know that they can attend other committees and are welcome to do so. The Public Petitions Committee is a good example of that. There were petitions in which there was a general interest, and we had a facility to ensure that other members could come along and ask questions. That ought to be encouraged if you want an energy around the deliberations of a committee. You want members to think, “It is a Wednesday morning, so I am going to go along and look concerned about

X.” It drives more energy into the process if that is acknowledged.

Evelyn Tweed: What are your views on pre-legislative and post-legislative scrutiny? I am a reasonably new MSP, so I have seen a lot of pre-legislative scrutiny but I have not seen much post-legislative scrutiny. What is your view on the balance of that? Should we have more post-legislative scrutiny?

10:15

Johann Lamont: Having high-quality pre-legislative scrutiny would mean that post-legislative scrutiny would be a much happier process. I question the extent to which committees conduct serious pre-legislative scrutiny ahead of stage 1 consideration of bills. Back in the day, work was done by the relevant committee ahead of a bill being published—that seemed to take up a lot of time. I know that various committees of the Parliament, including the Public Audit Committee, highlighted the need for post-legislative scrutiny.

It would be quite good to know that legislation that everybody celebrated as sending a signal actually made a difference, if I might repeat my earlier point. The Parliament could do a bit of post-legislative study, rather than just saying, “Oh, it ended up in the Supreme Court. That didn’t go well.” It would be good to know what has worked well and to learn lessons from it. You would need to consider how that process should be managed. Everybody says that such scrutiny is a good thing, but I do not think that anybody has ever quite got to a place where they have worked out how to do it in a serious way.

Professor Tomkins: That is right. Post-legislative scrutiny is one of those things that bodies such as the Hansard Society and the Study of Parliament Group are always saying that Parliament needs to do more of. That is a mantra in the scholarship and the literature.

I do not think that the Scottish Parliament does post-legislative scrutiny particularly badly in comparison with any other Parliament, because I do not know of any Parliament anywhere in the world that does it particularly well. I do not have to tell anyone in this room that the agenda moves on. Politics is always about what is next; it is never about what happened two or three years ago. Achieving world-class post-legislative scrutiny might be a bit of a chimera. That is not to say that we should not chase after it, but it might be one of those aspirations that is never reached.

Pre-legislative scrutiny matters much more, because parliamentary scrutiny of Government policy is at its most effective when the Government is not too deeply dug in. This Parliament can have really good pre-legislative

scrutiny, even before the formal stages begin, if the minister who is proposing the bill comes to the committee and says, “This is work in progress. There might be things here that we haven’t quite got right.”

I will give an example of where such an approach went well, which was Jeane Freeman’s handling of the bill that became the Social Security (Scotland) Act 2018. When she came to the Social Security Committee with that bill, she opened the door to all five parties represented on it. We were all invited to talk to her about what was good, bad and ugly in that legislation—not that there was much in it that was ugly. The atmosphere in which the committee was able to conduct its early deliberations on what became the 2018 act was pre-legislative, but it was not formal or structural; that was simply the way in which the responsible minister decided that she would handle the process. She won the Scottish politician of the year award because she got the Scottish Parliament to vote unanimously for her legislation at the end of the stage 3 process due to the way in which she had handled it. That is the last time that I will be nice on the record about my friend Jeane Freeman.

There is a serious point here, which is that, whether we call it pre-legislative scrutiny or not, we can have effective scrutiny if the minister who is responsible for the bill has that frame of mind when they come to the committee that is undertaking the stage 1 work.

Another example of where the process went well was the bill that became the Hate Crime and Public Order (Scotland) Act 2021. One of the reasons that we were able to make so many changes to that bill was that the minister responsible for it—the current First Minister, Humza Yousaf—knew that he would have to make changes to it. The legislative process that led to the enactment of that bill was really impressive. Of course, as I was involved in it, I would say that, wouldn’t I?

Johann Lamont: And I would not.

Professor Tomkins: I think that Johann Lamont’s concerns about the bill are not about the process but about the substance of what was in the legislation, which is a different issue. I did not vote for the legislation, either. We are talking about the process of committees’ pre-legislative scrutiny.

A lot can be done by committees in this Parliament when it is understood that bills are not the last word and when the Government or whoever is proposing the bill, whether that is a minister or any other member of the Scottish Parliament—it might be a member’s bill—is not completely dug in and committed to every section

or provision, or even every aspect of policy that is reflected in that legislation. Then you can have really effective stage 1 scrutiny. It does not always happen, but it can happen.

Johann Lamont: My observation on the hate crime legislation—not to dwell on personal grief—is that there is a difference between somebody listening to you and somebody actually paying attention and changing their position. Adam Tomkins is right to say that, if the pre-legislative work is done early enough, it will not be regarded as a disaster if the Government changes its position.

When I took legislation through the Parliament, back in the day, there were not many ministers and it was the job of deputy ministers to go to committees to work through issues and to feed back, for example, “You’re not going to win that one,” or, “We’re going to have to shift on that.” I took through quite complicated legislation and I would say that I never lost a vote on an amendment. What I mean by that is that we had made the changes before the vote on the amendment—before I could lose the vote. Flexibility was built in to the process, which is essential. That is a mindset thing. If you set something up as being a disaster if you are beaten on it, you end up digging your heels in and supporting ineffective legislation. There have been a couple of good examples of that in the Parliament.

The system needs to be open to the possibility that, even if you are well intentioned, the consequences of some legislation could be very poor. People should not thirl themselves to something and refuse to contemplate the possibility of an unintended consequence that they had not thought of. If somebody flags up an unintended consequence, the last thing that a Parliament should do is wave that away, because people will have to live with the result. We should not be afraid of rigour and we should not be afraid of debate.

I cannot think of specific examples but I recall that, way back in the very early days of the Parliament, folk would give evidence to the committee and say, “You might not have thought about this. It’s not a huge issue, but this is going to be a problem.” As a committee, informally—this happens with Government back benchers—we would speak to a minister and, formally, through the committee, say, “You need to address this again.” Nobody lost face.

It is the same with a proper stage 1 report with proper recommendations. Nobody loses face by accepting those recommendations. We have been here for 25 years, so there is a reasonable expectation that people can be mature. There are plenty of things that we can have a ding-dong

battle about, but not something such as this. Digging your heels in on legislation when other people will live with the consequences is something that good parliamentarians should resist.

The Convener: I am going to do that marvellous convener’s thing of referring to the pre-printed bit at the top of the script and say that I am conscious of the time.

Annie Wells (Glasgow) (Con): It has been a long time, but it is good to have you both back.

Johann, I think that you said in your opening remarks that, unlike Westminster, in times of crisis, we are unable to quickly enough to hold ministers and cabinet secretaries to account. How could we make that better, and what is holding us back? If there is a crisis, how do we get ministers and cabinet secretaries to come to committees as soon as possible? We need to look at committee workload, but should there be a process for calling them to committees to be questioned? If so, how would that work?

Johann Lamont: In a sense, that is just a question of process, which is maybe a matter for discussion with committee clerks. One of the things that the Ken Macintosh commission looked at was the possibility of committees meeting at the same time as the chamber. I cannot see why that is a problem if that happens during a debate on which there will not be a division. Also, frankly, we can cater for people engaging when sitting at home on Zoom, so we should probably be able to cope with people being in a committee at the same time as there is a vote. That would free up some time, but there is a question of resource.

In a sense, that provision is much more about the public. Look at the Post Office crisis. The guy who has been sacked is in front of a committee. That kind of thing has never happened here. That is a place where a committee is afforded a platform for people’s questions to be asked. That public role is important.

You would need to speak to people with professional admin expertise about how to arrange things so that you could do that, but wanting to do it is quite important. This is the only place in the universe where the thing that is being discussed everywhere else is not being discussed. Back in the day, it would drive me bananas when we would have a three-hour debate about whatever when the rest of the world was going to hell in a handcart. We did not seem to be capable of finding a way of putting the subject of that debate to one side, or just cutting it. Providing five speakers on an issue on which we can all agree with each other for three hours is a waste of time and energy. To an extent, people across the parties need to be pretty rigorous about saying,

“This is an indulgence when we have this other stuff that we need to talk about,” but you would need to have respect for the professional administrators who are managing that process. Also, you would not want the committees or the Parliament to be buffeted by whatever is going to be on the 6 o’clock news.

Professor Tomkins: Your inquiry is about the effectiveness of committees. I absolutely understand that, but the really ineffective bit of the Parliament is not the committees; it is the chamber, for all the reasons and more that Johann Lamont has talked about. The committees are much more effective than the chamber.

The Convener: We did an interesting iterative report about chamber procedures, and it is a journey—I will say no more than that at the moment.

Johann Lamont: On the basic level of there being nowhere to hide, if you appear before a committee—I have been that soldier—you are going to get asked another question and another question. However, we formalise the process so much in the chamber that if you just go, “Blah blah blah” for long enough, the clock runs down and the world moves on—not that I would ever have done the run-down-the-clock thing. Anyway, that is why committees need to take even more seriously the opportunity and power that they have to bring in a Government minister and be relentless with them, because ministers cannot just refer to their notes when somebody has got them in their sights.

Annie Wells: Do you think that we always have the same witnesses in to give evidence to the same committee? You touched on that issue as well, Johann. I was on the Equalities and Human Rights Committee for four years and I knew exactly who was going to be in front of me every other week. We never heard the voice of wee Betty fae Broomhill or whatever.

I know that we are trying to do better in that regard, but how can committees listen better to what people want us to do and to their views on certain issues that we are looking at, especially on things such as equalities, finance, housing and local government? A lot of those people feel far away from the committee, but we need to hear those voices in order for us to make good legislation and put forward good reports to the Government.

Professor Tomkins: One thing that committees can do—indeed, they do this—is go and see people where they are instead of waiting for people to come here. When I was on the Social Security Committee, we went to jobcentres and talked to people who were claiming universal credit. We did not wait for them to come to us; we went to see them.

I encourage committees to think more creatively and to think more about that, although, of course, there are budget implications. Committees in all Parliaments struggle with the problem of the usual suspects. There are deeply embedded, entrenched lobby interests, and voices that represent those lobby interests appear before committees year in, year out. It is not just the gender balance of committee witnesses that needs to be thought about; it is frequency. You might even want to have a quota so that, once someone has appeared in front of a committee a couple of times in a parliamentary session, that is it and the committee will try to hear from somebody else.

Obviously, one would want to make exceptions to that—especially for former members of the Scottish Parliament. Seriously, though, the problem that Annie Wells has landed on is real. The clerks whom I worked with tried hard not just to go back to the usual suspects, but there is a reason why the usual suspects become the usual suspects, which is that they are good at doing what committees need. You do not want lectures from your witnesses, even when they are professors; you want evidence that you can use. Not everybody has the communication skills to convert their lived experience or their professional expertise into something that is usable by a committee, given all the other constraints on your time. The usual suspects become usual suspects not just because we are all very lazy and we like hearing from the same people all the time, but because some people are good at helping committees to do their work and to be more effective. We need to be mindful of the problem, however, and we should push back on that all the time.

10:30

Johann Lamont: I think that the usual suspects have changed a bit, too. One observation that I would make from the very long time that I was here—I am feeling even more ancient than I normally feel—is that organisations that engaged with the Parliament, whether they were charities or groups involved in learning disability, which engaged very powerfully in the early days, had some really powerful things to say, but I suspect that many of those organisations will now be employing communications experts. The usual suspects will now be people who have developed an expertise in communicating, as opposed to being the families of disabled children, for instance.

When one of the early education bills was being discussed, people won an argument around the presumption of inclusion. It did not feel, at the time, like those people were professional

communicators. Those who were speaking so powerfully were parents or families. That aspect of professionalism has not just concerned those we are asking to speak; the organisations themselves have felt the need to engage in a particular way, which I think can be a problem. I would reiterate the point that Adam Tomkins has made about being creative in going out and speaking to people and taking evidence in a different way.

I made a point about groups and organisations that are fully funded by the Scottish Government. Two things have been suggested on that. First, that should be clear, and the Government should not use an organisation that it is funding to validate its position. Secondly, organisations should perhaps have accountability if they are funded in that way. Is there a process in the Parliament for bringing in representatives of groups to talk about what they do? A lot of what they do will be very good, but to what extent are they constrained?

At the Education and Skills Committee, we took evidence from Education Scotland and the Scottish Qualifications Authority—as you can imagine, that was a joy. I would not have said this, but I can remember that other members felt that that was happening every year, with the same frustrations—but nothing really changed. There is a question around the extent to which there has to be a tension or pressure around that process. I am not saying that you should not do it, but there should be a degree of scepticism or challenge by committee members. I am talking about anything that feels like the committee is doing something by rote—“This is the month when we see X,” for instance. If a committee is doing that, it is missing the point of what it might be able to do.

Annie Wells: I have a further question. I was going to come on to the question of Government funding. It is important that, if an organisation is coming to the committee, it should be up front. It could perhaps make a declaration at the beginning of an evidence session, if it is giving a witness statement or contributing evidence, to say that it is fully funded by the Scottish Government, for instance.

Having been back a second time, I have dealt with one legacy report on the way in and one on the way out. One of Johann Lamont’s colleagues, Mary Fee, was on the Equal Opportunities Committee. When I came in in 2016, there was a legacy report on Gypsy Travellers, and, when Mary Fee left in 2021, there was a legacy report on Gypsy Travellers. I am sure that there will be another one when we go in 2026.

How can committees look at legacy reports and go back to see what the Government has been doing? We should be able to do that. We have given the Government those legacy reports and it

has seen them, but we still seem to have the same questions every time that there is a new parliamentary session. I do not know whether such reports are valuable. Are they valuable only if we properly scrutinise them and do something with them at the first meeting when the committee is reconstituted?

Professor Tomkins: I think that it depends on what the legacy report says. As far as I recall, the principal point of the legacy report that my clerks prepared on behalf of my committee, when I left as convener of the Justice Committee, was that the committee did not have any time to do anything apart from look at Government bills. Big bill after big bill came to the committee.

The action on that rests not with the justice committee nor probably even with the Government; it rests with the people who sit around the table at the beginning of a new parliamentary session designing the committee structure that the Parliament will have, including how many committees it will have. One thing that has happened in this session that was not the case in the session in which I served is that there are now two justice committees—one on criminal justice and one on civil justice. Maybe that was because of what we said in the legacy report, but maybe not—I have no idea.

A committee will not always be able to deal with the points that are made in a legacy report. That might be a set of issues for somebody else. If the same substantive policy area is kicked into the long grass session after session, that is a failure of political will for whatever reason—we all know that the issue needs to be addressed, but none of us wants to do it. It does not matter what the committee structure is. It is not a structural problem or a systemic problem; it is a political problem.

Annie Wells: I will let in Johann Lamont in a second.

Committees meet once a week, on a sitting day—the sitting days are Tuesday to Thursday. A lot of legislation comes in front of us, and we want to look at legacy issues. We want to hold our own sessions on things that come up and interrogate people or whatever. We do not have enough time in committees to do all of that, especially not in Thursday morning committee meetings, because we need to stop.

Johann Lamont said that Ken Macintosh looked at the idea of committees sitting at the same time as plenary business is going on. I feel quite frustrated at doing the same thing over and over again and not getting to go on committee work planning days. Sometimes we never get to the real bit that we want to do.

Should we therefore have committee work from Monday to Friday? Could Monday and Friday be days on which we are out and about in the community to do a bit of evidence gathering? Alternatively, should we keep to the structure of Tuesday to Thursday sitting days? What are your thoughts on that?

Professor Tomkins: The problem is that committees are slotted around chamber business, not the other way around. I would turn that upside down and say that the least important thing that happens in this building is what happens in the chamber, because most of that is scripted and leads to nothing. Most people on the outside pay no attention to most of it. It matters much less than an MSP thinks it matters. When you are an MSP, you think that the chamber is the heart of the thing. It is not. If chamber business were at the convenience of the committees rather than committee business being at the convenience of the chamber, we would have a much more effective Parliament, without sitting on Mondays and Fridays.

Johann Lamont: I will make a couple of points. First, on the question of funded groups—forgive me for going back to that—arrangements should be transparent. Things have changed, I think. When Labour was in government, we funded organisations to challenge what we were doing. It never occurred to me that those organisations would just do my bidding, for example. Maybe it was just me, but I would go to a conference and get kicked up and down the room by a housing organisation or a women's organisation and be anxious and worried about going there.

A cultural thing has shifted. It is not so much about organisations being funded as about their funding directing what they are able to say about a piece of legislation. I really do not want to know that a group that has been funded by the Government 100 per cent agrees with the Government and that that has given the Government's idea validity and nobody else is given a space. That is not always the case, but it sometimes is.

In legacy reports, committees need to be serious about what they want. They should not just give a big list of all the things that it would be really good for somebody else to do next time around. What things were most frustrating to committee members? They should make that their legacy and a pressure point.

You talked about Gypsy Travellers. At one point, when I had ministerial responsibility for Gypsy Travellers and I was going to get grief at a committee, I ended up setting up a working group, which was very effective. If you keep developing good policy but it is never implemented, that is not about legacy or about what happens in here; it is

about an organisation's incapacity to make the policy debate real in the world. Legacy should be taken seriously. Committees need to look at that when they reconvene and have respect for it. However, in that example, I suspect, less is more.

Another point concerns the role of committees. Not enough time is taken over secondary legislation. I used to get into trouble because I had questions. It was like, "Sorry I'm boring you, but this is our job as legislators." The danger is—again, I have been there—that the view becomes, "Oh well, it's only secondary legislation. We can get that past the committee quite easily." People need to be alive to the fact that quite important decisions can be made in relation to secondary legislation, so the committee needs to be fleet of foot in that regard and have support from clerks.

My final point concerns time. If what the committee is doing matters, the time needs to be found. Adam Tomkins is completely right to say that, at present, the balance is not right. There can be a couple of hours of wearisome and tedious consensus on X issue when, in fact, there is another really important issue that needs to be wrestled with, and the committee is the best place in which to do that, because it is a different kind of forum.

Even though, latterly, I was a list member, I hold on to the notion of the importance of constituency days. It used to be that we had one constituency day rather than two days—I cannot remember whether it was Monday or Friday—but we did parliamentary work in a different way then. It is entirely reasonable, therefore, that a committee could be doing work on a Monday if that involved going out and engaging with folk. The notion of getting the balance right in your work as a parliamentarian and being serious about your local community constituency work should be recognised in the parliamentary timetable.

The Convener: Again, I am conscious of the time. I call Stephen Kerr—I highlight the time, I am afraid.

Stephen Kerr: I will be brief, convener—you have said that three times in relation to my sections.

The Convener: I have.

Stephen Kerr: That is okay—I get the message.

I have a concern about the power imbalance between the Executive and the Parliament. There have been a number of references to the fact that powerful committees were to be a feature of the Parliament, in place of a second chamber. I want to challenge something that Adam Tomkins said. He was critical of the scrutiny powers of the Parliament in relation to the power imbalance, but

he was full of praise about process. However, if the process leads to law that is then designated as ultra vires, that is surely a failure in the process.

Professor Tomkins: No, I do not see it like that. That is baked into the devolution settlement. This is not a sovereign Parliament with unlimited competence; it is a Parliament of limited competence, and its competences are limited by law. The only people who can ever have an authoritative word about whether those competences have been exceeded are those in the Supreme Court. Not even a law professor is a more important voice in that argument than a Supreme Court judge.

I do not think that what you have described is a failure of devolution at all—it is an example of devolution working. One might not like devolution and one might want something else, but, for the time being, we have devolution. Devolution means that we have multiple Parliaments in the United Kingdom, and they cannot all do everything that they want to do. Some of them have limits imposed on them by the law, and those limits must be tested and ultimately enforced by courts.

Stephen Kerr: But there must be something amiss in the legislative process if, during that process, the Parliament or the committees—whichever it is—do not come up against the idea that, actually, a piece of legislation is probably outside the scope of the Parliament's authority. Surely that is a process-related defect.

Professor Tomkins: I see the force of that argument, but I am not sure. First, even though the number of cases in which the Supreme Court has invalidated provisions of acts of the Scottish Parliament has increased rather than decreased of late, it is still tiny. Most legislation that is passed by the Scottish Parliament is not challenged by the Supreme Court and, even if it is, it is not necessarily invalidated by that court.

There are very well-known examples in which the Supreme Court has taken a view about legislation that is different from the view that the Parliament took. That is not because the Parliament ignored the question of competence, but because the Supreme Court simply took a different view.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill is a good example. In 2018, there was a lot of debate in this place about whether that bill was within or outwith incompetence, not least because the then Presiding Officer certified that, in his view, it was not within competence. Nonetheless, the Parliament proceeded to enact the legislation anyway, and it then went to the Supreme Court, which invalidated certain provisions of it—on grounds, in fact, that were very different from

those that the Presiding Officer had identified as his reasons for thinking that it was outwith competence.

The process was that Parliament enacted legislation bearing fully in mind that we were running up against the limits of competence, and the outcome was that large parts of the legislation were invalidated. The ultimate decision on that was not for us; it was for the Supreme Court. However, to my mind, that is devolution working within the law and not a failure of the parliamentary process.

10:45

I said that it would be a challenge to find a difference between me and Johann Lamont, but here is one. She intimated in an earlier remark that it was some kind of embarrassing failure to lose a case in the Supreme Court. It is not. The definition of a case that goes to the Supreme Court is that it is plausibly arguable either way, otherwise what is it doing in the Supreme Court? It is not an embarrassment to lose in the Supreme Court. It is a reflection of the fact that, in a parliamentary democracy that is committed to the rule of law, powerful appeal courts are there to ensure that even institutions as prestigious as this one act within, and not beyond, the limits of their legal competence. I think that that is perfectly normal.

Johann Lamont: What is embarrassing is when people have argued that there is an issue with legislation and that argument has been waved away. It is not that the Supreme Court found that issue but that the Government already knew about it and chose not to pay any attention to it. We all know that there have been controversial—

The Convener: As interesting as this discussion is, I am very conscious of the time and there is still another member to bring in.

Stephen Kerr: I think that the issue relates to the nature of committees, particularly with regard to their responsibilities in scrutinising legislation.

I will be very brief, to please the convener, whom I like to please.

I was a member of a select committee in the House of Commons that was chaired by Rachel Reeves. Rachel was a brilliant convener, because she said at the outset, "When people who come in front of the committee leave, they need not to have thought once about what the party affiliation of the person on the committee was. They shouldn't be able to tell the difference between us." From the evidence and reflections that we have heard this morning, it is clear that that is not the case in our Parliament. I want to understand why. Is it a reflection of the calibre of our MSPs?

Professor Tomkins: Yes, it is partly a reflection of their calibre. It is also partly a reflection of the political culture in Scotland, which, over the past 10 or 12 years, in particular, has become much more dominated by party loyalty than perhaps it was in the first period of devolution.

It is also partly a function of size. I am not in favour of the Scottish Parliament growing in terms of its number of members; I think that there should be fewer rather than more elected politicians in Scotland, with all respect to those in the room who have been elected. However, it is easier in a Commons of 650 members to make a career as a maverick and to do so on the committee corridor without worrying too much about what happens in the chamber. That is harder here, because there are fewer members to start with.

The issue is partly a function of calibre, it is partly a function of size and it is partly a function of the changed nature, I think, of Scottish political culture, which has become much more driven by party loyalty. That is beginning to break down, however, and not before time, so I am optimistic. I am always optimistic—as you know—that things will get better rather than worse.

Johann Lamont: We cannot ignore the fact that, for the past however many years, every discussion has been a proxy for a big discussion around the constitution. Even if a member does not particularly agree with a policy, they do not want to be seen to be on the wrong side of that big divide with regard to where their own party is. That has concentrated and focused people's minds, but it has maybe inhibited their capacity to disagree, because such disagreement is given more significance than it might otherwise have.

In addition, there is the issue of party discipline. In a multiparty system that was devised with proportional representation in mind, a rebellion makes an awful lot more of a difference. We learned that very early on, in the first session of Parliament, when—as I recall—there was an accidental rebellion on something to do with ferries. Some members thought, "Oh, we can't possibly support that," and, all of a sudden, they discovered that they had beaten their own Government by accident on a matter that they had not realised was quite so serious. That is part of it.

I will make one final point. If you were to ask a lot of people in organisations with which I work now about the faults of the Parliament, they would highlight that grass-roots organisations have had to develop to do work on issues that they thought a committee would be asking about. One example is women's organisations. There is a burgeoning women's movement again in Scotland, which has come almost entirely out of a frustration that the system is not asking the questions that those women want asked and is not demanding the

answers that they seek. There is a whole structure of people who are doing really serious policy work, and their frustration is that they are doing that voluntarily when the system should be doing it. That is a challenge.

Stephen Kerr: Is that a reflection of calibre?

Johann Lamont: Well, you cannot ask me to judge that.

Stephen Kerr: Adam Tomkins was only too happy to say so. Do you have a view?

Johann Lamont: Well, what is calibre? Let me put it—

Stephen Kerr: Outside Parliament, a lot of people think that we have too many career politicians.

Johann Lamont: Let me put it this way. The capacity for people to be serious about their job remains the same, but the reward for being serious about their job, and independent of the parliamentary process and of their leadership, their party and all the rest of it, might be different. That is why we have to take it back to basics. Ultimately, it is about elected members being serious about their job. Members should stop outsourcing their thinking to somebody else and take the job seriously.

Stephen Kerr: People outside the Parliament have continually expressed concerns, which they have aired quite publicly, that too many of our parliamentarians have only ever lived in the bubble of politics, and therefore their ability to do what you describe is inhibited by the fact that they have no hinterland.

Johann Lamont: It can also be that the consequence of disagreement is massive.

Stephen Kerr: Yes.

Johann Lamont: My big thing about the Parliament is that, although in my early youth I was not in favour of it—coming from the kind of background that I had, I thought, "Scotland's a diverse country. Stop pretending all Scots are the same as one another."—when I saw how distant Westminster was from people's lived experience, including that of the kids I was teaching in class, I believed that we had to bring power closer to people. I now have concerns—we can maybe develop this at another point—about the system that is sitting atop that. We have created jobs, roles and functions for people, but we have lost that connection. There has been nothing inevitable about that; it is about how people do their jobs and how seriously they take those jobs.

I find it astounding that any politician would write to somebody and say, "I'm not meeting you because I don't agree with you." I simply find that astounding. What are they fearful of—that they

might learn something that they had not thought about before? There is a notion that some of these issues cannot be legislated for or regulated, as they are about people's mindset. But that does not mean that folk in Parliament, simply because they came here on a journey that was different from mine, will inevitably not have the capacity to do what I have described. Taking that view would also be wrong.

Stephen Kerr: It is a self-perpetuating culture. That is the problem.

Professor Tomkins: On the question of calibre, I would say that that is a problem, but it is not the cause of the problem—it is a symptom. The underlying cause is the question of political culture and, in particular, party political culture: whom do parties want to be their representatives? Parties regard you, or us, not as representatives of the people but as representatives of themselves. Who does the party leadership—the party hierarchy—want to encourage to become an MP or an MSP? That, I think, is the underlying cause of the problem. Focusing on the calibre of individuals, therefore, is a bit like playing the person rather than the ball. It is part of the problem, but it is a symptom rather than the underlying cause, which is the political culture.

The Convener: I will draw a line under that discussion, but it is interesting that, in the 25th year of the Scottish Parliament, such discussions are very much worth while and need to take place.

That said, I will drag us back to the issue of committees. I look to Ivan McKee to see whether there is anything that he would like to cover as we move to the final part of the session.

Ivan McKee (Glasgow Provan) (SNP): I welcome the witnesses. Thank you for your open dialogue and your wide-ranging input on this important subject.

Professor Tomkins, I was quite taken by your outlining, in your introduction, the role of the Parliament and its three functions. That is a very helpful way to think about it.

I take issue with you slightly on one aspect, however, which I would like to explore a wee bit more. I think that you both said that the role of a committee is not to debate issues. I understand what you mean with regard to members having an opportunity to grandstand and make political points. However, there is perhaps an issue around the role of committees in allowing issues to be raised that would otherwise not be raised. I would like to get your reflections on that. The Citizen Participation and Public Petitions Committee is one structural manifestation of that, but the opportunity arises in all committees. I am taken by the fact that, when I encounter people outside Parliament who are coming to give evidence to a

committee, the fact that they are engaging with the process in that way is a big deal for them.

As a follow-on from that—this is perhaps quite an existential question—what is the outcome of that process? Is it just that people come in and make their views known to a committee in evidence, as part of an inquiry or whatever, and that does not necessarily go anywhere? I go back to the point that Annie Wells made about legacy reports. When I came back to committees after a five-year absence as a minister, I thought, “Oh, you're still talking about the same things you were talking about five years ago. The same people are coming in and we're asking the same questions, so what's actually changed?” I suppose that my question is, what changes as a consequence of that process?

Professor Tomkins: When I said that it is not the role of committees to debate matters of public interest, all the work in that sentence is being done by the word “debate”. It is not the function of committees to stage debates or to deliberate in the way that that happens in the chamber. It is absolutely the role of committees to bring issues of public concern in from the outside to the Parliament's attention, and it is much easier for committees to do that than it is for the chamber.

That goes back to the issues that I talked about in response to Evelyn Tweed's questions. What makes an effective inquiry or an effective committee? The power that committees have is the power to take evidence and to choose whom to take evidence from. I did not mean to imply by my opening remarks that I think that committees should somehow be immunised or insulated from matters of public debate. However, it is not the function of committees to debate in the way that it is the function of MSPs in the chamber to debate. That is really what I meant by what I said in my opening remarks.

With regard to your more existential question, as it were, on what the outcome is, again, that is the responsibility of committees, is it not? We have talked about that all morning. You can take whatever evidence you want, but what do you do with it? Do you use it in a way that adds value to the parliamentary conversation, if I can put it like that, or do you diminish its value by inserting it into part of the conversation that is already there, as if nothing of value has been added by speaking to all those people from the outside to whom you would otherwise not have spoken? That is always the choice that committees have.

All morning, Johann Lamont and I have given examples of where we think committees have done that job well in this Parliament, by adding value rather than simply replicating things that would already have been said even if the

committee had not bothered to get out of bed that morning.

Johann Lamont: On the question of issues that would not be raised elsewhere—this perhaps reflects a point that was made earlier—there is a danger that people simply lobby for things to go in the manifesto, the manifesto is published and it mentions those things, and politicians then spend the next four years talking about those things in a way that does not relate to the priorities of constituents.

I draw a parallel with my own attitude to surgery work, particularly when I was a constituency member. You try to help somebody with a problem, and you try to understand what it is in the system that has caused the problem, rather than looking simply at the individual experience. If something in the system has caused the problem, you can take that into the political process. That is about members doing their job.

In my experience, the best comparator for that in the Parliament is the Citizen Participation and Public Petitions Committee. When I was on the Public Petitions Committee, as it was then, we would routinely receive petitions on the big issues of the day, which were being argued about all the time. The constitutional question is a good example. However, the Public Petitions Committee did not spend time on those petitions, because we knew that those issues were going to be discussed elsewhere.

That is the test for a committee: are we looking at an issue because nobody else is looking at it, or are we looking at it in a different way? It is not just about lived experience as anecdote. The danger with lived experience is that we say, “I know this really poor person and this really terrible thing happened to them—isn’t that a shame?” If we say, “Well, that has happened to them and we can understand the barriers that have caused that, and the institutions and systems that have created that situation, and we’re going to do something about it,” that is worthy of a committee’s time. The Citizen Participation and Public Petitions Committee is a good example of that. It is about stripping out issues and being honest. We are going to be debating the constitution in the chamber, so let us talk about other things that also matter. That is quite a reasonable test.

11:00

Ivan McKee’s point about coming back to find committees still asking the same questions is right. We might say, “I went away from this committee four years ago, and you’re still wrestling with that issue.” That can be because some questions are really tough, but sometimes it is because you can get locked into a system.

The political challenge for all of us, but for committees in particular, is not simply to buy into what the usual suspects, politically, want to talk about. There is a huge opportunity in committees—and it is a privilege—to talk about things that those people do not want to talk about. I gave a couple of examples earlier. The mesh issue is a classic example of an injustice done to women who, by the sheer force of their campaigning activity, brought it into the public domain. Once it was there, we saw a whole series of politicians and committees really doing their job seriously and refusing to let the issue go, no matter what happened. Yes, it got difficult and awkward, and the process went on for a while, but there were all sorts of strands to it.

That is a good model. Committees should talk about things that are not going to get talked about otherwise. I go back to my earlier point about having a political debate and the way in which the committees were used in the early days. We told a journalist, “I’m going to go in there, and I’m going to say X.” We went in and said it, and then we came back out and were reported as having said it. It was like a bounce—a trampoline effect. That is not serious, and I think that a lot of that has gone.

Given all the time, energy and seriousness that committee members bring, they need to think about bringing that to bear on issues that might not be getting the same focus as they might otherwise get. A committee can offer that relentlessness in a way that a chamber debate cannot.

Ivan McKee: Let us go back to Adam Tomkins’s second point, about holding Government to account. We have had a lot of good discussion this morning about the value of committees and inquiries in raising issues and taking evidence, and in scrutinising legislation, given the two-way street that can operate effectively in that regard. Do you want to highlight anything as a good example of committees holding Government to account?

Professor Tomkins: It is harder to think of good examples of that, in my view. I suppose that the Finance and Constitution Committee did a lot of that. As a committee, it was not overwhelmed with legislation. From time to time, there would be legislation, and every year there was the budget—which, as I said earlier, is a form of legislation that has its own bespoke procedure—but quite a lot of the committee’s time was taken up in talking to finance ministers, particularly the cabinet secretary, about budgetary matters.

With regard to whether the committee ever managed to make much difference to Government policy, it is very difficult for any finance secretary to come before that committee and say, “Well, I’m

not really quite sure about my tax policy yet. I'm open to the committee's views." That is a bit politically unrealistic, even by my standards. To be honest, I am not quite sure how one would measure the effectiveness of accountability in a context like that. It would be quite difficult.

The best examples that I can think of are all about the way in which responsible ministers handled legislation. With regard to accountability for actions, policies and decisions, I think that the Parliament has a lot of work to do.

Ivan McKee: My final question—Johann Lamont has already commented on this—is on elected conveners. What are your thoughts on that idea?

Johann Lamont: I add to my comments the caveat that you should be elected by your peers. The danger is that a party says, "We've got a majority, so we'll choose the weakest candidate from among the Opposition members." Forgive me for thinking bad thoughts, but you can see how a well-intentioned process can be distorted.

I would argue that we have seen that a wee bit with regard to some of the decisions about who becomes Presiding Officer and so on. If the majority party gets to choose a Labour convener of the finance committee, I think that we can see what might happen. It is clear that, if the issue was easy to address, it would have been sorted by now, but there is that sense. We are seeing this now—I notice that the convener of the Finance and Public Administration Committee has been saying a lot of quite strong stuff, as far as I can see. We know that, on some committees, the convener is absolutely charged with doing that kind of job. Those things are there, but there is not an easy fix.

I go back to my point that I would favour elected conveners, but you would need to strip out the payroll vote, otherwise the system would become completely distorted. Parliamentarians should have a sense of their own role, which is not simply to sit there and nod their head. Equally, they are not there to constantly play a tribal role. I am as tribal as they get, but that is only part of the job. There is a lot to be gained by parliamentarians understanding that that is an important job in itself.

At one point, I suggested that parties should not get Short money if there was evidence that they were whipping or disciplining committee members for how they conducted themselves in committee. That would probably be taking it a step too far. Culturally, however, we should be telling parties to give their members the space, and have confidence in them, to go into committee and follow the evidence. How could anybody be the worse for that?

The caveat to that is that we need to ensure that the evidence with which members are presented has not been filleted before it gets to committee. The committees need to have the confidence to hear from more than just people who are going to agree with them.

Professor Tomkins: At the beginning of the session, I said that we do not elect Governments in this country: Governments emerge out of, and are accountable to, the Parliaments that we elect. It is really important always to bear in mind that it is the Government that is accountable to the Parliament, and not vice versa. I think that this Parliament does not always bear that properly in mind in how the Parliamentary Bureau functions and the informal way in which elections for the Presiding Officer are run.

It is not about rules, but about culture. If we had a Parliament in which 100 MSPs thought that their job was to hold the Government to account, with 29 MSPs perhaps taking a different view, we would have a different political culture. The Parliament would have different structures and procedures, and you might even end up with less legislation being quashed by the Supreme Court as a result—I do not know.

I said all that stuff at the beginning because I think that where you end up is determined by where you start from. If you started from the right principles and you absolutely understood that it is the constitutional function of a Parliament to hold the Government to account, never the other way round, you would not necessarily end up where, after 25 years, we have ended up here.

The Convener: I thank you both for a very interesting and thought-provoking morning. I know that we have an offer to contact you if we have any additional questions.

I will use the convener's privilege to say, particularly with regard to the last point that Adam Tomkins raised, that the three criteria that the Parliamentary Bureau should use in recommending committee members to the chamber are, as we have already discussed, the party balance, the interest of a member in serving on a committee, and the member's qualification and experience, as indicated by that member, to serve on a committee.

You have both raised a lot of questions, and I thank you very much for your contributions this morning. I am sure that you will follow our inquiry with interest, which is good, because it means that we will be held to account by those who were formerly in Parliament and are now outside it, but whose views and opinions are most welcome.

11:08

Meeting continued in private until 11:34.

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