



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 26 April 2022

Session 6



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**FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
13th Meeting 2022, Session 6**

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Daniel Johnson (Edinburgh Southern) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Douglas Lumsden (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lesley Fraser (Scottish Government)

Ian Mitchell (Scottish Government)

John Swinney (Deputy First Minister and Cabinet Secretary for Covid Recovery)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 26 April 2022

[The Convener opened the meeting in private at 09:30]

10:16

Meeting continued in public.

Scottish Government's Continuous Improvement Programme

The Convener (Kenneth Gibson): Good morning, and welcome to the 13th meeting in 2022 of the Finance and Public Administration Committee. The first item on our agenda is an evidence session with the Deputy First Minister on the Scottish Government's continuous improvement programme. The Deputy First Minister is joined by Scottish Government officials Lesley Fraser, the director general corporate, and Ian Mitchell, the interim director of propriety and ethics. I welcome all the witnesses to the meeting.

I invite the Deputy First Minister to make a short opening statement.

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney): Thank you, convener. First, I apologise for detaining the committee this morning. A journey that normally takes me 90 minutes took me three hours.

I am grateful to the committee for the opportunity to give evidence this morning. Following our constructive session in January, I welcome the opportunity to discuss with the committee progress on the updated procedure for handling complaints by civil servants about current or former ministers and the continuous improvement programme that arises from it.

At the point of the previous evidence session on 25 January, the draft procedure had been published. We were in the middle of a discussion period with staff, staff networks, ministers, trade unions, stakeholders and, of course, the committee. The discussion period was constructive and respectful, and it resulted in a small addition to the procedure's terms of reference, which I sent to the committee in my letter of 24 February, when the procedure came into operation. The feedback from the committee

was instrumental in helping us to develop the guidance that accompanies the procedure.

I was pleased to inform the committee that the Government had appointed six external investigators and five external decision makers from a high-calibre pool of applicants to carry out investigations under the updated procedure. The group has since completed an induction session, which was led by the propriety and ethics directorate.

After the procedure became live, the proactive work that, when I previously spoke to the committee, I identified as being important to maintaining and improving a safe and respectful working environment is progressing as planned. Although we hope never to have to use the updated procedure, cabinet secretaries and ministers received a briefing on it after it came into operation, to ensure that it is fully understood from the outset. Communications to all-staff networks accompanied the procedure's launch, and communications with staff have continued throughout March—in particular, for the launch of the associated revised staff grievance policy and procedure, which came into operation on 21 April.

In addition, I am pleased to say that the independent advisers, Mr James Hamilton and Dame Elish Angiolini, have been given final copies of the procedure and have been invited to consider updates to the Scottish ministerial code.

We are now looking to the future and to the activities in the continuous improvement programme for the rest of the year. The programme promotes positive standards of behaviour, seeks to prevent unacceptable behaviours and continues the work to create a safe and supportive environment in which staff can speak up.

The programme has already involved a range of actions beyond the development of a new complaints procedure. The programme's activities are helping to embed the Scottish Government's new vision "In the service of Scotland" and its five core values—integrity, inclusion, collaboration, innovation and kindness—at the heart of the workplace. Activities include the establishment of a propriety and ethics team to provide oversight and co-ordination on key issues and a review of corporate information management to improve how information and records are used, stored and processed.

In the past few months, we have held discussions with those who are most closely involved with the programme and our recognised trade unions in order to begin to establish measures of success for the programme. Those measures are intended not only to track the completion of the programme's activities, but to

chart how well we are doing them. The measures of success will ensure that we are aware of what best practice is and that we adhere to it at all times. They will also help us to identify the areas where we can become more successful.

The programme looks across the organisation at the systems and business practices that are designed to continue to build a positive working environment that people can thrive in. The activities that are planned until the end of this year consider different aspects of culture and behaviour and look at the ways of working that are in place. In particular, proactive outreach work that makes contact with network groups and satellite offices has already started and will be taken forward in earnest. Throughout this period, we will continue staff communications and our engagement with our recognised trade unions.

I look forward to discussing matters with the committee.

The Convener: Thank you for that opening statement. I will start the questioning, after which I will bring in colleagues round the table.

When you wrote to us in January, you talked about how the continuous improvement programme would

“ensure that the updated complaints procedure is not seen in isolation but is set within a wider context that fosters a culture of openness and inclusion.”

What specific activities are being undertaken to foster a culture of openness, transparency and inclusion?

John Swinney: A range of measures are being undertaken. There is the routine training and development of members of staff, as well as the processes and procedures of the civil service, which ensure that we have in place the appropriate support for ministers in the taking of decisions and that there is a very clear and transparent process for that. Obviously, that will vary across different parts of the organisation. Ultimately, the decisions that are taken by Cabinet are taken through the Cabinet decision-making process, and all the elements of the decision-making process are kept under constant review.

In relation to some of the wider issues around the procedure that I set out in my opening statement, steps have been taken to ensure that staff and ministers are aware of all the details of the complaints procedures so that complaints can be handled properly and appropriately.

The Government focuses on its obligation to share widely the information that is available to it through routine publication schedules, of which there are a significant number. It also responds to the more detailed and specific requests for

information that invariably come through the freedom of information regime and other channels.

The Convener: Thank you. You mentioned staff training. I understand that 85 per cent of respondents to the 2022 people survey said that they were familiar with the organisation's values. The next phase of the vision implementation will shift from awareness raising to behaviour change. What behaviours do you believe need to change?

John Swinney: The best way to answer that question is to reference the point that I made in my opening statement about the values of the organisation and what we expect to see in that respect. The flipside of that is that the behaviour that has to change is any behaviour that is incompatible with those values. We have set out in a proactive and positive way what the values of the organisation are and what we expect to see from members of staff. That is openly communicated to members of staff, and any individual who believes that they are in a working environment that is not consistent with or conducive to those values is given a platform from which to raise their concerns through the internal processes of the Scottish Government.

I hope that members of staff will take a very clear signal from the communication of those values that that should be the norm of their experience and that, if it is not, there are channels for them to raise such concerns through and that those concerns will be addressed. It has been encouraging to see a positive response within the staff surveys in relation to the reduction of behaviours that we would all judge to be unacceptable.

The Convener: How have the staff received it?

John Swinney: Generally, the staff response has been good. The survey evidence that you highlight indicates that staff are aware of the efforts that are being made to ensure that we have the appropriate culture in which staff can operate, that it can be reflected in their experience and that staff feel empowered to influence the process and to raise any concerns that they may have.

The Convener: I note that six external investigators and five external decision makers have been recruited to carry out investigations for the updated procedure and that induction sessions have been carried out. How did you come to those figures of six and five, and what criteria were used to decide whom to appoint? Also, what is the nature of the appointments? I realise that they are giving on-going advice, but are they on retainers? Can you be a wee bit more specific about who they are and what they will be doing?

John Swinney: The selection process has been undertaken in the same way as we would normally undertake a public appointments process. There is

a person specification and people are invited to apply. There is then a sifting process and a selection process, which is undertaken in accordance with the approach that we take to public appointments in general.

The individuals are essentially retained individuals and they will be paid a daily rate to reflect the work that they undertake. For example, should there be a case to be investigated or decided upon, a selection process would be undertaken to identify which person from the panel was suitable to undertake that investigation. In selecting the investigator, it will be crucial to make sure that there is no prior involvement with any aspect of the case or the individuals involved, and there will be a similar test in relation to the decision maker, who will be a different individual from the investigator. They will be remunerated for the time that is required to be spent on the task that they are allocated to undertake.

We have had preparatory discussions with those individuals through an induction process, and, as I reported to the committee, they have come through a selection process to be appointed to the roles in the same way as we undertake the public appointments process. I am not sure whether Ian Mitchell wants to add anything to that.

Ian Mitchell (Scottish Government): Only in relation to the question about why we ended up with those numbers of six and five.

We advertised through the public appointments portal; they were not public appointments as such. We got a really good level of interest. One of the criteria is that they are highly experienced in workplace investigations. We did not have a specific number of appointments in mind, but, as Mr Swinney has explained, because they are being paid a daily rate rather than salaried, we thought that those numbers were good enough to ensure that we have someone available when needed. Also, if a case goes to appeal, we will need a different set of investigators and decision makers, so we thought that six and five were reasonable numbers to cover that. However, there was no hard and fast rule around that.

The Convener: It is not because you anticipate myriad complaints or anything like that? In fact, there are none at present—is that correct?

John Swinney: It is to take into account possible conflict-of-interest issues if people already have knowledge of the individuals, for example, and the fact that we inserted the appeals procedure. If we have an individual to investigate and we then go to appeal, we will need a separate decision maker and so on, and we will need to again ensure that there is no prior involvement. As Ian Mitchell said, there is no hard and fast

judgment on the numbers. The decision was made simply to give us that range and flexibility.

10:30

The Convener: There are no cases at this time, are there?

John Swinney: Obviously, we do not comment on individual cases of this nature. Those matters are kept confidential, to protect the interests of all involved. We hope not to have to use the procedure.

The Convener: A number of reports have suggested that there are concerns in the areas of governance and oversight and record keeping and information management. How are they being addressed?

John Swinney: Work is constantly undertaken to ensure that we have appropriate record keeping, which will vary across a range of interactions around individual cases.

There must be the most assiduous recording of decision making within Government at different levels, whether that is at official level or involving ministers. There will be decision making that has to be recorded through formal channels, such as Cabinet decision making and the processes that are involved in that.

We undertake work to ensure that officials are trained and experienced in the capturing of the processes of governance. That stretches beyond decision making to charting the different stages in the development of a policy. Policies will evolve over time, with extensive and detailed interaction on particular questions. It is important that we have an account of how such decisions have been arrived at that can be readily made available when required.

The Convener: I open out the session to colleagues around the table.

Liz Smith (Mid Scotland and Fife) (Con): The Deputy First Minister will be aware of the fact that the committee requested the presence of the former permanent secretary and was very disappointed that that request was declined. I know that the Deputy First Minister cannot comment on the specifics of that, but it has raised two issues for the committee.

First, this Parliament has, as yet, not been able to scrutinise the previous permanent secretary about the issues that he felt had caused difficulties in the administration process. Secondly, it raised a concern about the accountability of the permanent secretary, whomever he or she may be, to not only the Scottish Government but to Parliament.

I raise those points because they are extremely important in the context of public scrutiny. We

wanted answers to specific questions that were nothing to do with the events of the difficult trials that had taken place but were about what procedures might be organised better. However, we have not been able to question and get that evidence from that person, who was right on the front line.

Do you accept that that is a problem for the committee? How do you think a permanent secretary should be accountable to Parliament?

John Swinney: The fundamental point that I would make, which is made by the letter that the current permanent secretary, John-Paul Marks, sent to the convener some weeks ago—I have 10 March in my mind—is that the permanent secretary is an office holder. I do not want to make an obtuse remark or say anything that sounds disrespectful, but the permanent secretary is not an individual; they are an office holder. Any of the questions that Liz Smith or the committee is interested in can be put to the permanent secretary—and I understand that the permanent secretary is coming to the committee fairly shortly.

The point about accountability is absolutely fundamental. The permanent secretary is the leading civil servant in the Scottish Government and, as that office holder, they must be available to come to the committee and to answer questions on issues that are relevant to the Scottish Government at any time. I view the relationship as the same as that which I have with a parliamentary committee. I am here to answer on the Government's behalf. In the letter to the convener, the permanent secretary made the point that civil servants do not act in an individual capacity; they act on behalf of ministers, and their authority comes from that relationship.

I hope that that addresses Liz Smith's point.

On the questions about the difficulties that lay at the heart of the complaints procedure in 2018, those issues have been openly scrutinised in the process that was undertaken by a specific parliamentary committee prior to the 2021 election and in this committee's scrutiny of the procedure that has arisen from those events, which is designed to address the issues that emerged during that process. This is my second appearance at committee to address some of those questions.

Liz Smith: Thank you. That is helpful, but I still think that there are two issues. You are quite right that the first of those is what will happen with accountability and ensuring that the process is as strong as it possibly can be. The previous permanent secretary was very much involved at the time when there were obviously serious issues, so given her non-appearance before the committee, the committee's problem is that we

have not been able to get some of that feedback, so it is much more difficult for us to scrutinise what the best way forward should be and to ask ministers about that.

You are absolutely right that you have been up front about what is happening. However, do you accept that our work has been slightly compromised by the fact that it has been difficult for us to find out in a public committee session exactly what went on in the processes and how they could have been run better?

John Swinney: I do not share that view, because extensive scrutiny of the process was undertaken by a specific parliamentary committee prior to the 2021 election. If my memory serves me right, the former permanent secretary made more than one appearance at that committee. The issues that pertained to all that went on in that period have been openly scrutinised by a parliamentary committee. I accept that that was not this parliamentary committee, but the issues certainly were scrutinised by a parliamentary committee in extensive and laborious detail—I do not think that any of us could say anything other than that—prior to the 2021 election. That is all on the record.

Essentially, the permanent secretary would make a contribution on behalf of the Scottish ministers. That is the only basis on which the permanent secretary, as a civil servant, can speak. Civil servants do not make individual appearances at committee: they represent ministers. It is crucial that, in all those cases, there is effective and open engagement with committees on the questions.

As I say, I am here to set out the lessons that have been learned from that process and how they have influenced the new complaints process that we have in place. I know that the permanent secretary will be happy to engage on any issues that the committee has on its mind.

Liz Smith: On exactly that point, the roles of the two committees are different. You are absolutely right that the committee that investigated the issues surrounding the extensive problems before the 2021 election had a specific role. We have a different role, which is about how public administration is made accountable. For the committee to scrutinise ministers such as yourself, it would have been useful for us to hear from the horse's mouth, as it were, exactly what some of the perceived challenges were. That is nothing to do with the events and what went on, which was for the other committee to question. Rather, it is about what structures could be improved. Do you accept that that issue has been difficult for us, as we have not been able to hear the evidence on that?

John Swinney: I do not take that view, for the reasons that I have set out. A lot of the questions about what went wrong with the process and procedure were clearly and openly aired at the committee prior to the 2021 election. Indeed, one of the issues that the convener has just questioned me about was the necessity for there to be no prior involvement of individuals in a particular case, and I went back to that point a couple of times in my responses. That was one of the significant flaws in the previous handling, which became very clear at the Committee on the Scottish Government Handling of Harassment Complaints.

Although I understand the Liz Smith's point that this committee did not undertake that exercise, my contention is that another parliamentary committee did so, and we are now in the process of learning the lessons from that and changing practice as a consequence. I am very happy to engage with the committee about that, and I am certain that the permanent secretary will be happy to do so, likewise.

Liz Smith: Thank you for that, but I just make the point that the scrutiny is the important thing. That is what this committee's role is about, I think.

Daniel Johnson (Edinburgh Southern) (Lab): I have two broad areas of questions. One is about progress and the other is about some of the content of future work, especially on the ministerial code.

On progress, I note that briefings with ministers have taken place, and I wonder if you could elaborate on the form that those briefings took, and whether every minister has received a briefing. I assume that the procedure will be most relevant to those civil servants who have the closest contact with ministers.

On the wider piece of work on information and training, has there been prioritisation among more senior civil servants, such as at director general or director level, and in private offices? If so, what progress has been made with that sort of targeted training?

John Swinney: In relation to the briefing of ministers, the format—as with an awful lot of life in the recent past—was online. Briefing sessions were undertaken via Teams. Parliamentary colleagues will understand that a three-line whip was applied to those sessions. Mr Johnson will know what I am talking about there.

Daniel Johnson: I do not know what you are implying.

John Swinney: I am simply saying that that is terminology with which we are all familiar.

The exception was the First Minister, who was briefed separately. I essentially convened those

briefings with the permanent secretary. We had input from specific members of staff who were involved in the formulation of the briefing. There was an explanation of the procedure, and written copies were provided to ministers in advance of the briefing session. There was an opportunity for ministers to raise questions about any issues relating to the procedure. I confirm that all ministers were party to that briefing and, as I said, the First Minister was briefed separately. All members of staff were made generally aware because it is important that they all hear the message.

10:45

I understand the distinction that Mr Johnson makes about staff who will be in the closest proximity to ministers. That is not always driven by seniority. It is driven by close proximity. I work closely with some staff who are more junior but I could not function without the excellent support that they provide for me. It is important that that is reflected in who is advised about the procedure.

That work is under way. Specific briefing sessions are being undertaken with private offices because there is a huge amount of interaction between ministers and private offices. That must be the area of most interaction between civil servants and ministers. There is a range of other interactions more generally across the specialisms in the Government. We must ensure that members of staff have access to the procedure. I am satisfied that that is available but, as the continuous improvement programme indicates, on-going dialogue will ensure that that is the case.

Daniel Johnson: I note that part of the recommendations is that an induction or training session should be put in place for ministers. Has that been put together? Is it in place? If not, when will it be in place?

John Swinney: After the 2021 election, there was a formal induction programme for ministers. That covered a range of topics from administrative and process type issues such as the one that we are discussing—the expectations of interaction with private offices—to some of the wider, policy-specific areas. For example, all ministers were briefed on some of the policy objectives on climate change, recognising that that policy objective transcends individual portfolios.

A mixture of policy and process induction has been undertaken since the 2021 election. Should there be any change to ministerial appointments, a similar programme will be put in place to ensure that any incoming minister who does not have previous experience will be suitably briefed.

Daniel Johnson: From the bulk of what we have seen to date as regards how complaints are

raised, progressed and investigated, the application of the ministerial code will determine the outcomes of any such process, which will be judged by the code. I note that the independent advisers on the ministerial code will come back within three months of the procedure's publication. Will the Deputy First Minister clarify when that is likely to happen, even in broad terms?

More importantly, given the sensitivity of the matter and given that, as we discussed previously, it comes down to ministerial discretion—especially from the First Minister—to decide whether the code has been broken, what are the parameters of the review that James Hamilton and Dame Elish Angiolini are undertaking? Will it simply be about the formulation and content of the code or will they also examine its operation?

John Swinney: On the point about timescale, we indicated that, three months after the publication of the procedure, we would invite feedback from the independent advisers. That will be towards the end of May and I expect us to have feedback within that timescale. The First Minister will then reflect on that feedback to determine whether any changes will be made to the code as a consequence, given the responsibility that she carries for its formulation.

In relation to the scope, the advisers will consider any interaction of the complaints handling process with the ministerial code, and whether that flows through in a smooth fashion. I anticipate that their recommendations will be in that space. However, I would not want to constrain the reflections of the independent advisers. I know that the First Minister will be happy to hear any reflections that they have on that question or perhaps questions that stretch beyond that particular relationship, but that would be me prejudging what we will hear from the independent advisers. We will know that in the next month or so.

The final point that I will make is about the nature of the ministerial code. What I am going to say I do not say in any pejorative sense. The atmosphere around ministerial codes, particularly in relation to the position of the United Kingdom Government, raises a serious issue about the significance of the ministerial code and its implementation and application.

As a minister who is bound by the code but is not a decision maker in relation to the code, I view adherence to the code as my fundamental duty as a minister. It guides and shapes my conduct and actions. I would like to think that I do not need to a ministerial code to guide and shape my conduct and actions, but it is there is a backstop to make sure that I know what is expected of me. It has to be taken with that degree of seriousness and

applied with that degree of seriousness, because without that, it is meaningless.

Mr Johnson's question gives me the opportunity to put that on the record as a reflection of what I think is the view of ministers. The ministerial code is there to be complied with, and the last thing that a minister wants is there to be any speculation about whether his or her conduct or actions has in any way brought the code into question.

Daniel Johnson: I agree with all that, but there will always be a tension when the questions are centred on the person who is also responsible for deciding whether the code has been broken or whether to apply it. From our previous discussion, I recognise the democratic reasons for that—I do—but there is a tension nonetheless. Is that an area for reflection by the independent advisers, and has there been any dialogue on that?

John Swinney: Mr Johnson is correct; there is a tension there. There is a fundamental democratic question that the First Minister appoints a minister and essentially judges conduct in relation to a tabulated expectation of how our ministers should conduct themselves. The First Minister takes the code seriously in that respect and has those expectations of ministers, and that is made clear by the First Minister to ministers.

In relation to the perspective of the independent advisers, I would be entering into speculation, because I do not know what will come back from them. However, what I would say is that when you have advisers with the track record and credentials of Dame Elish Angiolini and Mr Hamilton, being open to hearing their perspectives is a good idea.

Michelle Thomson (Falkirk East) (SNP): Good morning, Deputy First Minister. It took me quite a long time to get into Edinburgh today, too, so I have every sympathy with you.

I want to ask about three broad areas. First, you have indicated that you are developing measures of success for the programme, but I want to get a little more flavour of how those measures will feed into later iterations of the people survey. Indeed, on the back of that, can you tell us what will be put in the public domain? In other words, my question is not how you but how we will test the measures of success, given our responsibility for scrutinising public administration issues.

John Swinney: The people survey is published, isn't it?

Lesley Fraser (Scottish Government): We publish certain aspects of it each year, in tandem with our colleagues in the UK Government. We are part of a wider UK people survey process.

John Swinney: The information that the people survey gives us about attitudes of members of

staff is published to give, I suppose, the committee the opportunity to scrutinise the progress that has been made in the general relationship between members of staff and the organisation and their experiences in that respect—hence, the importance of our looking at this from a variety of perspectives. As Michelle Thomson will know from her professional background, a people survey is a significant indicator of the health of an organisation and highlights the challenges to the leadership of the organisation to ensure that it is on an appropriate improvement journey.

However, although such measures are important in a general sense to assess an organisation's performance, we need to be very careful about what we take forward as we chart progress on the continuous improvement journey. I certainly do not want that to be judged on whether the number of cases or complaints that we are getting is declining, because that is a rather negative way of looking at the issue. Instead, I want us to think very carefully about how we can demonstrably quantify progress in the organisation and how we are improving the experience and the capability of staff. All those different factors have to be reflected in the approach that we design as a consequence.

Michelle Thomson: I agree completely but, with regard to Lesley Fraser's comments, if this is done under a UK civil service remit and approach, how will the different and more nuanced approach that we are taking here be reflected?

I also want to hear a bit more about the extent to which the data that is published will be quantitative or qualitative. After all, the biggest change in all of this will be to culture and behaviour, which are always the hardest things to change. In that respect, it is the qualitative insights that give that flavour. How will success be measured or reflected in the next version of the people survey? Are you planning to include additional Scottish Parliament elements to get a sense of that?

John Swinney: There are two different dimensions to take into account here. The first is the people survey which, as Lesley Fraser has said, is part of a UK civil service-wide proposition. It can give us some insight into these issues, but it is not exclusive.

That brings me on to the second dimension, which I think lies at the heart of Michelle Thomson's question. How do we design an approach that enables us to be confident that the continuous improvement journey is having a positive effect in the organisation? That will require us to develop our thinking about the process, which will inevitably have to be much more qualitative than quantitative. We might, for example, have to think about how we formulate conversations with staff in order to inform that

qualitative process, if that is the type of information that we are trying to extract from this experience. There will be quantitative indicators that we can identify, but I do not want it just to be a quantitative survey. It must begin to delve into the experience of members of staff in the working environment—how satisfactory is it and what can we do to strengthen and improve it?

11:00

I am happy to update the committee over time, in our periodic updates, on how that work is being undertaken to develop the framework and any thinking or expectations from the committee in that respect would be very welcome.

Michelle Thomson: Thank you. I have seen a lot of this kind of development in my previous career and there is a risk that the process can become the absolute. In that respect, I was just a bit surprised to note that the review of bringing in propriety and ethics is the last step in the process, because the risk then is that the ethical approach is applied from a deontological rather than a consequentialist perspective. What is your thinking about that being the last step in the chain and therefore how you can look back at it from a consequentialist, ethical basis—in other words, on an outcome basis, because this is all about the outcome and not just about the process?

John Swinney: I do not want it to be viewed as a final element, because propriety and ethics has been established as a distinctive directorate in the Scottish Government in response to a lot of the experiences that we have had, in order to underpin all the work that we are undertaking.

I do not want the committee to think that we are only getting around to thinking about propriety and ethics at the very end. We have actually been thinking about it from the very beginning—it runs through the whole process. The words that I would highlight in the last element of our schematic are "review of the processes", as opposed to a review of the propriety and ethics function, because propriety and ethics is embedded in the process that we are undertaking.

Michelle Thomson: Obviously, the new process applies to former ministers, so what consideration have you given to how iterations of the process will be communicated to them and over what timescale, both in relation to former ministers and in relation to ministers who are currently in post—five years down the line, how will they be communicated with? I am not talking about the detail of the process, but they need to understand that they have a responsibility to be across the process at a given point in time and as it evolves. Where is your thinking on that?

John Swinney: We will have to consider what communication will be undertaken based on any updates to the procedure. There would have to be an open process of communication. In fact, if there were to be any change to the process in the years to come, ministers would be under an obligation to advise this committee of exactly that, which puts it into the public domain immediately. We would have to reflect on that specific practical issue, but a change to the procedure would be a matter of public record. Such a development would be communicated to the committee and more widely as a consequence.

Douglas Lumsden (North East Scotland) (Con): I asked about the issue of agency workers at the 25 January meeting and I still have a concern about that. I get that agency workers are not employees—they have their own employer, so the approach needs to be different. However, the new procedure says:

“Propriety & Ethics will take steps to assure that any agency worker with a concern about a Minister’s behaviour can have their issue addressed.”

Will that follow a separate procedure? Will the decision makers and investigators get involved at all in that process?

John Swinney: First, I accept Mr Lumsden’s point that there is a specific issue to do with agency workers. We took that away after it was raised with me at a previous evidence session. The judgment is difficult because the individual is not an employee of the Scottish Government but, essentially, they must be able to raise any concerns that they have through their own employment channels. Assuming that the organisation for which the individual works has appropriate human resources processes in place to enable that to be the case, the Scottish Government must have in place appropriate contractual relationships with a contractor in order to make sure that, should any issues be drawn to the contractor’s attention as an employer, those issues are addressed by the Scottish Government. That would have to be done under a contract management relationship, but if that involved any issues of ministerial interaction, we would have to address that through our own processes as an organisation.

It would not necessarily be through that process, which is available to members of staff, but we would have an obligation to address those issues because of our obligations under contract. You cannot have contractual relationships that do not work in an appropriate fashion; we would have a contractual obligation to address any issues.

Douglas Lumsden: Would decision makers and investigators take part in that process?

My concern is that there could be two individuals—an agency employee and a staff member—with identical complaints, and one complaint would be handled completely differently from the other. You have explained some of the reasons behind that. Ministers could be criticised because one complaint was not being dealt with effectively because it came from an agency worker.

John Swinney: I am trying to reassure Mr Lumsden that the complaints will come through a different channel, but they will have to be addressed, because we cannot have a situation where an agency worker is not able to raise their concerns. In exactly the fashion that Mr Lumsden has put to me, there could be two individuals sitting side by side, one of whom has certain rights because they are an SG employee, and another who has a different channel for raising concerns about their rights through an agency employment structure. However, I do not envision the investigators and decision makers being involved in handling an agency issue—we would have to handle that through proper management of contractual arrangements.

Douglas Lumsden: Would a minister still be aware that a potential complaint was being made from an agency worker?

John Swinney: Yes.

John Mason (Glasgow Shettleston) (SNP): I would like to follow up on Liz Smith’s question about the permanent secretary. You made the point that civil servants speak for ministers, which was also my understanding. However, on top of that, we had advice that, under section 14 of the Public Finance and Accountability (Scotland) Act 2000, the permanent secretary is also answerable to Parliament specifically on the issue of resources being used economically, efficiently and effectively.

John Swinney: Yes, because the permanent secretary is also the principal accountable officer and, in the role of principal accountable officer, has particular obligations under other parts of legislation.

The Convener: That appears to have concluded questions from the committee. I thank the Deputy First Minister for coming to the committee to give evidence. As the second session has been cancelled due to a Covid-19 outbreak at Skills Development Scotland, that concludes the meeting. I thank you all for your contributions.

Meeting closed at 11:09.

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