



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Petitions Committee

Thursday 9 February 2017

Session 5



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PUBLIC PETITIONS COMMITTEE

3rd Meeting 2017, Session 5

CONVENER

*Johann Lamont (Glasgow) (Lab)

DEPUTY CONVENER

*Angus MacDonald (Falkirk East) (SNP)

COMMITTEE MEMBERS

*Maurice Corry (West Scotland) (Con)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tam Baillie (Children and Young People's Commissioner Scotland)

Laura Callender (City of Edinburgh Council)

Kirsty-Louise Campbell (City of Edinburgh Council)

Finlay Carson (Galloway and West Dumfries) (Con)

Tam Hiddleston (Unison Scotland)

Cathy James (Public Concern at Work)

Andrew Pepper-Parsons (Public Concern at Work)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Petitions Committee

Thursday 9 February 2017

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Johann Lamont): I welcome everyone to the third meeting in 2017 of the Public Petitions Committee. I remind members and others in the room to switch their phones and other devices to silent.

Agenda item 1 is a decision on taking business in private. It is proposed that we take item 4, consideration of a paper, in private. Do members agree?

Members *indicated agreement.*

Continued Petitions

Youth Football (PE1319)

09:15

The Convener: Agenda item 2 is consideration of continued petitions. The first petition for consideration is PE1319, by William Smith and Scott Robertson, on improving youth football in Scotland. We will take evidence on this petition from Tam Baillie, the Children and Young People's Commissioner. Members have background papers, including previous submissions from the commissioner.

Welcome to the meeting, Mr Baillie. To make the most of our time this morning we will move straight to questions. I am aware that you were giving evidence yesterday to the Health and Sport Committee on related issues around football.

Tam Baillie (Children and Young People's Commissioner Scotland): That was on Tuesday. Thank you for hearing me today. Missing the original session in December was unavoidable.

The Convener: We absolutely understood the reasons for that and we very much appreciate you being here.

I noticed the view that you reached in your submission of 26 July last year, in which you set out your overall impression, which is that the Scottish Football Association and the Scottish Professional Football League have gone as far as they are prepared to go or are able to within their governing structures, and that

"for real change to occur, external regulation has to be imposed".

I ask you to comment on that and on whether there is anything that you would now add to that overall impression.

Tam Baillie: I would reinforce that overall impression. To go back a little, I came in on this as an issue in 2010, when the Public Petitions Committee contacted me to see whether the issues that were raised by the petition had any implications with regard to children's rights. At that time, the issue was around children not being allowed to play for their school football team and whether that was a breach of their rights. There was a fairly straightforward answer—yes, it was.

Since then, many other matters have been raised by the discussion around the petition, some of which have been covered by the committee. I have been dealing with it over that period of time. The issues that have come up are: the compensation scheme, which is a well-meaning scheme to try to compensate clubs for the time

that they spend training children; an issue with regard to 15-year-olds being held to three-year contracts; an issue about the minimum wage, and who knew what and when with regard to that; and an issue about football agents.

There has been some positive movement, and I have given the SFA and the SPFL credit where I think that it is due. Children are now allowed, unreservedly, to play for their school football team. That change took six years—it was only last year that they agreed to have that written into the guidance that is given to clubs, which gives an idea of how tortuous the process to address the issue has been. The SFA has appointed a wellbeing and protection officer and a children's rights officer, and I welcome that. It also initiated a complaints process in 2015, which was one of the recommendations in my report. Having said that, the SFA gave evidence earlier this week, through Andrew McKinlay, that that process has not been used since it was set up.

We have had one success—children now being allowed to play for their school football team—but there remain outstanding matters, which I want to address today: the compensation scheme; 15-year-olds on three-year contracts; the minimum wage; and the involvement of football agents with children.

The Convener: The committee has a number of questions but, if they do not cover all the issues that you particularly want to comment on, I will make sure that you have an opportunity to do that at the end.

In relation to the issue of external regulation, have you had any substantial conversations with the Scottish Government about its role? You say that the SFA and the SPFL have gone as far as they are going to go on self-regulation. Has there been a discussion about what the alternatives might be?

Tam Baillie: Yes, I have had some discussion with the Scottish Government, but the thinking is at an early stage. My message to the Government is that it is going to have to get involved in some shape or form because, in my estimation, having had experience of dealings with the SFA and the SPFL, their structures or lack of willingness will mean that the necessary changes will not be made. That is why I think that they are intransigent on some matters. The factor that contaminates the situation continuously, which was obvious from the evidence that was given previously on the issue, is money. To my mind, when money comes into the equation, the best interests of children tend to be less of a central focus. My major concern has been to keep the focus on the best interests of the children and young people who are involved in the game. As was made quite clear in previous evidence, when money becomes part of the

considerations, the best interests of children tend to take second place.

The Convener: So, part of the problem is that young people are regarded as one of a club's assets. Is another issue the almost unique willingness of young people and their parents to deny their own rights because of the nature of football?

Tam Baillie: Yes. Football is our national sport and it was obvious from the interviews that we conducted with children that they love it and are passionate about it. They are also passionate about realising their dreams, and the clubs have access to those dreams in the palm of their hands. I think that that leaves those young people vulnerable to exploitation because of the enormous power imbalances between the children and the clubs.

Some of what I have proposed is intended to try to redress that power imbalance. In fact, the Health and Sport Committee wanted to concentrate on the impact that the power imbalance has on children who are in and around the clubs and are associated with them. Unfortunately, there is evidence that those are the very circumstances that will be looked for by people who choose to try to sexually abuse children: power imbalances and unfettered access to children and young people. We know, not just from football but from countless other areas, that those are the kind of circumstances that people with ill intent towards our children will seek to exploit.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, Mr Baillie. I want to ask about the registration period for players in the 15 to 17-year-old group, which you have flagged up as an issue of concern. The SFA and the SPFL have noted some concerns about the impact on players in that age group of having shorter registration periods, including the potential negative impact on players' wellbeing if they were to move clubs during that period, and the possible knock-on effect of top talent being taken by clubs in the English Premier League. Can you expand on your views on that issue?

Tam Baillie: Yes. The issue is tied to the way in which compensation schemes are administered. As soon as a child signs with a club, there is a price on their head that is the cost of the compensation to release that child to play for another club. That cost mounts and, to me, it gets in the way of decisions about the best interests of the children. However, the issue is particularly pernicious for 15-year-olds because the clubs use the excuse that they are protecting the children from the rich clubs down south to avoid uprooting their family or they say that they cannot always predict whether a 15-year-old's talent will blossom

and they will therefore hold on to a child so that they can reap some reward from their investment. Those are the kind of words that are continually used by the clubs.

Mr Doncaster said time and again in his evidence to the committee that, in the professional bodies' view, the balance was just about right—that is, the balance between the best interests of the child and the incentive for clubs to invest. I do not think that that is the case at all. As far as I can see, all the power is with the clubs and very little is with the children and young people. I have been contacted recently by parents of children who are caught in that bind, as clubs are holding on to the children when they are 15 and they do not know what to do. If they raise a concern with the club, that might jeopardise the child's career prospects and they do not want to do that.

There is a fear factor for children being able to reasonably raise complaints, especially when the odds are stacked so heavily in favour of the clubs. I really take issue when I hear that a balance has been struck and that it is just the right balance. It is the right balance for the clubs, but not for the children.

Rona Mackay: Is the issue getting worse, or have the numbers of children being held back always been at the same level?

Tam Baillie: I cannot say. What I can say is that the SPFL gave the reason that, if the system were dismantled, the whole thing would collapse around us. In fact, when giving evidence, the SPFL said that it would not change the system at all. That shows the inflexibility of the clubs' position. They are not interested in changing it and that has proved to be one of the main reasons for not being able to seek any movement. I do not know of any other situation in which you can hold a child aged 15 against their will for three years. It beggars belief.

Maurice Corry (West Scotland) (Con): Good morning, Mr Baillie. Turning to the issue of compensation, the Scottish Schools Football Association recently commented that there are a number of risks with the reimbursement of costs remaining. Those include a child being regarded as a commodity, the implication of a child being owned by a club and the risk of such payments being used as leverage. Considering the comments that you have just made, do you recognise those risks and share the SSFA's concern?

Tam Baillie: Given the operation of the compensation scheme, I describe it as a price on a child's head. When Fraser Wishart gave evidence on 22 December, he described such situations as being the case for people up to the age of 23, and that has to be dealt with somehow.

In one of my communications, I recommended that payments not be triggered until the signing of a professional contract, but I am mindful that people in the game said that there must be a better way of doing it. We said that in evidence to the committee, and I believe it, and people who are in the game need to come up with alternatives. As it sits just now, the system works against the best interests of children.

Maurice Corry: It does not really have the interests of children at its heart.

Tam Baillie: No, not at all.

Angus MacDonald (Falkirk East) (SNP): We have heard in previous evidence that having a system of compensation is a FIFA requirement. However, as you know, suggestions have been made about possible alternatives to the current system, including that compensation should be payable only when a young player first signs a professional contract. Our discussions are taking place against the backdrop of the project brave initiative which, among other things, would involve a reduction in the number of players in the academy system. Have you been involved in any discussions about project brave and the opportunities that it could present to address the issues of the compensation system?

Tam Baillie: Not directly, although I welcome the intention of project brave. We have a population of 5.6 million and something like 3,200 children are part of the academy system. Germany has a population of more than 70 million, yet there are 4,500 children in the academy system, which is similar to ours. There is something not right about the number of youngsters that we include in the system, because the clubs are building up false expectations that the youngsters will become professional football players. The purpose of allowing clubs to spread the net wide and to scoop up as many youngsters as possible is based on the hope that a valuable nugget will be realised and a club will benefit from that. That is my interpretation of the situation. I really welcome the narrowing down of the number of young people who would be part of the system, but I do not know how quickly that will be done.

Angus MacDonald: That point was certainly raised in previous evidence sessions.

Brian Whittle (South Scotland) (Con): Good morning, Mr Baillie. You have alluded to many points that I am passionate about. In youth sport, the first thing is to ensure the welfare of the child and to ensure that the child can enjoy playing sport and can have a long-term relationship with sport. Basically, we would all like that to happen. I presume from your evidence so far that you would suggest that the current system gets in the way of that and is a block to that ethos.

09:30

Tam Baillie: There are thousands of people who are in football for very good reasons and have the best interests of children at heart, but the way in which the system is set up creates power imbalances, and there is no way to sort things out when they are not working. As a result, the children involved suffer. It is not beyond the capability of our clubs to organise the system in a different way so that it is not stacked so heavily in their favour.

Brian Whittle: Obviously, one issue that is raised is that dismantling or changing our country's system would leave it open to plunder from south of the border. What is the reality? What would happen if our kids were not held to a three-year contract?

Tam Baillie: That would have to be looked at not through the lens of what would happen to the football clubs, but through the lens of what would happen to the children.

Brian Whittle: That is kind of what I meant.

Tam Baillie: Children would have the opportunity to move clubs. Even now, there are strictures on whether they can move from one club academy to the other where there is no agreement between those clubs. Clubs made quite a big thing of changing the rules so that children could walk away from the club academy and become part of grassroots youth football, but that is not freedom of movement as I recognise it. We have to start with what is in the best interests of the children. In any case, our clubs live next door to very rich neighbours, so that dynamic will kick in at some point.

Brian Whittle: Are we just shunting the problem south of the border?

Tam Baillie: I was going to come on to the Football Association. Today, in the Westminster Parliament, there is a debate on a motion of no confidence in the FA. The issues with regard to the administration, structures and governance in the FA are similar to those that we have in Scottish football, and I am pleased that the Westminster Parliament has taken a keen interest in the matter. A select committee is looking at it. There is exactly the same kind of dynamic in England as that which we are experiencing in Scotland—English clubs might well be fearful of rich clubs elsewhere.

Brian Whittle: As you say, the issue is not only for Scotland—it is bigger than that—although we are considering the issue in Scotland.

Tam Baillie: Yes—absolutely.

Maurice Corry: I want to ask a fairly general question about the welfare considerations for

children and young people who play football in the club academy Scotland structure. A number of suggestions have been made about welfare when it comes to playing for school teams and the length of the registration period for players aged from 15 to 17. In your submission to the Health and Sport Committee, you commented on power imbalances in the current youth football system. In light of what we have discussed, what would a balanced system that considers welfare look like?

Tam Baillie: For a start, the capacity of clubs to hold on to youngsters for three years from age 15 should be removed. I think that I have already said that I welcome the appointment of the wellbeing and protection officers and the children's rights officers in the clubs. They have reissued a statement about the need to comply with procedures, but more than that is needed—there must be constant monitoring. In other matters, my experience of the authorities is that they take rather a light touch on the monitoring of clubs' behaviour. I would like the procedures to be strongly monitored and implemented, and that will need more than what is done now. However, I give them credit for moving in the right direction.

Maurice Corry: How long has the issue been going on for?

Tam Baillie: I have been involved in it since 2010. That was when the petition was lodged. I was involved later on in that year, and we gave evidence in 2011. That is why I gave the example of six years being taken to get movement on the fairly straightforward matter of whether children should be allowed to play for their school team regardless of whether they were signed for a club.

Of course they should be able to, but it took us six years to get such an agreement without any conditions attached to it. Originally, a change was made, but with the condition that a child would be able to play for their school team subject to welfare considerations, which would be assessed by the club.

Rona Mackay: Given how long it has taken to achieve such small changes, how optimistic are you that the changes that you are talking about today will be made in a shorter timescale? Given that we are now talking about these matters, and given what has come to light in England, are you optimistic that the process will move more quickly?

Tam Baillie: No, I have no confidence whatsoever that self-regulation will bring about the changes that are required. I have changed my position on that. I originally told the committee that self-regulation was always the best way. I still believe that but, in this instance, the structures and the governance are such that the changes will not be made. In fact, that is the view of ex-chairpersons and ex-chief executives of the

Football Association. I was going to read out this quote later, but I will do it now. They have said:

“The FA has been given more than enough time to self-reform and ... we now ask that parliament take this on board, recognise that further promises of change are not serious, and legislate as necessary, including the appointment of a regulator to achieve the changes that are so desperately needed”.

I am calling for regulation; the ex-chairpersons and chief executives of the FA are calling for a regulator. We need to have a governance review to consider some of the changes that are required.

I do not have confidence in the authorities to change the system in the way that they need to.

The Convener: Do you think that that is a reflection of the fact that the SFA and the SPFL are entities that are made up of the football clubs? Is it the competition between the football clubs and the resulting lack of trust that is the problem? I presume that the administrators are trying to manage a problem. Is the core issue the fact that they cannot get the clubs to agree to change?

Tam Baillie: I do not know about the inner workings of the SPFL and the SFA, but I know that the issue of vested interests has been raised numerous times. We are talking about businesses that need to make money to survive. If the comment about turkeys not voting for Christmas has been made to me once, it has been made to me half a dozen times, in private. That colours my view about the authorities' capacity to change things in the way that they need to.

The Convener: So it might be that, although our focus has been on the SFA and the SPFL, there should be at least some recognition that they are having to deal with the tensions among clubs, which are presumably competing for talent.

Tam Baillie: I do not have detailed enough knowledge of the situation, so it is difficult for me to comment.

The Convener: An issue that emerged in our previous evidence session on the petition, which was not something that we had expected to look at, was that of agents. Would you like to say something about the fact that it is possible for someone to operate as an agent without their being subject to any great scrutiny and the fact that they have access to young people at the very point at which, as you say, they have aspirations and ambitions? We felt concerns when we heard that, and I am sure that you must have done, too

Tam Baillie: Yes. I welcomed Andrew McKinlay's acceptance that the SFA needs to look at self-declaration in relation to agents and whether they are fit persons to conduct a business. He suspected that the review would look at those issues, and I welcomed that. However, he

did not say that, as early as February last year, I raised the issue of child protection checks in the context of evidence that had previously been given to the committee by Jim Sinclair, a representative of Rangers Football Club, who declared that the club had paid £35,000 for a child. I was aware of press reports about agents, and I wanted to be assured that proper child protection checks were carried out on them.

The response that I got from the SPFL and the SFA expressed great concern about continuing allegations and innuendo without any substantiation. I then sent them some of my evidence again, and they said that they would continue to investigate all matters that were brought to their attention with appropriate evidence of a rule breach. That was all last year—I wrote to them in February.

I should have known better. There is a letter on record from the Scottish Premier League, as it was, in response to Scott Robertson, one of the petitioners, who raised the issue of payments over and above the compensation scheme. The SPL said:

“The payment of a greater sum than is provided for in the SPL Rules would not be a breach of those Rules. Therefore, and in the absence of any complaint from the player or either of the clubs involved, I cannot see why SPL would wish to pursue the issue.”

In other words, even when the rules are not adhered to, there is no rule breach. We find ourselves going round in circles trying to get some accountability for the behaviour of, in this instance, the agents who are involved in football. I welcome the attention that the SFA is now giving to the matter. If only it had done that when I asked earlier.

The Convener: The defence in that instance seems to be, “Well, no one complained about it.”

Tam Baillie: In a situation in which one club makes a large payment to another for a player, on what basis do the authorities think that someone would complain about that, especially if the payment appears not to have complied with the SPL—as it was—rules? It just lacks credibility that someone would complain in those circumstances.

There is a lack of curiosity about what is happening in our game. Time and again, things get reported in the press and no action is taken by our authorities—I will come on to talk about the minimum wage, which is another example. They are charged with the responsibility of imposing and maintaining standards, but they are sitting back, waiting for so-called complaints to be made. In the instance that I described, I cannot imagine circumstances in which either party would complain about the payment—it would not happen.

The Convener: The agent is not going to complain, and the young person will not want to put their chances or their career at risk by complaining. The authorities seem to have an odd view of the world—it is like saying, “As long as no one complains about the law being broken, the law enforcement agencies do not have to do anything about it.”

Tam Baillie: Yes. The clubs, too, are unlikely to complain—the receiving club certainly will not do so, unless it thinks that it should have got more. The payment is outwith the rules anyway—although in that instance the authorities said that it did not breach the rules. That is the level of interaction with the SFA and the SPFL that I and the petitioners have experienced. Trying to get our authorities to take the responsibility that they are charged with is desperately frustrating.

Brian Whittle: I am going over the same ground, but I am concerned that I do not know who is in charge. The vibe that I am getting is that it is not the SPFL and SFA but the clubs who are in charge, and the SPFL and SFA are fairly toothless in the matter.

Tam Baillie: That is a question that you might want to put to the SPFL and the SFA. A review of governance is needed. Because money is the driving factor, the review should consider the flow of money in the whole system. Time and again, it comes back to the clubs’ investment and their need to get a return on their investment—through young people, in the context of this discussion.

Rona Mackay: Is there any parental involvement in agents’ contracts? Have you had sight of contracts?

Tam Baillie: I do not have that level of detail, but I know that there are concerned parents who find that their—in most instances—sons are caught in a three-year contract. We can imagine that a parent of a child with talent, who wants that talent to blossom, can sometimes be blind to some of the implications that might be an issue later.

Of course, we would all want our children to have access to the potential riches from becoming a professional football player. However, as I said earlier, that attitude makes children and young people vulnerable; they are chasing a dream that, for some, will become a reality but, for too many of them, it will not.

09:45

Rona Mackay: Do you know whether parents have to sign the contract as well and, if so, whether they really understand what they are signing?

Tam Baillie: I had a recent communication from a parent about their signing a form that was blank

because it needed to be filled in later. However, it would be wrong of me to make a blanket statement about how the contracts are signed.

We said in our original report that there was a lack of understanding among children and parents about the children’s rights. We suggested that more information be given up front to the children and the parents and we recommended the use of information from the Professional Footballers Association, because it is helpful. However, we can imagine the excitement when contracts are being signed and what can happen in the heat of the moment. When we asked children where their contracts were, we found out that they did not know. Obviously, they are carried along by their passion and love of the game, and the paperwork gets lost in all of that.

The Convener: I have a question about the national minimum wage issue. I expect that you will have seen the evidence that we took previously on that. To say that the committee was surprised that the football organisations did not seem to think that they needed to be aware that clubs were offering contracts of £1 a week would be an understatement. What expectations would you have in relation to the national minimum wage in order to protect young people from being exploited?

Tam Baillie: I share the committee’s surprise. In fact, I note that Rona Mackay asked a direct question to Neil Doncaster, who said:

“no, I did not have knowledge of any clubs paying £1 a week.”—[*Official Report, Public Petitions Committee, 22 December 2016; c 36.*]

I have letters from the petitioners to the SPFL dating back to 1 December 2014 that highlight the reports in the newspapers of a £1 per week contract. There was a response to that from Neil Doncaster that said that the organisation could not comment on that because it had an adjudication role. The petitioners then wrote on 23 January 2015 with a copy of the contract. I understand that that was sent by recorded delivery, but there was not a response to that. However, there was another communication highlighting a similar issue on 12 September 2016, which got a response and there was an exchange. So, as I said, I share the committee’s surprise that the SPFL said that it did not know about the £1 per week contract, because that exchange was in response to the more recent reports in the *Daily Record* about the clubs that had been highlighted.

The Convener: Given that there is a registration scheme, would it be reasonable for the scheme to look at any contracts and check whether they are within the law in terms of the national minimum wage?

Tam Baillie: Yes. In fact, Mr Doncaster also said in his evidence to the committee:

“Where there are allegations that any club is not paying that wage, we will look carefully at those allegations.”—
[*Official Report, Public Petitions Committee, 22 December 2016; c 36.*]

The Convener: But the system itself registers young people on those contracts.

Tam Baillie: The SPFL said that it would look at allegations, so I would be interested to know whether it looked at the allegations that were flagged up to it.

The Convener: It would be worth while to seek a response on that. Do members have any other questions?

Brian Whittle: We could be here all day.

The Convener: I do not know whether you have anything final to say on these questions, Mr Baillie. We have heard a lot, and an awful lot of it is quite challenging.

I am interested in the issue of agents. The SPFL and the SFA respond to complaints, but should there not be a greater expectation in relation to child protection so that they do not wait for somebody to complain but put in place measures to protect young people in the first place?

Tam Baillie: Absolutely. The thing that is lacking here is any proactivity, as far as I can see, on the part of the authorities. Time and again they have said, “Nobody has complained to us, so there is nothing for us to deal with.” That is not how overarching authorities should behave. They should be proactive in setting standards and expecting their members, and everybody else, to adhere to them.

As I stated earlier, I believe that a governance review is needed. In fact, I checked the original petition, which asked for audit processes and accountability of all public funds in Scottish football. I would suggest that it be all funds in Scottish football.

There is an urgency to the issue now, because of the allegations of historic sexual abuse. There has to be a response to that. I welcome the SFA setting up an inquiry but, to my mind, unless it deals with some of the power imbalances and the desire to exert control over children and young people, it will leave itself open to people who might want to exploit that power imbalance.

Brian Whittle: Football has a huge capacity to do a lot of good. As you mentioned, Mr Baillie, there are an awful lot of very good people out there doing fantastic work with our kids. The SPFL Trust is doing great work. However, somehow or other, those at the top of the tree have lost their way. We need to look at the way that we deal with

children’s welfare. We have to be careful not to have a knee-jerk reaction and make changes that have unintended consequences but, without question, the welfare and the best interest of the child are not being looked after.

Tam Baillie: I suggested to the Health and Sport Committee that it link up with this committee, and I suggest likewise to you now. The issues have been going on for a long period of time with not a lot of movement on things that really count. We have to try to get some movement.

The Convener: I am struck by your points about power imbalances. The issue of silence has come up in some of the evidence when people have finally spoken out about their own experience—that is obviously a more specific issue than contracts. The unique thing about football is that, because people have ambitions and dreams, they silence themselves, and those circumstances allow bad things to happen. The vast majority of people who are involved care deeply about the sport and about nurturing young talent and all the rest of it but, if we do not get it right, that creates opportunities for those who do not.

Tam Baillie: The leadership should come from the top, and that is where I am pitching my comments.

The Convener: Thank you very much for your evidence, which has been extremely helpful. It raises a series of new questions for those who thought that the petition would finally be closed; it seems that so many issues have now come through.

Do members have any suggestions about how we might take forward the petition?

Brian Whittle: My gut feeling is that we should have the SFA and the SPFL back in here. Quite frankly, it has come to light that some of the evidence that was given was less than forthright and perhaps even less than truthful.

The Convener: I am interested in what the Scottish Government has to say, as well. We might want to reflect on how that will be done. Perhaps we can reflect further on what we have heard. The question of what was known about the national minimum wage needs to be addressed as well. Perhaps we can think about how we take it forward—who we would invite and so on. We will certainly be keen for that to be done transparently and in public. We need to take the opportunity to reflect on the strong and significant messages from the Children and Young People’s Commissioner on the welfare and rights of young people and the imbalance of power.

If members agree, we will have another discussion at a later stage in order to reflect on the

evidence and we will see how we take it forward from there.

Members *indicated agreement.*

09:55

Meeting suspended.

09:59

On resuming—

Whistleblowing in the NHS (PE1605)

The Convener: We move to petition PE1605 on whistleblowing in the national health service—a safer way to report mismanagement and bullying, by Peter Gregson, on behalf of Kids not Suits. The meeting papers include a note by the clerk, which summarises the submissions received from the organisations that are represented at today's meeting and the petitioner's response to those submissions. Members have copies of the submissions.

Members will recall that we agreed to invite evidence from the chief executive of NHS Scotland, the City of Edinburgh Council, Public Concern at Work, and UNISON Scotland. Paul Gray, the chief executive of NHS Scotland, will appear before the committee at our 2 March meeting.

10:00

In attendance this morning are Kirsty-Louise Campbell, interim head of strategy, and Laura Callender, governance and compliance manager, from the City of Edinburgh Council's strategy and insight division; Cathy James, the chief executive, and Andrew Pepper-Parsons, head of policy, from Public Concern at Work; and Tam Hiddleston, who is secretary of the Scottish healthcare branch of Unison Scotland.

I welcome you all to the meeting. I will allow up to five minutes each if anyone wishes to provide a brief opening statement, otherwise we will move straight to questions. Does anyone want to start?

Cathy James (Public Concern at Work): I am happy to start because part of the petition questions the service that Public Concern at Work provides to staff across NHS Scotland, so it might help to explain a little bit about Public Concern at Work to the committee.

We are an independent charity and a legal advice centre that was set up almost 25 years ago. The heart of our mission is to encourage workplace whistleblowing to prevent disaster and damage, so that we get a safe environment for people to speak up, so that staff are listened to, and so that we prevent the kind of scandals that unfortunately are all too common in the newspapers—the Mid Staffordshire NHS Foundation Trust type of scandal.

We deliver our mission by providing free, independent, legally privileged advice to any UK worker across the United Kingdom. We also support organisations in their whistleblowing arrangements and we do public policy and

research. Our submission covers some of our work with the NHS in England. More recently, of course, we have been providing the national confidential alert line for the Scottish Government. We have also been working on the new agenda in England for the freedom to speak up guardians and the national guardian who has recently been put in place to improve policy and culture around speaking up in the workplace in the NHS in England.

We have been working with Health Education England to train the freedom to speak up guardians in the NHS in England; we have trained approximately 165 of the people who have picked up that post and we have 100 or so more to train. We are involved in how to improve the culture around speaking up, specifically in the NHS but also across any sector in the UK.

We are an important safety net for whistleblowing arrangements that organisations put into place locally. We will always be an option for a member of staff to take advice from. If they are unsure whether or how to raise their concern, we are a safety net for them to explore their options.

We were never set up as—and our contract with NHS Scotland is not intended to be—a reporting line. A reporting line involves taking the information and feeding it back into the organisation or to another part of the system to get the issue addressed. We try to help individuals to think about where they might go in that system to help them to make an informed decision. We are also aware of individuals' legal rights in relation to whistleblowing because we are a legal advice centre, so that is part of our advice. However, the real focus of our advice is how to get the information to somebody who can do something about it with the least risk to the individual and with the best chance that the information will be listened to, addressed and acted upon.

The petition seeks a more enhanced service than the one that was commissioned by NHS Scotland. I entirely agree that the independent investigation process is an absolutely essential part of good whistleblowing arrangements. However, it is not part of the offer in the service that we provide, so there is a mismatch between what has been commissioned and what is being asked for in the petition.

The Convener: Okay. Thanks very much—that is helpful. Following on from what Cathy James has said, will the representatives of each of the bodies who are here give an overview of their experience of working with the current system, including its strengths and its weaknesses, if there are any?

Kirsty-Louise Campbell (City of Edinburgh Council): I am the head of strategy for the City of Edinburgh Council and our whistleblowing arrangements sit independently within our division, reporting directly to the chief executive, the monitoring officer and the relevant committee.

Prior to the implementation of the new arrangements in 2013-14, we had what I would describe as a standard public interest disclosure policy for staff. Through that, we found that we did not receive concerns and were not able culturally to encourage staff to raise their concerns as we would have liked to. We changed our policy on whistleblowing not only to incorporate the provisions of the Public Interest Disclosure Act 1998 but to broaden it out and provide colleagues with a strong, independent mechanism through which to raise any serious concerns that they may have and that they may feel uncomfortable raising through the normal channels, such as the normal management lines.

We procured an independent whistleblowing hotline arrangement. Colleagues in the City of Edinburgh Council can contact an external body to raise their whistleblowing concerns. The concerns that are logged with that provider are categorised as minor or major. If there is a matter of major concern, the provider has an option to investigate it on our behalf and take its findings to the chief executive and the council committee that deals with that.

Since the new arrangements have been in place, we have had 53 disclosures, which is a few each year. There is no pattern or trend to that. The most significant number are not major disclosures, but we have had 11 major reports, some of which have led to criminal convictions. However, we have found that, through having that independent approach—which is unique among local authorities in Scotland—we have actively built the culture of, and trust in, the staff's ability to raise concerns and they are now able to see how those concerns are addressed dependably through our committee system with our elected members.

The Convener: Thank you for that. What is Unison's point of view?

Tam Hiddleston (Unison Scotland): I will certainly not disagree with how the City of Edinburgh Council has decided to go forward with the hotline. In the NHS, we have always encouraged our staff and trade union members to raise any issues. We have robust policies in the NHS, which have been agreed in partnership with the trade unions over the years and mean that the staff feel valued, protected and able to raise their concerns.

The whistleblowing culture in the NHS is relatively new. The helpline is new so it is still

bedding in. We need to raise awareness that it exists. There are references in the papers to the amount of calls having dropped, which raises the point that we need to promote the helpline more. For us, the preferred option is the continuation of the current arrangements along with the introduction of an independent national officer.

The Convener: Is the distinction between whistleblowing and complaining an issue? If a trade union member has a complaint, there is a system for that. Are the two things sometimes conflated? Do people sometimes whistleblow when, in fact, the issue is their individual treatment in the workplace?

Tam Hiddleston: That is looked at carefully if a whistleblowing incident is ever raised. As a union activist, I have dealt with whistleblowing cases in my employment. At times, I can see that the issue should be raised through another policy. The member of staff can be advised that it should be dealt with as a grievance or through the bullying and harassment policy, which everybody takes seriously. There is still an issue of distinguishing between the two and deciding whether something is a whistleblowing matter—a major incident—or whether it can be dealt with through the board's policies and procedures.

The Convener: I do not want to diminish anybody's complaints but, to be devil's advocate, does the union have an issue with vexatious complaints or complaints that are part of a pattern of behaviour against one of its members?

Tam Hiddleston: Vexatious complaints are the problematic part of whistleblowing. If we are supporting a member, we will not just go full pelt in doing that. We will do a lot of investigation to make sure that there is background evidence for the concerns that are being raised. However, there is a problem not only for the trade unions but for the health boards.

The Convener: Thanks very much for that. That is very helpful.

Angus MacDonald: My question is for the City of Edinburgh Council representatives. Your submission is quite positive about the impact of the hotline. As you have perhaps said already, it mentions a developing confidence that there is a safe mechanism for reporting concerns. It also refers to the external independent third party. Do you have any evidence that links the independence of the service provider to the developing confidence in the system and why it is proving to be successful?

Kirsty-Louise Campbell: We have anecdotal evidence to link the arrangement of taking forward an independent hotline and the investigation process, to that building of confidence in our arrangements on whistleblowing and how we

actually deal with concerns and complaints across the piece. Since the hotline has been in place, every one of the 53 requests and disclosures that have come in have been fully investigated. That includes the non-qualifying disclosures that we are talking about here, of which there were 14. All those have been placed back into the appropriate investigation process.

What our colleagues are seeing in that anecdotal feedback is that, every quarter, we openly speak at our governance, risk and best value committee about the disclosures that have been made—whether they are major, minor or non-qualifying disclosures—and identify that we have actively investigated them. We give a sense of those outcomes to the committee and in reports to the public. We also show where we have changed policy or procedure or where an action has been taken. According to anecdotal staff feedback from some of the focus groups that we have held, that approach has been welcomed. Visibility and transparency across the organisation have given the staff a sense of confidence.

Angus MacDonald: When you report back to the governance, risk and best value committee, do you identify what the issue was in each case?

Kirsty-Louise Campbell: In a similar way to parliamentary procedure, we take some items of business in private and some in public. In public, we give a sense of all the disclosures, whether they have been investigated and whether they have been closed. For all our elected members on that committee, we give an overview of exactly what the concern that was raised was, who undertook the investigation, whether it was done internally or through our external provider, and the outcome of the investigation. We also cover how we fed back to the whistleblower themselves, whether they were not known to us but known to the provider or were happy to share their details. They then have the opportunity of saying whether they were satisfied with the outcome—that they felt that they had been heard and so on—or whether there were still underlying issues. Any of our committee members can also get a full copy of the report on the investigation that we carry out.

Angus MacDonald: Okay. That is great—thanks.

Brian Whittle: On a point that you made earlier, it strikes me that the terminology around whistleblowing is quite emotive. Surely it is about raising health and safety issues to the benefit of healthcare professionals, patients and health board trusts. I just thought that I would put that out there.

Have you received any feedback or do you hold any data that compares and contrasts confidence

in the current facility with what the council had in place previously?

Kirsty-Louise Campbell: The confidence that I can see in the data is in the public interest disclosure policy that we had previously, before we implemented the new arrangements. Across an eight-year period, we had three public interest disclosures. Since 2014, when the hotline was put in place, our whistleblowing hotline has had 53 contacts. From those, there were 11 major investigations into matters raised by colleagues. To me, that shows a sense of confidence in the new arrangements and that colleagues feel that there is a trusted route for them to raise those concerns.

Brian Whittle: Thank you.

Rona Mackay: Just to follow on from what you have been saying, the term “developing confidence” suggests that there is not yet full confidence in the system. Would you agree with that? Have you identified any areas for improvement that would really get the system up and running and that people would have confidence in?

10:15

Kirsty-Louise Campbell: We are about to go into a new promotional element on whistleblowing. We still have to ensure that everybody is fully aware of the policy and how they can engage. Although we have reached a huge number of our staff, we still have some work to do with our colleagues on the front line so that they fully understand what the service is about. Our feedback loop—the way in which we let colleagues know when our investigations have resulted in, for example, a change in policy or in the way that we work—could be better. We need more conversations and promotional activity as we continue to build confidence and shift our culture.

Rona Mackay: Have you started to do that?

Kirsty-Louise Campbell: Yes. At the end of the pilot, we asked employment law specialists to review our whistleblowing arrangements, because we like to have a learning culture and constantly think about how we can improve what we have available for colleagues. The review came back with some suggestions on promotion, and work on that is actively under way as part of our improvement plan.

Rona Mackay: Laura Callender do you want to flag up any issues surrounding the governance of the system. Has anything at all been problematic?

Laura Callender (City of Edinburgh Council): Not really. When we initially launched the pilot in May 2014, it was a very new way of approaching this type of disclosure from members of staff. To

be absolutely honest, those early months of engagement with colleagues across the organisation at all levels were not easy. We worked hard with colleagues in many different services to promote and explain what we were attempting to do. We tried to set out that the service is a useful risk management tool and is about us all doing things better. It is about transparency. It benefits us all if we know when something is going on in the organisation that we would not be happy or comfortable with. I suppose that there was a good deal of persuasion around that.

We had to operate very independently. With the hierarchy of line management and so on, it was difficult to have challenging conversations with people who, in some cases, were senior to us. Gradually, during the pilot, which lasted a year, we developed extremely good working relationships with colleagues in areas where we had frequent contact, such as human resources. As you can imagine, there was a lot of interaction with HR, especially in looking at the background and previous cases and so on. During the pilot, we also developed a very good working relationship and partnership with our external provider. The contract is commercially procured and the pilot provider was successful in the procurement process, so we will be working with it for the next couple of years.

Angus MacDonald: In the “Background” section in your written submission, you condense into three paragraphs the timescale that was involved. You considered a petition in April 2013 and, after various exercises, the policy and hotline were launched simultaneously in May 2014, which was just over a year later. What work and resources were involved in achieving that? Did you face any significant obstacles or challenges?

Laura Callender: Kirsty-Louise Campbell might know better than I do about that, but we were not involved at the very start. I became involved when we launched, as the arrangements were being made with the provider and we were setting up how we would work together. From my perspective, it all worked well. We worked in partnership to develop the way that we would work together.

On the day that we launched the service, we received a major disclosure that led to a protracted investigation, with certain aspects involving Police Scotland. Probably the biggest challenge that we faced was that, on day 1, the launch day, we were not ready for that major disclosure and huge investigation. There was a huge learning curve in those early months. The people who we were working with at the time were very keen to launch the service as quickly as possible and, with hindsight, we probably were not as prepared as

we should have been to launch on that day. However, we survived. We had a good outcome. It was a very difficult investigation, which eventually led to a criminal conviction. That experience of being thrown in at the deep end and having to deal with matters as they came up informed the processes and the future development of the service.

Angus MacDonald: I think that we are aware of the case that you are referring to. It would have been a steep learning curve right enough if the first call was on the first day.

Laura Callender: Indeed. It is probably worth noting that that case was raised through the old public interest disclosure policy a month prior to the launch of the new policy. The whistleblower was concerned that the issues that they had raised were not being dealt with through the old route, which led them, on the day of our launch, to contact our external provider and to disclose all the information again to them.

Angus MacDonald: That is helpful.

The Convener: We will now focus on the Public Concern at Work and Unison submissions. I will kick off. Both organisations acknowledge that there is work to do to improve outcomes for whistleblowers. It is encouraging to see ways in which that work is being progressed. Can anything be learned from other organisations?

Cathy James: The banking sector has a new approach to whistleblowing. The Financial Conduct Authority has put in place specific rules that to some extent mirror what colleagues here from the City of Edinburgh Council are saying about the structure that is needed for whistleblowing arrangements.

The measure of success for any such arrangements is that staff trust the organisation to do something about the issue that has been raised and that staff are treated fairly and not badly. Therefore, having in place good structures and governance processes, the commitment of senior leadership and the reporting that is being talked about are front and centre of getting good whistleblowing arrangements to work.

The banking sector might be a place to look at when considering what processes it might be sensible to expect NHS boards to put in place. Of course, there are the new whistleblowing champions, which I would have thought would provide the forum for discussions to take place on what structure to have for board reporting on whistleblowing.

In addition to the national officer, the NHS in England has a freedom-to-speak-up guardian in every secondary care trust. That role is likely to be extended to primary care. That person is

responsible for receiving concerns and being in touch with the senior governance part of the organisation—the board, the chief executive, the whistleblowing champion or the non-executive director—that is responsible for whistleblowing, so there is a sense that the information is being dealt with and the individual is being protected.

It is interesting that the banking sector is coming at the issue from a rules-based approach, while the NHS has a person-centred focus. The two sectors can probably learn from each other; perhaps the two approaches could be melded. Maybe there is an opportunity for more structure in what is expected of boards in Scotland, as opposed to the more light-touch approach that is in place. That might be a way to look at the issue.

The Convener: Has Mr Pepper-Parsons been looking at international models or at what happens in other countries on whistleblowing?

Andrew Pepper-Parsons (Public Concern at Work): Although the Dutch model has what the Dutch call the house of the bell ringers, which is an amalgamation of a regulator and an advice centre, it is fair to say that the UK is leading the way on what is expected of organisations. In Europe, the debate is about having a law that protects whistleblowers and a directive that pushes member states into setting up a legal framework. We are ahead of the game in that sense, because we have a legal framework. We are talking more about putting the issue back to the organisations, the employers and the regulators, to make sure that they are listening to the concerns that are being raised.

The Convener: What is Unison's perspective on whether we can learn from other organisations?

Tam Hiddleston: I cannot say what other organisations we should look at or whether they are being looked at, but we always have to be willing to learn from elsewhere. However, the local council and the health board are two entirely different employers that have entirely different terms and conditions, policies and procedures, so a caveat is that they have different issues. We should not always try to compare the two employers, because entirely different concerns will be raised, whether they are medical or health-related concerns.

To go back to the question, we should always be willing to look elsewhere and to implement new approaches in our organisations to assist our staff. To that end, Unison recently developed an app that allows our staff and members to raise concerns that go to Unison regionally, while the same email or message goes to the director of nursing in the health board concerned. We are moving into the digital technology age, and the

initial indications are that the app is proving helpful.

The Convener: That is an interesting point. I was involved in an inquiry into the oil industry, and one thing that emerged was that people were reluctant to make complaints in person because they felt vulnerable in their workplace, but they saw the trade union as a safe intermediary. How that fits in with whistleblowing, which is about the individual, is perhaps something that we can address with Paul Gray.

Andrew Pepper-Parsons: There is a temptation to assume that everybody wants to raise things anonymously or via some sort of electronic means. However, that is not always the case. Having access to advice and a kind of independent space is important, whether that is done through us or the trade union.

The Convener: Yes. People need advice on how they can take an issue forward.

Kirsty-Louise Campbell: On that point, our main method of contact is by telephone, so there is less email and digital engagement and there are more telephone calls to the hotline provider.

Cathy James: There has been research by the University of Greenwich and the ACCA on the channels that are needed for a good whistleblowing system.

The Convener: What is the ACCA?

Cathy James: It is the Association of Chartered Certified Accountants. The research states that a multitude of channels is needed in order to build trust. At one point, people might use the channel of anonymity. If lots of concerns are raised anonymously, that is perhaps a sign that people are not quite sure; they will choose anonymity if they do not feel that they will be protected. At another point, they might choose a telephone line or someone who is independently appointed, such as an ombudsman-type person. The choices ebb and flow as new initiatives come out and there is more incentive to use the system or more promotion of the system. A multitude of channels is needed because we are talking about trust, and people's trust will change over time—it is not static.

Maurice Corry: I have a supplementary question for Mr Hiddleston. You made an interesting point about the integration joint boards and the relationship between health board staff and local authority staff, because there are issues with their different contracts and what have you. I understand that situation because I was chair of the Argyll and Bute integration joint board. In relation to whistleblowing, what are the main problems for the two different sectors of staff under IJBs?

Tam Hiddleston: The issues are cultural and historical because of the different employers—local councils and health boards—in the IJBs. Those employers have vastly different terms and conditions, which gives rise to different issues, as I explained earlier. That exacerbates the problem of where a whistleblower goes to. We will need to learn from that. The IJBs have proven to be problematic already in some areas, and the whistleblowing issue adds another problem. They are in their infancy, but we need to keep that point in mind.

Maurice Corry: Do you see a resolution?

Tam Hiddleston: I cannot say at this point whether there can be a resolution. My day trade union job is in a health board that is not a territorial one, so I am not involved in the IJBs. I do not have a lot of experience of the problems; we get that through our health committee, which I am representing today. I cannot answer on what the resolution will be.

10:30

The Convener: That matter may be interesting to pursue.

Maurice Corry: Yes.

Brian Whittle: The Unison submission suggests that any

“criticisms need to be considered in their full context.”

One possible explanation that it puts forward is that

“Awareness of the helpline may be low”.

What is the reason for a lack of awareness of the facility? What can be done to increase awareness? Are any initiatives in place to address that?

Tam Hiddleston: One reason is probably historical. We have had good and robust policies and procedures to report any malpractice, bullying, harassment and so on. The whistleblowing facility is relatively new; it has been promoted, but we definitely agree that it has to be promoted better and more widely across the organisation. The appointment of an independent national whistleblowing officer alongside the helpline would see a further push for that awareness.

As for call numbers being relatively low, our staff have historically felt obliged to raise matters through their line managers in the health boards. The culture has been to raise concerns through that structure. Whistleblowing has been a relatively new thing in the past four or five years in the health service, and we need to promote it further. The trade unions advise our members to contact us or to raise matters individually with our support. We will continue to do that through our

members meetings, newsletters and websites. The issue is well publicised and we hope that that will increase the use of the helpline.

Brian Whittle: The number of calls to the helpline has dropped by 75 per cent since it was established. Is the question more about confidence in the helpline than awareness of it?

Tam Hiddleston: I cannot answer on confidence in the helpline. There will be positive and negative feedback about helplines or hotlines—call them what you want. I cannot answer on the reasons why the number of calls has dropped, which might be because of the low level of awareness that we talked about. If that is so, we need to promote it more.

Staff in the health service may feel that a case does not involve major whistleblowing, so it goes through one of the other policy processes. That is the only answer that I can give you on the drop in numbers.

Cathy James: I think that I can answer the question on the drop in numbers. There was a huge spike in the first six months, when something like 73 cases were raised, of which 57 were private employment matters. Understanding of what the line is about has since improved, and the concerns that are coming through are more along the lines of public interest issues and less about seeking advice on private issues. The sense that the helpline is about whistleblowing and not grievances is perhaps shown by the drop in the figures.

The line has had an average of approximately 17 calls every six months. A similar number of public interest issues, which involve an individual seeking advice, will be in the next six-monthly report.

The real measure of what is happening on the ground is the number of calls that the internal whistleblowing designated contacts at each board receive. All boards have good whistleblowing arrangements, with designated individuals who are signposted as the place to raise a concern, and that is where the investigation takes place. The activity at board level is the measure of success for the process.

The Convener: Maybe we can address with Paul Gray why so many people with private grievances felt the need to go to a whistleblowing line, which suggests that they had nowhere to go before.

Cathy James: Perhaps. I am not suggesting that private grievances are not incredibly important. Private grievances and whistleblowing concerns need to be dealt with, but the two need to be separated. Perhaps it was a little unclear at the beginning of the process whether the line was

a bullying line or a whistleblowing line, so lots of people with bullying issues came through. Bullying needs to be dealt with, but not necessarily through the whistleblowing process.

When we train the managers who receive the calls on understanding the issues and unpacking the complex matters that a whistleblowing issue can present, we help them to think about where there is whistleblowing and where there is a grievance and not just to assume that something is a grievance because the individual says that. The information on what the person has seen and whether a safety, malpractice or wrongdoing issue is hidden in among a dispute that might have gone on for a long time needs to be looked at. Training of managers is really important to get that right.

Rona Mackay: I will go back to what Mr Hiddleston said. I am interested in the comment that concerns might be normalised or treated as low level and not warranting full-scale referral. How does that reflect on the existing mechanism? How can the approach of seeing something as a regular occurrence and just one of those things be dealt with?

Cathy James: Any organisation that looks at whistleblowing will face that challenge. When should an informal process be used, which should be dealt with by a line manager who is paid to do a management job, and when should an issue be escalated to a more formal process? That will depend on the individual; on whether they have a good relationship with their manager; on whether they think that their manager will listen; on whether the manager has insight into the processes and understands when an issue is serious; and on when an issue should bypass the management line.

One reason why whistleblowing can present a challenge to organisations is that it breaks through the hierarchy. It is quite difficult to impress it on managers that there will be occasions when their staff go somewhere else, and they should encourage that. That is not necessarily a comfortable position for a manager to be in, particularly in healthcare, where there are strong systems for reporting. There is Datix reporting and serious incident reporting. Whistleblowing cuts across all such structures, which can be a challenge in healthcare and other industries.

Rona Mackay: In a sense, the issue is quite subjective and an element of judgment is involved, so exactly what the whistleblower wants might not be achieved. Is that what you are saying?

Cathy James: The point is to have flexibility, which can feel uncomfortable to a manager or to somebody who is trying to put structure into an organisation. Although the structure is broken down when we say that it is fine on occasion to

break the management line, that is essential in whistleblowing. There must be the sense that the issue does not have to go through one channel. That is the check and balance.

Rona Mackay: Do managers take that on board? Are they aware that that is how the system works, or are they defensive?

Cathy James: There is always more to do to train managers in every aspect of their work. The advice line shows that things can easily go wrong when something has not been listened to and dealt with in the management line; alternatively, the wrongdoing might have happened in the management line. It can feel difficult to break ranks.

Maurice Corry: There has been much debate about an independent national whistleblowing officer. What are your views on that role and, in particular, the level of independence that would be involved? Do you have any concerns about a potential conflict of interests?

Cathy James: The national guardian role that has just been put in place in England sits in the regulator. It is funded by NHS England, the Care Quality Commission, which is the regulator, and probably NHS Improvement, which Monitor, the financial regulator, became part of. There is a tripartite system to build independence. The national guardian's office has a board with representatives from each of those organisations. It is a challenge to set up something that is truly independent when it is part of the Government, but that is done with regulators, and it should not be impossible to do that with such a role.

I emphasise that there should be a sense from the outset of what sort of cases the officer will take on. One of the challenges with the national guardian in England is that that was not sorted before the role was put in place, which has created uncertainty, and in turn that can breed mistrust. If we learn from the journey that the national guardian is on in England, that will improve the process for a similar appointment in Scotland.

Maurice Corry: Would Mr Hiddleston like to comment?

Tam Hiddleston: Unison fully supports the introduction of an independent national officer, although we should ensure that they have the appropriate powers to investigate and feed back to organisations. Discussions should be on-going about the officer and their remit. Their remit should not just be in health, because there are local care providers, too. There is still a lot about the officer's role to be considered. In our view, such a role will be vital to sit alongside the helpline. Because the position will be new, there will be teething

problems, but we see the role as a seriously good addition to the whistleblowing arrangements.

Andrew Pepper-Parsons: When I read the petition, I wondered whether the petitioner was asking for an ombudsman to replace our alert line service. The problem is that a regulatory body will have a duty to investigate, so that takes away the access to independent advice. People want to get advice, but they will not necessarily be able to get it from a regulatory body.

Any regulatory body that has statutory powers needs to ensure, wherever possible, that it does not duplicate the work of other regulators. That is also a key point.

Cathy James: The healthcare safety investigation branch is another new development in England. It would be really innovative to combine what is being done in that branch with a national officer in Scotland. The investigation aspect—that is, the ability to tap into an independent investigation from the individual's perspective—is missing across the UK. That kind of approach would bring about a step change in the trust and confidence in the arrangements.

The Convener: Does anyone want to make any final comments?

Tam Hiddleston: Cathy James mentioned the Datix system that we use. Although Unison broadly supports that system, it needs to be reviewed in line with everything else that we are doing on whistleblowing and the Unison duty of care app. Datix is a good system, but it needs to be strengthened. At the minimum, we need to get feedback from the system to staff members who have raised incidents. We are working in partnership with employers to try, as best we can, to do that.

The Convener: I am interested to hear members' views on how we should take the petition forward. I suspect that we will want to hear from the chief executive of NHS Scotland on 2 March before we consider options for action. I am interested in the issue that has been highlighted of where people should go under integration joint boards, because we do not want their experience to suffer as a consequence of what has been described today as two cultures coming together. Quite a number of issues have been raised that we will want to pursue with the chief executive.

We have learned a lot today and I very much appreciate the time that the witnesses have taken to be with us. If, as the petition proceeds, you want to feed in any further comments, please feel free to do so. Thank you for your attendance.

10:44

Meeting suspended.

10:47

On resuming—

Shared Space Schemes (Moratorium) (PE1595)

The Convener: Agenda item 3 is consideration of current petitions on which we are taking no further evidence at this stage. PE1595, which was brought by Sandy Taylor, calls for a moratorium on shared space schemes. Members will recall that when we last considered the petition, we had an evidence-taking session with the minister at which it was agreed that a seminar would be helpful to progress the issues that the petition raises. We also considered the understanding of shared space schemes that Sustrans uses, in respect of the role of controlled crossings.

We have had a response from the minister and a submission from the petitioner, and I invite members to comment or suggest action that we might take on the petition.

Rona Mackay: I should declare an interest, as the petitioner is a constituent and I am heavily involved in his local campaign.

The Convener: Thank you. At the centre of the issue is the definition of “shared space”. The minister suggested that it was possible to have a shared space with crossings, so there seems to be some confusion at the heart of this.

Rona Mackay: My understanding is that the minister sought clarification from Sustrans about whether a crossing could be included in a shared space and that Sustrans said that it could be. We need to dig a bit deeper into the information in the minister’s letter in response to the petition.

It is a major issue. The local issue is on-going and there could be changes within weeks, but from a wider perspective we need clarification from Sustrans on the safety-crossing element in shared spaces, because that is the contentious issue for vulnerable and less able people who find it difficult to navigate their way across the road. The letter from the Minister for Transport and the Islands mentions a seminar, and perhaps we can get some idea of when that will take place and how it fits in with the petition.

The Convener: I think that we would want a stronger commitment from the transport minister to progressing the issue with some degree of urgency. The petitioner makes the point—and it is a suggestion that we have already discussed—that it is possible to have a shared space with safety crossings, but people seem to have resiled from that position. We need a bit of clarity on that.

Rona Mackay: That is confusing. We definitely need clarification on that, as it is a key issue.

The Convener: A local authority might want to access the funding that a shared space project would bring, but it might feel that it cannot do so if it wants to put in a safety crossing, as that might cause issues locally.

Rona Mackay: As I have said, it is confusing. That is what needs to be known with regard to the wider issue. As far as the local issue is concerned, it will have to happen retrospectively because the scheme is already in place, and now the campaign is calling for safety crossings to go in. What has been highlighted is a key point with regard to the wider issue of shared spaces in general.

The Convener: If we presume that everybody in this world is pretty rational, we can imagine that people who promote shared spaces do not want to create vulnerabilities among people who have mobility or sight issues. It would be interesting to get some clarification from Sustrans on that, including on the intent behind the policy and whether it is possible—indeed, this seems to me to be perfectly rational and logical—to have a shared space that takes account of not only the needs of people who are capable of navigating the situations but people with particular needs. Does that seem fair?

Members indicated agreement.

The Convener: We will seek an update from the Scottish Government on indicative times for the seminar, and I assume that the committee would expect an invitation to that. We will also seek clarification from Sustrans on the issue at the heart of the petition, which is how to strike a balance that meets the petitioner’s concerns. The petitioner makes it clear in his further submission what the problem is, and it is reasonable to ask for the same clarity from Sustrans.

A75 (Upgrade) (PE1610)

The Convener: The last current petition on the agenda is PE1610, by Matt Halliday, on the upgrade of the A75. I welcome Finlay Carson, the MSP for Galloway and West Dumfries. Members will see that the committee has received a response from the Minister for Transport and the Islands, which notes that the Scottish Government is undertaking two relevant courses of action in relation to the A75: the carrying out of a local traffic management study and the consideration of improvements to the A77 south of Girvan.

Members will see from the papers that we have received two submissions in support of the petition, from David Mundell MP and Richard Arkless MP. The petitioner has also provided a written submission in which he notes his dissatisfaction with the Scottish Government’s response. In his view, the Scottish Government’s progress in addressing the condition of the A75 is

too slow. Do members have any comments or suggestions for action?

Brian Whittle: I was on the A75 on Monday at a time when the traffic was fairly heavy. I have been involved with the petition almost right from the start, when we went to the conference in Finlay Carson's constituency, and I agree that progress seems to be very slow. I think that it would be valuable for committee members to witness for themselves the traffic that can build up on that road. Given that this is a Euro-route forming part of the trans-European network, given the potential loss of business for the port of Stranraer and given that the infrastructure for other ports south of the border has been significantly upgraded, my personal view is that an upgrade of the A75 is essential and is well overdue.

The Convener: As no other member of the committee wishes to comment, I invite Finlay Carson to say a few words.

Finlay Carson (Galloway and West Dumfries) (Con): I must declare an interest. As well as being the MSP for Galloway and West Dumfries, which contains the bulk of the A75, I have spent the past 49 years living two or three metres away from it, so I have seen the increase in the traffic over the years. Like its predecessors, the current Scottish Government has failed to address the issues.

I hope that the committee will not mind if I briefly go through some of the history. Back in the 1960s, the amount of ferry transport from Stranraer started to increase. With the move to roll-on, roll-off ferries, the crossing from Stranraer to Belfast was described as the short sea crossing. That, along with the removal of the railway line, resulted in an increase in road traffic.

We now have sailings seven days a week from two ferry terminals at Cairnryan, with ferries disgorging up to 1,000 vehicles at one time. Generally, it is a mixture of cars and—more concerning—very heavy goods vehicles. At certain times of the day, the road is extremely busy. It has nose-to-tail HGVs on it, and there are very few opportunities for cars to make progress anywhere along the route between Stranraer and Gretna.

Without getting political, I note that during the days of Ian Lang and Sir Hector Monro, certain improvements were carried out, which involved the likes of Glenluce, Newton Stewart, Gatehouse of Fleet, Castle Douglas, Dumfries and Annan receiving their bypasses. They were probably the most difficult bits to do. Some sections of the A75 could have been upgraded since then, but there have only been small schemes that have tended to involve single or three-lane carriageways, which, in many people's view, make some of the stretches of road that have been improved more dangerous than they were before.

Back in 2006, when we had a Labour Government, Dumfries and Galloway Council put together the south-west of Scotland transport partnership regional transport strategy, in which it highlighted the transport priorities in Dumfries and Galloway with a view to campaigning directly or in partnership with others for the A75 Euro-route—and the journey times on it—to be improved so that the ferry ports could be retained. The methodology considered the likely benefits of the proposed transport interventions from the point of view of how well they contributed to Dumfries and Galloway's wider economic, social and environmental policy objectives, and the priority that was attached to each of the projects reflected that.

Back in 2006, dualling the A75 between Dumfries and Gretna was priority 4 and dualling the A75 between Stranraer and Dumfries was priority 5. However, no action at all has been taken. What makes that even more unbelievable is the fact that Stranraer to Cairnryan is part of route E18, and the whole A75 is part of what is called the Euro-route. The European design standard for routes that are identified to that level is the standard of a motorway, or at least that of an express road. That is not what we have; in fact, many people describe it as the goat track.

As well as the economic aspect, there is the social aspect of the dangers of the road. The Minister for Transport and the Islands talked about carrying out a local transport survey for the villages of Springholm and Crocketford, which are the only two villages that a Euro-route goes through. It is possible to travel all the way from Belfast to Barcelona without passing through 30mph limits, never mind 30mph limits in places where there are people living within yards of a road that carries huge HGVs. Recently, a freedom of information request to identify how many HGVs were speeding on the A75 was rejected, because Police Scotland suggested that it would cost more than £600 to provide the information and the information officer turned it down. I do not see any benefit in a local transport survey that will identify speeds but which will not make them public.

We are starting to see the economic impact of the reduction of businesses using Stranraer. As Brian Whittle has said, the upgrades to the road structure to Heysham and Holyhead have resulted in a drop in the vehicles using Cairnryan, which is very concerning. The last thing that we need is for Dumfries and Galloway to become even more the forgotten part of Scotland.

11:00

The communities of Springholm and Crocketford have lived for years and years with the road on their doorsteps. We cannot consider only a risk

assessment and the accident rate; we must also take into account the quality of life of the people who have to live next to the route.

There has been no action at all—it has all been talk. We have had a transport summit, which emphasised the issues that we have with the A75 but offered no clear direction forward. I would say, as the petitioner suggests, that the local transport survey is disrespectful to the people who have been working hard to see some action on the road. It is about time that there was a plan to move things forward and that some action was taken instead of being put off. The issue is not just what the future economic impact on Dumfries and Galloway will be but whether Dumfries and Galloway will actually be open for business at all if the road is not upgraded.

The Convener: Do committee members have any comments?

Rona Mackay: The evidence that something needs to be done, and quickly, seems compelling. I am not particularly familiar with the area, but from the submissions and from what Finlay Carson has said, it seems that the issue needs urgent attention.

The Convener: With all due respect to the people who wrote it, the Scottish Government letter is the worst kind of civil service letter. It talks about a “collaborative review” and “stakeholders” and says that the Government will do this and that, but it gives no sense that something active is going on. I might be characterising the letter unfairly—the Government might want to be cautious because it has its constraints—but it feels as if the Government is just reiterating that there will be a review instead of saying that it has urgent action points.

Brian Whittle: From the submissions, it is obvious that there has been review after review after review, none of which has come to a conclusion on what has to happen. The petition is very compelling and, having been on the road, I think that it would benefit all members of the committee to witness its condition for themselves. We have to move forward somehow—and quickly.

The Convener: The letter says:

“Transport Scotland are currently considering the responses to the draft report and the final report is scheduled for publication by the end of this year.”

I am not clear why it would take such a long time. It is almost as if Transport Scotland is locking time into the process and saying, “Well, we won’t respond to that until the end of the year.” I am concerned about that.

There is a suggestion that we have a visit, which we could probably tie into some engagement

things that we might want to do. That might be useful.

Brian Whittle: What can the committee do practically? Frankly, I am inclined to speak to the transport minister. I know that we have already done so, but I am inclined to find out the thought process behind what the Government is doing.

The Convener: Some of the issue is about how high up the level of priority is. We all understand the pressure that Government is under when choosing between different projects. It would be useful for us to see what the issues are, because that would give us a sense of what, for local communities, is—literally—the driving force behind the issue. That could inform our engagement with the minister.

Finlay Carson: It is all about timing. If you take the average number of cars and HGVs on the road over 24 hours, it probably looks like the road does not warrant an upgrade. Brian Whittle said that we should go down and experience it, and what needs to be appreciated are the huge volumes of lorries and cars that come off or go on to ferries at Cairnryan. I drive my daughter home from Dumfries on a Tuesday night, after her ice hockey, and the convoys of lorries and their speed at 11 o’clock at night are frightening.

The bare minimum that we are looking for is a bypass for the communities of Springholm and Crocketford. We can do all the surveys that we like, and the figures will probably not add up over a 24-hour period. However, it is the short bursts of intense traffic that cause frustration, not only for the people who are commuting from Belfast to Carlisle or who are travelling through our region but for the people who have to use that road every day for work, for example.

The A75 is the main artery. We do not have multiple options; the A75 is the only way to get from east to west. On the face of it, the surveys do not appear to justify an upgrade, but they do not show the whole picture.

The Convener: That is very true for transport issues more generally. There can be resistance to putting crossings up and people will give that horrible response, “Well, there haven’t been any fatalities.” There should be a risk assessment of the potential for that.

I take the points that you have made, and I can see that traffic will come in bursts when a ferry arrives. Therefore, a visit would be useful.

Maurice Corry: I have been an operator on that road, and I can say that we had the same problem 20 years ago. As hauliers, we campaigned ad infinitum to get the road upgraded. I suggest that we get the Road Haulage Association and the Freight Transport Association before us, as their

members use the road, and we should also hear from people who do multidrop deliveries from Stranraer to Carlisle, as we used to do. I had all sorts of issues with that road.

Brian Whittle: If we are to make a visit, would it be worth meeting the ferry operators and getting their input?

The Convener: We can ask the clerks to scope out a visit, which I hope would involve public engagement, too.

After we have visited the area, we can think about whether to hear from the minister and representative organisations. The petition raises a number of important issues. When we visit, we might find that local people want to contribute to the discussion; of course, they can contribute through their elected members if they do not want to do so directly.

We can take a number of things forward. Are there any more comments?

Finlay Carson: Let me add one more thing that might give a bit more weight to the call. The A75 is a single carriageway with accident black spots right along its length and, in the event of a serious accident, the main road can be closed for seven or eight hours. If a haulier is transporting perishable goods under time constraints, and they think that they might miss the ferry—this happens regularly—they will automatically select a different route, even if it is longer and more expensive, as long as it gets them to the ferry on time. Hauliers are making decisions based on the closures on the A75.

I am sure that all members are aware that such closures are a regular occurrence. It takes just one car accident to close the whole route, and the diversions can be so long that they cause problems for people who are trying to get to a ferry on time. The impact of closing a single carriageway for a long time should also be taken into account.

The Convener: There are economic and environmental issues to deal with, if people are taking illogical routes that keep them on the road for longer. We can usefully explore such matters.

The discussion has been helpful. I suggest that the clerks scope out a visit, after which we can consider options for an evidence session. There are issues that we want to take forward. Do members agree?

Members indicated agreement.

The Convener: I thank Finlay Carson for coming, and I close the meeting to the public.

11:09

Meeting continued in private until 11:20.

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