



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 29 November 2011

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PUBLIC PETITIONS COMMITTEE

8th Meeting 2011, Session 4

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)

*Mark McDonald (North East Scotland) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Bill Walker (Dunfermline) (SNP)

*John Wilson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roseanna Cunningham (Minister for Community Safety and Legal Affairs)

Michael Matheson (Minister for Public Health)

Duncan Wilson (Scottish Human Rights Commission)

LOCATION

Committee Room 2

Scottish Parliament

Public Petitions Committee

Tuesday 29 November 2011

[The Convener *opened the meeting at 14:02*]

Decision on Taking Business in Private

The Convener (David Stewart): Good afternoon, ladies and gentlemen. I warmly welcome everyone to the Public Petitions Committee and ask all those present to switch off their mobile phones and other electronic devices. I also warmly welcome to the meeting the right hon Greg Knight MP, chair of the House of Commons Procedure Committee, and all the members and staff of that committee.

Item 1 is a decision to take business in private. I seek the committee's agreement to take in private item 5, which is consideration of the evidence that we will hear during item 2. Are members agreed?

Members *indicated agreement.*

Current Petition

Institutional Child Abuse (Victims' Forum and Compensation) (PE1351)

14:03

The Convener: Item 2 is an oral evidence-taking session on PE1351, on time for all to be heard. Members have received a note from the clerk, which is paper PPC/S4/11/8/1.

I welcome to the meeting our first witness, who is Duncan Wilson, head of legal and strategy at the Scottish Human Rights Commission. Mr Wilson appears in place of Professor Alan Miller, who is out of the country on business. Mr Wilson, I believe that you wish to make some introductory remarks.

Duncan Wilson (Scottish Human Rights Commission): Thank you, convener. I thank the committee for the opportunity to speak.

Today, the Parliament can once more witness, after more than a decade of campaigning, the dignity and determination of survivors of historical child abuse. Although we as a nation have taken a number of significant steps to address the issue, more remains to be done. The Scottish Human Rights Commission encourages everyone involved, particularly Scottish ministers, to commit to a renewed impetus to securing remedies and justice for survivors of historical abuse.

It is not only time to be heard—it is also time to learn lessons. An unknown number of people in Scotland continue to be dual victims of human rights violations. They are not only victims of the initial abuse that they suffered but they continue to be denied access to justice and effective remedies. In response, the Scottish Human Rights Commission has worked independently and impartially on a human rights framework for justice and remedies that takes into account the human rights of everyone involved, including former staff in institutions as well as survivors and other former residents.

The human rights framework is based on international law, best practice, survivors' views and the views of experts with experience of similar processes elsewhere in the world. In essence, the framework calls on the Government to ensure accountability as well as acknowledgment and to identify not only what happened but why, and how it can be avoided in the future.

We have had constructive engagement with the Government on implementing the nine recommendations that we made in February 2010. We are pleased that Scottish ministers recently agreed to meet the commission to discuss how to

put those recommendations into an action plan to implement the framework that we proposed, taking into account the pragmatic constraints of Government while upholding the principle that all survivors of human rights abuses should have access to justice and effective remedies.

We hope that that process will reflect the urgency of ensuring that justice be done before more survivors die without having seen justice. I look forward to discussing the matter further with the committee.

The Convener: Thank you for your introductory statement, Mr Wilson. The committee has a number of questions for you. As I understand it, the pilot forum hearings were restricted to former Quarriers residents. Would you support a wider roll-out to other potential victims?

Duncan Wilson: Yes. When we published our framework, we noted that a confidential committee may be part of the overall package of remedies. Such a committee should be within the broad range of remedies, reparation and access to justice for survivors that we have highlighted.

The Convener: I understand that you looked closely at the Irish experience, particularly the Irish commission. Have you picked up any lessons from Ireland that would be useful for our consideration?

Duncan Wilson: We looked not only at the Irish experience but at experiences elsewhere, including Canada and Australia and more recently Northern Ireland. A number of things can be learned from the Irish experience, which Amnesty International in Ireland recently evaluated thoroughly. A feature of the process in Ireland, which I think is a lesson, is that it lasted a number of years and was very expensive. We believe that there can be smarter ways to achieve a number of the remedies and reparations steps. The fact that the process in Ireland was very expensive should not preclude our pursuing an action plan and securing investigations that get to the bottom of why the abuse happened, whether the state was responsible and how we can learn lessons for the future.

There are more recent models from Northern Ireland, which are a different way to go and which have the specific aim of being less expensive.

Sandra White (Glasgow Kelvin) (SNP): Good afternoon, Mr Wilson. I am pleased that you have engaged with the Government. That seems to be a step forward.

Although the pilot forum was based on the Irish model, it did not seek to hold abusers to account and did not provide compensation for victims. It has been argued quite vociferously that benefits associated with a confidential acknowledgement model—a model that avoids a more

confrontational or adversarial approach—would have been lost if there had been an attempt to extend the pilot forum's remit to issues such as accountability. Do you agree?

Duncan Wilson: I do not think that one aspect precludes the other. The human rights framework that we developed had five elements to ensure best practice in remedies and reparation, which I know we would all agree is Scotland's aspiration. The first of those elements is the participation of everyone involved in all decisions that affect them. The second is accountability, which I will come back to. Thirdly, there is non-discrimination, so that any steps apply to the broad range of survivors. The fourth element is empowerment, which involves supporting people to exercise their right to remedy and to access to justice. Finally, any process should be underpinned by legality and should uphold the human rights of everyone involved, whether that means the right to a fair hearing for former staff or the right to access to justice for survivors.

The issue to which you point is accountability and how a confidential committee may form part of that package. I will outline the elements that we proposed for a comprehensive approach to accountability.

The first element is investigations. Where there is a credible assertion and credible evidence of serious ill treatment, there should be an investigation that is at least sufficient to determine whether the state was responsible and what lessons can be learned for the future. Recently, the First Minister and the Deputy First Minister of Northern Ireland announced an inquiry and investigation with powers to compel oral and written evidence from a wide range of bodies. That could be an alternative model to the investigation committee in Ireland, which was expensive.

The second element is the right to an effective remedy, which includes access to justice and reparation. I am sure that we will discuss the barriers that survivors continue to face to exercising their right to civil justice because of the time bar. When reparation is mentioned, people often think that it is all about compensation and expense. The media sometimes help to foster that impression, but many of the steps in reparation can be almost, if not completely, cost free.

One element of reparation is satisfaction. A confidential committee where survivors can recount their experiences, be listened to, have what they say accepted to be true and have it recorded officially can be part of the realisation of satisfaction.

Another element can be an effective apology. We might think that that would be relatively straightforward, but experience suggests that

institutions feel restricted in their ability to offer a full apology, perhaps because of the fear of civil litigation or of voiding insurance contracts. Apology laws have been used elsewhere in the world to address that.

Restitution can involve restoring what was lost through health or education support—a number of steps have been taken on that. It can also involve rehabilitation, mental health services and, for example, parenting skills, which survivors in Scotland have mentioned. It can involve many steps that are not necessarily expensive.

A further element of reparation is guarantees of non-repetition, which is why we need a form of investigation that can identify not only what happened—that is acknowledgement—but why it happened and which can investigate responsibilities and recommend and follow through on steps to ensure that the same thing does not happen again.

The final part of reparation is adequate compensation. All the steps should be characterised by the participation of survivors, the choice of appropriate remedies for them and proportionality. The remedies should be proportionate to the harm that each individual suffered.

Sandra White: That is enlightening. Would a correct summation of what you said be that the pilot programme was just the start and that what you have just explained could come from it?

Duncan Wilson: That is correct. Any confidential committee—not just the pilot forum, but even a national one—can be only one part of a broad range of remedies, if we are to comply with survivors' human rights.

Nanette Milne (North East Scotland) (Con): You have addressed the first part of what was to be my question, which was about accountability, so I will focus instead on compensation. How should the compensation side of reparation be addressed?

Duncan Wilson: I recognise that compensation is one of the more challenging elements in a broad package of justice remedies and reparation. I have already mentioned—but it is worth reiterating—that there are a number of other steps that may be almost cost free and more quickly achievable. It is important that we do not delay everything just because some elements are challenging.

Elsewhere, contributions have been made to compensation packages by the range of bodies that have shared responsibility. Scotland's residential childcare provision has been very different from that in Ireland, for example, but all the steps—whether previous public petitions, inquiries or prosecutions—have identified

instances of sexual abuse, physical abuse and serious neglect in the widest range of institutions in Scotland.

Tom Shaw's historical abuse systemic review in 2007 comprehensively outlined the range of institutions, which include state-run bodies and religious and non-religious private bodies. There is a wide range of responsibilities, and each of those actors should be seeking to contribute to a reparations package.

14:15

Mark McDonald (North East Scotland) (SNP): Can you expand on the Scottish Human Rights Commission's current involvement in developing proposals to secure justice for victims of institutional child abuse?

Duncan Wilson: Certainly, I can. I mentioned in my opening remarks that we are pleased that Scottish ministers recently agreed to meet us to discuss how to develop an action plan to implement the broad range of recommendations that we made more than 18 months ago.

We propose—we have discussed this informally with a number of survivors' groups—to host a human rights interaction. In essence, it will be an opportunity for everyone who has a stake in the issue to get round the table and negotiate. We recognise that there are pragmatic constraints—the economic climate is one—that preclude the fullest realisation of some of the recommendations, but that should not inhibit identification of steps that can be taken and the development of a road map for the way in which, the extent to which and the time in which all the recommendations can be realised.

We propose—we hope that ministers will be receptive—to host a negotiated agreement to develop an action plan, which would identify the facts, and the wishes and desires of survivors; the range of institutional provisions; an analysis of the human rights involved, as we have outlined in the human rights framework; and who is responsible under a shared framework of common responsibilities and how each party will contribute to remedying the wrong that has been done. We will then reconvene some time later to ensure that the recommendations have been implemented.

That is how we propose to continue our contribution to addressing the issue.

Bill Walker (Dunfermline) (SNP): You have answered most of what I wanted to ask about. Are there any issues that you feel are not being properly addressed in the development of proposals to secure justice? Is there anything else that you want to put on the record?

Duncan Wilson: We made nine recommendations that continue to be relevant today in the human rights framework. There were 14 recommendations in total, but five of those related specifically to the time to be heard pilot forum, which has concluded. From the remaining nine, there is currently a proposal on the table to develop a national confidential committee model, but that is just one part of a broad package. We are hopeful that the next step will involve a commitment from all sides to develop a road map for realising a range of other steps.

I will highlight one example of an important concrete and achievable step in securing justice for survivors: the issue of apology. As I mentioned in passing, an effective apology—an apology that says, “We are sorry that that happened to you and we take responsibility for it.”—can be an important part of remedies and reparations. An ineffective apology—“We are sorry if that happened to you.”—can have the opposite effect, and can reinforce what happened, retraumatise and further degrade survivors.

Whether there is at present a real or an imagined legal impediment to effective apologies, the fact is that many institutions report that they feel that they are unable to make full and effective apologies, either because of fear of civil litigation or because of insurance companies.

There is an opportunity for Parliament to pass legislation like that in British Columbia that could be as short as three sections—literally less than a page on the statute book—and which would be a legal remedy for the real or imagined fear about making a full and effective apology. Perhaps in a few months or less, the Parliament could pass a straightforward law that would enable institutions to make full and effective apologies that would be the starting point for the broader range of remedies for survivors.

Bill Walker: Thank you. I am glad that you brought up the subject of apology, because I have always felt that if someone is ordered or feels compelled to make an apology, it is not really an apology. How can we ensure that people do not feel obliged to make apologies that they do not mean, and that the apologies that we hope will be made are, in fact, heartfelt and accompanied by a sensation of severe regret for what has been done?

Duncan Wilson: The experience from British Columbia and New South Wales and other places that have introduced such legislation is already pointing to the impact that it can have in practice. Where institutions may feel impeded in apologising at present, there would be, and would be seen to be, no impediment to an effective apology. So, in essence, the onus would be on

institutions to make an apology and show a good-faith commitment to addressing past wrongs.

On compelling contributions to a process like that, I go back to the earlier example from Northern Ireland that is very contemporary, whereby the Office of the First Minister and the Deputy First Minister have publicly committed to holding an investigations or inquiry process that would have powers to compel witnesses to attend and to compel the production of records—documentary evidence—including, for example, care records. There can therefore be both a carrot and a stick, if you like. However, it is important that we remove impediments as well as provide encouragement.

Bill Walker: Thank you.

John Wilson (Central Scotland) (SNP): Many of the issues regarding compensation have been covered in previous questions. However, as I understand it, there are difficulties in getting compensation, if that is what individuals are looking for, for any institutional abuse that occurred prior to 1964, because such claims cannot proceed under current legislation. However, just for the record, I do not think that everybody who suffered institutional abuse seeks financial compensation; as Bill Walker said earlier, genuine apologies from the organisations involved may suffice. However, for people who are looking for financial compensation, what are the issues about and the barriers to their getting it?

Duncan Wilson: First, none of us would want to speak on behalf of survivors, who speak very eloquently individually and collectively about their wishes, desires and needs for justice, which are varied. To be blunt, we simply do not know what those are for the so-called silent majority of survivors, who have yet to speak about the harm that they suffered, let alone about how they would wish to see it remedied.

On compensation, there are a number of issues that could be addressed in different ways. The first is the time-bar limitation for civil suits. I am sure that the ministers and officials who are here after me will speak to this point, but we are still waiting for publication of the consultation document. When Mr Ewing appeared before this committee almost a year ago, he indicated that there would imminently be a consultation and that the Government was keen to pursue the opportunities to expand beyond the Scottish Law Commission's recommendations in 2007 to see whether there were options to secure access to civil justice for survivors.

There might be opportunities through the review of the prescription and limitation legislation, and we will certainly take advantage of the consultation to explore whether opportunities exist within a

human rights framework to expand to that extent. Of course, this Parliament has legislated specifically for victims of other forms of abuse to receive access to compensation for historic harms. As members will be well aware, that law was recently upheld by the UK Supreme Court, which reinforced the power of this Parliament to make such legislation, should it so desire.

Neil Bibby (West Scotland) (Lab): The SHRC report states, on page 9, that

“prior to the announcement that a Pilot Forum would take place, the Commission was not asked for its view on the proposal to carry out a pilot or on any model chosen by the Government.”

What would you have done differently, had you been given the opportunity to express your views?

Duncan Wilson: When the announcement was made, we took stock and considered how best to react to it. You will see from the framework that we recognised that a confidential committee could be one part of a broader package of reparations and access to justice. We made a number of recommendations on adjustments to the way in which the pilot forum was being designed at the time, including adjustments to its independence. That led quickly to changes in the way in which officials and members of the forum were seeking to establish it. Throughout the process, we continued to have a dialogue with members of the time to be heard forum on, for example, the limits of confidentiality and on when there would be a duty to report allegations of serious harm to the prosecutorial authorities or the police.

We are recommending that a number of elements should be carefully considered by any confidential committee, but I reinforce our main point that while we recognise that such a committee could be one part of a package of remedies and reparations, we also recognise that it is only one part. We believe that it should exist alongside the broader range of recommendations that we have made.

Neil Bibby: Are you aware of the historical abuse systemic review report that was published in 2007? Page 130 states:

“An archivist was instructed to destroy all senior management team records in 2004.”

What knowledge did the SHRC have of that, and of any other on-going investigations regarding that line?

Duncan Wilson: We were, of course, aware of the historical abuse systemic review. A review of its findings was part of the preparation of the framework. We did not specifically investigate that issue, but I think that it reinforces the value of looking beyond simply having a confidential committee whose role, valuable though it would

be, would be to listen to and record the experiences of survivors. That is not even sufficient to identify the truth, let alone to compel the production of evidence.

We would certainly recommend that the human rights framework require an investigation component. I know that everyone often thinks of the Irish investigation committee, but this one could be as simple as an inquiry with the kind of legislative powers that inquiries generally have; it should be able to require the production of oral or written evidence. I am sure that we are all watching the Leveson inquiry at the moment. We have seen how quickly an inquiry can be established when the political will exists to do so, even in the current economic climate.

14:30

Neil Bibby: The 2007 review report also states:

“Many children died while living in children’s residential establishments. Some organisations have identified the children in graveyards. But in other cases searches have yielded few records identifying children or information about why they died. The lack of information suggests that little importance was placed on the children’s identity and their value to their extended families.”

Does that point need to be addressed by an investigation?

Duncan Wilson: Yes. One of the elements that contributed to the human rights framework was a 108-page legal paper that we published. It looked at the evidence that is out there and the incidents that are likely to be reported or to arise as a result of an inquiry or investigation, and it examined how those would be understood through the lens of human rights and whether they would be considered to be human rights violations.

The incidents that were reported in the historical abuse systemic review include not only the ones that you have outlined, but denial of contact with family, denial of correspondence, forced movement out of Scotland to Australia, Canada or elsewhere and being told that family members were dead when they were still alive. There is a wide range of issues, which could and should be seen, through the lens of human rights, as human rights abuses.

An important distinction that we draw is that it is important not to look at conduct in the past through the lens of today’s standards, and that a number of issues that were identified in the Shaw report and that are likely to arise in future investigations would, nonetheless, have been human rights violations at the time.

There is a dual standard as well as the dual violation that we talked about. The assessment of whether conduct is a human rights violation should be based on standards at the time, as it would not

be appropriate to apply today's standards to historic conduct. For example, our understanding of corporal punishment as a human rights abuse has evolved over time. However, the standard for access to justice and remedies should be the right as it is applied today, for people who continue to be denied that right.

John Wilson: You referred to the Shaw report that was produced earlier this year. Can you indicate how valuable or otherwise the Shaw report was to the Scottish Human Rights Commission in coming to its recommendations? Do you envisage a marrying of the two sets of recommendations—the recommendations of the Shaw report and the SHRC's recommendations to the Scottish Government?

Duncan Wilson: The time to be heard forum report was published almost a year after our report, so in that sense its conclusions did not inform our framework, but its existence did. It is appropriate that both sets of recommendations be looked at together.

The time to be heard forum had a restricted mandate, which was to listen to survivors' experiences and report on them. It did not, for example, hear from survivors about the barriers that they have faced in trying to get justice, but it nonetheless recorded the experiences of survivors and, as such, produced important lessons. We are pleased that Scottish ministers endorsed the majority of its recommendations and we hope that those recommendations will be taken alongside ours.

John Wilson: I have a couple of brief questions. You indicated the difference between the Irish Government's decision on how it took forward institutionalised abuse cases and the recent decision by the Northern Ireland Assembly—in particular, the Office of the First Minister and the Deputy First Minister—on how it intends to take forward inquiries in Northern Ireland. What lessons have been learned? Can we learn some of those lessons?

Duncan Wilson: It is premature to look to Northern Ireland as an example of good practice, because there is too little information about what will happen there. A recent statement by Amnesty International Northern Ireland outlined a range of concerns that it continues to have about that process; for example, it appears that the inquiry and investigation in Northern Ireland will last no more than two and a half years, but that the powers of compulsion that I mentioned will be introduced through legislation, the passage of which is programmed to last about two years. Therefore, there is a risk that the inquiry will have its powers of compulsion only as it is coming to a conclusion, which might seriously imperil its utility.

I would not necessarily look to any of those experiences as being good practice that could be directly replicated in Scotland, not least because the pattern of institutional childcare in Scotland has been so different from that elsewhere. However, we can and should see what we can learn from the good and bad in all experiences around the world. An important evaluation of one process in Canada—the Kaufman report—outlines exactly why that process was wrong for everyone who was involved. Lessons can be learned from processes that go wrong as well as from those that have been successful.

John Wilson: From evidence on the Shaw inquiry, our predecessor committee identified issues to do with the level of support that is required for victims to give evidence. One issue was about follow-up support. The process involves people giving evidence about traumatic periods of their lives. That goes back to your comments about serious-harm reporting methods. When there is institutionalised behaviour, reporting serious harm becomes less important for the people who are surrounded by an institution that is carrying that out as practice. That was the experience of many individuals who suffered abuse in institutions where abuse was the norm and not the exception. What is the Scottish Human Rights Commission's view on provision of ongoing support, where it is required, for victims who would give evidence?

Duncan Wilson: As I said, one element of the human rights framework is empowerment, which is about enabling people to take part in processes, such as the options that we are discussing, by providing the support that they require. That could be in the form of security to ensure that there are no reprisals but, equally, it could be mental health support that individuals need before, during and after such a process.

Another important element is ensuring that what is reported is acted on. Even though the officials, the Government and anyone else who is involved in a confidential committee process might feel that there has been clarity on the limitations of the approach, people can, nonetheless, have expectations that something will happen in their case as a result. There must be absolute clarity throughout as to the likely outcomes. None of us wants to raise expectations that simply cannot be met, because that can be more harmful than anything.

John Wilson: My final question is on the compensation scheme that has been referred to. How would the scheme work and who would contribute to it? Some of the issues that we are dealing with are historical, and not only in relation to the institutions that were involved. For example, local authorities have changed shape since some

of the historical institutional abuse cases that have been identified took place, and we have had a change of Government jurisdictions. The UK Government was responsible for childcare, but that responsibility was transferred to the Scottish Government in 1999. How does the Scottish Human Rights Commission envisage a compensation scheme, if one is established, being funded?

Duncan Wilson: The question is broader, because the issue is not limited to compensation. It involves how a scheme for securing access to effective remedies should work. You are correct to outline that there is a range of parties who are responsible and that there are complications, in that the majority of the cases that will be reported will pre-date devolution. That stresses the importance of the kind of process that I outlined before, which involves getting together all those who share responsibility—the UK Government, the Scottish Government, local authorities and individual institutions—so that they can contribute to and agree a broad package of remedies and reparation. The majority of the steps that I outline will require the good faith and involvement of a wide range of parties.

International human rights law is clear that the ultimate responsibility lies with the state, so it is for the state to demonstrate leadership by committing to a process like that and by not only contributing in kind but by taking steps to address the barriers to justice that continue to exist.

Sandra White: You mentioned a reparation package in the framework. Do you think that that should include compensation, as well? Do you have in mind a particular compensation scheme? Should the package involve the things that you have just mentioned, rather than being just a financial package?

Duncan Wilson: The commission is proposing that the next step should involve all the parties getting together to agree an action plan to address each of the elements of the framework that we propose, rather than breaking off individual pieces, so that we develop collectively a plan that will enable us to do whatever we can now, and to address some of the more challenging issues over time. There should be a process in which survivors, the state and others who have responsibility are sitting around the same table to negotiate next steps.

Neil Bibby: Who is underwriting funding of the scheme in Northern Ireland?

Duncan Wilson: Another element of the limitations that Amnesty International Northern Ireland noted in the announcement of the Office of the First Minister and Deputy First Minister was the fact that it is not minded to introduce a

compensation element at present and looks to the inquiry to recommend how institutions could contribute to a reparations package. Amnesty correctly points to a failing of responsibility on the part of the state to take leadership in that element of the process.

The Convener: Your evidence has been comprehensive and enlightening, Mr Wilson. We will now take evidence from ministers. You are welcome to stay and watch.

We will suspend for two minutes to allow our other witnesses to take their places.

14:43

Meeting suspended.

14:45

On resuming—

The Convener: I welcome our next set of witnesses to the meeting. First, I appreciate the fact that we have been joined by two ministers: Michael Matheson, Minister for Public Health, and Roseanna Cunningham, Minister for Community Safety and Legal Affairs. I also welcome two Scottish Government officials: Jean Maclellan, head of adult care, and Paul Allen, head of damages and succession branch.

I will begin and then my colleagues will ask questions of their own. Either minister should feel free to answer my question, although I suspect that Michael Matheson will respond. What progress has been made in establishing a national confidential forum for all victims of institutional child abuse and when will the necessary legislation be introduced in Parliament?

The Minister for Public Health (Michael Matheson): You are correct, convener; I will answer that question.

Since the publication earlier this year of the Shaw report, which followed last year's time to be heard pilot, we have been looking at how we can take forward our commitment to establishing a national confidential forum in Scotland. Of course, that will require primary legislation but we have also been looking at where we might place that forum in the Scottish public sector and how we can ensure that it will continue to operate independently. As a result, we have been discussing with a range of organisations and bodies how we can take that forward.

We have also been looking at some of the issues that were highlighted in the Scottish Human Rights Commission's framework, how they sit alongside the Shaw report recommendations and how we might bring both together to shape the confidential forum that we intend to establish in

Scotland. As a result of our discussions with a number of stakeholders, including survivors organisations and the Scottish Human Rights Commission, we have agreed to hold before the end of the year an interaction that will be hosted by the commission and which will be attended by me and—we expect—stakeholders from local authorities and other organisations, stakeholder representative groups and other individuals. We will discuss drafting an action plan to look at what we need in order to frame the terms of the national confidential forum, and that work will allow us to look at conducting a consultation exercise to allow people to give their views on the forum's final form. We can then consider how we take forward legislation.

The Convener: That was very useful, minister. If all that goes to plan, when might legislation appear before the Parliament?

Michael Matheson: First, we need to secure as much agreement as possible on the action plan but I hope that we will be in a position to carry out a public consultation on a draft piece of legislation at some point next year. Once that consultation has been completed and we have gone through the responses that we receive, we will have to draft the legislation. I cannot give you a definitive timetable in that respect, largely because it all depends on what goes into the legislation. After all, the more legally complex that it is, the more time we might need to draft it and then we will have to look for an appropriate slot in the legislative timetable. I am keen for this to move as quickly as possible and the sooner that we get things moving towards legislation, the better. However, until the consultation is complete, it is difficult to set out a definitive timeframe, except to say that we will try to do things as quickly as we can following the results of the consultation exercise.

Sandra White: Good afternoon, minister. Thank you very much for coming to answer our questions. I, too, had a question about timescales, but you have answered it. We look forward to legislation being introduced in 2012—and sooner rather than later, I hope.

You mentioned stakeholders. Who would be eligible to participate? The question is who would be eligible, not necessarily who you would ask to attend.

You said that you were looking to public consultation for the forum and you mentioned local authorities, the Scottish Human Rights Commission, survivors and stakeholders. Can you be more specific? When we took evidence from the Scottish Human Rights Commission, we asked whether, given that a number of institutions and local authorities have changed since this terrible incident, Quarriers or others would be part of the

stakeholder groups. Can you be more specific about how you will consult and who will sit on the forum? More prescriptively, perhaps, who will be invited to come along to the consultation?

Michael Matheson: The interaction is the Scottish Human Rights Commission's event. The commission has invited us to attend and as ministers we have agreed to attend. It will be for the commission to determine which other organisations and individuals it wishes to attend the event. However, it is important that other parties that have a role to play—whether they be local authorities, service providers or private organisations—have an opportunity to participate in the interaction and to discuss some of the issues that we need to examine in order to formulate an action plan. I am open-minded on who should attend, but ultimately it is for the commission to invite whoever it wishes to attend. Scottish ministers have given a commitment that we will attend in order to explore the Government side of things.

Sandra White: That would be a follow-up from the evidence that we received from the Scottish Human Rights Commission in its opening statement. It is very pleasing that you will take part. For clarification, the Scottish Human Rights Commission will lead the interaction, it will organise the forum and the Government will participate. Is that correct?

Michael Matheson: Yes. We have been in discussions with the Scottish Human Rights Commission about its suggestion of an interaction with different individuals and organisations, and we have agreed to participate in that. Whom it invites to attend will be a matter for the commission, rather than the Government. We hope to have the interaction before the end of the year, if possible.

Nanette Milne: The pilot forum did not seek to hold abusers to account or to provide compensation for victims of abuse. What plans does the Government have to deal with such issues? Will they be addressed as part of the forum or dealt with separately?

Michael Matheson: I will deal with the forum and my colleague, Roseanna Cunningham, will deal with the issue of future compensation.

The forum was a pilot. It was a model that was proposed in order for us to explore what would be an effective mechanism and forum to allow survivors of abuse to give their testimony in a confidential setting. Those who participated in the pilot found the process valuable, and their feedback was very positive. It also flagged up some issues that we may want to consider in developing any national confidential forum that we establish through primary legislation, but it was

designed to be informal and to provide people with that opportunity in a non-confrontational way.

If any forum was to have a more investigatory role—almost a judicial role—the nature of the process would change. Someone might present evidence, someone might wish to challenge that evidence, and lawyers would have to be involved in that process, so the nature of the forum would change quite markedly. The model that we piloted last year allowed us to avoid that unnecessary legal process, but allowed people to give testimony in a confidential setting and allowed restorative justice issues to be considered if that was appropriate in certain circumstances.

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): It is probably appropriate to remember that there are quite different ways in which compensation can be awarded. There can be a compensation order if there is a successful criminal prosecution; there can be an award of damages if there is a successful civil action; and there can be an award under a criminal injuries compensation scheme, which is not dependent on court proceedings. Those three are distinct ways of achieving a monetary outcome in relation to this issue.

Obviously, for a compensation order to arise out of a criminal prosecution a successful prosecution is needed. We know that big evidential issues can surround that. Again, for an award of damages to be made in a civil action, a successful court action is needed. A great many questions underlie that, which survivors may wish to raise. Finally, there is the non-court-related criminal injuries compensation scheme. The United Kingdom Ministry of Justice is looking at the criminal injuries compensation scheme and we are awaiting the outcome of that before deciding whether changes should be made to the situation in Scotland.

That probably begs more questions, but it is fair to say that there are three different kinds of compensation.

Nanette Milne: If the national confidential forum is not to be the formal confrontational body that Michael Matheson indicated, how would the people responsible be held to account?

Michael Matheson: I return to my earlier answer. We have to discuss what will be contained in the forum. That is not set in stone, which is why we will have discussions with the Scottish Human Rights Commission and look at formulating an action plan that will allow us to consider the content of any consultation. There are no hard and fast rules about what will be in the forum, but the experience from the pilot that we ran last year provides a good grounding to build upon. We will have discussions with other stakeholders and draft an action plan on any

further consultation on a national confidential forum.

Neil Bibby: If the Scottish Human Rights Commission and stakeholders suggest that there should be thorough investigation of specific areas, will that form part of the national confidential forum?

Michael Matheson: We must wait and see what comes out of the discussion. I do not want to pre-empt those discussions, because people would say that it was clear that the Government had already taken a view on what any legislation should be.

I am mindful that we have to look at the experience of the time to be heard pilot forum last year and consider how we can build upon that, given the positive feedback that we received from those who participated. However, we must have those discussions with stakeholders before we formulate any action plan. I do not want to give the impression that we have come to a position on matters until we have explored those issues.

Mark McDonald: Duncan Wilson from the Scottish Human Rights Commission, who was here earlier, spoke about the human rights framework that the SHRC has drafted and the nine points that are contained within it. Without wishing to ask you to pre-empt anything, does the Government have a view on those nine points or are you keeping an open mind until you have had discussions with the SHRC and other stakeholders?

15:00

Michael Matheson: We formulated our response to the human rights framework earlier this year, following the final report from the time to be heard forum, which was published in March. We have responded to some of the points that the SHRC highlighted, such as the issue of reparation, to which it has taken what I would describe as a holistic approach. We as a Government think that it is worth exploring that area further and progressing it with any national confidential forums.

Certain aspects of the framework can help us to ensure that we frame any new national confidential forum in as effective a way as possible. We have commissioned some additional work around reparation, which is being progressed by the centre for excellence for looked-after children, and we hope to have its report by the end of this year. That will help to inform some of our thinking around that particular area, which comes off the back of some of the work that the commission has carried out.

It is important that any national confidential forum is separate from Government, to ensure that it carries confidence and is not run by the Government; that is how the Government intends that it should operate.

Mark McDonald: The SHRC mentioned examples of how similar issues have been dealt with in other places—for example, the approach that is being taken in Northern Ireland. What work is the Government doing on looking at examples of how such processes have been attempted in other places, with regard to lessons that can be learned to inform discussions further?

Michael Matheson: Two examples that have been cited recently are the experiences in the Republic of Ireland and Northern Ireland. Some of our thinking on and work with the pilot forum that we ran last year was informed by elements of the Irish experience, but Northern Ireland currently has only a draft set of proposals for its inquiry. Until we have further detail on exactly how it intends to conduct its inquiry, it is difficult for us to draw too much from that experience.

We are always open to opportunities that may arise from the experiences of other jurisdictions in the world if there are lessons that can be learned. Inevitably, however, each jurisdiction will reach a decision on what operates best in its own area.

Bill Walker: I want to return to the compensation issue, which Nanette Newman—*[Laughter.]* I beg your pardon; I mean which Nanette Milne was talking about.

I guess that my question is for the Minister for Community Safety and Legal Affairs. You have touched on this issue already, but does the Government have any plans to extend the availability of criminal injuries compensation to more victims, beyond the scope that already exists in England, Scotland and Wales?

Roseanna Cunningham: It would be helpful if members would remember that the criminal injuries compensation scheme is reserved, and we therefore do not have any immediate and direct input to it. That is why I mentioned that the UK Ministry of Justice is reviewing the scheme at present. We will have to examine options in Scotland once we get an understanding of what the ministry is proposing.

Most people are probably familiar with the compensation scheme. It provides a financial acknowledgement and redress for victims of violent crime—it is not confined to the type of crime that we are talking about this afternoon, but goes right across the board. It provides a service on behalf of the Scottish Government, but it is reserved, so we are in a slightly difficult position until we understand exactly what the Ministry of Justice is considering.

The scheme has been criticised in terms of eligibility and what we call quantum, which is the term for the global amounts of money that are being discussed, but I cannot say whether the ministry will come back to us with anything substantial on those issues. Until we know what its position is, it is difficult for us to make any great response. Once we understand what it is discussing, we will undoubtedly want to respond, and I can ensure that the committee is copied into that response.

Bill Walker: Good, thank you.

The Convener: Neil Bibby has a question on time limits for civil claims.

Neil Bibby: What plans does the Government have to take forward the work that the Scottish Law Commission published in 2007 on prescription and limitation in relation to personal injury claims?

Roseanna Cunningham: There has been considerable discussion about the law of damages for personal injury. It is the case that we had intended to issue an integrated consultation paper earlier this year in respect of the three separate Scottish Law Commission reports. That plan had to be changed in the light of Bill Butler's Damages (Scotland) Bill, as we had to focus on it, but we are determined to issue a consultation paper.

The Scottish Law Commission's proposals were not welcomed in all quarters, because it was felt that they might not go far enough. We want to consult as widely as possible, not only in terms of the individuals who contribute to the consultation but in terms of the options that are open to us.

The biggest problem is the time bar in civil law. The time bar applies across all personal injury cases. It means that, with some exceptions, people are pretty much tied to raising a case within three years of the damage or injury taking place—an exception would be a situation in which the injury was not known about for considerably longer. The bar is, however, part of Scots law. We are open to changing some of the time-bar rules but, if that is the suggestion, account will have to be taken of the fact that that might have an impact across a much wider legal area than the narrow one that we are talking about today.

The consultation paper will carefully consider the Scottish Law Commission recommendations, which included, for example, extending the time limit from three to five years. With regard to the issue of clarifying the circumstances in which courts could make exceptions, there is a perception that courts have taken a strict and hard-line approach to the application of the time-bar rules. We will consider those issues carefully and will look at what is happening with regard to

cases in Ireland, where the point at which the time-bar clock starts ticking has been changed.

The danger is that the suggested approach could be seen as a panacea. It does not remove the requirement still to prove the case in a court. The civil court's standard of proof involves a balance of probabilities—it is not as high a standard of proof as that of the criminal courts—but people still have to be able to prove the case, which still means having evidence that can be tested. That can be a problem with very old cases, which is one reason why the time bar exists: the more time has gone by, the harder it is to get the evidence together in a way that will overcome the evidential barriers.

John Wilson: I welcome the fact that you are committed to consulting on the time bar. Can you give us an indication of the timescale that you are working to? Last year, the committee heard evidence on the consultation from the then Minister for Community Safety. When do you expect the consultation to be carried out and when do you expect to have the results?

Roseanna Cunningham: As I indicated, it did not happen this year because we had to focus on one specific bill that concerned the general issue of damages. The intention at the moment is to consult through January and February, so the consultation is imminent. I hope that the committee is able to keep an eye on the publication of the consultation paper.

Sandra White: I was interested in what you said about the time bar and what happens if an illness manifests itself in later years. Would the case related to asbestosis, which the Parliament supported, be used as a stepping point towards achieving compensation? It has been proven that the illness manifests itself in later years.

Roseanna Cunningham: Since the Scottish Law Commission published its report, there have been a number of high-profile cases in and around the issue, and the asbestosis case is one of them. It would be wrong for us not to take on board some of the implications of such cases, and we will do that.

Sandra White: I understand exactly what you mean by the requirement to prove the case in court. I am not a lawyer, but I assume that compensation would be easier to obtain in cases in which somebody has been found guilty and jailed than in cases in which no one has been proven guilty. Is that a difficult area?

Roseanna Cunningham: It is difficult. That is why I indicated that there are three different compensation schemes, if we want to call the civil law of damages a compensation scheme, which is perhaps a bit of a misnomer.

If an identified person has been through a criminal trial and found guilty, one might expect that it would be relatively easy to prove an action for damages against them, given that the standard of proof is lower in a civil case. The difficulty arises when there has not been a criminal court case or a conviction, in which case there may be bigger issues.

The civil standard of proof is not as high. A criminal case has to be proven beyond reasonable doubt but, in a civil case, the standard is the balance of probabilities. That standard is considerably lower, so the likelihood of success is higher. I suppose that that can be regarded as a potential positive.

In a civil court case, any criminal injuries compensation scheme award that had been made might be taken into account in any decision on damages. However, I would not like to say absolutely that that is the case and would need to double-check for the committee.

The Convener: John Wilson mentioned evidence that your predecessor, Fergus Ewing, gave last year. It is always dangerous to quote a predecessor's evidence at the current minister, but Mr Ewing said that the Scottish Government hoped to go beyond the Scottish Law Commission's recommendations. Do you agree with that?

Roseanna Cunningham: I certainly think that the Scottish Law Commission recommendations were conservative and I can understand that Fergus Ewing may have felt that we could explore much more widely than them. I confirm that the consultation will do that. It will not be limited to the Scottish Law Commission recommendations; we will explore much more widely and will take evidence on much wider recommendations.

The Convener: You have pre-empted my final question. Would the Scottish Law Commission recommendations help the majority of the survivors of abuse? If not, what other suggestions will you come up with to help survivors?

Roseanna Cunningham: I cannot answer that, because I would need to know the potential or likely outcome of each individual case. I have no way of knowing that and whether the commission's recommendations would materially change it.

As I said, the Scottish Law Commission's recommendations were fairly conservative, so I would not be going far outwith the bounds of reality by saying that—narrowly construed—they would probably not make an enormous difference.

I cannot possibly say whether any changes, to the time bar for example, would make a huge material difference. I need to remind people that

the issue is not just about the time bar; it is also about proving the case in a court. That is probably an even bigger hurdle, given the timescales that we are talking about. The removal of the time bar is seen as a straightforward way of solving the issues, but I am not sure that it would always do so. There is a danger that it would be seen as some kind of quick fix, which it is not.

15:15

The Convener: Thank you for that. We have a couple of minutes left for any final points.

John Wilson: I have a question for the Minister for Public Health. I welcomed his earlier statement that the Scottish Government had commissioned a report on reparations, and I look forward to reading it when it comes out.

The Scottish Human Rights Commission and others have talked about the establishment of a national confidential forum, and the minister said that he was engaging in discussions with stakeholders about its establishment. Will he tell us when he expects it to be established? It is okay to talk about consultations and speaking to stakeholders but, given the time that the committee and this Parliament have taken to deal with the issue, people are now looking for decisive action and timetables so that we can tell them when we expect the forum to be established.

Michael Matheson: Are you referring to the national confidential forum being established?

John Wilson: Yes.

Michael Matheson: It depends on how quickly we can do things. I want to explain why I cannot give you a definite timeframe. It is not because I do not want to; it is because a number of interlinked factors will determine it.

It will depend on how quickly we can establish the action plan through the interaction that the Scottish Human Rights Commission is conducting. Once that action plan is complete and agreed, we will be in a position to publish a consultation document on what the confidential forum might look like. Consultation normally takes three months and, once it has been completed, the Government will consider what has been submitted and respond to those submissions. We will draft a piece of legislation on the back of that, and we will then be in the hands of Parliament to identify a slot in which we can bring the legislation forward.

The reason that I am hesitating in giving you a definite date is that a number of factors are interlinked, and they are not necessarily within my control. I do not know what might come out of parts of the process. I imagine that we will have a better idea of the timeframe once we have

completed the interaction and agreed on an action plan. That will give us a better idea of when we can go out to consultation and what might be contained in the national confidential forum. If it helps the committee, I will be more than happy to keep it informed of our progress on each of those stages, so that it can be aware of what stage we are at, at any given time.

Looking at the history of the petitions on the issue, we can see that it was one of the early subjects to have been raised following the establishment of the Scottish Parliament. I do not want to set out a timeframe today only to have to come back and say that it cannot work. I cannot be specific for a number of reasons. I can assure the committee that there is a desire on the part of the Government to set up a forum sooner rather than later but, as I have said, some of the timeframe is outwith our control.

John Wilson: I welcome the minister's response to that question. That helps to explain the journey that we still have to make before we can establish the forum. Yes, some people might want us to get things done tomorrow, but the reality is that the Government's hands are tied in taking the issue forward in a meaningful way.

I hope that, at the end of the day, we will be able to establish a meaningful forum to examine the issues that the petitioners have identified and to take forward the issue so that everyone concerned feels that they have received the justice that they rightly deserve.

The Convener: If members have no further questions, I ask the ministers whether they have any final comments to make.

Michael Matheson: If members find it helpful, I am more than happy to keep them informed of and up to date on our progress and to explain any changes that might be made to the timeframe for certain stages.

The Convener: Thank you for that.

On behalf of the committee, I thank the ministers and their officials for their attendance and their very helpful evidence, which we will consider in private in item 5. We will return to the petition at a future meeting.

I suspend the meeting for two minutes to allow the witnesses to leave.

15:20

Meeting suspended.

15:23

On resuming—

New Petitions

School Uniforms Policy (PE1411)

The Convener: Item 3 is consideration of two new petitions, the first of which is PE1411, on reforming school uniform policy in all Scottish local authority schools. Paper 3 refers and members will have received the clerk's note, the Scottish Parliament information centre briefing and the petition. I invite the committee to consider the petition and the briefing and to suggest any action that we should take.

Sandra White: I know that similar petitions have come before the committee and that the subject has been discussed by various local authorities and schools. I do not know whether the petitioner is present this afternoon, but I note his comment that it is cheaper not to have school uniforms. However, people in my Glasgow Kelvin constituency have told me that it is better to have them. I am not saying that this happens in every school that does not have a school uniform policy, but one secondary school in particular found itself having to deal with people who were not pupils coming into the school and causing problems. I guess that it is all about choice. Perhaps we should continue the petition, but I just wanted to say that a number of headmasters and headmistresses have pointed out to me various safety and security aspects of school uniforms. Indeed, it might even prove cheaper for local parents to buy them.

Bill Walker: I agree with what Sandra White said, and we did not talk before the meeting. Basically, I think that school uniforms are a good idea, and I reject the idea that they are somehow more expensive. Virtually all the schools in my constituency have a school uniform policy. I remember that, when I was a very young person, which was a long time ago, people tried to get away with things to do with their uniform, such as the type of tie that they wore. Broadly speaking, I think that school uniforms are a very good idea. I reject the argument that they are more expensive, but perhaps, as Sandra White said, we should continue the petition.

Mark McDonald: I do not want to correct my colleague Bill Walker, but the petition is not about the cost of school uniforms. The school uniform issue is important, but the petition is about gender identity and issues such as the effect that gender-specific school uniforms have on students who have a conflicted gender identity, albeit that the number of such students might be very small.

With that in mind, rather than continue the petition, perhaps it would be worth passing it on to the Equal Opportunities Committee. Given that although, on the face of it, the petition is about school uniform, it is actually about gender identity, it might be better served being looked at by that committee.

The Convener: Thank you—that was a useful point.

Nanette Milne: I accept what Mark McDonald says and I do not disagree that the Equal Opportunities Committee might be the best committee to take forward the petition, but the issue of cost does come up in the petitioner's comments. In my experience, school uniform is a leveller—it makes people equal. I happen to live in the west part of oily Aberdeen, where there is a lot of money around. Kids were turning up for school in designer outfits that cost the earth, as we all know. A requirement to wear school uniform meant that clothing of a reasonable price was made available to all. Whatever we might read in the press, not everyone in the north-east is well off.

Neil Bibby: I second Mark McDonald's proposal that we should refer the petition to the Equal Opportunities Committee.

John Wilson: Although I agree with Mark McDonald and Neil Bibby on the idea of passing the petition on to the Equal Opportunities Committee, I think that this committee should do the first trawl and see what we get back. As Mark McDonald quite rightly identified, the petitioner seems to be asking a specific question about the transgender community, which is referred to in the petition. I am keen that we should be allowed to take the petition forward in the first instance and to gather some evidence, after which we could pass it on to the Equal Opportunities Committee. There are issues in the petition that fit into that committee's remit and which relate to the existing raft of legislation on discrimination. Transgender is an area that is covered in the legislation that emanated from Europe. I would like us to have the opportunity to do the first trawl and to find out what responses we get, because we may find that we have a stronger case to pass the petition on to the Equal Opportunities Committee on the basis that legislation that is supposed to be in place may not be being applied by education authorities throughout Scotland.

Mark McDonald: I am not going to die in a ditch over the issue, so I am more than happy to roll back. The clerks have identified a number of organisations that we should write to, but there is one glaring omission—given that the petition raises an issue to do with the transgender community, it is important that LGBT Youth

Scotland is one of the organisations whose views we seek.

Neil Bibby: I agree. I think that we should also write to the Scottish Youth Parliament.

The Convener: If there are no further comments, do we agree to continue the petition and to write to the bodies that are identified in the clerk's paper, plus those mentioned by Mark McDonald and Neil Bibby?

Members *indicated agreement.*

Bonds of Caution (PE1412)

The Convener: PE1412 is on bonds of caution. Members have the note by the clerk, the Scottish Parliament information centre briefing and the petition. I invite the committee to consider the petition.

15:30

Sandra White: This is quite an interesting petition. I am not a lawyer, as I said earlier, but the petition is intriguing and I would like to continue it. We should write to the Government about the timeframe and about giving separate consideration to the abolition of the requirement for bonds of caution. I would like to take forward the clerk's recommendations.

Nanette Milne: I agree that we should keep the petition open. We should perhaps ask the Government what the timeframe is for a formal consultation on succession law.

The Convener: Do colleagues agree that we should continue the petition and write to the bodies that are identified in the note by the clerk?

Members *indicated agreement.*

Current Petitions

Acquired Brain Injury Services (PE1179)

15:31

The Convener: There are 12 current petitions for consideration today. The first is PE1179, from Helen Moran, on behalf of the Brain Injury Awareness Campaign, on acquired brain injury services. Members have the note by the clerk—paper 5—and the submissions. I invite contributions on the petition.

Nanette Milne: This is an important petition, and I do not want us to close it at the moment. We have still not heard from the Association of Directors of Social Work. We should perhaps get in touch with the ADSW again and ask it to comment. We could also get an update from the Government on whether any progress is being made on creating a care network.

Mark McDonald: Being a new member, I was not here when the petition was first considered. How many times has the ADSW been asked to provide evidence? Is it more than once?

The Convener: I think that it is twice.

Mark McDonald: I wonder whether we should tell the ADSW that, if we do not get a response, we might call it in for an oral evidence session. Ignoring our request for evidence once may be down to timescale, but doing it twice is pushing it. If it does it a third time, we should bring it in and ask it questions directly.

Sandra White: I agree that we need a reply from the ADSW, and I agree with Mark McDonald and Nanette Milne that we should continue the petition.

John Wilson: I agree, too, although the petitioner has made a number of interesting points in response to the issues raised. I suggest that we forward the petitioner's letter to the Scottish Government and ask it whether it has any comments on the issues raised by the petitioner. There is genuine concern that, although it is fine for the Government to say that social work departments and health boards should have all those services in place, the reality, and the petitioner's experience, is that the support is not there.

The Convener: Are members content to continue the petition and to write to the Scottish Government and the ADSW?

Members *indicated agreement.*

Freight Trains (Overnight Running) (PE1273)

Rail Noise and Vibration (Larbert) (PE1302)

The Convener: The second and third current petitions are PE1273, in the name of Anne Massie, on overnight running of freight trains, and PE1302, in the name of Colin Sloper, on rail noise and vibration at Larbert. Members have the note by the clerk—paper 6—and the submissions. I invite contributions from members.

Bill Walker: I declare an interest in that the Stirling-Alloa-Kincardine line runs through both my council ward and my parliamentary constituency, so I know quite a lot about the subject.

The first petition, PE1273, on the overnight running of trains, should not be taken any further, because the railway line was never closed. Although it was unused for a number of years, it was never closed. It is unreasonable to ask for the line to be closed to the running of trains overnight.

Option 4 on page 5 of the clerk's note outlines the reasons for closing the petition, which I accept, because they are reasonable. The companies involved are private companies and they must operate properly but—I might make myself very unpopular with one or two constituents in saying this—we must remember that these trains, to a large degree, supply coal to Kincardine power station, which requires the regular running of trains.

More work requires to be done on the second petition, PE1302, although I do not know quite what. The second petition's request that there be far more co-operation to make life more tolerable for everyone who lives along the line is reasonable. I would separate the two petitions out.

Sandra White: I bow to the knowledge of the local councillor and constituency MSP but, on the second petition, PE1302, I am concerned that the petitioner has not responded to requests for feedback on two occasions. I might be presumptuous in saying that the reason why a response has not been forthcoming is that he is happy with what has happened and that the petition has achieved what it set out to achieve. I do not know whether that is the case. I am concerned that, on two occasions, we have had no response from the petitioner, which suggests that he is happy with what is happening and that the petition can be closed.

John Wilson: I disagree with my two colleagues on closing the petitions. As I have indicated in the past, I am very knowledgeable about these freight trains, particularly coal freight trains, because they pass by my door; indeed, I might be seen to have a vested interest. I

welcome the responses from Network Rail and DB Schenker on the operational requirements. I received notice this morning from Network Rail on the level of rail workings that will take place over the next three months, which will directly impact on my overnight sleep, so, if I get a bit crotchety over the next three months, I hope that committee members will take into consideration the amount of rail working that is taking place.

We asked Transport Scotland to tell us what discussions had taken place with Clackmannanshire Council on the mitigation works. Transport Scotland indicated in its response that it hoped that the work would start by August 2011, but it now admits in its letter that the work has not commenced. I would like us to keep the petitions open to enable us to get definitive dates from Transport Scotland and Clackmannanshire Council on when the mitigation works are likely to commence and whether they will satisfy the residents who live along the line.

I take on board Bill Walker's comment that, although the railway line was derelict, it was still there and was just reopened. However, houses were built next to the line on the basis that it was not being used at that time.

I know that it is a question that we have asked Transport Scotland, Network Rail and DB Schenker, but why we are shipping in coal to the south-west of Scotland and transporting it by rail to the east of Scotland is still beyond me, given that there are port authorities on the east coast. I do not understand why Scottish Power and DB Schenker continue to use freight trains to transport coal across central Scotland to its destination when two ports on the east coast could handle and accommodate it. I know that these issues have already been raised and realise that the last time we discussed the petition Scottish Power, DB Schenker and Network Rail told us that it was a contractual issue. However, there are still questions as to why the transportation of freight across central Scotland is disrupting many communities in the area.

Mark McDonald: I am afraid to say that I disagree with my colleague John Wilson. I entirely understand the points that he has made, but I do not think that the petition should be used to shoehorn particularly that last point into the discussion.

As far as PE1273 is concerned, work to begin the mitigation measures is in progress. I understand the argument that we should wait for that work to be completed, but it might then be argued that we should wait and see whether the measures are effective and we might never be able to draw a line in the sand. The petitions have achieved much, but I think that we should certainly close PE1302, particularly given that, on two

previous occasions, the petitioner has not responded to the committee's requests.

Moreover, given that work to begin the mitigation works is in progress, I think that PE1273 has served its function and should be closed. If the mitigation works prove to be unsatisfactory, a new petition can be submitted. In short, though, I think that these petitions have achieved their purpose and should be closed.

Bill Walker: I sympathise completely with the view that importing coal via the west coast and shipping it over to the east is crazy; indeed, I and other people on Fife Council have gone through the issue several times with various bodies. However, it all comes down to business economics, where the coal is available and the relative costs. We are trying to reopen various port facilities in Fife to import coal, but the main thinking is that, although coal can be imported there, it is simply not economic to do so. Obviously, I am in regular touch with Scottish Power in my constituency.

When the issues faced by those living along the railway line were brought to my attention as a councillor some years ago, I was very sympathetic to the people who had bought houses beside the line in the belief that it would never be used again and found that suddenly—or so it seemed—trains were running along it. However, I am afraid that it was only hope on the part of the purchasers, as at no time had there been any legal closure of the line. In other words, the people bought the houses on the understanding that there was no such legal aspect and no estate agent ever said that no trains would ever run along the line. I was very annoyed when I found that out, but I am afraid that this is a case of caveat emptor for the home owners.

The Convener: Although we have run these petitions together, we should take a separate decision on them. Although I very much sympathise with John Wilson's position on PE1273, I do not think that we can take it any further than the overnight running issue that it has raised. The other complexity is the incentivisation of the use of trains to carry cargo and the fact that, through the freight facilities grant, successive Governments have funded the ability to take freight off roads and on to rail—and, indeed, boats.

Mark McDonald has suggested that PE1273 be closed. Do members have any views on that?

Bill Walker: I second that suggestion.

The Convener: Do you agree, Nanette?

Nanette Milne *indicated agreement.*

John Wilson: My views are on the record, convener.

The Convener: The committee has agreed to close PE1273 in light of the points that are set out in the clerk's note and which will be identified in the minutes for the meeting.

On PE1302, on Larbert rail noise and vibration, I seek confirmation of members' views on the next steps for the petition.

Mark McDonald: I suggest that the petition be closed. Given that the petitioner has not responded to two previous requests, the committee takes the view that he is satisfied with progress.

The Convener: Are members agreed?

Members *indicated agreement.*

Gypsy Travellers (Council Tax) (PE1333)

The Convener: PE1333, in the name of Shamus McPhee, is on behalf of the Scottish Gypsy Traveller law reform coalition, on disadvantages to Scottish Gypsy Travellers and members of the settled community residing in mobile homes. Members have a note from the clerk—paper 7—on the petition and the submissions. I invite contributions from members.

15:45

Sandra White: The committee has considered the petition previously, and I think that we can close it. It has been confirmed that water and sewerage charges are billed and collected by local authorities on behalf of Scottish Water but that if no services are provided, no charge can be levied. That is one of the issues that was raised. The Scottish Government has clarified that its forthcoming review will not consider council tax banding, water and sewerage charges as they are matters for local authorities and that it will progress a review of the site management guidance for Gypsy Traveller sites. I hope that we will keep an eye on that guidance but, as I believe that most of the questions have been answered, I think that we should close the petition.

The Convener: Do members agree with Sandra White's recommendation?

Members *indicated agreement.*

The Convener: Given the comments in the clerk's paper and Sandra White's comments, we are closing the petition under rule 15.7.

Saltire (Edinburgh Castle) (PE1352)

The Convener: PE1352, in the name of Mark Hirst, is on flying a saltire on Edinburgh castle. Members have a note by the clerk—paper 8—on the petition and the submissions. I invite contributions from members.

Mark McDonald: As I remarked on the overnight freight petition, there comes a point at which you draw a line in the sand. In this case, the Scottish Government has indicated that it will erect a flagpole and is looking for a suitable site. I do not want to get into the position of discussing whether the site that is picked is the best site and so on. We should be satisfied that a site will be chosen and leave it at that. We should close the petition because it has achieved its aim.

The Convener: Do members agree with Mark McDonald's recommendation?

Members *indicated agreement.*

The Convener: The committee has agreed unanimously to close the petition under rule 15.7, for the reasons identified by Mark McDonald and the clerk's report.

Gypsy Traveller Encampments (Guidance) (PE1364)

The Convener: PE1364, in the name of Phyllis McBain, is on clarifying guidelines relating to Gypsy Traveller encampments. Members have a note by the clerk—paper 9—on the petition and the submissions. I invite contributions from members.

Mark McDonald: As a North East Scotland member, I have a knowledge of the issue in the petition. A point that Mrs McBain has highlighted to me in e-mails is that there appears to be lack of consultation of private landowners and individuals who have been affected by the encampments and more consultation of local authorities. Local authorities have a significant role to play, but private areas of land are often affected. We should write to the minister in the terms that the clerk has suggested seeking clarity on the review that is being taken forward, with specific reference to private individuals such as Mrs McBain, who had a harrowing experience as a result of an unauthorised encampment and its aftermath. It would be good if we could get some clarification that individuals such as Mrs McBain will be able to have some input to the review and that it will not simply come from local authorities and other organisations.

Bill Walker: I agree completely with what Mark McDonald has just said. It is important that it is a third-party type of review.

The Convener: If no other members want to contribute, do we agree that we will continue the petition by writing to the Scottish Government in the terms set out by Mark McDonald?

Members *indicated agreement.*

Mosquito Devices (PE1367)

The Convener: PE1367, in the name of Andrew Deans, is on behalf of the Scottish Youth Parliament, on banning Mosquito devices. Members have a note by the clerk—paper 10—on the petition and the submissions. I invite contributions from members.

Sandra White: It is refreshing to hear that someone who has not been asked to give evidence wants to come along and give their side of the story, as Compound Security Systems does—good for it. It is good that the committee can facilitate that. We should keep the petition open and invite the company to give evidence.

The Convener: Is that agreeable to members?

Members: Yes.

John Wilson: No, I do not agree that we should invite the company along to give evidence. The Parliament should not be used to advertise companies that use such devices. We should pass the letter from the National Autistic Society to the Justice Committee, along with the evidence that we have gathered. If we invite the company to give evidence, we will be giving it a platform from which to justify the continued use of the device in communities. We should refer the petition to the Justice Committee, so that it can consider the legal implications of the continued use of the device.

Mark McDonald: Not for the first time today, I disagree with John Wilson. We would not be affording a commercial opportunity to the company. If it unwisely chooses to use its time before the committee to put forward a sales pitch, it will find itself coming back down to earth with a bump. I am pretty sure that members would have strong questions for the company about the use of the devices—there are a number of questions that I want to put to the company.

The Convener: I was just talking to the clerk, and I think that the issue is not so much a legal as a societal one. Is there an argument for bringing the company and the petitioners together before the committee, to have a dialogue?

Bill Walker: Yes. I disagree with John Wilson. The company and its product have been mentioned by name and it is only right to give it a chance to respond. As Mark McDonald said, we know a sales pitch when we see it. The company has been criticised and we will listen to what it has to say.

Nanette Milne: I had not thought about inviting the petitioner along too, which is a good idea. The petition was presented in the Parliament at the end of the previous session, and we do not receive many petitions from young petitioners. It

would be good to have the petitioner back to take part in a discussion—it might set a precedent.

Neil Bibby: I was initially sceptical about inviting the company, in that its evidence will be, “No, we are doing this,” so I was not sure what would be achieved. However, the discussion has moved on and I support inviting the petitioner as well as the company to give evidence.

John Wilson: The committee seems to be minded to invite representatives of the company to give evidence alongside the petitioner. I suggest that we also invite a representative from the National Autistic Society to give evidence on that day. If we are going to open up the evidence session, we should hear from the society, which has written to us about the impact on people with autism. An issue that has come up is that only young people are affected by Mosquito devices, but NAS has opened up an issue about an effect on a much wider community.

The Convener: Do members agree to invite three groups to give evidence at a future meeting—the petitioner, Compound Security Systems and the National Autistic Society?

Members indicated agreement.

Hospital Education (PE1381)

The Convener: PE1381, which was lodged by Gwen Garner on behalf of Action for Sick Children (Scotland), is on education provision for children and young persons who are absent from school due to illness. Members have a note by the clerks—paper PPC/S4/11/8/11—and submissions. I invite comments.

Nanette Milne: I would feel comfortable if the petition were closed. The Government has undertaken to conduct a review of the guidance, as sought by the petitioner, and has said that the petitioner will be invited to participate in the review as a key stakeholder. I think that the petition’s purpose has perhaps been achieved.

The Convener: Do members agree to close the petition, in light of Nanette Milne’s comments?

Members indicated agreement.

Speech and Language Therapy (PE1384)

The Convener: PE1384, by Kim Hartley on behalf of the Royal College of Speech and Language Therapists, is entitled “Giving Voice—speech and language therapy transforms lives”. I invite contributions from members.

Sandra White: I find the petition quite difficult. Like most committee members, I am sure, I have dealt with this subject for a number of years. There seems to be a shortage of speech and language

therapists. The amount goes up and down according to demand.

I am loth to close the petition, but the Government has made various points about the timescale for publication in relation to the issues that have been identified in the petition. Perhaps we could continue the petition and ask for a timescale for the study that is mentioned.

Mark McDonald: As Sandra White said, many of us have had some involvement in the issue. I have personal involvement in it and I also have a number of cases in my area.

There is a question about how speech and language therapy fits into the preventative spend agenda that is being pursued and whether health boards are prepared to view it as an option in that regard. I have seen figures from the Royal College of Speech and Language Therapists about the impact of £1 that is invested in speech and language therapy in terms of future savings for other services, so I think that it fits into that agenda.

We should keep the petition open and write to the Scottish Government. Perhaps we should also ask the national health service how it sees speech and language therapy fitting into the preventative spend agenda, whether any moves are afoot to reprofile the speech and language therapy budgets in relation to preventative spend, and if not, why not.

Nanette Milne: I agree with Mark McDonald.

The Convener: Do members agree to continue the petition, in the light of comments that have been made by members and the points in the clerks’ action plan?

Members indicated agreement.

Lesser-taught Languages and Cultures (University Teaching Funding) (PE1395)

The Convener: The next petition is PE1395, in the name of Jan Čulík, on targeted funding for lesser-taught languages and cultures at universities. I invite contributions from members.

Sandra White: I have been involved in the issue through my work with the University of Glasgow and, like others, I have been visited by Jan Čulík and Hugh McMahon, a former member of the European Parliament. As is evident from the papers before us, the minister has had letters and visits as well.

The position that is outlined in our papers contradicts the evidence that has come from the university and the petitioners. We now have a sub judice issue, because the issue involving the senate and the court of the university has been

taken to court. Obviously, we cannot do anything about that in the committee.

We should write to the Government to ask whether it will consider giving lesser-taught languages and cultures controlled funding subject status, which would enable the funding to be targeted. That is what the petitioners say is required if we are to ensure that the study of central and eastern European culture and languages carries on, particularly with regard to Czech and Russian. I would like those issues to be clarified. Perhaps we could even invite the University of Glasgow's principal to give evidence on the petition.

The Convener: And perhaps the Scottish Further and Higher Education Funding Council. That is a useful point. The petition has been very strong. I think that everyone was here when we got the presentation from Jan Čulík and his colleagues.

16:00

Bill Walker: I support what Sandra White said. I am very sympathetic to the issue. That does not mean that we should necessarily continue the petition, but we should do so for further investigation, as other avenues for how the activities can be funded are being explored with the Government. Much of that comes down to money, unfortunately. We have such a valuable asset, and I would hate to see the whole thing fall by default.

Mark McDonald: I agree that we should continue the petition. Like other members, I have had meetings with the petitioners since the committee first considered the petition. Like all petitioners, they were keen to impress the fact that they wanted the petition to continue, but there are issues that need to be looked at.

My ears pricked up with interest when Sandra White suggested having the university come to the Parliament to give evidence. I said to the petitioners that we might want to consider that but, if there is a potential sub judice issue, we might have to wait to call the university in for evidence, as we would not want to stray into such areas. We could write to the Government, and when a response comes back and the sub judice matter has ceased to be an issue, we could call before us to give oral evidence the university and possibly the Scottish funding council. We should keep that option open.

The Convener: Yes. Obviously, the clerk will research the sub judice issue, but it certainly makes a lot of sense to continue the petition to find out whether the Government will consider giving lesser-taught languages and cultures

controlled funding subject status, which Sandra White recommended.

Neil Bibby: I declare that I have met and know the petitioners.

There is obviously a legal issue that we need to be wary of, but there are a couple of points to make on the way forward. The Scottish Government suggested that points that are raised in the petition could be put to the review of higher education governance. The deadline for doing that has passed, so I do not know whether the committee should write to those who are involved in that review to put forward the points that have been made. If we cannot ask for evidence from the University of Glasgow in the short to medium term, perhaps we could ask for further evidence from the Scottish funding council.

John Wilson: I put it on the record that I have not met the petitioners, although there have been several requests for a meeting.

I remind members of the comments on a petition that was discussed earlier, when I was told that I was straying into areas that the petition did not cover. It is clear that the petitioner's response concentrates on a particular institution. My colleague Sandra White asked whether we could invite the University of Glasgow's principal to discuss the funding for minority languages, but the petition directly refers to the Scottish Government and its advice to the Scottish funding council on teaching lesser-taught languages.

If we take on the petitioner's latest submission, the same argument that was made earlier will apply—we will stray into an area that the petition does not cover. The committee can decide to do that, but it must be aware that it is doing so and that that will open up issues that were not originally covered in the petition.

We tend to look at petitions in general terms so that they can have an impact on the wider community, but the petitioner clearly came back on funding in a specific institution, which he now wishes to be examined and further developed. If the committee wishes to do that, that is its decision, but I remind committee members that that will open up the floodgates for future petitioners to add issues that they may expect the committee to deal with.

The Convener: That is certainly a useful and reasonable point. It is legitimate to consider the Scottish funding council or associations of principals of Scottish universities, but we need to look closely at the terms of the petition.

Sandra White: Part of the background is the fact that we wrote a letter to Glasgow university and got a reply, albeit perhaps not from the principal. It is quite within the committee's

competence to call in evidence from Glasgow university about whether courses are taking place and from the Scottish funding council, which distributes the money. It is fair to say that the committee moves on and that that sometimes involves other people coming in, as with the previous petition on Mosquito devices.

I suggest that we continue the petition, write to the minister and check the position on the subject's being sub judice. We can wait until the evidence comes back, at which point the committee can facilitate a meeting with the Scottish funding council and with representatives from the Glasgow university language courses. That is the course of action that we should take.

Bill Walker: On the point about the Scottish funding council, I have met the people concerned and studied the matter. In a previous life, I was very aware of languages and culture through travelling on business. I want to ask you, convener, and my colleagues whether it would be worth while when writing to the Scottish Government to contact the Minister for Energy, Enterprise and Tourism, Fergus Ewing. One of the reasons that the petitioners give for the value of their school is the tremendous contribution that language and cultural awareness make to enterprise, tourism and international relations. We are talking money here, of course. If I could wave a magic wand, I would suggest getting money from that kind of source, rather than simply going down the academic route to the Scottish funding council. Does that make sense?

The Convener: Do any members want to make any additional points?

There certainly seems to be consensus that we should continue the petition and write to the Scottish Government and the Scottish funding council, which would keep within the terms of what the petitioners said originally. In fairness, when the petitioners first approached the clerks, the issue was specific to Glasgow, but there was subsequently a widening-out. Writing to Fergus Ewing would be sensible. An issue is whether we confine the question to Glasgow university or whether we involve a body that is representative of the principals of the universities in Scotland. That would cover John Wilson's point.

Mark McDonald: That is probably a decision for another day. We are taking the decision to write to the Scottish Government at this stage. Once we have ironed out the sub judice issue, we can decide whom it will be appropriate to call to give evidence, if that is what we decide to do. Once we have received a response from the Scottish Government, we might decide not to call for evidence. That is a decision for the future, however, and we should not get too hung up on it today.

The Convener: That is a fair point, as matters might well have moved on by the time we look at the petition again. Do members agree to continue the petition and to write to the Scottish Government, in line with the comments from the clerk and from Sandra White—and Bill Walker's comments as well?

Members indicated agreement.

Bill Walker: Thank you.

The Convener: I apologise, Mr Walker, for missing out your point.

In Care Survivors Service Scotland (PE1397)

The Convener: PE1397, in the name of Mary Roy, is on the future support of and funding for the In Care Survivors Service Scotland. Members have a note by the clerk—PPC/S4/11/8/14—and submissions. I invite contributions from members. I will allow a few seconds for them to find the right paperwork.

Mark McDonald: This is one that we need to keep open. I said earlier that we did not always have to keep something open until the very end but, given that negotiations are under way, it would be worth while to find out the relevant timescale from the Government and to examine the decision that is made. We should also ascertain the petitioner's views throughout the process. We should keep the petition open and ask the Government to give us an indication of the timescale and to keep us updated on progress.

John Wilson: I agree that we should keep the petition open. I suggest that, when we write to the Scottish Government, we ask how the discussions regarding continued funding for the body link to the earlier evidence that we heard today about setting up the forum and whether this could be part of the future work done with in-care survivors funding. We should find out whether the Government has joined up the pieces of the jigsaw to ensure that we have a comprehensive support structure for survivors of institutional abuse.

Bill Walker: I agree with what John Wilson has just said. I would hope that this could tie in with the major bit of work that we discussed earlier involving the Scottish Human Rights Commission and all its work. It would seem to me to fit in with that and to offer mutual benefit, but perhaps I have got it wrong.

The Convener: So it is agreed that we continue the petition in the terms set out by John Wilson and in the clerk's report.

Members indicated agreement.

Wild Animals in Circuses (Ban) (PE1400)

The Convener: Our final current petition is PE1400, in the name of Libby Anderson, on behalf of OneKind, on banning wild animals in circuses. Members have a note by the clerk—PPC/S4/11/8/15—and submissions. I invite contributions from members.

Nanette Milne: We should keep the petition open because we know that the Scottish Government intends to consult on the use of wild animals in circuses and hopes by January to have a better understanding that will feed into drafting the consultation. It is only fair to keep the petition open until we have a bit more knowledge.

The Convener: Thank you. If no other member wishes to contribute, is it agreed unanimously that we continue the petition and write to the Scottish Government in the terms set out in the clerk's report?

Members *indicated agreement.*

The Convener: We will now move into private session for the next agenda item.

16:12

Meeting continued in private until 16:21.

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