



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# PUBLIC PETITIONS COMMITTEE

Tuesday 4 March 2014

Session 4

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**PUBLIC PETITIONS COMMITTEE**  
**5<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*David Stewart (Highlands and Islands) (Lab)

**DEPUTY CONVENER**

\*Chic Brodie (South Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Jackson Carlaw (West Scotland) (Con)

\*Angus MacDonald (Falkirk East) (SNP)

\*Anne McTaggart (Glasgow) (Lab)

David Torrance (Kirkcaldy) (SNP)

\*John Wilson (Central Scotland) (SNP)

\*attended

**THE FOLLOWING ALSO ATTENDED:**

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

Committee Room 3



# Scottish Parliament

## Public Petitions Committee

*Tuesday 4 March 2014*

[The Convener *opened the meeting at 10:00*]

### New Petition

#### Additional Support for Learning (Funding) (PE1507)

**The Convener (David Stewart):** Good morning, ladies and gentlemen. I welcome you all to this meeting of the Public Petitions Committee. As always, I ask everyone to switch off electronic devices as they interfere with our sound system.

I have received apologies from David Torrance.

Agenda item 1 is consideration of a new petition. PE1507, by Alex Orr and Sophie Pilgrim, on behalf of the Scottish Children's Services Coalition and Kindred, is on funding for additional support for learning in Scotland. The committee decided not to invite the petitioners to attend to speak to the petition. Members have a note by the clerk, the Scottish Parliament information centre briefing and the petition.

Members will be aware that the petition requests that we urge the Scottish Government to write to all 32 local authorities in Scotland to remind them of their obligations under the getting it right for every child approach, which will become statutory under the Children and Young People (Scotland) Bill in 2016. In a sense, the petition is straightforward, in that it asks us to write to the Scottish Government to ensure that it contacts all the local authorities, and the objective is fairly straightforward for the committee to achieve. However, as always, I ask committee members whether they have any comments and whether they agree that we should write to the Scottish Government in the terms that the petition requests.

**Jackson Carlaw (West Scotland) (Con):** That would be entirely appropriate. We considered the matter in advance, and I have looked at the petitioners' request, which seems entirely reasonable. The logical first step would be our undertaking to write to the Scottish Government to seek its views on the request.

**The Convener:** Do members agree to Jackson Carlaw's proposal?

**Chic Brodie (South Scotland) (SNP):** I agree, but one of my concerns is that there does not seem to be a lot of substantive information about the number of authorities and children involved

and the estimates or lack of estimates. I know that it is sometimes difficult for petitioners to bring forward substantive information, but I wish that we had more information. I presume that we will get that from the Government.

**John Wilson (Central Scotland) (SNP):** The petition indicates that the petitioners wrote to all 32 local authorities but received responses from only 13, and only seven gave substantive assurances that they were tackling the issues that the petitioners raised.

We can write to the Scottish Government and ask for its views on the petition, but I would be keen for us to write to either the Convention of Scottish Local Authorities or a range of local authorities to find out its or their views on the petition ahead of the Scottish Government writing, if it agrees to write. If local authorities are not delivering the additional support for learning that the petitioners have identified, I would be keen to find out what the issues are. Rather than write to the Scottish Government, waiting for it to respond and following that up by writing to local authorities, we could short-circuit the process slightly and ask some local authorities to respond first.

I suggest that we ask some of the larger local authorities, such as Glasgow City Council and possibly North Lanarkshire Council, and perhaps one or two smaller ones, such as East Dunbartonshire Council and Midlothian Council, for their views. I am not sure whether they are among the local authorities that responded to the petitioners, but it would be useful to get further information on the issues that the petitioners have raised.

**The Convener:** That is an add-on to Jackson Carlaw's suggestion. Do you agree with that?

**Jackson Carlaw:** I am content with it, although the petition asks the Scottish Government to undertake that exercise. I wonder whether John Wilson is, in effect, inviting us to undertake the exercise that the petitioners are asking us to write to the Government to ask it to undertake. Might that not lead to some duplication? It is not that we are being asked to write to the Scottish Government to request its views; we are being asked to write to the Scottish Government to ask it to write to all local authorities, reminding them of their responsibilities.

**John Wilson:** If the committee feels that we should just write to the Scottish Government, as the petitioners have requested, I am quite content with that. I was just trying to short-circuit some of the to-ing and fro-ing and reduce the time that the committee might have to spend on the petition. We may find that the Scottish Government will be content to write to the local authorities, but we might not find out what the underlying problems

are. We might decide to close the petition once the Scottish Government has written to and received responses from the local authorities.

**The Convener:** I suppose that we can always put the aspects of your request into the request to the Scottish Government.

**Chic Brodie:** That will give the Government the opportunity to clarify whether there is any overlap with the Children and Young People (Scotland) Bill.

**The Convener:** Are members happy with that course of action?

**Members** *indicated agreement.*

**The Convener:** As members are aware, we were to take oral evidence on a petition on group B streptococcus this morning. Unfortunately, the petitioner is unable to attend due to family commitments, but they have confirmed that they are able to attend on 18 March. I mention that so that committee members can put a note in their diaries about that deferment of today's evidence.

## Current Petitions

### School Bus Safety (PE1098 and PE1223)

10:06

**The Convener:** We move on to current petitions. We start with PE1098, by Lynn Merrifield, on behalf of Kingseat community council, and PE1223, by Ron Beaty, both of which are on school bus safety. Members have a note by the clerk and the submissions.

Stewart Stevenson was keen to come along for the committee's discussion of the petitions, and I understand that he is on his way. When he arrives, I will invite him, with the committee's agreement, to make a few general points. Before he arrives, I open the floor to committee members to express their views and give their thoughts on the next steps.

I highlight one point that members will be aware of. PE1098 is a long-standing petition, and I think that it is a very good one, but the clerk has reminded me to advise you that we have had no contact from the petitioner since March 2010. I put that point of information on the record. As I say, PE1098 has been a positive petition.

One first step would be to defer PE1223 to a future meeting so that we can seek an update from the Scottish and UK Governments on the progress of the section 30(2) order. Members will be aware that, under the Scotland Act 1998, it is possible to change legislative competence, as long as both Parliaments agree, with a modification through an order in council. That has happened in other areas, such as railways. It is possible for legislative competence to move from one Parliament to another, and to judge from the correspondence that I have seen between the two Governments, there seems to be keenness to try to get a change on the matter.

**Chic Brodie:** I do not know if there is in fact keenness. The last time the matter was raised, I could not for the life of me see why things were taking so long. I do not understand the lack of willingness on the UK Government's part to allow legislative competence to be transferred to the Scottish Government so that we can do something about the matter. We have lost sight—the UK Government has certainly lost sight—of what we are talking about. The end customers are the children who travel by bus. Having looked at the correspondence between our minister and the Department for Transport, I have no idea why papers are apparently just being shuffled around down south.

**The Convener:** Mr Stevenson has arrived just in time. We know that you are very interested in

the issue, Mr Stevenson, and that you have a strong constituency interest. Would you like to address the committee on the merits of the petition?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Thank you, convener. I am much obliged. I thought that you might be covering the petitions a little later, but fortunately the phone call came, so I am able to be with you.

It is worth our while to go back nearly four years, to when Mike Penning, who was then the appropriate minister at Westminster, came and gave evidence to the committee and indicated a willingness and a commitment to help out. In relation to what would be useful to us to progress the issue, Westminster has already provided the powers to the Welsh Assembly. The committee may wish to consider those points.

There is no magic bullet here, of course. It is a question of making some changes and seeing whether they help with bus safety in practice. In the north-east of Scotland and a couple of places in the south, there have been incidents of serious injury and harm to schoolchildren, and indeed death, in the vicinity of dropping-off and picking-up points of buses, and some of the proposed changes would appear to be helpful in relation to that. To be blunt, given that the petition has been around since 2008, we ought to be in a position to see some progress. I hope that the committee will keep the petition open and remain committed—as I am sure it will be—to helping not only my constituents but, more important, kids right across Scotland.

**The Convener:** Thank you. Just before you came in, Mr Stevenson, we were debating the use of section 30(2), which you will know from your time as the Minister for Transport, Infrastructure and Climate Change, as it has been used, I think, in relation to another transport issue. Mr Brodie expressed frustration about the delay, particularly from the UK Government.

The letter that I received via Keith Brown from Stephen Hammond, Parliamentary Under Secretary of State for Transport, states:

“Robert Goodwill MP, Under Secretary of State, replied on 19 December”

—that was December 2013—

“that the Department for Transport officials are awaiting details of the functions for which transfer is being sought from Transport Scotland before proceeding.”

I am not making a party political point here, for obvious reasons. It is just that the Department for Transport seems to have patted the ball back to Transport Scotland for it to make some decisions.

It does not appear to me that there is any reluctance to transfer the powers, and I think that

there is great willingness within the Scottish Government set-up to get some action if they are transferred, but what is your perspective?

**Stewart Stevenson:** You are quite right to distribute the issue among the relevant parties: Transport Scotland, the Scottish Government and the UK Government. It is relatively modest in scope, and administratively, such things often disappear a little bit too far down the pile. That is probably the case for all those who are party to the issue. However, I think that, as long as the committee keeps the pressure on, something will happen.

I have not counted the number of interactions that the committee has had with the relevant parties, but when I printed out the list of interactions, it ran to more than a page, with one line per item, the first of which is a submission in 2009 and the most recent of which is a Scottish Government letter from the past month or two.

This has been a long-running issue, and if the committee continues to add its weight, it could ensure that Transport Scotland lives up to its obligations, that the minister then signs the necessary correspondence and that the officials down south keep the issue at the top of their in-trays. I know that they have many things to which they pay a lot of attention, of which this issue will merely be one.

**The Convener:** Can you provide any other helpful advice to the committee to help us to resolve the problem?

**Stewart Stevenson:** What is being done is probably the correct thing. I have in my mind an example of something that took a terribly long time when I was the Minister for Transport, Infrastructure and Climate Change. It related to Vehicle and Operator Services Agency inspections and the need for the police in Scotland, although they were not needed in England. Everybody agreed, but after three and a half years, the situation had still not been fixed even though, every time we wrote, we were told that it would be. It was just an administrative issue. There was not a lack of willingness; it just somehow happened. I think that this issue is probably a similar case.

**The Convener:** It seems to me that there is willingness to accept the terms of both petitions. The only thing that the Scottish Government probably does not want to do is to introduce a ban on overtaking school buses. In many states in America, people are not allowed to overtake school buses. I am not sure whether the legislation is at the state level or the federal level, but there are certainly laws in America to prevent that from happening. However, the Scottish Government does not want that particular aspect of what PE1223 calls for to happen—that is where we are.

On the rest of the proposals, I think that there is willingness to achieve a solution.

10:15

**Stewart Stevenson:** I am not overly concerned about the detail. What we need to do is to get the powers, apply them and see what works, and we will then be able to see what we should progress in the longer term. I suspect that, until we try things, we will not have good data on which to base decision making. That data will help colleagues elsewhere in these islands to make decisions, too.

**Jackson Carlaw:** I think that I heard Mr Stevenson say a moment ago that the powers had been devolved to Wales. However, when Keith Brown appeared before the committee, he said:

“The UK Government has confirmed that it is not prepared to devolve construction and use regulations that would allow us to prescribe the design of vehicles.”—  
[*Official Report, Public Petitions Committee*, 13 November 2013; c 1790.]

Has that power been devolved to Wales? It seems to be the one without which the Scottish Government feels that it could not give effect to the aims of the petition even if other powers were devolved or certain other dispensations were given.

I am just trying to understand the situation. Has Wales managed to go ahead without that dispensation, or has it been granted to Wales? I understand why there would be concern about different construction rules applying to vehicles in different parts of the UK, because they would be crossing borders, and complications could arise from that.

**Stewart Stevenson:** I do not want to give you false certainty on the subject. I am not a master of the detail of what has been devolved to Wales. However, with regard to construction and use, I think that we are talking about seat belts rather than anything else. That is the subject that PE1098 deals with; the petition in which I have a constituency interest is not directly about seat belts.

In reality, most of the buses are fitted with seat belts, albeit that they are mostly two-point ones and not three-point ones. I do not take a position on the issue. My concern is more to do with the outside branding and how we control access to and egress from the buses. That is what Mr Beaty is most focused on.

**Chic Brodie:** Jackson Carlaw asked part of the question that I wanted to ask, but I will make a general comment. Perhaps it is because of the sector that I come from, but I find it absolutely unbelievable that, as Mr Stevenson pointed out, we have allowed an issue such as this to go down

the pile. I am sick and fed up of being told that we will get responses to queries in four weeks. I received a letter last week from the Home Office telling me that it would not be answering any more of my correspondence relating to an immigration issue, because immigration is reserved.

As I said earlier, we seem to be losing sight of why we are here. It is not a game between two Governments. We are talking about children and children's safety. For the life of me, I do not understand why it has taken this length of time to come to some sort of solution. I suggest that we ask the minister to come back to the committee, hopefully with a solution but at least to explain why this is taking so long.

**Jackson Carlaw:** I note that the letter from the Department for Transport dated 13 December states that the DFT was waiting to hear from Transport Scotland, which said, as far back as March last year, that it was going to provide a list of the powers that it felt needed to be transferred.

It might be interesting for the committee to write to the Government in Wales to ask what powers it required in order to give effect to the changes in the legislation that it made. That would give us a checklist from a part of the United Kingdom where the change has been successfully accomplished, and we could use that to determine the necessary requirements for the objects of the petition to be achieved. I feel that we are sitting in the middle, in a vacuum of understanding, and the Welsh experience would give us something against which we could benchmark what is happening.

**The Convener:** That is a sensible idea. We have two immediate proposals. One is to invite the minister to attend and the other—they are not mutually exclusive—is to write to ask the Welsh Minister for Economy, Science and Transport what her experience has been. What do members think of those suggestions?

**Anne McTaggart (Glasgow) (Lab):** I fully agree with those two suggestions. It is a current petition; have we sought the Welsh Government's advice on the issue in the past?

**The Convener:** No.

**Anne McTaggart:** It would be more than helpful, in that case, for us to do that, and thereafter to speak to our own Minister for Transport and Veterans.

**John Wilson:** I suggest that, if we are going to invite Keith Brown to give evidence, we also ask him to provide us with a timeline for Scottish civil servants' communications with the Department for Transport at Westminster. During the third session of this Parliament, Mike Penning MP attended this committee and assured us that any request that was made by the Scottish Government to transfer



the powers would be looked upon favourably. Now, more than three years later, we are told in Keith Brown's letter of 9 January that the civil servants have just made an application to the Secretary of State for Scotland for transfer of those powers.

I would like to know what has happened in the intervening three years since Mike Penning gave quite clear assurances. The then minister for transport in the Scottish Government was present when those assurances were given, so it seems to be clear that there has been a failure to follow through on the issues that were raised at that time and on the assurances that were given by Westminster. I know that there are procedural issues relating to applications for transfer of additional powers under the Scotland Act 1998, but the reality, based on the letter of 9 January, is that we are only now being given the assurance that civil servants are finally making an application, more than three years after the event.

**The Convener:** That is a good point. Chic Brodie has just made an interesting point to me off-microphone: he has suggested that we have at a future meeting a representative of the UK Government as well as Keith Brown, so that we do not suffer from "It wisnae me" syndrome and can determine what is happening, because it is in our interests to ensure that the matter is resolved.

As I said at the start, I do not pick up that there is any political or policy reason for not transferring the powers. Both Governments seem to want it, but there seems to be some bureaucracy that has stopped it happening. How do members feel about setting up a future meeting at which both ministers appear together?

**Jackson Carlaw:** If such can be arranged, I have no objection to its taking place.

**The Convener:** In the meantime, we should still write to the Welsh Government.

**Jackson Carlaw:** That would help to inform us as to what is needed.

**The Convener:** The other thing that we could stress when we write to the UK Government—this is a bit of a cause of mine—is that we can offer them an opportunity to give evidence by videoconference rather than in person. I feel that we should use that facility more; there is an associated climate change issue, and it might also allow us to arrange an earlier meeting. Do members agree?

**Members indicated agreement.**

**Angus MacDonald (Falkirk East) (SNP):** I concur with the comments that have been made so far and am happy with the recommendations that have been made. We can all see that it is a prime example of the wheels of government

grinding exceedingly slow, but when two governments are involved the wheels are not just grinding slowly, but are at dead slow or stop. I hope that section 30(2) of the Scotland Act 1998 will be used as soon as possible, but I am certainly happy with what has been suggested.

**The Convener:** Unless there are any fresh suggestions, I shall summarise what we are doing. First, we shall write to the Welsh transport minister to ask about the Welsh experience of what happened in similar circumstances, so that we have that intel before the committee. Secondly, we shall set up a future meeting to be attended at the same time by Keith Brown and by representatives from the UK Department for Transport—whomever are the appropriate minister and civil servants—with the recommendation that the meeting be held by videoconference. We are not suggesting that we have the Welsh Government minister here at the same time. That would overcomplicate things. That is what I have picked up from the committee.

**Angus MacDonald:** I presume that we would invite someone from Transport Scotland along with the minister.

**The Convener:** Yes. The minister would normally bring along representatives from Transport Scotland, although we could suggest it in the letter to Keith Brown.

**John Wilson:** I just want to reiterate my point, convener. Are we writing to ask the Scottish Government for a timeline? In 2010, we received an assurance that the issue could be dealt with by the Scottish Government and UK Government, but I am concerned about the letter of 9 January, in which the minister assures us that civil servants are only now applying to transfer the powers. It would be interesting to get a timeline and to hear what discussions have taken place, and why it has taken so long to get to the stage that we have now reached—more than three years later.

**The Convener:** That is a good idea.

**Jackson Carlaw:** We need to be clear about the objectives of the engagement with ministers. I suspect that, if ministers from both Governments thought that we were seeking to establish a negotiation "live, on air" to resolve matters, the powers that be around them would recommend that they think twice before participating. We are really seeking to clarify the issues so that Governments can resolve them, rather than trying to broker that resolution, which might be frowned upon.

**The Convener:** It might raise the eyebrows of some civil servants if there was a suggestion that we are doing that. Perish the thought.

**John Wilson:** I draw members' attention to the *Official Report* of 10 October 2010, in which Mike

Penning gave a clear assurance that if the Scottish Government were to apply for the transfer of the powers, that would be considered favourably. I understand Jackson Carlaw's reservations about the committee brokering negotiations between the Scottish Government and the UK Government. However, if a UK Government transport minister gave us such a clear assurance in October 2010, that means that the committee has a clear role in brokering some kind of agreement between the UK Government and the Scottish Government so that we can move the petition forward.

It has been quite frustrating sitting here for almost four years, listening to the same debate, and not seeming to get any further forward except that an application is now being made via the Secretary of State for Scotland to the UK Government for the transfer of powers.

**Stewart Stevenson:** It is worth reminding ourselves that there has, of course, been a change of Government down south, although I do not believe that that is material in any sense. Mike Penning felt quite passionately about the issue. If I recall correctly, he was a fireman in a former life and so, in that capacity, had to deal with the consequences of accidents on our road networks. He therefore had a lot of personal oomph behind making something happen. That is not to criticise any of his successors, but sometimes when a matter is personal, things can happen more quickly.

I am confident about and happy with what I am hearing and I am sure that my constituent, Mr Beaty, will be too.

**Jackson Carlaw:** Mike Penning is a member of the current Government.

**Stewart Stevenson:** Is he? Have I got that wrong?

**Jackson Carlaw:** Yes.

**Stewart Stevenson:** In that case, *mea culpa*.

**Jackson Carlaw:** There has been continuity, in that sense.

The difficulty is with the definition of the powers. That is why I think that the exercise of writing to the Welsh Administration will be helpful. There might well have been an understanding that powers could be transferred, but there might have been a subsequent request or it might have emerged that powers that go beyond those that were initially envisaged would have to be transferred. That is why I would like to understand how the transfer was achieved in Wales; it would make things clearer and easier for us.

**The Convener:** We have a good programme of action for dealing with the petition. John Wilson has another point.

**John Wilson:** It is just a correction, convener. I gave the date of the meeting to which I referred as 10 October 2010, but it was on 26 October 2010.

10:30

**The Convener:** Thank you for that. We have a clear plan of action for Ron Beaty's petition. I look forward to the subsequent meetings and to getting the issue resolved. I thank Mr Beaty for being in the gallery today.

PE1098, by Lynn Merrifield, is another good one. However, my understanding is that she has now emigrated. In theory, there is nothing to prevent us from continuing the petition, but the clerks have not been in touch with her since 2010. Unless members feel strongly about the issue, it would probably be best to close the petition on the basis that we have no contact with the petitioner.

**John Wilson:** Some time ago, the committee decided to conjoin the two petitions because of the crossover between the issues. I am keen to keep the petition live, because we have been running the two petitions side by side and we have always discussed them together. The main issue in Lynn Merrifield's petition is seatbelt safety, which is as relevant today as it was when the petition was originally lodged.

**The Convener:** Personally, I am relaxed about the issue. I just thought that I should do my duty and ensure that the committee knows that there is no current contact with the petitioner. As John Wilson said, Lynn Merrifield's petition is mainly about three-point seat belts, which Stewart Stevenson has referred to. If members feel strongly about it, I am totally relaxed about keeping the petition open. Do we agree to keep it open?

**Members** *indicated agreement*.

**The Convener:** I thank Mr Stevenson and Mr Beaty for attending.

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

**The Convener:** Our third current petition is PE1351, by Chris Daly and Helen Holland, on time for all to be heard. Members have a note by the clerk and the submissions, including a late submission by the Scottish Government, in the additional papers. Members will have read the material but, to summarise, the petition asks for a time for all to be heard forum to be set up, with a compensation scheme. The Scottish Human Rights Commission has been working with the centre for excellence for looked-after children in

Scotland to set up human rights interaction on historical child abuse. An action plan is being drawn up and we await views on it—obviously, the Scottish Government will respond—so there are still some actions to be carried out. The other point that I picked up in the additional papers is that the organisation Former Boys and Girls Abused of Quarriers Homes has offered to give evidence.

That is a summary of where we are with the petition. I know that a lot of members have an interest in it, so I will throw the meeting open to comments. Before I do so, I point out that my view is that it makes sense to await the finalised action plan and the Scottish Government's response before we consider the petition in detail. Clearly, however, that is up to members.

**John Wilson:** I have a particular interest in the petition, which is another that has been before the committee for a number of years. We are trying to resolve the issues that the petitioners have raised. I am slightly disappointed by the late submission from the Scottish Government, because I do not think that the petitioners will have had time to consider what the Scottish Government has outlined—the letter is dated Friday 28 February. Given the involvement of the petitioners and the correspondence and responses from them in the past, it is always useful to hear their reaction—especially to responses from the Scottish Government.

Developments are taking place in other jurisdictions in the United Kingdom. In particular, earlier this year the Northern Ireland Assembly took action to try to deal with cases of historical abuse. I welcome some of the movement by the Scottish Government. On your recommendation, convener—that we await the final action plan and the Scottish Government's response to it—I say only that if we do that, we should also ask the Government to provide a speedy response to the action plan, once it is produced.

We know from the extensive paperwork that we have received for this meeting that time-bar issues are coming into play, as time goes on. I urge the Scottish Government to take on board some of the issues that have been raised by the petitioners and others who have suffered historical abuse. Time-bar criteria should be looked at carefully to ensure that no one who was subjected to child abuse is penalised by a legal technicality that puts a time bar on any application.

The issue requires a great deal of sensitivity. I urge everyone who is involved—especially the Scottish Government—to understand that they have a role to play in dealing with historical abuse in a way that involves those who were abused. We must get to the root cause of the problems and ensure that such abuse never happens again in Scotland, or elsewhere in the UK.

**Chic Brodie:** I am almost becoming a committee bore by asking why such things take so long. I do not understand why the situation has gone on for years. As Mr Wilson said, there are implications in relation to time bars and compensation. I do not give up, but I am in despair. We seem to forget who is at the end of all this.

**The Convener:** I suggested that a next step is to await the finalisation of the action plan. In fairness, what the SHRC has done has been good. It is the appropriate organisation to be involved and it is working on the right lines. Do members agree to await the final action plan and the Scottish Government's response to it and to consider the petition again in that light?

We should not lose sight of John Wilson's point about the time bar, which is an issue. If my memory serves me right, I think that Fergus Ewing made a helpful reference to the time bar when he was the responsible minister. We must be alive to the issue, which relates to future compensation. Do members agree to that way forward?

**Members** *indicated agreement.*

### **Judiciary (Register of Interests) (PE1458)**

**The Convener:** The fourth current petition is PE1458, by Peter Cherbi, on a register of interests for members of Scotland's judiciary. Members have a note by the clerk, which is paper 4. We also have the clerk's note of the meeting between the Lord President, Chic Brodie and me, and we have the submissions.

I will make a couple of points before we debate the petition. The petitioner suggests that we call the Scottish Court Service to give evidence on its existing staff register of interests. Moi Ali, the Judicial Complaints Reviewer, has provided an interesting additional paper in which she makes the powerful point that the issue is the

"failure to recuse"

and

"not ... a dearth of recusal data."

Her letter is direct and straightforward and she pulls no punches about the issue.

The committee might wish to write again to Lord Gill to ask whether he considers that a record of declarations of interests, similar to that for several members of the judiciary in the SCS annual report, could be set up for other judges and sheriffs. Members will know that only a handful of them are involved in the SCS board; a much greater number are not members of that board, so they are not required to declare interests.

Those are key points for the committee. I throw the discussion open to members.

**Chic Brodie:** I think that I missed something that happened early on in the process and before I became a member of the committee. The petition calls for a register of pecuniary interests of judges, and I do not know where the recusal bit came in.

On the conversations that we had with Lord Gill, I see from my notes that a request was made regarding the financial interests information that is available via the SCS on three members of the SCS board although, in fact, it turns out that there are seven judicial members of the SCS board. I know that it is difficult, but I still think that it might be worth while trying to keep the issue of financial interests separate from the issue of the declaration of a potential conflict of interest. We might return to the latter at some stage in the future, but we might want to expand on the information that is already available via the SCS on the financial interests of the judiciary.

**The Convener:** If I understand the Judicial Complaints Reviewer's letter, the crucial issue is recusal before a case. For example, if a judge was dealing with a case in which he or she had some financial interest, they would recuse before it. So, it is about the ability to recuse over a financial issue, which I think is the point that Moi Ali is making.

**Jackson Carlaw:** I find no fault in the way in which we have conducted ourselves on the issue. I read the letter from Moi Ali with a great deal of interest. If it were possible to divide up the time appropriately, I suggest that we should take the subject to the chamber as part of a Public Petitions Committee debate. It would be useful to go beyond the bounds of the committee to allow some of the issues to be stated more widely in the chamber and for the Cabinet Secretary for Justice to have to respond formally to some of the issues that have arisen. Although we have moved matters forward in a limited way by the nature of the discussions that we have had, frankly, I do not think that any of us is wholly satisfied with the outcome or totally persuaded by the case that has been made to us.

**The Convener:** That is a useful point. I inform the committee that, at the Conveners Group, we put in a bid for a debate on organ donation. That has been agreed, but we are fine tuning whether it will be in April or May. However, any further bids for debates would just join the queue at the Conveners Group. There is always a healthy interest in bids for committee plenary debates. I think that such debates are a useful opportunity. My view is that this petition would be a good subject for a plenary debate. It might have to be after the summer recess but, whenever there is a

slot, the committee can be assured that I will argue for it at the Conveners Group.

**Jackson Carlaw:** It would be a useful subject for us to take to the chamber. As matters stand, we have probably got as far as we are likely to get with the issue. As I said, I do not think that we are entirely satisfied with the outcome at which we have arrived. It would be useful for us to make that clear and to allow the issue to have a wider profile.

**Chic Brodie:** In general, I agree with Jackson Carlaw. I do not think that there was any intended obfuscation when we met the Lord President, but there was the conflation of pecuniary interests with recusals on the basis of family relationships. It is argued that judges do not know whether someone whom they know will come up in a case. If we can separate those issues, I still think that there might be a requirement to focus on the half-commitment that we have on the information that is available through the SCS board on pecuniary interests. After that, we can look at how we might deal with other complaints.

**The Convener:** Thank you for that. Do members agree to that course of action?

10:45

**John Wilson:** The discussion has been useful. One or two members referred to Moi Ali's timely response to the committee in relation to the issues that have been raised about publishing information on a judge or sheriff recusing himself or herself from hearing a case. The second paragraph of the Lord President's letter states:

"I am pleased to say that my officials have devised a means by which this can be achieved. Court Clerks will inform the Judicial Office for Scotland when a judge or sheriff has to recuse."

The difficulty is that, as far as I understand, it is still down to a judge or a sheriff to decide whether to recuse. Without a register of interests, how would anyone dealing with the courts understand or realise when a judge should recuse? Without any evidence or a register of interests to say otherwise, judges and sheriffs can continue to hear whichever case they want to hear and recuse when they decide to do so.

The petition clearly indicates that a judge or sheriff might have financial interests relating to shareholdings in a company or they might hold a company directorship, and that might be directly relevant to a case. Unless there is a register that clearly shows the financial interests of judges and sheriffs and their families, it is difficult for an ordinary member of the public to understand the relationships that judges or sheriffs might have.

Most importantly, Lord Gill talks about confidence in the judiciary. The committee is here

to look at the confidence that the public has in the judicial system in Scotland. That should underlie our investigations into the issue. I welcome Jackson Carlaw's suggestion that we try to get a chamber debate on the issue, but there are things regarding the petition that we need to examine further, particularly in light of the responses that we have had. We need to get assurances from Lord Gill and the Scottish Government that we can move forward in relation to what we expect of the judiciary in Scotland and how accountable it is in the public's eyes—not the eyes of a self-serving group of judicial appointees.

**The Convener:** I thank John Wilson for his comments. He is right to go back to the fundamentals and what the petition is calling for. The register of pecuniary interests is key.

It sounds as though the committee is enthusiastic about bidding for a plenary debate. If that is agreed by members, we will make appropriate urgent requests to get that in the queue for a future meeting. Do members also agree that we write to Lord Gill to clarify whether he would consider setting up a record of declarations of pecuniary interests, similar to the one that already exists for several members of the judiciary?

**Members** *indicated agreement.*

**The Convener:** Do we need to cover any other points?

**John Wilson:** I suggest that we write to the Scottish Government to ask for its views on the exchanges that have taken place between the committee and those who have provided evidence to us and whether, based on the information that we have, it would consider reviewing its decision not to engage in the process.

**The Convener:** That is a fair point. Do members agree to do that?

**Members** *indicated agreement.*

### **Gender-neutral Human Papillomavirus Vaccination (PE1477)**

**The Convener:** The fifth current petition is PE1477, by Jamie Rae, on behalf of the Throat Cancer Foundation, on gender-neutral human papillomavirus vaccination. Members have a note by the clerk and submissions. Members may comment if they wish, but I point out that work was done on the issue at the Joint Committee for Vaccination and Immunisation meeting in February. It might be useful to consider the petition at a future meeting once we have the full details of that meeting, as the JCVI is the key organisation. Do members agree to do that?

**Members** *indicated agreement.*

### **Co-location of General Medical Practices and Community Pharmacies (PE1492)**

**The Convener:** The sixth current petition is PE1492, by Alan Kennedy, on co-location of general medical practices and community pharmacies. Members have before them a note by the clerk and the submissions. Members will be aware that, when the petition was first discussed, I made it clear that I had been heavily involved, particularly in the Western Isles, and to a certain extent in Caithness, where the situation had come to a head.

When Mr Kennedy appeared before the committee, he promised to give us some further points. I felt that he made a number of powerful points in his submission about encouraging general practitioner practice co-location with willing pharmacies, where the community supports that.

Alex Neil made a robust response to the committee, which referred to the Wilson Barber review—a review that was extremely helpful and moved things on in a positive way. However, there are still a number of outstanding issues and consultation is still going on to try to find a way forward. There are particular issues in rural and remote areas; the situation is probably different in our cities and larger towns, although I am sure that members have examples where that is not the case. I had an example in Benbecula where a well-functioning and well-respected GP surgery was providing a pharmacy service when a pharmacy application came in. The approval structure for that is bizarre, and the cabinet secretary would probably agree with me that it is a strange way of operating. If a new pharmacy is set up, it will mean that the practice will lose staff and perhaps GPs. The key point is that the community is almost 100 per cent opposed to that.

There are wider issues about whether the GP contract effectively allows profits from pharmacy services to be reinvested in the business, but I do not want to take the committee off on a tangent. Although it is a complicated issue, I thought that it would be useful if I gave a quick summary of my understanding of where we are at.

**Chic Brodie:** I had a meeting with Community Pharmacy Scotland and, to dispense with the notion of the conflict of interest that was raised previously, there are much wider issues. I would be somewhat concerned if we were simply to close the petition without getting more information from the consultation. There are significant issues that need to be addressed, from the price of drugs to participation of medical practices in dispensing. Perhaps we will discuss those in this week's debate in the chamber. However, I would be very much against closing the petition at the moment.

**The Convener:** Just to clarify, I do not think that anything that I said suggested that we should close the petition.

**Jackson Carlaw:** We took evidence from, among others, Jean Kerr, who is chair of the Cumbrae public reference group. The situation in Cumbrae continues to deteriorate daily. Jean Kerr described to us how a three-partner GP practice had closed on the island as a result of the ending of the GP dispensing practice. At huge expense, a locum is now providing services without being resident on the island. NHS Ayrshire and Arran advertised and interviews have just taken place, but none of the candidates for the GP practice has been deemed to be satisfactory. I understand that the health board will re-advertise the opportunity later in the year. Meanwhile, the locum facility will carry on without overnight cover. It is being suggested that the dispensing of drugs is not being properly overseen as a result of the lack of GP discretion on the island.

All the issues are still live. The number of cases is likely to diminish, because the number of practices remaining is declining. We have always accepted that there is an argument for pharmacies to open up separately where community circumstances change. However, even though the number of cases will diminish, I suspect that there will always be examples of communities in Scotland where co-location is the appropriate way for a service to be provided. I do not think that the way in which the rules are currently applied works in favour of common sense or to the advantage of particular communities.

All that the authors of the petition seek to ensure is that the interests of the community prevail, rather than other interests that are applied without regard to the circumstances.

**Chic Brodie:** The point that Jackson Carlaw has just made with regard to Cumbrae, where no interviewee was successful and the proposed income of the next set of interviewees will increase, makes me question why it is difficult for stand-alone GPs to operate with the fairly substantial income that is being proposed, yet previously, when the dispensary was there, they were quite happy to work within that context. That is what generates my concern about the conflict of interest.

I take the points that have been raised, but there is certainly a lot more work to be done on the matter.

**The Convener:** I ask members to look at the last page of Alex Neil's very lengthy and quite helpful letter. He states:

"Our Vision and Action Plan, published last September, will further empower NHS Boards to pro-actively plan through their Pharmaceutical Care Services Plans. This will

enable Boards to plan and procure NHS pharmaceutical care based on the identified needs of local communities. Final proposals on this issue will be subject to further consideration and consultation."

That will be a step in the right direction. The matter has not been finalised yet, because there is still consultation to be done. I think that the petitioner mentioned that, although he hoped that he would be asked to submit his views, he has not been.

**John Wilson:** That is the point that I was going to raise, convener. The assurances in the cabinet secretary's letter fail to live up to the committee's expectations. The petitioner has rightly identified the statement that was made in the closing remarks last time the committee discussed the petition. We asked the Scottish Government to seek the petitioner's views when it conducts its review of the provision of community pharmacy services, but the petitioner has highlighted that the Scottish Government has not directly consulted him on the issue. It is concerning that the committee made a clear recommendation to the Scottish Government to consult the petitioner but that that request from the committee was ignored.

The petitioner also raises in the response a number of concerns about how communities will be genuinely consulted on the issue. If he as the petitioner had to be advised by a third party that the consultation was taking place, how will members of the general public, particularly those who live in communities that are facing the very difficulties that the petitioner is trying to highlight, have known about it? It might be worth while for us to write to the Scottish Government to ask why it did not consult the petitioner directly. In the annex to the Government's consultation, there is a list of the consultees that have been directly contacted. We should also ask how it intends to ensure that the widest possible consultation takes place, particularly with communities that are directly affected.

**The Convener:** There is another option for the committee. The Health and Sport Committee intends to hear evidence on the Government's "Prescription for Excellence: A Vision and Action Plan for the Right Pharmaceutical Care through Integrated Partnerships and Innovation" in the coming months. One option is to ask that our work be transferred to the Health and Sport Committee, given that it is undertaking an inquiry. What are members' views on that?

**Chic Brodie:** I agree with that option.

**John Wilson:** I would be keen for us to find out when the Health and Sport Committee intends to carry out its inquiry into the delivery of excellence in this area. If it is, as suggested, two or three months down the line, it might be useful for us to take on board the issues that have been raised today, write to the Scottish Government about

them and try to get responses before we refer the petition to the Health and Sport Committee.

11:00

**The Convener:** To clarify, I think that there will be a one-off evidence session rather than a fully fledged inquiry.

**Angus MacDonald:** I am happy to go along with John Wilson's suggestion that we seek further clarification before we refer the petition to the Health and Sport Committee.

**The Convener:** Angus MacDonald makes a good point. Why do we not write to the convener of the Health and Sport Committee and clarify exactly what it has in mind? If it ends up being a fully fledged inquiry, perhaps that is a different aspect for the committee to consider. That is a good point. We will do that.

**Anne McTaggart:** I agree with that, but can we find out further information before we pass the petition over?

**The Convener:** Will John Wilson summarise his view on that?

**John Wilson:** My proposal is that we hold on to the petition and write to the Scottish Government to seek responses to the questions that have been raised. However, if the Health and Sport Committee is dealing with the issue in a one-off inquiry prior to our receiving responses from the Scottish Government, it may be useful to transfer to that committee our information to date and ask it to consider that in its inquiry.

**The Convener:** Does Chic Brodie agree with that course of action?

**Chic Brodie:** Yes.

**The Convener:** We will pursue that course of action. When we have received a full reply from the Scottish Government and the Health and Sport Committee, we can analyse the issue again.

### **Mental Health (Care and Treatment) (Scotland) Act 2003 (Amendment) (PE1494)**

**The Convener:** The seventh and final current petition is PE1494, by W Hunter Watson, on mental health legislation. Members have a note by the clerk and the submissions.

As the Scottish Human Rights Commission says, compatibility of the Mental Health (Care and Treatment) (Scotland) Act 2003 with the European Convention on Human Rights is, of course, ultimately

“a matter for the Courts.”

It is fair to say that there have been concerns about inconsistent practices in relation to electro-convulsive therapy under the 2003 act, but the independent review of practice and the Scottish Government's proposed new mental health bill will, of course, allow participants and other concerned individuals to express their views on any proposed change.

I throw open the discussion for comments and points.

**Chic Brodie:** On that last point, it is important that the petitioner and others submit their views in the consultation. The petitioners have certainly generated emotion on that particular issue and emotion has been generated among the petitioners and others who are directly involved. It would be appropriate for us not to do anything other than suggest that the consultation proposals embrace the points that the petitioner and others have made.

**John Wilson:** I declare an interest. In my register of interests, I am still the deputy convener of the cross-party group on mental health.

Mr Brodie is right: the subject is very emotive. It is clear that a wide range of evidence has been provided to the committee on the issues that the petitioner has raised, particularly from the medical profession and others who have a particular point of view to justify their continued action.

It is clear that, once again, this is a petition that has to be treated with a great deal of sympathy and concern in light of both the issues that have been raised and individual circumstances. In some cases, the treatment might seem to be against the person's human rights but, given the evidence that we have received to date, it is difficult to see how we can take the matter much further forward.

**Jackson Carlaw:** We should move to close the petition under standing orders rule 15.7, on the basis that there is broad agreement from the various organisations that the 2003 act is compliant with human rights legislation. There is a Government consultation on proposals for a mental health bill, and the most appropriate approach would be for the petitioners and others to submit their views to it in order that it benefits from the widest possible advice.

**Angus MacDonald:** I agree with Jackson Carlaw's suggestion.

**The Convener:** Before I bring in other members, I point out that we can obviously still pass to the Scottish Government any and all submissions that we have received on the petition, so not one word of any submission will be wasted when it comes to forming future Scottish Government policy and new legislation.

**Anne McTaggart:** Convener, I agree with what you said about passing on the information that we have collated and with Jackson Carlaw's suggestion that we should close the petition under rule 15.7 but ensure that the petitioners can submit their views to the Scottish Government.

**John Wilson:** I support Jackson Carlaw's proposal to close the petition under rule 15.7. In doing so, however, I note that it is important how we record this, because on one of the previous petitions we asked the Government to consult the petitioner as part of any consultation about community pharmacies. Therefore, I strongly urge the Scottish Government to consult not only the petitioners but other members of the public who have made submissions to the committee on the issue. Although a number of professional and medical bodies will no doubt be among the statutory consultees when the Government holds its consultation, it is important that the individual members of the public, including Mr Watson, who have taken the time to submit the petition and other written evidence, should be part of the consultation process. I urge the Scottish Government to make every effort to contact the individuals who have made submissions, so that it can get their views as part of the consultation process.

I also agree with the suggestion that all the paperwork that the committee has received on the petition to date be submitted to the Scottish Government as part of the committee's provision of evidence to it on any consultation that takes place.

**The Convener:** Thanks. We can certainly do that. If the committee agrees to close the petition, we can also write to the Scottish Government in those terms. Does Chic Brodie agree to that?

**Chic Brodie:** Absolutely. Although I am in general agreement with the suggestion, my one concern is that there are now only three weeks left before the consultation period ends. If we are to take this approach, I suggest that we must be fairly quick in asking the Government to make contact. Of course, as we have agreed, the Government will have all the evidence that has been submitted to us.

**John Wilson:** Chic Brodie is right about the timescale for the consultation. It might be useful if the committee also suggests to the Scottish Government that it extends the deadline for submissions to allow the individuals who have made submissions to the committee to be contacted by the Scottish Government to ensure that any information that they want to provide as part of the consultation process can be considered as part of the discussions that take place in the review of the responses to the consultation.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

**The Convener:** In summary, we will close the petition under rule 15.7, but emphasise that all the documents that we have received as part of our consideration of the petition will be sent to the Scottish Government, that we will write to it to ask it to contact interested parties and, finally, that we will ask it to extend the submission date for evidence.

I thank Mr Watson for his time and trouble in preparing the petition and thank him very much for the petition.

**Chic Brodie:** I agree.



## Committee Working Practices

10:09

**The Convener:** Our final item of business is consideration of a note by the clerk, PPC/S4/14/5/8, on committee working practices. At a previous meeting, the committee asked the clerk to prepare a paper about procedure when a petitioner no longer wishes to proceed with a petition. I invite contributions from members on the clerk's paper, which, as you know, in effect says that if the petitioner says that they wish to close the petition, unless there are extraordinary other issues that should be considered, we would normally close the petition at that stage. We are developing committee policy on the issue and I throw it open to comments from committee members.

**Chic Brodie:** I agree in general with the paper.

**John Wilson:** I have no disagreement. We decided earlier, when there was a recommendation to close a petition, to keep it open. It is within the gift of the committee to decide when it is appropriate to close a petition and when it is appropriate, despite the fact that the petitioner is no longer engaging with the committee, to keep it open. The paper sets out the committee's options in a fairly straightforward way.

**Anne McTaggart:** I thank the clerk for the note.

**Angus MacDonald:** I agree that, if the petitioner no longer wishes the petition to proceed, it seems pointless to carry on without their presence.

**Jackson Carlaw:** I reluctantly support that view.

**The Convener:** Thank you. As I said, we are simply adopting a policy for the future. We always have the power to take a different approach if there are extraordinary circumstances, although our default position will be the approach that is outlined in the clerk's report. As always, if there is extraordinary information, the committee can react to that.

*Meeting closed at 11:11.*



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