



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# PUBLIC PETITIONS COMMITTEE

Tuesday 27 January 2015

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**Tuesday 27 January 2015**

**CONTENTS**

	<b>Col.</b>
<b>CURRENT PETITION</b> .....	1
Social Care (Charges) (PE1533).....	1
<b>NEW PETITION</b> .....	11
Poll Tax (Arrears) (PE1546).....	11
<b>CURRENT PETITIONS</b> .....	12
School Bus Safety (PE1098 and PE1223).....	12
A Sunshine Act for Scotland (PE1493).....	12
No More Page 3 (PE1521).....	14
Access to Justice (PE1525).....	15
Creationism (Schools) (PE1530).....	15
Planning (Rights of Appeal) (PE1534).....	18
Polypropylene Mesh Medical Devices (PE1517).....	18

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**PUBLIC PETITIONS COMMITTEE**  
**2<sup>nd</sup> Meeting 2015, Session 4**

**CONVENER**

\*John Pentland (Motherwell and Wishaw) (Lab)

**DEPUTY CONVENER**

\*David Torrance (Kirkcaldy) (SNP)

**COMMITTEE MEMBERS**

\*Jackson Carlaw (West Scotland) (Con)

\*Kenny MacAskill (Edinburgh Eastern) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

Hanzala Malik (Glasgow) (Lab)

\*John Wilson (Central Scotland) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Neil Findlay (Lothian) (Lab)

Mike Liddle (Scottish Government)

Shona Robison (Cabinet Secretary for Health, Wellbeing and Sport)

John Scott (Ayr) (Con)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Public Petitions Committee

Tuesday 27 January 2015

[The Convener opened the meeting at 10:32]

### Current Petition

#### Social Care (Charges) (PE1533)

**The Convener (John Pentland):** Good morning. I remind everyone to switch off mobile phones and electronic devices, as they interfere with the sound system. We have received apologies from Hanzala Malik.

Agenda item 1 is an evidence-taking session with the Scottish Government as part of the committee's consideration of PE1533 by Jeff Adamson on behalf of Scotland against the care tax, on the abolition of non-residential social care charges for older and disabled people. Members have a note by the clerk and the various submissions. I point out that at the initial stage NHS Scotland's view was not sought, on the basis that the questions that had been identified were more properly a matter for the Cabinet Secretary for Health, Wellbeing and Sport in the first instance. Following today's evidence session, the committee might wish to follow up issues specifically with NHS Scotland.

I welcome to the meeting Shona Robison, the Cabinet Secretary for Health, Wellbeing and Sport, and Scottish Government officials David Fotheringham and Mike Liddle from the integration and reshaping care division. I invite the cabinet secretary to make a brief opening statement, after which we will move to questions.

**The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison):** Thank you very much, convener. I welcome the opportunity to speak to the committee about this issue.

I certainly recognise the concerns that have been raised by people who face a range of challenging disabilities and conditions, their carers and the organisations that work with them, and I am determined that the Scottish Government will continue to work with our local authority and, indeed, health partners to improve the consistency and fairness of the current approach to charging for non-residential care.

It is important to consider charging as part of the wider social care system. We need to ensure that resources are in place so that we have the quantity and quality of social care that people require and that any charges are affordable and

reasonable. With that in mind, I announced on 20 January a further £100 million investment over three years to increase social care capacity and help reduce the number of people who are waiting to be discharged from hospital. Charges for social care allow local authorities to recoup a small part of their expenditure on social care, but we must ensure that charges, where necessary, are fair and affordable.

My predecessor, Alex Neil, and I have taken a close interest in the issue of charging for social care, and I am determined that there should be a fair system for service users. That is why we are working in partnership with the Convention of Scottish Local Authorities and have ensured that, for example, no one under 65 and in the last six months of a terminal illness should be charged for the care that they receive at home. We will set that out in legislation, if necessary. I am happy to explore with the committee and others what more can be done, and we are in continuing discussions with COSLA about what further action can be taken to create a fairer care-charging system.

I am happy to take questions, convener.

**The Convener:** Thank you for those opening comments, cabinet secretary. I should note that Jeff Adamson, the petitioner, is in the gallery.

In your letter to the committee on this petition, you say that you were "sympathetic" to it. However, much of your response is about ensuring greater consistency across local authorities rather than moves to abolish care charges. Do you have any views on the principle of abolishing such charges?

**Shona Robison:** As I said in my opening remarks, we need to look at charging in the round, and we are in discussions with COSLA about what more can be done. We need to ensure that we have the capacity in social care; after all, a lot of the debate at the moment is about how we prevent people from being delayed in hospital and, indeed, how we ensure that people are not admitted to hospital when they do not have to be. All that requires us to build capacity in the social care sector.

I guess that that is part of the debate about and the considerations that we need to give to this matter. Because resources are finite, we need to decide on the best way of deploying them. However, as well as having that bigger debate about the balance that needs to be struck, we must resolve certain issues, which is why, as I pointed out in my opening remarks, we have looked at the issue of people in the last six months of life, why COSLA is working on a new financial assessment that will lead to more continuity and consistency across local authority boundaries and

why we are talking to COSLA about what more we can do to create a fairer charging system.

I certainly acknowledge that there are inconsistencies and that systems can differ from one local authority to the next. While we have that bigger debate about what is affordable, and in the context of having to consider the important issue of the growth of social care, we need to make the current charging system fairer for those who are paying charges, and that is the focus of our current discussion with COSLA.

**David Torrance (Kirkcaldy) (SNP):** Given the variance in charging across the 32 local authorities, has the Scottish Government done any assessment of the cost of abolishing care charges?

**Shona Robison:** We have, but obviously there are some unknown quantities in that. We looked at the current income from charges, which was around £50 million, but there are certain unknowns such as how much costs would grow by if charges were to be removed. It is hard to estimate something like that completely, but I think that, as we will acknowledge, there would be a growth in demand and therefore a growth in costs.

Although £50 million might not seem to be a huge amount when we look at the bigger picture, if it is spent on abolishing care charges, it cannot be spent on growing capacity. I guess that we could equate that to £100 million that could be put into growing social care capacity but would not be. Those are the debates and dilemmas that we have in the current financial climate. Given the challenges of the need to grow social care, delayed discharges, or a growing ageing population, for example, we need to decide on the best place to invest our finite resources.

As I said, we are having discussions about such issues with local government and the national health service. The problems are not easy to resolve and, when charges are levied, it is important that they are fairer than they are at the moment; I am keen to progress that. We have to make some challenging choices about investment in social care otherwise we will continue to face other challenges around not being able to keep people out of hospital or to get them out of hospital as quickly as we need to. We have to ensure that we provide adequate care for people who need it.

**John Wilson (Central Scotland) (Ind):** The petition is about the unfairness of the current charging regimes, particularly the inconsistency between local authority areas and the charges that they make. Cabinet secretary, you have made a couple of references to delayed discharges. Health board boundaries are not coterminous with local authority boundaries and there is inconsistency in charging across local authority

areas. For example, NHS Lanarkshire covers three or four different local authority areas that have different systems for care charging. Do you not see the potential for some individuals to pursue a delayed discharge because they cannot afford the charges that apply in their local authority, while in other areas there might be greater scope for discharge because the care system does not charge as much?

**Shona Robison:** You make a fair point. Part of the complexity of delayed discharges is that some local authorities have greater social care capacity, some are more able than others to recruit staff, some have more care homes, some have greater provision of home care services and some have more intermediate care beds. Each area faces different challenges from the others. That might be a part of the problem, but there are other issues that lead to some of the differences and particular challenges of delayed discharges being worse in one area than they are in another. Having said that, I have made it clear that delayed discharges are a problem throughout the system and we are focused on resolving that problem.

Your point about inconsistencies is fair. That is why COSLA has been working on a new financial assessment framework so that there will be more consistency around what income is taken into account and what is disregarded. However, as I said in my opening remarks, we are in discussions with COSLA about what more can be done. There are issues around the income level at which people start to pay charges, for example, and they are important issues for tackling inequalities. There is also the issue of people who have complex needs.

To summarise, the discussions that we are having with COSLA are a work in progress and I am sure that the committee will understand that those discussions are difficult, challenging and complex. We need to ensure that, if we do one thing, it does not have a knock-on effect on something else. We need to consider in the round what more we can do to create a fairer system, address some of the inequalities that exist in the charging system and bring more consistency to address some of the issues that you raise.

With integration come 1 April, those issues of consistency will have even more importance. Therefore, you can be assured that we are in the middle of discussions with COSLA about what more we can do to move the matter forward positively.

10:45

**John Wilson:** Cabinet secretary, I accept your response. However the issue is the length of time that it is taking us to reach a conclusion. The

working group has existed for three years and the last paragraph of COSLA's response indicates that the group will be working on a number of issues over the next year. Do you have a timescale in your mind for when you would like all those issues to be wrapped up so that we get some consistency and co-ordination of service delivery for people who require care services?

I note from COSLA's response that one of the issues is the consideration not only of household incomes but partners' incomes, which might be worrying for some households. In the past, when partners' incomes have been included in other areas, it has ended up with separations and divorces because people felt that they were being financially undermined because of the care charges that were applied and the disproportionate charges on someone who lived in the household.

**Shona Robison:** I understand the committee's frustration at the length of time, but I suppose that it is a reflection of the complexity of the issue. A couple of things that have happened over that time were referred to earlier. There has been progress on charging for under-65s with a terminal illness. It is right that that was resolved. It was not fair that someone be charged for end-of-life care. The other issue that is about to be finalised is the new financial assessment framework, which will help with some of the issues with what one local authority or another disregards.

We are making incremental steps of progress rather than something quicker. However, on the future timeframe, we are in some detailed discussions with COSLA about what more can be done. Obviously, we want to bring those discussions to a conclusion as quickly as possible, but we are keen to get the conclusion right, because the issue keeps surfacing. If we are going to do more on fairer charging, we want to agree something that will be sustainable and see us into the long term rather than have to come back and revisit the issue time and again, as we have done in the past.

I hope that you will forgive us for taking a bit more time, but, as soon as those detailed discussions with COSLA are reaching any conclusion, I will be happy to come back to the committee with the detailed information.

**John Wilson:** You indicated that discussions with COSLA are coming to a conclusion. Do you have any timescale in mind? I note the incremental steps that have been taken but many individuals and households want answers sooner rather than later to the questions that have been raised about the charging regimes that apply. I am interested to know whether you have a timescale towards which you and your department are working to try to get a conclusion to the issue.

**Shona Robison:** I guess that it is always as soon as possible. If I put a timeframe on it and that timeframe slipped because we had not reached conclusions in those discussions, I am not sure how helpful that would be. I certainly want to try to bring the discussions to agreement and conclusion as quickly as we can. I would be more than happy to ensure that the committee gets early notification of that once we are in a position to do that.

**John Wilson:** You are aware that under the Community Care and Health (Scotland) Act 2002 the Scottish Government could, if it so wished, set charges if it felt that it was not getting support from COSLA members. Has that been part of the deliberations and discussions not with COSLA, but in the department and with you?

**Shona Robison:** We and COSLA are well aware of that. Obviously, we have said in relation to six-month end-of-life care and the fact that councils should not charge for that that, if required, we would enact the 2002 provisions. We are all aware of the power that we have.

We are trying to take matters forward in the spirit of partnership. The new integrated partnerships will start on 1 April. We all recognise that resources are challenging and that we need to ensure that where we spend the money will have the biggest impact and will be the biggest help so that social care delivers in the way that we need it to deliver. We need to be cautious about the decisions that we make. They have to be made in consultation and negotiation rather than in any other way. However, we are, of course, aware of the power that we have.

**John Wilson:** Thank you very much, cabinet secretary.

**The Convener:** I note from the evidence that much of the income that has been generated from social care services has not been put back into those services. Will you comment on that?

**Shona Robison:** To be fair to councils, I know from my discussions with them that they are certainly spending their social work budgets. I do not think that there is a case of a council not spending the resource that it has on social care. They are doing that. In the main, councils are doing what they can to meet increasing demands.

One of the challenges is in how we can make better use of our collective resources, which is why integration is so important. The benefits from ensuring that the integrated teams work more closely together will mean that social-care spend will have more impact than it currently has. However, I do not get the sense, from the evidence that we have, that local authorities are holding money back in the social care arena.

**Mike Liddle (Scottish Government):** From our analysis of the cost of collecting the charges, we think it likely that about 15 per cent of the income that is generated from charging would be releasable. That would be the cost of administering the charges. The figure is comparatively small; we think that the amount is likely to be about half what the evidence from Scotland against the care tax suggests.

**Shona Robison:** I am sorry, convener, but I understood your question to be about whether the income that councils get from charging goes back into services. We have no information to suggest otherwise. When we consider what councils are spending on social care, we do not get the impression that they are holding money back from it. In fact, in the discussions that we have had with partnerships over the winter, when there have been heightened issues to do with delayed discharge, local authorities have been pretty up front in coming up with additional resource through the tripartite arrangement in which we, health boards and councils put in money. I do not get a sense that they are holding any moneys back.

**Jackson Carlaw (West Scotland) (Con):** Good morning, cabinet secretary. We have had a few changes in the committee since the petition was lodged.

I will give voice to a sentiment that I think underpinned part of what the petitioners were trying to say to us. Given that the power exists under the 2002 act, they are concerned that although trying to negotiate an arrangement seemed to be the sensible thing to do, that has taken considerable time and, as they see it, nothing of substance has been forthcoming—although I note what the cabinet secretary has said to us in evidence. You are right to seek a voluntary agreement, but is there any justification for the petitioners' sense that COSLA has shown a lack of rigour in pursuing the issue about the timescale? The petitioners' feeling was that not an awful lot had been happening and that perhaps, given that ultimately you had a power, the Government should have been encouraging some sort of resolution of the issue a little more actively. Will you respond to their suspicion that there had been a lack of initiative and drive?

**Shona Robison:** COSLA has made some progress, I am sure, although I understand the frustrations of people who want faster progress. We are trying to get 32 local authorities to agree to a new financial assessment framework, which has taken time because it involves talking about what should and what should not be disregarded. That is not without its challenges.

To be fair to COSLA, in the midst of looking at that issue it has also been looking at integration. We have been working on the national indicators

to agree what the £100 million for delayed discharge will deliver and what integrated partnerships will deliver regarding the 72-hour discharge standard and keeping people out of hospital. It is a huge agenda. The people in COSLA who have been working on that have also been considering fairer charging. They have had a lot on their plate and have been trying to keep all those balls in the air and to make progress on all of them.

I can understand that people might be frustrated and feel that the pace has been too slow. The issues are complex and have required detailed discussions on each aspect, which is why progress has been a bit slower than people would like.

**Jackson Carlaw:** Is consistency ultimately achievable? Argyll and Bute Council suggests in its evidence that the geography of its area is such that it will always be difficult to achieve the degree of consistency that some people might regard as reasonable, based on how easily they could access services elsewhere. Is geography an insurmountable obstacle or can the concern about the geography of the area that the council represents be overcome?

**Shona Robison:** There will always be differences around the edges. There is a host of challenges in delivering services, including the requirement for travel. The ability to access services in remote and rural areas is different from the challenge in an urban environment.

However, the financial assessment framework will be helpful. Why is something disregarded as income in one local authority when it is not disregarded in another? If you move from one local authority to another, the variations between what is disregarded in financial assessments are considerable. COSLA accepted that the variations are too large. If we can marshal those variations and create more consistency on what is disregarded or not disregarded, the differences will be more about issues such as rurality and the nature of the local authority area. We will get to a better place through the financial assessment framework. It will probably not eradicate every difference, but it will be a much fairer financial assessment than we have at the moment. We will look at that very closely as it emerges for approval from COSLA's structures.

11:00

**Kenny MacAskill (Edinburgh Eastern) (SNP):** Inclusion Scotland has raised a specific caveat and the Equality and Human Rights Commission put forward a more general caveat and warning regarding compliance with the United Nations Convention on the Rights of Persons with



Disabilities—in particular, article 19. Does the Scottish Government think that the framework is compliant and what has been done to ensure that it is compliant?

**Shona Robison:** Yes. We have looked at the evidence that has been provided to the committee on the matter to date, and we do not consider that the general charging framework is incompatible with the acts and conventions that have been highlighted. We have also ensured that it is consistent with equality legislation. Obviously, we will review the position if more evidence comes forward. However, that does not mean that improvements cannot be made with regard to fairness. The framework might not be incompatible with the UN convention or whatever, but that does not mean that there is no scope for improving its fairness. That is where we are focusing our attention at the moment.

**Jackson Carlaw:** You said that you have taken the same view through the equality impact assessment.

**Shona Robison:** Yes. As the committee is probably aware, the Equality Act 2010 places a general duty and a specific duty on local authorities: both duties are relevant in development of charging policies. Local authorities are required to have a policy to

“eliminate discrimination, harassment, victimisation ... advance equality of opportunity ... foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

COSLA’s charging guidance states:

“As a result of the general duty local authorities must consider how to promote equality and ensure that no group are put at a disadvantage by their charging policy.”

The guidance also states that local authorities should

“carry out Equality Impact Assessments on their non-residential care charging policy”

to ensure that they have no

“disproportionate impact on people of a protected characteristic.”

That is all about considering whether a policy is fairer to one section of the community than to another and whether people feel that existing charging policies are fair. I do not think that that means that any particular group is necessarily being penalised. It is about a local authority’s charging policy being different from that of another local authority, rather than it being about the policy varying within a local authority.

All that said, it does not mean—as I have said throughout this evidence session—that more cannot be done to make the policy fairer. It is one thing for there to be requirements under the law but it is quite another to consider whether

something can be made fairer, which is the territory that we are in.

**Jackson Carlaw:** Can I conclude on the issue of fairness? Ian Hood, the co-ordinator of the Learning Disability Alliance Scotland, made a very forceful and reasoned contribution to our discussion in relation to what has changed in recent times in that the income tax allowance has increased significantly. Councils were able to charge £6,000 to £8,000 for over-65s, which used to be consistent with the income tax threshold. However, that threshold is now £10,000 and is set to go higher. So, there are individuals who are no longer regarded as being subject to income tax but who, because the charging threshold has not increased, find that they are regarded as being capable of meeting charging costs. I wonder whether—en route to abolition as a principle, which we have touched on—the issue of fairness is rather exposed by that discrepancy, which has arisen even over the period during which the review has been under way. Might it not be a route to alleviate matters for those who are least able to afford the charging?

**Shona Robison:** We are having such discussions with COSLA—we are looking at inequalities and people who are on lower incomes and how we could do more to make charging costs fairer. You will forgive me for not going into too much detail, but there is recognition that we need more debate about the people who are on the lowest incomes.

**Jackson Carlaw:** I will take comfort from that.

**The Convener:** There are no further questions. Does the committee agree to reflect on the evidence and to consider a paper by the clerk at the next meeting before deciding what action to take?

**Members indicated agreement.**

**The Convener:** I thank the cabinet secretary for attending. I now allow you to go.

**Shona Robison:** Thanks very much, convener.

11:06

*Meeting suspended.*

11:08

*On resuming—***New Petition****Poll Tax (Arrears) (PE1546)**

**The Convener:** Agenda item 2 is consideration of new petitions. We have one new petition: PE1546, by John Crossan, is on collecting poll tax arrears. Members have a note by the clerk and the petition.

The petitioner has indicated that he no longer wishes to proceed with his petition. On that basis, I invite members to agree that the petition be closed.

**Members** *indicated agreement.*

**Current Petitions****School Bus Safety (PE1098 and PE1223)**

11:09

**The Convener:** Agenda item 3 is consideration of seven current petitions. We are taking the first two petitions together: PE1098, by Lynne Merrifield on behalf of Kingseat Community Council, and PE1223, by Ron Beatty, are both on school bus safety. Members have a note by the clerk and the submissions.

The committee previously agreed to defer consideration on PE1098 and seek an update from the Scottish Government in 2015. That will be requested and be made available for the committee's next consideration.

As no member wishes to contribute, do members agree to write to Transport Scotland requesting that it take account of the petitioner's most recent submissions, highlighting breaches of Transport Scotland's school bus safety guidelines, and that we defer further consideration until the evaluation report is available in late summer?

**Members** *indicated agreement.*

**The Convener:** Is the committee also agreed to take any other action it considers appropriate in relation to the petition?

**Members** *indicated agreement.*

11:11

*Meeting suspended.*

11:12

*On resuming—***A Sunshine Act for Scotland (PE1493)**

**The Convener:** The next petition is PE1493, by Peter John Gordon, on a sunshine act for Scotland. Members have a note by the clerk.

Two submissions and a further email from the petitioner were received after the committee papers went out. It is unhelpful for submissions to be received after papers have been issued. The committee gives everyone it writes to sufficient time to respond. In the Scottish Government's case, the committee expects that in future responses will be received in good time.

I invite members' contributions.

**Angus MacDonald (Falkirk East) (SNP):** I am disappointed that the Scottish Government has not responded timeously. I agree with your suggestion

that notification be given to the Government that we expect timely responses.

**John Wilson:** The further information submitted by the petitioner should be passed on to the Scottish Government. In the Scottish Government's response, it alluded to the fact that the petitioner had not provided additional information, so it would be useful to forward on the latest correspondence and ask that the Scottish Government respond to the issues raised in it.

The Scottish Government is looking to bring in a system that is

"fit for 2015 and beyond."

I think that that is what the petitioner is looking for, too. Although they concur on that, the difficulty is getting the Scottish Government to take the appropriate action to ensure that the petition is meaningfully considered by it and, in particular, health boards.

**Kenny MacAskill:** I think that the situation is fine. The Government was dilatory, leading to a delay, but there is a willingness on its part to look at the issue.

The matter is rather complex, given that it involves bringing together how various boards are operating. It seems to me that we should certainly pass on to the Government the information that the petitioner has provided to us, but we must give the Government the opportunity to bring together what work is being done and what it will deliver. I do not think that that can be done quickly, because it is quite a complex area that involves interaction with other activities in the NHS and elsewhere. We should push the Government to keep us abreast of matters or to indicate a clearer timetable for the action that will be taken.

11:15

**Jackson Carlaw:** I am delighted to agree with Mr MacAskill.

**John Wilson:** I feel that I must strike a slightly discordant note. According to the information that we have, guidance was issued to health boards in 2003 that they should establish registers. It is now 2015, and the petitioner has highlighted that a number of health boards do not have a register in place and, according to the petitioner, have no intention of putting one in place. Given that, 12 years down the road, the health boards have not taken on seriously the guidance that was issued in 2003, it is incumbent on the Scottish Government to ask them why that is the case and why action has not been taken before now to address the issues that have been raised.

In its letter, the Scottish Government said that no issues had been raised by patients or family

members, but it is clear that the petition raises issues, which should be addressed accordingly by the Scottish Government. If it takes 12 years for the guidance to be reviewed, refreshed and implemented, that is too long.

**The Convener:** Does the committee agree that we should write to the Scottish Government to welcome its announcement that it is to conduct a wider consultation on the issue and to seek a firm timetable for that work? Does it also agree to seek the Scottish Government's view on what effect the forthcoming European Federation of Pharmaceutical Industries and Associations code on transfers of value from pharmaceutical companies to healthcare professionals and organisations will have on what the petition seeks, and to take on board the points that Mr Wilson made?

**Members indicated agreement.**

### No More Page 3 (PE1521)

**The Convener:** The next petition is PE1521, by George Eckton and Jane O'Donnell, on no more page 3 in *The Scottish Sun* and the Scottish Parliament. Members have a note by the clerk and the submissions.

I bring to members' attention the fact that I have recently been appointed to the Scottish Parliamentary Corporate Body and that I am on record as supporting the no more page 3 campaign. I invite contributions from members.

**Jackson Carlaw:** I am minded to suggest that we close the petition on the basis that we have fulfilled what was asked of us, which was that we draw the matter to the Scottish Parliament's attention. We have done that. I suppose that we could, if we wished, make a further representation to the SPCB. Ultimately, our responsibility was not to resolve the issue but to highlight it in the Scottish Parliament. I believe that that has been successfully done, so I am not quite sure what the next step for the committee would be in taking forward the petition.

**Angus MacDonald:** I certainly support the no more page 3 campaign. A week or so ago, it looked as if the campaign had been successful as regards its overall objective, but that does not seem to have been the case.

As Jackson Carlaw said, the committee has done what it was asked to do. I think that we might stray into dangerous territory if we were to decide that a particular publication could not be sold in the Parliament building. That decision should be left to the SPCB.

**The Convener:** Do members want to refer this petition to the SPCB, or do we want to close it?

**Jackson Carlaw:** My view is that we have written to the SPCB, which has discussed the matter, and that we should therefore close the petition. That does not reflect my view on the issue of substance, but I think that we have taken the petition to its logical conclusion.

**The Convener:** Do members agree to close the petition?

**Members** *indicated agreement.*

### Access to Justice (PE1525)

**The Convener:** The next petition is PE1525, by Catherine Fraser, on access to justice. Members have before them the note by the clerk and a letter from the convener of the Justice Committee. I invite contributions from members.

**Kenny MacAskill:** A lot of work is being done by the Scottish Legal Aid Board and the Scottish Government on how to protect the integrity of a legal aid system that is under financial pressures. I understand people's desire for action, but since time immemorial, and certainly since the establishment of legal aid, in order to avoid a growth of defamation cases there has been no public policy interest in the matter.

It would seem to me that, because we are in a state of fluidity as legal aid changes and tries to come to terms with court and legislative changes, all that we can do is write to the Scottish Legal Aid Board and the Scottish Government and ask whether there is any willingness to change the current view. However, I think that it is difficult for the proposal to be dealt with on its own and that it would have to be part of a wider review of legal aid.

**The Convener:** Do members agree with that proposal?

**Members** *indicated agreement.*

### Creationism (Schools) (PE1530)

**The Convener:** The next petition is PE1530, by Spencer Fildes, on behalf of the Scottish Secular Society, on guidance on how creationism is presented in schools. Members have a note by the clerk and the submissions. I ask members for comments.

**Kenny MacAskill:** I understand that the Education and Culture Committee has expressed a willingness to review the issue. If that committee is willing to look at it, we should send the petition to it.

**Jackson Carlaw:** That might be what we end up doing. I have read many of the submissions that we have received, and I see that many of them characterise creationism as supreme bilge, which is a view that I have some sympathy with.

The issue thereafter is whether it should be taught in schools.

The view of the Scottish Government, the Educational Institute of Scotland and School Leaders Scotland is that they do not believe that prohibition would be the right way forward. When we interrogated the petitioners, my view was that anything should be subject to the light of day. I do not believe that, when these issues are raised, individuals and their families—because parents have a role in all of this—will fail to bring out the truth in people's minds with regard to whether they regard creationism as science, which seems to me to be unlikely.

The fact is that the Scottish Government did not see merit in banning creationism in schools. Therefore, although we might want to refer the petition to the Education and Culture Committee, I do not know whether it will be able to do anything other than write to all the people to whom we have written and receive the same replies back. If the committee feels that that would be a useful thing for us to do, that is fine, but I think that we have had fairly comprehensive and forceful responses from the Scottish Government and the teaching unions and professional bodies, none of which believes that a formal prohibition in law would be the right way forward.

**John Wilson:** I might be corrected on this, but the EIS and SLS—whose views, it must be said, were challenged in a submission by a headteacher called Alex Wood, whom a number of us know and who wrote in an individual capacity—and others indicated that professional safeguards were built in.

As I understand it, the problem that was highlighted when the petition was presented to us is that no such professional safeguards are in place for classroom assistants or others from outwith the teaching staff who come into educational settings. The issue for us is quite clear. Although we are not saying that people should be stopped from coming into schools in particular circumstances to present their case, the issue is whether it was appropriate in the circumstances that were highlighted in the petition for the situation to have arisen.

It would be worth while to send the petition on to the Education and Culture Committee, because a number of issues have been raised in the submissions, which highlight that there are constraints within the English and Welsh education system but that there do not seem to be any constraints on what is taught in the Scottish education system. It might be useful if the Education and Culture Committee is prepared to look at the issues and investigate how the Scottish system compares with those in other jurisdictions,

particularly in the light of the response that we received from the Scottish Government.

**Angus MacDonald:** Having read the submissions, I believe that the most salient point was one raised in the Free Church of Scotland's submission. It states:

"Politicians seeking to enforce their doctrines through the State education system is the mark of an authoritarian, not a democratic state ... The petitioners are demanding that children be told what to think. The Free Church of Scotland believes that children should be taught how to think. And we believe that in a mature democracy, sceptical questioning and alternative points of view should be encouraged rather than banned."

From the responses that we have received overall, there is clearly no appetite for the Government to interfere on the issue. However, as John Wilson stated, there may be a need for further safeguards. I would be content to refer the petition to the Education and Culture Committee.

**Jackson Carlaw:** I ask Mr Wilson and Mr MacDonald whether that is not actually a call for this committee, having got to this point, to write to the Scottish Government again ourselves, drawing to its attention the point on classroom assistants and others that Mr Wilson has identified to see whether the Government believes that it has taken that into account in the response that it gave us previously. I am not sure why we are passing on the petition when, if we feel that we would like further clarification on an issue, our normal course of action would be to seek clarification ourselves.

**Angus MacDonald:** I would be happy for the committee to explore the issue further, convener, if that is the will of other committee members, and then possibly look at referring the petition to the Education and Culture Committee if need be.

**Kenny MacAskill:** I have to say that I was persuaded by Jackson Carlaw's initial comments. It seems to me that it is for the Education and Culture Committee to decide whether it wants to take the matter further. It might be that it decides not to do anything with the petition. I would be hesitant about us doing anything other than remitting it to the Education and Culture Committee. If it says that it does not want the petition, I think that we will have done as much as we could to focus it and to have got some clarity on the matter. It is for the Education and Culture Committee to decide whether it wants to pick up the petition and run with it.

**David Torrance:** I am happy to refer the petition to the Education and Culture Committee.

**The Convener:** I would tend to agree with Mr MacAskill—that is a first for me, too, Jackson—that we should refer the petition to the Education and Culture Committee. It is then up to that committee to decide what it should do with it.

**Jackson Carlaw:** If that is the will of the committee, I am happy to support it.

**The Convener:** Are we agreed?

**Members** *indicated agreement.*

### **Planning (Rights of Appeal) (PE1534)**

**The Convener:** The next petition is PE1534 by Clare Symonds, on behalf of Planning Democracy, on equal rights of appeal in the planning system. Members have a note from the clerk and the submissions. I invite contributions from members.

**Kenny MacAskill:** The Government has made it clear that it will not rush to pass further legislation because it is satisfied with how matters are bedding down. In a similar way to the previous petition, it seems to me that, if the Local Government and Regeneration Committee wishes to go somewhere with the petition, that is a matter for it, but we have explored the issue as far as we can. We have had some clarification, and I do not think that approaching the Government again would take us any further than where we are at the moment.

**Angus MacDonald:** I agree with Mr MacAskill. We should accept the petitioners' request that the petition be referred to the Local Government and Regeneration Committee and refer it.

**David Torrance:** I support that.

**The Convener:** Are we agreed that we will refer the petition to the Local Government and Regeneration Committee?

**Members** *indicated agreement.*

### **Polypropylene Mesh Medical Devices (PE1517)**

11:30

**The Convener:** The next petition is PE1517, on polypropylene mesh medical devices. I welcome Neil Findlay and John Scott to the meeting. As members are aware, due to the weather in the New York area, Adam Slater is unable to appear by videoconference today. I know that that will come as a disappointment to the petitioners, who are here today, and to others who have contacted me and are also in the public gallery. We have a note by the clerk and two written submissions.

I suggest that we reschedule the evidence session with Mr Slater. What are members' views on that?

**Jackson Carlaw:** I am happy to support that course of action.

**The Convener:** Do you have any comments, Mr Findlay?

**Neil Findlay (Lothian) (Lab):** Before I make any comment, I would like to know whether the committee has come to any conclusions about how to proceed with the petition.

**Jackson Carlaw:** I have a point that would lead us to that stage.

The committee was appalled by the evidence that we heard, and we were enormously encouraged by the cabinet secretary's action in calling for a suspension of the use of such devices. However, it has been disturbing to hear that their use has, nonetheless, proceeded in a number of places.

Underneath it all, I am increasingly concerned by the drift of travel in the various reviews that are taking place, to which we have previously referred—particularly the review that is being conducted by the Medicines and Healthcare products Regulatory Agency. It seems to me that the MHRA is moving towards recommending that the benefits of proceeding with mesh implants outweigh the risks. It states that it has come to that conclusion despite the fact that

“there is some evidence of under-reporting and there are concerns that MHRA is not aware of all women who have experienced problems.”

That seems to be, potentially, quite a dramatic obstacle to the progress that many of us thought was being made. Are we able to invite the MHRA to give evidence to the committee? I think that, when it concludes its review, which I think will happen in March, we ought to seek to take evidence from the MHRA. I am concerned that its report may give force to the direction of travel of Governments—potentially beyond our shores—despite the fact that there is considerable concern on our part that the rather glib assessment that

“the benefits ... outweigh the risks”

seriously fails to represent the concerns that we have heard from those who have given evidence to us. We can see what we thought was tremendous progress going into reverse, and we have a responsibility to take evidence and pursue the issue. Thereafter, we may open up the issue to wider debate in the Parliament when we have an opportunity to do so.

**Neil Findlay:** I thank Mr Carlaw for that.

It is disappointing that Mr Slater cannot give evidence, although that is perfectly understandable, given the weather conditions in the US at the moment.

We know that, since the cabinet secretary announced his alleged suspension of the use of mesh, it is still being fitted inside the bodies of women in Scotland, but that is now called a clinical trial. Since then, we have also witnessed multimillion-pound compensation settlements

being paid out to several people, with thousands more sitting in the pipeline. A range of other issues are related to the on-going scandal, on matters such as the ethics of how medical trials work, the involvement of professionals in those trials and the people who sit on the review bodies. There is a tangled web of issues that we have to unravel.

If we are going to get all that out in the open—and out in the open it must come—it is up to the Parliament to do that. Whether that is through a Public Petitions Committee inquiry—I have never sat on the committee, so I do not know whether that is within its remit—by asking the Health and Sport Committee to hold an inquiry or by having a committee debate in the Parliament, something has to happen to allow us to debate all the complex issues that relate to the case.

Mr Slater used a powerful analogy in the *Sunday Mail* at the weekend. He said:

“Politicians wouldn't allow a car on the road if one in 10 crashed and injured people.”

For nine out of 10 people driving those cars, the benefit outweighs the risk, but one in 10 could crash the car and end their life or dramatically change it. Are we going to allow that to continue to happen in Scotland, when we know what has happened across the US and the world?

I am happy to come back to the committee and I am keen to hear Mr Slater's evidence, but my appeal is that the committee makes a decision very soon as to how it wants to proceed and whether to bring the issue to the Parliament or have a more in-depth inquiry. Every day that we delay, the potential is that another woman's life is ruined.

**John Scott (Ayr) (Con):** I identify myself with the foregoing remarks of colleagues. I, too, am disappointed that Mr Slater cannot give evidence, although obviously that is for entirely understandable reasons.

I am concerned about the different approaches that health boards are taking. Given the precedent that is being set in America, I am concerned about the financial liabilities that individual health boards might incur, as compensatory payments might subsequently be required. Ultimately, that will come back on to the Scottish Government.

I am disappointed that the MHRA, apparently almost by its own admission, might not be aware of all the risks or problems. What is the point of such a body if it admits that it is not aware of all the risks? Therefore, it is absolutely right that it should be invited in front of the committee to explain itself. Mr Findlay draws the analogy with one in 10 cars being defective. That would not be an acceptable standard in transport, so I cannot

see why it is acceptable in health matters and, in particular, with mesh implants.

Therefore, I support the view that the issue must be investigated much more fully than it appears to have been. If the Parliament is taking the lead in the world on the issue, all power to its elbow.

**The Convener:** As I said at the outset, we should schedule an evidence-taking session with Mr Slater as soon as possible, and I think that we should also invite the MHRA to give evidence. I have been advised that we cannot compel it to attend, but we will endeavour to do that. On whether we should hold an inquiry into the matter, I do not know how the process would work, but it might be quicker to have a debate on it in the chamber.

The action that the committee can take quickly is to get in touch with Mr Slater and the MHRA. That will be the end of our evidence taking, and we will then be able to compile our report and send it to the relevant parties. Thereafter, a quicker way forward might be to have a chamber debate rather than an inquiry.

**Jackson Carlaw:** I remind colleagues that the Scottish Government has an independent review under the chairmanship of Dr Lesley Wilkie, which will make its own recommendations based on the MHRA review. As well as the MHRA, we might want to invite the chair of that independent review group to give evidence so that we can understand its thinking, based on what it has heard.

**John Wilson:** I support Jackson Carlaw's point. As well as evidence from Mr Slater, the MHRA and the chair of the independent review body, it might be useful to take evidence from the Cabinet Secretary for Health, Wellbeing and Sport. From the initial discussion that we had with the previous cabinet secretary, the committee was under the impression that all mesh implant operations had been suspended pending the inquiry. It is clear that that did not happen and that some health boards are using the issue of clinical trials as a way round the suspension.

It would be useful to hear evidence from the cabinet secretary and her Scottish Government officials, the MHRA and Mr Slater before we have a chamber debate, as there are still issues that we need to examine. I would not want the committee to ask for a chamber debate without all the facts being before us, including the results of the MHRA's evidence-seeking inquiry.

Some concerns have been raised about the Department of Health's response to the committee, because it is clear that it is not doing a full trawl of all those who have had mesh implant operations to find out whether there have been benefits. Mr Findlay mentioned the analogy of one person in 10, but the committee has heard that a

number of patients are coming forward only now, because of the campaign and because of the discussions that have taken place in the committee.

It is incumbent on us to ensure that the MHRA is doing as full an inquiry as possible before it presents evidence, and that the independent inquiry that the Scottish Government has set up does likewise. That will ensure that we reflect the true situation out there and not a hypothetical situation, or what is suspected. We know from the evidence that we have received so far that not all medical staff have reported where there have been complications and some patients have not been aware who to report the complications to.

We need to ensure that any inquiry that is carried out is a full inquiry that takes on board the views and experiences of all patients who have undergone these operations.

**Neil Findlay:** I have two points. First, time is of the essence here, because the more we delay, the more potential there is for more people to be, in my view, victims of this growing scandal.

Secondly, I have not spoken to the petitioners today, but I can almost guarantee that, if the committee gets people in to give evidence on the issue, the same number of people will be here in the public gallery each time. They are probably the most determined and diligent campaigners I have come across in a long time.

Given the pain and suffering of many of these people, which is a challenge to their being here, I make an appeal that one session is held and everyone is invited to attend it, rather than the committee holding three or four sessions, in which case people who find it difficult to travel and to walk would have to come here time and again.

**David Torrance:** The European Commission took evidence at the end of last year and has a report coming out this month. It might be worth while inviting it to give us evidence as well.

**The Convener:** As there are no further comments, I will sum up. There are five action points. First, we will quickly get in touch with Mr Slater and invite him to give evidence. Secondly, we will invite the chairman and chief executive of the MHRA along. Thirdly, we will write to the new Cabinet Secretary for Health, Wellbeing and Sport and invite her back for an update. Fourthly, we will consider whether to have a single agenda item and to try to accommodate as many witnesses as we can on that day, but we will need to consider the logistics of that. The fifth point is that we will also invite the European Commission to give evidence. Are we agreed?

**Members indicated agreement.**

**Neil Findlay:** Convener, you said that the committee would invite the cabinet secretary “for an update”. Just so that I am clear, does that mean that the committee will write to the cabinet secretary and she will come here to give an update, rather than doing it through correspondence?

**The Convener:** Yes. We will invite the cabinet secretary to come back to the committee. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** Thank you, colleagues.

*Meeting closed at 11:46.*



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