



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Petitions Committee

Thursday 8 November 2018

Session 5



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Pàrlamaid na h-Alba

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PUBLIC PETITIONS COMMITTEE

16th Meeting 2018, Session 5

CONVENER

*Johann Lamont (Glasgow) (Lab)

DEPUTY CONVENER

*Angus MacDonald (Falkirk East) (SNP)

COMMITTEE MEMBERS

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*David Torrance (Kirkcaldy) (SNP)

*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Edward Mountain (Highlands and Islands) (Con)

David Stewart (Highlands and Islands) (Lab)

CLERK TO THE COMMITTEE

Sarah Robertson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Public Petitions Committee

Thursday 8 November 2018

[The Convener opened the meeting at 09:32]

Continued Petitions

Armed Forces (School Visits) (PE1603)

The Convener (Johann Lamont): I welcome everyone to the 16th meeting in 2018 of the Public Petitions Committee. We have one item on our agenda today, which is consideration of a number of continued petitions.

The first petition is PE1603, by Mairi Campbell-Jack and Douglas Beattie, on behalf of Quakers in Scotland and ForcesWatch. Members will recall that the committee published a report on the petition earlier in the year, and that the Scottish Government responded to it just before the summer recess. The petitioners have commented on that response. Do members have any comments or suggestions for action?

Angus MacDonald (Falkirk East) (SNP): Given the Government's on-going consideration of the principle of using the child rights and wellbeing impact assessment, I agree with the petitioners that we need further clarification from the Deputy First Minister on the timeline of that work and about how the Government will use the assessment to ascertain the impact in schools.

The Convener: Do members agree that we should contact the Scottish Government about that?

Members indicated agreement.

The Convener: We agree to that action, and we thank the petitioners for their continued interest in the petition's progress.

Parking (Legislation) (PE1616)

The Convener: The next petition for consideration is PE1616, on parking legislation, by John S Shaw. When we last considered the petition in March, we agreed to defer consideration until the findings of the "Improving Parking in Scotland" consultation were published. The consultation has concluded. It informed the Transport (Scotland) Bill, which was introduced to the Parliament in June. Members may wish to note that part 4 of the bill focuses on pavement and double parking. However, it is unclear whether the bill will make parking in front of a dropped kerb an offence. The Rural Economy and Connectivity

Committee is the lead committee for the bill, which it is currently considering at stage 1. It held an evidence session on the parking aspects of the bill yesterday, and intends to hold an evidence session with the Cabinet Secretary for Transport, Infrastructure and Connectivity later this month. Do members have any comments or suggestions for action?

Brian Whittle (South Scotland) (Con): I had a constituency issue to do with people parking in front of a dropped kerb driveway. It seems that the law states that it is illegal to do that only if something is parked on the driveway. That is the information that I have received, which surprised me somewhat. It might be worth asking the Scottish Government to update us on the progress that it is making. I know that it has been working with the Law Society of Scotland on the bill, and it would be helpful to hear back about that.

The Convener: I have had issues locally with people parking across driveways and I have been told that it is not an offence because they are parking on a public highway. There are lots of contentious issues around that. Parking in front of a dropped kerb or on pavements can affect people with mobility issues and visual impairments and those who use wheelchairs or prams. Would an effective approach be to ask the Rural Economy and Connectivity Committee to take the matter forward? That committee is looking at the issue in the context of the Transport (Scotland) Bill, which could be improved if we sent the petition to it and suggested that that question could be addressed during the bill's progress. Any member can lodge amendments to the bill. Maybe Angus MacDonald could let us know about the committee's work.

Angus MacDonald: I am not on that committee. I am on the other one.

The Convener: Okay. You are on the other one with the long title.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I agree with your suggestion, convener. If the Rural Economy and Connectivity Committee is holding an evidence session and looking at those parts of the bill, we could ask it to look at the petition.

David Torrance (Kirkcaldy) (SNP): I support that suggestion as well.

The Convener: It is not simply that that committee is holding an evidence session. The bill that it is dealing with covers parking and we would want to underline the fact that the issue raised in the petition sits within the remit of the bill. We could emphasise to the committee that the petition has highlighted an issue that we think should be considered as the bill progresses.

If members agree to that, we would close the petition but refer it to the Rural Economy and Connectivity Committee, emphasising that we believe that the issues should be seen in the context of the Transport (Scotland) Bill, which addresses parking issues. Is that agreed?

Members indicated agreement.

Child Welfare Hearings (PE1631)

The Convener: The next petition for consideration is PE1631, by Maureen McVey, on child welfare hearings. As members will recall, when we last considered the petition, the committee noted that the Lord President has the power to determine that family cases be heard by specialist family sheriffs and we agreed to write to him to establish whether criteria exist to determine when and in which child contact cases that happens. The Lord President's response is included in the papers for this meeting.

We also agreed to write to the Scottish Government to seek its views on the Scottish Child Law Centre's suggestion to use child welfare hearing decision notes to record discussions at child welfare hearings. The Government's response references two public consultations that it considers relevant to the issues raised in the petition: the Scottish Civil Justice Council consultation on the case management of family and civil partnership actions in the sheriff court; and the Scottish Government consultation on a review of the Children (Scotland) Act 1995 and a proposed family justice modernisation strategy. Those consultations have concluded.

The Government's submission states that it intends

"to see what consultees say in relation to Child Welfare Hearings and then consider policy in this area in the light of those comments."

Do members have any comments or suggestions for action?

Rachael Hamilton: Considering that the petitioner agrees with the recommendation by the Scottish Child Law Centre about using the child welfare hearing decision notes, I think that she believes that that would strike an appropriate note. Perhaps we should write to the Scottish Government about that aspect, and to get an update on the action that it intends to take.

The Convener: The petitioner makes the point that she has responded to the two consultations, so I suppose that the question for her is whether the consultations result in the Government taking the action that she seeks.

What struck me about the petitioner's comments is the gap between what the Lord President perhaps imagines the system to be like and the

problems that arise when it is not working. Different sheriffs may have to rehear a case, but they do not necessarily get the full story because there is not a full record of what was discussed. I can also see the challenge in providing a full note. The petitioner seems to think that there is a balance to be found. Do members agree that we should ask the Scottish Government for its response to that?

Rachael Hamilton: We should ask about the consultations as well.

The Convener: We will write to the Scottish Government to seek an update on the action that it intends to take relevant to the petition and in response to the outcomes of the public consultations run by the Government and the Scottish Civil Justice Council. We will also highlight that the petitioner supports the proposal identified by the Scottish Child Law Centre. Is that agreed?

Members indicated agreement.

Prescription (Scottish Law Commission Report) (PE1672)

The Convener: The next continued petition for consideration is PE1672, by Hugh Paterson, on the Scottish Law Commission report on prescription. Following our previous consideration of the petition, in May, we wrote to ask the Scottish Government whether it would consider introducing an awareness-raising scheme to inform title deed holders that, if they hold defective property title deeds and that information does not come to light until 20 years after conveyancing, it is the client, and not the solicitor or insurer, who is liable for any costs.

The Government's response states that it could not

"justify spending public money on a specific awareness raising scheme on the 20 year prescriptive period and property transactions."

However, it intends to update the "Buying a home: the legal process" section of its website to inform property owners about prescriptive periods. It is also working with the Law Society for Scotland to update the Law Society's information on buying and selling a property with regard to the law of prescription.

The committee wrote to ask Registers of Scotland whether its current information technology system is set up in such a way that a letter could be sent automatically to a property's owner 12 to 18 months before the 20-year cut-off period came into effect, to notify them that there would be no right to redress after that period.

Registers of Scotland's response states that its current IT system

“does not allow us to identify titles that have not changed hands for (say) 19 years, as there has never been any need to do so.”

The response says that, at significant cost, it would be possible to modify its systems. The submission also states that, while Registers of Scotland understands the issue that the petition raises, it is extremely rare for people to have defects in their title deeds. The petitioner remains of the view that Registers of Scotland should write to all proprietors who have owned their titles for 19 years to draw attention to the law of prescription.

Do members have any comments or suggestions for action? I was struck by the comment from Registers of Scotland that writing to people might create concern, which might mean that people sought advice that cost money, only to have it identified that there was no problem. That does not feel proportionate to the issue, although it has clearly been a problem for an individual. Do members have a view on what we might do?

Rachael Hamilton: If I am looking at the evidence correctly, it strikes me that the IT system will not be able to identify the relevant people in order to write to them. The information that could be used to do that seems to be lacking.

The petitioner is well intentioned in what he has set out to do, but there seem to be a lot of barriers to doing it. However, there is a light at the end of the tunnel, which is to ask the Scottish Government what it could provide through the online guidance and the update of the information on buying and selling properties.

The Convener: On the issue with the IT system, anything can be done with an IT system. However, if we are going to write to every person whose property is coming up to the 20-year date, the question about what people will do when they get that letter raises a compelling argument. Will they take legal advice on whether their title deeds are okay? Lawyers will know this better than me but, if people are aware of the issue because it is in the guidance, it should be possible at the early stage of buying a property for them to say to their solicitor that they want reassurance that that has been checked.

Brian Whittle: I am never quite sure. If someone lived in their property for more than the statutory 20 years, the issue could arise further down the line.

09:45

The Convener: The question is whether anything can be done that is proportionate to the risk. We are talking about a private transaction, so we need to ensure that the legal process is as fair as possible. I was reassured by the Scottish Government and the Law Society saying that they

are working together on guidance, which I hope will help.

Brian Whittle: I agree that the time to do something is at the purchase; it would be more appropriate to raise matters at that point than at the 20-year mark.

The Convener: Yes. People should be informed and thinking about the matter. The question is whether, even given all that, there might be a mistake that is not spotted until 20 years later. There is a judgment, on balance, to be made.

Rachael Hamilton suggested that we write to the Scottish Government to seek an update. Do members agree with that? Should we do anything else?

Rachael Hamilton: The Government says that such cases are unusual, but I have had a couple of constituency cases in which problems with title deeds have not been identified by the time that people are selling their property. It is important for some responsibility to lie with the legal profession.

The Convener: Do members agree to write to the Scottish Government to seek an update on the progress that has been made on updating its online guidance and on its work with the Law Society of Scotland to update information on buying and selling a property?

Members indicated agreement.

Log Burner Stoves (Smoke Control Areas) (PE1685)

The Convener: The next petition for consideration is PE1685, by Jim Nisbet, on log burner stoves in smoke control areas. The clerk's note refers to the two recommendations in the Environment, Climate Change and Land Reform Committee's report "Air Quality in Scotland Inquiry". Is that Angus MacDonald's committee?

Angus MacDonald: Yes.

The Convener: Excellent. The report's recommendations were to undertake more research to understand the extent of pollutants that emanate from wood-burning stoves and to review the current regulations and guidance on wood-burning stoves to ensure that the regulations are sufficiently robust.

The Cabinet Secretary for Environment, Climate Change and Land Reform accepted those recommendations and confirmed that the issues are under active consideration jointly with the other United Kingdom Administrations. The steps that have been taken include an investigation of the public's use of wood-burning stoves, which the cabinet secretary stated would

“provide a sound evidence base for reviewing current policy and legislation, and any other research requirements.”

No findings from the investigation appear to have been published yet.

The petitioner has expressed his disappointment with the cleaner air for Scotland strategy, and he argues that significant research has already been undertaken on the issue.

Do members have any comments or suggestions for action? The clerk's note suggests closing the petition, because the Government is actively taking forward the ECCLR Committee's recommendations. Does Angus MacDonald want to comment first?

Angus MacDonald: The ECCLR Committee's report on air quality in Scotland, which was published in February, noted the concerns that had been expressed about the potential impact of wood-burning stoves on air quality. As the convener mentioned, the cabinet secretary has recognised that the Clean Air Act 1993 might need to be updated.

New European Union standards, which I presume that we will sign up to, are coming into force in 2020 that will, in effect, force consumers to purchase what are called ecodesign-ready stoves. There is therefore a bit of movement already.

There was a development yesterday, when the cabinet secretary announced an independent review of the cleaner air for Scotland strategy, which will be chaired by Professor Campbell Gemmell. Such a review was a programme for government commitment. Would it be worth the committee making Professor Gemmell—or at least the steering group—aware of the petition, so that it could be considered while the strategy is reviewed?

The Convener: Could we do that as well as closing the petition?

Angus MacDonald: Yes. There has already been quite a bit of movement on the issue. The petitioner has made his point, and the issue is definitely on the Government's radar. We need to make sure that it is on the radar of those who are reviewing the cleaner air for Scotland strategy, and we could do that by writing to Professor Campbell Gemmell.

The Convener: If there are no other views, is that agreed?

Members indicated agreement.

The Convener: On that basis, we agree to close the petition under rule 15.7 of standing orders, as the Scottish Government is acting on the Environment, Climate Change and Land Reform Committee's recommendations. We also agree to write to Professor Campbell Gemmell, who will be conducting the work that has been

identified. The issues are important and we note that there has been movement and progress, so we thank the petitioner for petitioning the committee and highlighting the issues.

Myalgic Encephalomyelitis (Treatment) (PE1690)

The Convener: The next petition for consideration is PE1690, by Emma Shorter, on behalf of #MEAction Scotland, on the treatment of people with myalgic encephalomyelitis. Members will recall that we took evidence on the petition from the petitioner and agreed to write to a range of stakeholders, including the Scottish Government and health boards.

The clerk's note provides a summary of the submissions that have been received from health boards, which appear to justify the concerns that the petitioner expressed in her petition and in her oral evidence about an inconsistency of approach or awareness across health boards. We have also received submissions from individuals who have outlined their experiences, particularly of cognitive behavioural therapy and graded exercise therapy. Their views appear to be supported by stakeholders including science for ME and Action for ME.

In response, NHS Education for Scotland has referred to a learning matrix that it has produced, which says that cognitive behavioural therapy

"has the clearest evidence of benefit".

The Scottish Government acknowledged that CBT can result in some people feeling worse but noted that studies have found that it has benefits for others.

On our desks, we have copies of submissions that were not included in our meeting pack, as they are in the process of being published. Invest in ME Research has set out why it believes that greater funding is required for biomedical research into ME. It considers that the delivery of training and education needs to be overseen by experienced clinicians and suggests that claims about the efficacy of CBT are "misleading".

Stuart Brown seeks clarification on the Scottish Government submission, particularly with regard to the "actual government spend" within the £90,000 of funding that it recently announced for research. He raises concerns about the Scottish Government's reference to the £2.5 million that it has invested in specialist nursing and care and argues that that money was not spent on patients with ME and

"nor did the Government particularly intend it to be".

Do members have any comments or suggestions for action? I am struck by the number of responses and by the powerful arguments that

are being put forward. I also found the evidence from Professor Jonathan Edwards interesting, although I do not pretend to understand all the issues. We are not clinicians, so I am always anxious about intervening in clinical matters where people have expertise, but his explanation of why bias is built in around behavioural issues was very interesting. The pattern of experience of those who made submissions is also significant.

Brian Whittle: As you know, convener, every day is a school day in this place. When I took part in a debate on ME in the Parliament, I admit honestly that I was not well versed in the subject. The number of submissions that we received prior to that debate was significantly higher than for most issues, which brought the matter to my attention. The issue needs to be looked at further.

I was struck by the different approaches across health boards, which the submissions highlighted. It is a cliché to talk about a postcode lottery, but we should look at that. I would be interested in hearing from the Cabinet Secretary for Health and Sport—that is probably the next logical step that we should take.

The Convener: If the cabinet secretary gave evidence, we could talk about the range of experiences that have been identified and the different practices by different health boards, as well as about what seems to be a contradiction in the clinical arguments—some people say that CBT is good for some patients but not for others, and the professor made the point that the way in which it is assessed builds in some of that, which is problematic.

Rachael Hamilton: Convener, you have hit the nail on the head. I was glad that my national health service board made a submission and disappointed, to be honest, that only a handful of NHS boards responded. As you just highlighted, it is evident that there are different approaches in different boards—they look at things differently. My board treats CBT and graded exercise therapy as evidence based and follows the Scottish Government guidelines. That was not noted in some other boards' responses.

As we know, the petitioner has not so far responded to the submissions—the information says that the petitioner has yet to respond to them. Is that correct?

The Convener: That refers to another petition—there is a detailed response from the petitioner.

Another thing that struck me in the evidence was the table that lists the recommendations to the Government. I need to get clarification about that because, all the way through, the recommendations are marked as not implemented, or their status is not known. It would probably be easier to have a conversation about

that directly with the cabinet secretary. However, there are detailed comments on the other submissions.

Angus MacDonald: The convener and Rachael Hamilton have raised the issue of the different approaches that health boards take. It is clear from the boards' submissions that the approach to training and awareness varies. There is a mixed approach to CBT and GET and to the provision of treatment and support—for example, NHS Lothian has its ME/chronic fatigue syndrome rehabilitation service at the Astley Ainslie hospital, whereas NHS Dumfries and Galloway states that the thrust of its service provision is community based. The approach is mixed and it would be good to get the views of the health boards that have not responded; I would have thought that they would all be keen to submit their views on such an issue.

Emma Harper, who is an MSP for the South Scotland region, has been active in addressing issues that relate to ME in her area. She has contacted NHS Dumfries and Galloway, general practitioners and other local services and health professionals, as well as attending events in Dumfries. She could not attend today's meeting, but she is aware that the petition is on the agenda and I know that she is working towards better health board engagement and proper evidence for the best treatment and support options.

I was concerned to note from the submissions that 82 per cent of GPs who were surveyed by Action for ME had undertaken no training on ME, and what I would class as a staggering 66 per cent were not aware of the good practice statement. We need to bring in the cabinet secretary to get her view on the provision of services to ME sufferers, particularly because a number of recommendations have not been picked up, as the convener pointed out.

The Convener: I remember when people first started talking about ME, when I was younger. At that time, there was scepticism, which comes out quite strongly from the evidence. People are not quite told that they are imagining their condition, but they are told to deal with it psychologically, rather than it being recognised as a condition that some clinicians now talk about under the heading of biomedical research. I do not pretend to be an expert, but I am struck that that is a thread in the evidence. I suppose that we need to ask the cabinet secretary whether health board responses and provision are still informed by the previous thinking and to what extent the Scottish Government recognises that that is a problem.

Rachael Hamilton: Before we see the cabinet secretary, would it be appropriate to ask again for responses from the NHS boards that did not submit one, as Angus MacDonald suggested?

10:00

The Convener: We should invite the cabinet secretary and send a note to the health boards to say that we will be having a session with her, so it would be helpful to get a fuller picture of what is happening across the country. It may be that ME is given no priority in some health board areas, which would be a story in itself and an issue that we needed to address.

With members' agreement, we plan to invite the cabinet secretary to give evidence at a future meeting and to contact the health boards that have not submitted responses, to give them an opportunity to do so ahead of that meeting. We will also record our thanks to the health boards that provided responses. Is that agreed?

Members indicated agreement.

Title Conditions (Scotland) Act 2003 (Review) (PE1691)

The Convener: The next petition is PE1691, by Christopher Hampton, on behalf of the steering group of Bowman's View, on a review of the Title Conditions (Scotland) Act 2003. The committee previously sought views from the Scottish Government, the Law Society of Scotland and the Scottish Law Commission. The clerk's note summarises the responses received and notes that the Scottish Government has no current plans to consult on changing the law in this area.

For our further consideration, it might be helpful to have a response from the petitioner to get his views on the submissions that we have received to date. That is the response that we have not received thus far. Do members have any comments or suggestions?

Brian Whittle: As you say, we should invite the petitioner to respond. Until that time, we should put the petition on hold.

The Convener: We are interested in the issues that are involved and recognise that they are complex. It might be helpful to get the view of the petitioner on what we could do next, although it is clear that the Scottish Government does not intend to do as the petitioner has requested. Do members agree that it would be helpful to give the petitioner that opportunity?

Members indicated agreement.

Getting it Right for Every Child Policy (Human Rights) (PE1692)

The Convener: PE1692 was submitted by Lesley Scott and Alison Preuss, on behalf of Tymes Trust and the Scottish home education forum. At our first consideration of the petition, we took evidence from the petitioners and agreed to

write to the Scottish Government and the Information Commissioner's Office.

The Information Commissioner's Office offers no comment on the call for an inquiry but sets out its role and views on the data protection aspect of the action that is called for in the petition. The Scottish Government does not agree with the petitioners' call for an independent inquiry. The petitioners argue that by stating that it is a matter for local authorities how they deliver the getting it right for every child policy and framework, the Scottish Government is abdicating its responsibility.

Committee members may be aware that there is significant interest in this petition among some individuals, who may have contacted us directly. Members may also wish to note that the clerks have received correspondence from individuals other than the petitioners explaining their concerns about the information-sharing aspect. As members are aware, submissions can be published only as and when they meet the Parliament's criteria for that; for example, they should not refer to on-going cases or disputes. I am aware that the clerks have been reviewing submissions that have been received recently, and those will be published in due course.

As far as our consideration of the petition is concerned, members have before them a copy of correspondence from the petitioners expressing their concern that some submissions are not being published. The petitioners have offered some suggestions of their own for what action we may wish to take on the petition, such as insisting that their points are properly addressed by the Scottish Government. The petitioners also suggest that human rights infringements in the context of upholding children's and families' rights could be explored by bodies such as the Children and Young People's Commissioner Scotland, the Equality and Human Rights Commission and the Scottish Human Rights Commission. In that context, do members have any comments or suggestions for action?

Brian Whittle: I am sure that other members have experienced what I have—the petition has led to an unusually large number of submissions being received and to the lobbying of all members of the committee. In my opinion, there seems to be a confusion of approach in a number of councils.

I am aware that the Education and Skills Committee is working on something similar. We could write to that committee and inform it of the petition so that the petition could be added to its investigation, because the committee is doing quite a bit of work on the issue.

The Convener: To be clear, the Education and Skills Committee has declined to produce a stage 1 report on the Children and Young People

(Information Sharing) (Scotland) Bill until we know that a code of practice is in place, because we were not satisfied. The bill is predicated on a code of practice, and the committee took the view that it was not possible to produce a stage 1 report until we knew what that code would say. That work is on-going. The committee is looking at the bill, which was drafted as a consequence of the judgments in the courts about the current position, and it is addressing a lot of the concerns that have been identified. It is not that GIRFEC is not being debated in Parliament; it is being argued through in the Education and Skills Committee as well as by the full Parliament.

It might be most appropriate for the petitioners to raise some of the suggestions that they have offered with the children's commissioner, the Equality and Human Rights Commission and the Scottish Human Rights Commission, rather than for this committee to call for the Government to set up an independent review. We could then allow the petitioners to explore and raise their concerns with the bodies that they have identified in their most recent email.

Brian Whittle: We need to recognise that the issue is raising a lot of concern, but I struggle to see what more the Public Petitions Committee can do, over and above what the Education and Skills Committee can do, other than to send the petition to that committee.

The Convener: To be clear, in all the years that I have been in Parliament, I do not recall a committee declining the responsibility of writing a stage 1 report on a bill. Critically, the bill was drafted in response to the concerns about the policy that were identified in court. That relates to what has happened around the named person policy.

I recognise that there is a strong argument for referring the petition to the Education and Skills Committee and asking it to look at the petition in the context of the work that it is doing on the bill, which is a response to the problem with the policy in the first place. Do members agree with that? I am interested in the views of other members.

Angus MacDonald: That is the right way forward. To clarify, if the petition is forwarded to the Education and Skills Committee, would that committee then have the option of forwarding it to the Equalities and Human Rights Committee or the Justice Committee?

The Convener: The suggestion is that the petitioners might consider taking that route, and we could say that we can see the force of the argument for doing so. That is how it would be done; it is not for this committee to make that decision.

Rachael Hamilton: To clarify, if we do not refer the petition to other bodies on a human rights basis, could the petitioner request that? If we give it to the Education and Skills Committee, what happens at that point?

The Convener: We can get some clarification on that. My understanding—we would need to check this if we were giving advice to the petitioner—is that the petition would not be sent, but I presume that we could request that those bodies explore the issues that the petitioners have identified. I understand that some of the bodies have been involved in some of the discussions about the implications of the named person policy in any event, because it was a matter of discussion in the courts.

The question for the Public Petitions Committee in dealing with the petition—as opposed to dealing with the issues that have brought the petition here—is whether we want to refer the petition to the Education and Skills Committee, to inform its work by highlighting the data protection issues as part of its scrutiny of the Children and Young People (Information Sharing) (Scotland) Bill, which has been introduced because it was confirmed at court level that there were issues with the policy. The separate question is whether to tell the petitioners that they may want to seek advice about how engagement with the bodies that they have identified could be taken forward.

Brian Whittle: I agree that that is a positive way forward. It is not a case of our trying to pass this on to someone else. The situation has been identified as one of grave concern, but I think that the petition will be best served by the Education and Skills Committee.

The Convener: I want to underline the fact that this is not an issue that the Parliament has not addressed or will not have to address again. The Scottish Government has a responsibility to come back to the Education and Skills Committee. It wants its bill to go through and the committee has agreed—although not unanimously—not to produce a stage 1 report on the bill and on its policy to address the weaknesses that were identified in court. It is a live issue in Parliament.

The separate question about taking forward the human rights dimension that is identified in the petition is something on which we might want to advise the petitioners. Of course, the petitioners always have the right to return with a further petition if they do not feel that our course of action satisfies their concerns. I do not think that any member of the committee wants to dismiss the concerns that have driven the petition, because it is clearly a policy area that the Parliament has wrestled with over time.

I take it that we are agreeing to refer the petition to the Education and Skills Committee, to allow that committee to include the data protection issues that are raised in the petition when its scrutiny of the bill resumes, but to identify for the petitioners the other options for considering the human rights issues. Is that agreed?

Members *indicated agreement.*

Access to Justice (PE1695)

The Convener: The final petition for consideration is PE1695, by Ben and Evelyn Mundell, on access to justice in Scotland. I welcome David Stewart MSP and Edward Mountain MSP for consideration of the petition.

The petition is linked to European Union milk quotas. In the United Kingdom, farmers were permitted to trade their quotas. However, in a small number of ring-fenced Scottish areas, free trade in quotas was not permitted. The petitioners argue:

“The ring fence put an enormous burden on any dairy farmer in the Southern Isles of Scotland who was either, having to give up production, or cut back production.”

The petition is focused on access to legal advice and support on human rights law, rather than the human rights impact of the ring-fencing policy itself. The committee first considered the petition on 7 June, when it agreed to write to the Scottish Government, the Law Society of Scotland, the Scottish Human Rights Commission and the First Minister’s advisory group on human rights leadership. Responses have now been received and the petitioners have responded to those.

It might help our consideration if David Stewart and Edward Mountain were to say something before we conclude.

David Stewart (Highlands and Islands) (Lab): Thank you, convener. I thank the committee for allowing me to come along to give some background information about the family. As you know, I am a strong supporter of the Public Petitions Committee, and I am glad to see that there are a couple of survivors from my era who are still members.

I have given evidence to the committee before, in an earlier session of Parliament, during a previous iteration of discussions on this issue, so I can give some background. I have been involved with the Mundell family for several years, and I want to thank other MSPs who have supported the family, not least Jamie McGrigor and Peter Peacock. I also thank Edward Mountain for his work. I welcome the Mundell family to the public gallery.

As I said last time, this is a highly complicated case, but it is well summarised in the papers that

members have received. On the surface, it is about the ring fencing of dairy farmers’ milk quotas, particularly but not exclusively within the southern isles ring-fenced area. The fundamental question for me is how an ordinary Scottish family on a modest income can seek redress and remedy for potential breaches of the European convention on human rights and for injustice in general.

10:15

The simple answer is that they should seek legal representation through the civil legal aid scheme. You will know, convener, that the family has been in touch with more than 50 lawyers, either in person or by phone, but the vast majority will not deal with human rights cases. Those who will have said that they will deal only with prisoners or people who have emigration issues.

One lawyer who agreed to take up the case wanted an up-front payment of £25,000 before proceeding. That payment, at the time, represented double the family’s yearly disposable income. Mr and Mrs Mundell tell me that many farmers in the ring-fenced areas were placed in an impossible situation, with a milk price below the cost of production. That led to the forfeit of their property and, as outlined in the committee’s papers, that is a breach of article 1 of protocol 1 of the European Convention on Human Rights.

Farmers who were in Mr and Mrs Mundell’s position had no money to pay interest on an overdraft and had to incinerate perfectly healthy cows for less than £500 per head. They had no money to diversify, suffered severe stress and in some cases lost their homes and businesses. I stress that this is not just about one family, much as the Mundells are in a terrible and tragic position, it is about how we right a wrong. As I said the last time that I appeared before the committee, surely the test of any advanced democratic society is how easily and transparently someone can seek legal redress at the highest level.

I know that time is short, so I will conclude with five quick points. The family believe that there has been a major miscarriage of justice for themselves, their neighbours and the wider area, which I support.

I accept that the committee does not have a remit over this, but I believe that the remit of the Scottish Human Rights Commission should be altered and expanded to allow it to sit in cases when people have found it impossible to access the services of a lawyer in respect of human rights. That is very much what happens with the Northern Ireland Human Rights Commission.

I also believe that cases should be investigated, perhaps in conjunction with a university. Again, that happens in Northern Ireland. It would be good

from the educational point of view, as well as assisting the individuals to justice. Judith Robertson from the Scottish Human Rights Commission appeared before the House of Commons and House of Lords Joint Committee on Human Rights on 2 May 2018 and said:

“The cheapest way to ensure that rights are delivered is to ensure that they are not breached.”

She went on to say:

“It is difficult for anybody to take a case in Scotland. ... we have no power to support anybody to do that; in fact, we are expressly disallowed.”

Finally, I thank the committee for listening to my representations. I appreciate that the matter is complicated, but stress that the key issue is access to human rights and legal advice at a very senior level for families that have limited funding.

Edward Mountain (Highlands and Islands) (Con): I echo what David Stewart said and thank the committee for giving me the opportunity to come and speak. Before I go any further, I declare that I have an interest in an agricultural business and that my comments will mainly be on the agricultural side.

The important point to remember about the Mundells is that they had about half a million litres of milk quota. We are talking about a number of years, but in a particular year the milk quota was selling at 28p a litre or it could be leased out at 12p a litre if the farmer wanted to do that. The Mundells were prohibited from doing that because the quota was ring-fenced within the area.

That decision was taken by the Scottish Government to advance and protect another industry, and for that the Mundells have had to suffer. Their situation was that as their business became less profitable they did not have the capital that every other dairy farmer in the country who wanted to move out of dairy farming could use to divert into other enterprises. That, to me, is a fundamental breach of somebody's human rights, especially if everyone else across the United Kingdom apart from those in the ring-fenced area had the ability to trade that quota.

I echo David Stewart's points about how particularly difficult this is. I could wax lyrical for hours on milk quotas and quotas, but I will not, convener, for which I am sure you are grateful. There are not many legal minds with a detailed knowledge of the issue, which affects the Mundells' ability to get that knowledge and use it to defend themselves and others from the situation in which they find themselves.

I have read the Scottish Government's and the Law Society's comments on the matter. Bearing in mind what the committee has heard and read, I wonder whether, once the First Minister's advisory

group on human rights leadership has published its recommendations in December of this year, we might all be in a position to understand how the Mundells and other farmers can resolve the issue. I know that it is up to the committee to recommend a course of action, but I would be minded to wait and see what that report says and to find out how the Mundells can progress their case, because I seriously believe that they have been disadvantaged and that their human rights have been affected.

The Convener: I want to be clear what the policy was. What industry was being protected and how many other cases have been identified—not necessarily cases that have led to the same circumstances that this individual family has found itself in, but cases in which people felt a similar level of disadvantage? If somebody has contacted 50 lawyers and none of them will take on the case, why is that? Is it simply because they do not have the expertise or are not capable of getting the expertise? I find that issue interesting.

David Stewart: I will leave it to Edward Mountain to talk about the technicalities of the creamery issue. As far as the legal side is concerned, the Law Society obviously advertises lawyers across Scotland who have expertise in human rights. They are not denying that this beast exists; of course it does. There is lots of expertise in Scotland, but the problem is with access to funding. As I said, many lawyers who have that expertise specialise in two areas, one of which is immigration, so it is difficult for the family to access that help. The fact is that, if you have contacted 50 lawyers and cannot get anyone to take on your case, you will conclude that if it waddles and it quacks, as the Americans say, it must be a duck. There is a real problem in accessing justice, partly because of funding and partly because of expertise.

The Convener: If I were playing devil's advocate and did not hold that view, I would suggest that if you cannot get one out of 50 lawyers to take on your case it must be because there is not a case.

David Stewart: I do not think that it ever got to that stage. In one case, £25,000 was required before the lawyer could start, and the family did not have access to that sum. In other cases, the family was not in the categories that the lawyers who deal with human rights cases are willing to take on.

Edward Mountain: I echo that. Having taken legal advice when I was working professionally, I know that it is extraordinarily expensive to get top-quality advice, and if there is not a wide variety of people available to do it and the choice is limited to just one person, that person will have to spend a huge amount of time doing background reading

to get to a point at which they understand the problem, which would generate a huge amount of up-front cost.

As far as ring fencing and quotas are concerned, the ring fencing was done to ensure that a particular creamery worked and could continue business. I am not sure where there was milk quota ring fencing across the rest of the UK. It was a tradable asset, as far as I am aware. I have brought with me information relating to a company that has got milk prices and traded quota across the United Kingdom, and all the figures are available to see. You can buy and sell that quota, but not if it is ring fenced. The problem is that, once you ring fence quota to a particular area and to a particular supplier, it does not take much to work out that the supplier knows that that quota cannot move, so they can dictate the price. Once you get into a monopoly situation, the price is distorted, and usually not in favour of the producer.

Angus MacDonald: How much was the price distorted? Do we know?

Edward Mountain: I cannot give you the exact figures, but the price was lower than in other parts of the United Kingdom. In fairness, we see that prices reflect changes, and milk prices at the moment are a real issue. Farmers are seeing milk being sold in the supermarket at about 49p per litre, and some farmers are getting only 21p per litre at the farm gate, so there is a huge disparity, which was reflected then as well.

The Convener: I know that I started this line of discussion, but the petition is not really about that. It is really about what support is available in the system once somebody finds themselves in difficulty.

Brian Whittle: There are a number of facets to the issue, not least the question of access to legal representation, which is in itself a human right. I am minded to suggest that we ask the Scottish Government about its thought process in ring fencing those quotas, because I am pretty sure that its intention was not to put the Mundells into this kind of position—it is an unintended consequence. I would certainly like to ask the Scottish Government about why it made the decisions that it made.

The Convener: We will contact the Scottish Government about that.

As I recall it, the Scottish Human Rights Commission was established without the right to take up cases, because it was not to be in competition with the United Kingdom-wide body that had those kinds of responsibilities. However, I sometimes wonder whether those at the UK level think that, because people in Scotland have the Scottish Human Rights Commission, they do not

need support at a UK level. I am interested in whether the Scottish Government has looked at the role and remit of the Scottish Human Rights Commission and whether, given the arguments that there are, it would want to review the situation. It might be that it does not want to, as it feels that the landscape is sufficiently stable for those concerns not to arise.

The other question is about the means testing of people's right to legal support—the whole debate around legal aid is about to what extent it should be means tested and so on. There is an argument around that. It would be interesting to hear the Scottish Government's view.

Brian Whittle: There are, again, two facets. There seems to be limited access to legal representation in this particular case, and I would certainly be looking to investigate that further. I do not know whether the Law Society would perhaps have a view on what we should be doing to make sure that a situation like this does not arise again.

Rachael Hamilton: There are two points. The petitioners make the point that the Scottish Human Rights Commission, which the convener just mentioned, should perhaps receive a higher budget in order to have a wider remit over enforcement powers. We should probably ask the Scottish Government about that.

The petitioners' issue is obviously due to Government policy, and human rights should therefore perhaps be taken into consideration when creating new policies. I am not sure whether the First Minister's advisory group on human rights leadership is aware of this example. It is a great example and we should be putting it into the mix when the advisory group is considering human rights.

The Convener: I know that the Scottish Government has to sign off any proposed legislation as being human rights compliant. However, it is sometimes established in court that the test has not actually been met.

So, we will write to the Scottish Government, particularly about the remit of the Scottish Human Rights Commission and about its response to the "Rethinking Legal Aid" report. We could also ask about the First Minister's advisory group. Is there anything further that we could or should do?

Rachael Hamilton: If human rights had been taken into consideration when the policy was created, this situation would not have arisen. Is there any evidence that suggests that a human rights compliance test was carried out at the time?

The Convener: To be fair, somebody would have to establish in court that the policy created a human rights deficit. We do not know that. The argument that is being made is that the petitioners'

problem is that they were not able to get to that point because they could not get a lawyer to take the case. I have dealt with other circumstances in which somebody has wanted to take a case forward but could not get a lawyer. The Law Society provides a list, but I do not think that you can make a lawyer take up a case. There are general policy issues around that, which are quite interesting.

Brian Whittle: Would there be a case for taking oral evidence from the Scottish Government on the issue?

The Convener: I am never opposed to having the Scottish Government in front of me to give evidence but I suggest that we write to it in the first instance. A number of things have been asserted, and it would be worth finding out what the Scottish Government's process is with regard to policy making and making that kind of decision. Has it reflected on the consequences of its process or done any analysis of them? Does the Government have a view on the role of legal aid or the question of the Scottish Human Rights Commission? Those are reasonably substantial questions.

10:30

Rachael Hamilton: There are a lot of questions there, convener. I am not sure about writing to the Government. It might be better to take evidence directly to highlight the issues in a stronger way.

The Convener: I suggest that one course of action does not block the other. Writing to the Government to ask for its views does not preclude the possibility of having a minister in front of us in order that we can interrogate them on that response, if that is what we decide to do.

David Stewart: I think that the key is the Scottish Human Rights Commission. Earlier, I quoted Judith Robertson's evidence to the joint committee in Westminster. Her key points were that the best way to ensure that people have their rights is to ensure that they are not breached in the first place, and that there must be easy access to redress, which there is not at the moment.

Edward Mountain put it well, but in very simple terms for those who are not farmers or crofters—that eliminates Angus MacDonald. He said that, on day 1, the family had a valuable asset but that, when the ring fencing came in, they did not. They had the same beasts and the same milk, but the ring fencing meant that they were physically unable to take it to the creamery because there were restrictions in place because of the way that the monopoly operates. It was not the case that we suddenly had a world decline in milk prices—what happened was that the Mundells physically could not sell it. The process did not have the transparency that existed in other parts of the

world and the UK, where people could transfer and sell their milk across the whole of Britain. Because of the situation where they were, the Mundells physically could not do that. The creamery was not picking up the milk because of ring fencing, and that caused the big problem. That problem led to families losing their property, which is the argument about the breach of the European convention on human rights.

The Convener: To be clear, however, the petition is looking at access to support in terms of human rights. The Scottish Human Rights Commission cannot provide that support because there is another body with that responsibility. However, is the body at a UK level not providing the support to folk with a problem in Scotland that it might provide to people elsewhere, such as in England? That is my question.

David Stewart spoke about Northern Ireland, but there is a particular reason why the Northern Ireland Human Rights Commission was constituted in the way that it was. However, I would be interested to know whether, in the rest of the United Kingdom, somebody in those circumstances would be in the same position as the petitioners.

Edward Mountain: If I may just briefly clarify, the creamery was picking up the milk, but it could dictate the price because it had a monopoly. The committee is looking at entirely the right issue. The Mundells had heritable property. If people own heritable property it can be transferred and moved on, but the Mundells were prevented from doing that.

It is not for me to protect the Government of the time but I do not believe that it had any malice aforethought when it did that. I believe that the policy was implemented with the best possible intentions but that it had unintended consequences, which have breached people's human rights. That is my strong belief, and somebody ought to hold the Government to account for that.

The Convener: I do not want to prolong the discussion or imply that what Edward Mountain said is not true, but I again confirm that the committee's concern is not to establish that there has been a breach of human rights.

The case has, however, thrown up an issue in the system that the committee wants to address, around people in certain circumstances being unable to access legal advice on a breach of their human rights, which some of us perhaps imagined that they could have accessed. The case has also thrown up the question of whether the provision of that access is the role of the Scottish Human Rights Commission or the responsibility of the UK body.

Do we agree to write to the Scottish Government in the terms that I have outlined, and to decide, when we have received the response, whether to ask the minister to appear before us?

Members *indicated agreement.*

The Convener: I thank Edward Mountain and David Stewart for their attendance.

I thank all the petitioners, as well as everyone who produced submissions as a consequence of the range of petitions that we have heard this morning.

Meeting closed at 10:34.

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