



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 14 January 2014

Session 4

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CONTENTS

| | Col. |
|--|-------------|
| NEW PETITIONS | 1931 |
| Local Authority Education Committees (Religious Representation) (PE1498) | 1931 |
| Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501) | 1944 |
| Ecurie Ecosse Cars (PE1502) | 1955 |
| CURRENT PETITIONS | 1958 |
| Whistleblowing in Local Government (PE1488) | 1958 |
| Scottish Public Services Ombudsman (Parliamentary Governance) (PE1489) | 1958 |

PUBLIC PETITIONS COMMITTEE
2nd Meeting 2014, Session 4

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Chic Brodie (South Scotland) (SNP)

COMMITTEE MEMBERS

Jackson Carlaw (West Scotland) (Con)

*Angus MacDonald (Falkirk East) (SNP)

*Anne McTaggart (Glasgow) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*John Wilson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Norman Bonney (Edinburgh Secular Society)

Colin Emerson (Edinburgh Secular Society)

Stuart Graham

Willie Rennie (Mid Scotland and Fife) (LD)

Tony Whittle

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

Committee Room 5

Scottish Parliament

Public Petitions Committee

Tuesday 14 January 2014

[The Convener *opened the meeting at 10:30*]

New Petitions

Local Authority Education Committees (Religious Representation) (PE1498)

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

We have apologies from Jackson Carlaw.

Agenda item 1 is consideration of three new petitions. As previously agreed, the committee will take evidence on two of the petitions. The first new petition is PE1498, by Colin Emerson, on behalf of Edinburgh Secular Society, on religious representatives on local authority education committees. Members have a note by the clerk, the Scottish Parliament information centre briefing, the petition and a submission from the petitioner.

I welcome to the meeting the petitioner, Colin Emerson—thank you for coming along—and Norman Bonney, who is the honorary president of Edinburgh Secular Society. I invite Mr Emerson to make a short presentation of about five minutes to set the context, after which we will move to questions. If Mr Bonney wants to contribute, I ask him to catch my eye. We would be happy to involve him in our proceedings.

Colin Emerson (Edinburgh Secular Society): Good morning, everyone. I thank the convener and committee members for the invitation to attend the meeting and for the opportunity that it gives us to describe our petition in more detail and answer questions about it.

It is relevant to state that Edinburgh Secular Society very much supports the concept of a Public Petitions Committee. It is a progressive means of allowing citizens and organisations to engage directly with the democratic process and potentially to influence policy or instigate new legislation. Crucially, it is the democratic principles of equality of access and the opportunity to influence by the quality of the argument and evidence that are presented, and not by virtue of privilege, that underpin the committee's success.

Our petition's aim is to ensure that similar democratic principles are introduced in local authority education committees. We contend that

the current statutory requirement for unelected and unaccountable religious representatives to be appointed, with full voting rights, to all 32 education committees in Scotland is undemocratic in principle and in practice.

The current legislation privileges one religion—Christianity—and in particular two denominations within that religion: the Church of Scotland and the Roman Catholic faith. That clearly discriminates against those of minority faiths and those of no faith. Surely that is an untenable position, especially given the demographic changes that are occurring in Scotland, where 37 per cent of the general population are of no religion—that equates to just under 2 million Scots. The no religion figure is much higher—at 65 per cent—among under-24s, according to the British social attitudes survey 2012.

Religious representatives have full voting rights, but unless voting rights come with the right to vote somebody off, democracy is undermined. Recent events in Fort William and Shetland highlight the undemocratic nature of such voting rights. In Highland Council, religious representatives' votes overturned the elected coalition's decision on the location for a new £4 million school in Fort William. In Shetland Islands Council, one religious representative refused to vote on a crucial school closure issue after being asked not to vote by other councillors. It is worrying that the Church of Scotland reported at its 2013 assembly that religious representatives hold the "balance of power" on 19 education committees.

Evidence clearly shows that the churches use their religious representatives' privileged position to promote their own agenda and interests.

Action of Churches Together in Scotland, a group comprising all the main Christian churches, produced a policy or manifesto document entitled "A Christian Vision for Education in Scottish Schools". The foreword to that document reads:

"The members of the Scottish Churches' Forum have agreed that the paper should be widely circulated. We believe that it will be a useful reminder to the politicians and public servants responsible for Scotland's schools that the Scottish Churches have an abiding and significant interest in education and will be prepared to argue for policies which embody the principles expressed in 'A Christian Vision for Education in Scottish Schools'."

We contend that the churches are quite entitled to produce a document and argue their point of view. However, for them to use their privileged position on education committees to promote their own aims would be fundamentally undemocratic—yet that is exactly what their intention is.

A Church of Scotland document entitled "A Guide to Good Practice for Church of Scotland Education Representatives on Local Authority Education Committees" states, in section 1, that

“it is important for church representation on local authority committees ... to ensure a respected presence ... This may be achieved by establishing good relationships”

and

“by exercising your statutory right and endeavouring to influence council education policies in areas of interest to the ... church, including the development of the curriculum”

and “Christian values”.

Section 16 asks:

“If you sought to influence the recommendations in a report through one political group how might you approach them?”

Finally, section 17 asks:

“If you wanted to introduce a new policy how could you secure the support of the elected members for your ideas—quid pro quo?”

It cannot be right that unelected representatives in a modern democracy can have such potential influence within local government without being accountable to anyone. That has to change.

We do not believe that the status quo is an option and we would appeal to the churches to support our petition for legislative change. They can show vision and leadership by surrendering their statutory positions and accepting the changing demographics in Scotland. New legislation would not prevent religious nominees from being appointed by councils under other laws, if that is what councils chose to do, just as other external committee members can be appointed. Indeed, John Finnie MSP’s proposed member’s bill—the proposed local government accountability and transparency (Scotland) bill—would allow such appointments to be made but would also address the highlighted issues of unelected representatives’ voting rights and the statutory obligation on councils to appoint. Edinburgh Secular Society endorses the proposed bill and the democratic principles that lie behind it, and we would urge the churches to do likewise.

The Convener: Thank you, Mr Emerson, and thank you for your kind comments about the Public Petitions Committee.

Let us assume, for argument’s sake, that your petition is successful and that religious representatives are taken off local authority education committees. What would be the benefits of that?

Colin Emerson: First, it is a more democratic principle, and democracy in action would become transparent. However, as I mentioned, in relation to a number of issues religious representatives’ current practice is to seek to influence policy, and that is what they do, as I outlined in my quotations from the Church of Scotland’s guidelines for its representatives on how to exert influence. Behind the scenes, that privileged ability to influence

policy would end and, crucially, the voting rights that I emphasised would also cease. I gave two clear examples, one concerning a school closure and the other on the location of a new school in Fort William: religious representatives would not be able to exercise such rights undemocratically. Finally, the point is that they hold the “balance of power”, to use the Church of Scotland’s own words, on 19 education committees in Scotland.

Norman Bonney (Edinburgh Secular Society): One or two cases around the country are particularly troubling. When you think about it, it is really strange that, after 15 years of devolution and the Scottish Parliament, no systematic study—as far as I am aware—has been carried out of the role of such religious representatives on local authority education committees.

Edinburgh Secular Society has compiled a list of the current incumbents of those positions. In the course of that work, we have discovered that in the Shetland Islands, for instance, the system seems to be creaking, to say the least. There has been controversy about whether religious members should be appointed, although Shetland Islands Council is legally obliged to appoint such members. The council has recommended that they should be appointed, but that they should not play their role. When I looked at the list of the members of the council’s education committee in late December, one religious appointee and two vacancies were listed, yet I read press reports that one religious representative—not the one who was listed, but another one—was refusing to cast a vote in a decision on the closure of a school. It is clear that in the Shetland Islands the system is creaking.

I can identify difficulties in other areas. In Edinburgh, when the religious appointees were elected by the City of Edinburgh Council, it was necessary to go to a division on the third person. There was an ad hominem, hearsay debate about the qualities of the individuals concerned.

An investigation of the details of how the current system is working raises fundamental questions about whether it is working in the right way. In the Shetland Islands, it is possible for representatives of the Shetland Churches Council Trust and for representatives of an interfaith organisation to be the religious representatives, but the law says that churches with charges and places of worship should send representatives to education committees. It seems to me that in the Shetland Islands, in particular, there are fundamental issues about whether the current system is working and whether the education committee in Shetland is making competent decisions, given the way in which it is composed.

The Convener: Is there not an argument that religious representatives add value to debates in education committees across Scotland?

Norman Bonney: Yes, I agree that they do. There is no doubt that many of them do, but the question is why those people should be in those positions on the basis of their religious confession. One member of each of the 29 mainland committees is nominated by the Roman Catholic Church, so those individuals are likely to be people who follow the orthodoxies of that church. There has to be a Church of Scotland representative on all 32 committees. There are clear doctrinal differences between those churches, so why should it be relevant to the appointment of committee members that they have different religious confessions? Although they may well be able to make positive contributions to the work of committees—I do not challenge that—if local authorities wanted contributions that were non-confessional, that could be achieved through open competition rather than through the appointment of people on a religious basis.

Colin Emerson: The acid test is why, if that system holds merit democratically, religious reps are not appointed to the Parliament's Education and Culture Committee. No one advocates that, because it would just not be acceptable for democratic reasons. It seems to me that the acid test is that, if the role had value, we would extend it to other committees, but no one advocates that.

Chic Brodie (South Scotland) (SNP): Good morning, gentlemen.

I have some sympathy with any proposal that seeks to overcome a democratic deficit and to ensure fair representation, so if my questioning is a bit robust, that is simply to help me understand why you are here. Why are you here? Why have you picked this particular subject?

Colin Emerson: Sorry?

Chic Brodie: You have picked the subject of a democratic deficit in relation to schools. What underlies your bringing the petition to Parliament?

Norman Bonney: We are representatives of Edinburgh Secular Society, which is a voluntary body of concerned citizens that is unhappy with the way in which certain religious institutions—just a few among the many—are privileged in our society.

Chic Brodie: Can you give me an example of where else, other than in relation to education, you are pursuing the overcoming of a democratic deficit?

Norman Bonney: We are looking at the United Kingdom constitution and the whole independence debate. However, the substance of the petition

that we are dealing with today is a very unusual, special privilege that is given to the Roman Catholic Church on the mainland and the Church of Scotland in all 32 local authorities to nominate individual members of local democratic education committees. It is an affront to democratic principles that those people have a role on those committees. As we have said, the Church of Scotland claims that it has held the "balance of power" in 19 of the 32 local authority education committees. What motivates us is a concern to have a more effective system of local democracy.

10:45

Colin Emerson: Our understanding is that in local government it is only in relation to education committees that there is a statutory requirement to appoint external members. Those committees therefore stand alone, and for democratic reasons that needs to be addressed.

Chic Brodie: You mentioned that you have done checks on the individuals who have been appointed. How much analysis has been done of local membership of religions vis-à-vis local school rolls?

Norman Bonney: Our capacity is rather limited, and that is the sort of thing that the Scottish Government ought to be investigating.

Chic Brodie: You brought the petition, for which there must be a basis, so I ask the question again. You have checked up on the individuals concerned. Are you saying that you have not done any analysis of local membership of religions vis-à-vis local school rolls?

Norman Bonney: There is a difficulty in attributing any particular religion to school pupils, who do not necessarily follow their parents' religion. However, we can tell from local authority statistics that there is great variation in the percentage of the population who identify with the Roman Catholic Church, for example. Some parts of the mainland might have a small percentage of the population who are Roman Catholics, but they nonetheless get a representative on the local authority education committee.

We also draw attention to Glasgow City Council, where, as I understand it, only two of the three religious nominees have been appointed. Given that we know that the most common name used in newly registered births in Glasgow is now Mohammed, the council might begin to think about how to fill that vacancy and whether someone of a Muslim denomination might be a representative on that committee.

We do not have all the answers but we are raising major questions that require consideration. For too long, the issues have been swept under

the carpet and it has been assumed that two particular religious denominations should have preferred membership of local authority education committees.

Chic Brodie: As I said, I have some sympathy with the idea of securing full democratic provision at whatever level.

Having reviewed individuals in 19 council areas, have you been able to establish what due diligence, if any, has been done in relation to those appointees?

Norman Bonney: You will realise that the local authority is bound to accept the nominations from the hierarchy of the church of Rome and from the Church of Scotland. There are then arcane procedures for the appointment of the third representative, which require registered places of worship to be notified of the vacancy, usually by public advert. In 2012 in Edinburgh, it went to a ballot among the local authority elected members, who had to decide between two nominees. In many cases, it comes down to consulting the churches and so on.

In my supplementary paper, I drew the committee's attention to the fact that there are so-called interfaith representatives, although, as I read the legislation, the committees ought not to have interfaith representatives because the interfaith movement does not have places of worship.

Chic Brodie: Given where I come from, this is difficult. I understand what you are trying to achieve; it is what it is based on that forces my questioning.

Your initial written submission contains a section on specific issues relating to appointments by the "Church of Rome". Did you do a similar thing on appointments by the Church of Scotland?

Norman Bonney: My main point about the "Church of Rome" is that it is an international organisation, whereas the Church of Scotland is a national, Scottish organisation. I think that—

Chic Brodie: People might disagree with that.

Norman Bonney: I think that particular issues are raised in relation to the church of Rome, which is an international body that appoints senior members of the hierarchy in Scotland who, in turn, appoint members to local authority education committees. It is strange to me that a Parliament that, justifiably, welcomes its own autonomy and seeks to have much greater power in Scotland should assent to appointments to local authority education committees being made by the church of Rome, whose hierarchy is under the control and discipline of people who are based in the Vatican.

Chic Brodie: Well, I think that I would spread my attentions much wider rather than just focusing on one particular element.

Angus MacDonald (Falkirk East) (SNP): I have some sympathy with the petition, having served on Falkirk Council's education committee for a number of years. I recall occasions when I felt that church representatives failed to grasp the complexities of an issue on which they then voted. However, having said that, when I woke up this morning, I thought that I was still living in what is termed a Christian country, despite the drop in religious affiliation that you referred to earlier.

I note that your petition says that the current set-up is

"inherently undemocratic, unfair and discriminatory."

I cannot speak for the Government, but I would hazard a guess that it would not wish to exclude religious representation from education committees, given the church's historical role in setting up a school in every parish in the country. With that in mind, would you find it acceptable to have the three church representatives on each education committee continued but with no voting rights?

Colin Emerson: As a general principle we would not find it acceptable if that was to be a statutory requirement. It would be undemocratic. As we noted in our paper, the bill that is proposed by John Finnie acknowledges that issue. It would remove the statutory obligation and voting rights but would allow councils to continue to appoint people such as teachers and parents. If they chose to do so, they could also appoint external religious representative members.

Norman Bonney: That would give councils choice, rather than their being obliged to accept nominations from two churches and one other. If those positions were done away with, local authorities would still have the power to appoint external members and could choose whether to include religious representatives and which it wanted.

Colin Emerson: That would introduce an element of merit, because the council could judge the quality of the candidate.

Angus MacDonald: I see where you are coming from.

Earlier, you talked about what you called

"the arcane procedures for the appointment of the third representative".

If a local authority were minded to have as the third member a Muslim, surely that should be a decision for the local authority.

Norman Bonney: I think that what happens in relation to that third position is that an advert is published and very often only one name comes forward, perhaps as the result of an informal agreement on the part of religious groups. In that circumstance, there is no contest, and the local authority accepts the person. If there is more than one name, the local authority has to decide which of the candidates will be the third representative, so there is choice. However, that is not always what happens. We suggest that, if we were to do away with the compulsory places, local authorities could still appoint religious representatives to their education committees, if they so wished.

John Wilson (Central Scotland) (SNP): In your submission of 6 January, you refer to the estimate of the Church of Scotland that the three church representatives hold the “balance of power” on 19 local authority committees. I would like an analysis of how they hold the “balance of power” in those 19 local authorities. Local authorities have different numbers of elected members. I am not sure about this because I have not done an analysis of it, but in a local authority such as Glasgow City Council there might be 30 elected members on the education committee and three religious representatives, whereas Shetland Islands Council’s education committee might have fewer elected members on it. There might also be situations in which the three representatives hold the “balance of power” because they are of no political persuasion and are not affiliated to a political party. What is your understanding of the situation in the 19 local authorities in which the three religious representatives may hold the “balance of power”?

Norman Bonney: We have not done a detailed study; we have merely quoted what the Church of Scotland itself has said. If the petition goes further, you might want to clarify with it what it means. However, it clearly claimed that the churches exercise influence. It is very worrying that they claim to have a controlling influence in the majority of Scotland’s local authority education committees.

Colin Emerson: My understanding is that the situation is to do with the number of education committees that are made up of coalitions because no single political party has power, so the churches’ representatives hold the balance because they are not affiliated to a political party.

John Wilson: Convener, that is what I am trying to get from the petitioners who are before us today. On the “balance of power” argument, I know that you have selectively quoted from the Church of Scotland’s document to identify that “balance of power” and how it is used to influence the decisions of local authorities. I know that in some local authorities the churches have certainly exerted undue influence over the local authority’s

decisions—in particular, local authorities in which joint-campus education provision has been proposed and church representatives have, in effect, vetoed moves in that direction.

I was interested in the earlier argument that used the example of Glasgow. You said that there were representatives from the “Church of Rome”, as the document described it, and the Church of Scotland; and I think that Mr Bonney said that, given some schools’ rolls, the third representative may be a Muslim representative. However, as recorded in the 2011 census results, the Muslim population of Scotland makes up only 1 per cent of the total population. Would it be fair to appoint to represent a particular religious group on an education committee someone who represents 1 per cent of the population?

Norman Bonney: I cannot give you a precise figure for the proportion of Muslims in the Glasgow population, but the figure for Scotland as a whole is 4 per cent, if I remember correctly. The figure would be much higher in Glasgow.

In some local authority areas the Roman Catholic population is only a few per cent, but they get representation on local authority education committees. That principle suggests, therefore, that if religious diversity is wanted on the education committee in Glasgow, the vacancy there ought to be filled by a Muslim representative. The question why a big city such as Glasgow should still have a vacancy for the third religious representative raises all sorts of issues.

I hope that our comments have demonstrated to you that there are a number of difficulties in how the current system operates. I think that our solution is the cleanest by far.

John Wilson: I have every sympathy with your petition in terms of the way it has been presented, the arguments that have been presented here today and the supplementary paper. The situation is that in the 21st century we are using legislation that was drawn up in the 19th century that continues to influence decisions that local authorities make.

How would you like to see the petition being taken forward? What is your ultimate goal? Is it to remove all religious representation from local authority education committees?

Norman Bonney: Our petition is very clear. We are asking the Scottish Parliament to resolve to urge the Scottish Government to draw up legislative proposals that would, in effect, remove the current form of religious representation on education committees. The consequence would be that other laws would leave it open to local authorities to appoint religious representatives to education committees, if they wish to do so. The

proposal would therefore give back power to local authorities.

11:00

John Wilson: For clarification, is it the case that you and the Edinburgh Secular Society have no objection to the appointment of religious representatives to education committees of local authorities, if the authorities want that, and that you seek only repeal of the current legislation, in which there is a statutory obligation on local authorities to appoint religious representatives to education committees? Would you therefore be quite happy for local authorities to continue to appoint religious representatives if they deemed it to be necessary?

Norman Bonney: That would be the effect of Parliament's approving our petition and urging the Scottish Government to introduce legislation to do away with the requirement to have three religious representatives on education committees. As a result of other laws, each local authority could appoint external members to its education committee and could choose, if it so wished, to appoint religious representatives. They cannot do that at present.

Colin Emerson: Those representatives should be without voting rights; we would be quite strong about that. It would be up to councils to justify—it would be in their gift to do so—how they selected and why they gave representation to some religious groups and not to other groups, whether they be humanists, pagans or whatever.

John Wilson: I am sorry to prolong the discussion, but I am simply seeking clarification about what you are trying to achieve. My understanding is that the petition seeks to remove the appointment of religious representatives to education committees and to change legislation that it is in the gift of the Scottish Government and the Scottish Parliament to change. However, what you are saying—what I am picking up; I will check the *Official Report*—is that you would be quite happy for local authorities to continue to appoint religious representatives to education committees if we were to change the legislation. Would that extend to local authority education committees being able to appoint more than three religious representatives? In Glasgow, for example, could religious representatives be appointed to the education committee to cover the wide spectrum of religious communities that operate and have members in Glasgow?

Colin Emerson: The current legislation says that local authority committees can appoint external members in number only up to a third of the membership of committees. The exception is education committees, which can currently appoint

up to 50 per cent external members, which is the part of the legislation that we are seeking to repeal. Education committees would then be in line with all other local authority committees on the one third to two thirds rule. There would be a limit to the extent to which councils could appoint religious nominees. That would also be up for debate and would shift the debate to local councils, because they would have to justify offering X external memberships. They currently must justify giving external membership to parents. Only 50 per cent of local authority education committees grant external membership to parents, I think, according to our analysis from last year. Of that 50 per cent, only 12 councils give those representatives voting rights, so there is already in-built flexibility and representation has to be justified council by council. The proposal would merely bring external membership on education committees into line with all other council committees.

John Wilson: The petition raises a number of questions, but they are for a later date.

The Convener: We are a bit short of time, but there is still time for a very quick question from Chic Brodie and a quick response from the petitioners.

Chic Brodie: I think that we are agreed that it is a nonsense that 85 years on from the original legislation this petition is before the committee today. Had the churches moved with the times and spread their message, their representation might have had more substance, but that is clearly not the case. If that is a message for the churches, so be it.

I am concerned about legislation of this sort because our objective should always be to ensure that no rancour, criticism or critiquing continues after legislation is passed. This might seem like a silly question, but I am going to ask it anyway. Have you had any discussion with the two main churches about the lack of democracy in the current situation?

Colin Emerson: Yes—I have had informal discussions with both.

Chic Brodie: Will you share their reaction with us?

Colin Emerson: One was quite adamant that the system should stay. The position that it presented was that instead of the situation being reversed, the statutory obligation being removed and the religious representatives lost, the number of religious representatives could be extended through, for example, seats being offered to humanists or A N Others. I should stress, however, that those discussions were private and informal.

Chic Brodie: I understand and appreciate your sharing that information with us.

Norman Bonney: Under the committee's auspices, we are requesting that the churches consider supporting our petition and voluntarily relinquish religious posts in education committees.

The Convener: Thank you very much, gentlemen. I apologise for our having run out of time. Please stay where you are for a second. There will be no more questions, but we will have a summation of the situation and the whole committee will consider the next steps for the petition.

My view is that we should continue the petition and seek further advice. As members know, the clerk has suggested that we seek advice from the Scottish Government, the Convention of Scottish Local Authorities and others. Clearly, it would be sensible to write to the churches that the petitioners have mentioned, so I suggest that we contact the Church of Scotland education committee and the Scottish Catholic education service. I seek members' views on the matter.

Chic Brodie: To achieve some equity and fairness, we should not only write to the Church of Scotland education committee and the Scottish Catholic education service but enjoin other faiths and organisations such as humanist organisations and what have you to provide us with their views.

John Wilson: We should also seek the views of the Educational Institute of Scotland, given that it is directly involved in education. It is important that we gather the widest possible range of views on the petition and, following what Mr Brodie said, I suggest that we seek the views of the Scottish Interfaith Council and, particularly given the petitioners' comments, the Muslim Council of Scotland.

The Convener: Thank you for that. Does the committee agree with the suggested course of action?

Members indicated agreement.

The Convener: As the petitioners will have heard, the committee will go away and do some homework with these organisations. We will continue the petition, the clerks will keep you up to date with developments and we will discuss the matter at a future date when we have got all the information back.

Norman Bonney: Can I suggest that the Equality and Human Rights Commission be consulted, as well?

The Convener: Do members agree with that suggestion?

Members indicated agreement.

The Convener: With that, I thank Norman Bonney and Colin Emerson for coming along and giving evidence.

11:09

Meeting suspended.

11:10

On resuming—

Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

The Convener: Our second new petition is PE1501, by Stuart Graham, on public inquiries into self-inflicted and accidental deaths following suspicious death investigations. Members have a note by the clerk, the SPICe briefing and the petition. Willie Rennie MSP is attending because he has a regional interest. I welcome him to the meeting and will ask him to make a few comments once we have heard from the petitioners.

I welcome to the meeting the petitioner, Stuart Graham, and Tony Whittle, who is a retired detective chief superintendent from West Yorkshire Police. I invite Mr Graham to make a short presentation of about five minutes just to set the scene, after which Mr Rennie will make a few comments, then I will kick off with some questions.

Stuart Graham: We have agreed that I will do a lead-in and Tony Whittle will do a pitch. I will talk about my personal experience, then Tony will bring in real-life experience of inquests and I will close. We have timed it, and it is close to five minutes, so we hope that it fits.

The Convener: As long as you keep to five minutes, I am perfectly happy with that.

Stuart Graham: We have a very strict script, so there should not be any waffling. That will come later.

Our family's personal six-year fight to clear Colin's name has been excruciating, and what angers us most is that it was altogether avoidable. A system of public review, disclosure and family participation should have been in place, and we want to ensure that no other family has to endure a fight such as we have had to endure.

An excerpt from a novel helps to capture the family plight in Scotland. The book is called, "Where The Dead Men Go" by Liam McIlvanney, and the excerpt reads as follows:

"It was Clare. She was crying, drunk. Couldn't we press for an inquest into Martin's death? I told her it was a waste of time. This wasn't England. Down south, almost every unnatural death, every suicide and accident, triggered an inquest. We didn't do that here. A Fatal Accident Inquiry was a rare beast, it was ordered for deaths that occasioned

'serious public concern'. Other than Clare, me ... was anyone seriously concerned about Martin's death? If we wanted answers we'd have to find them ourselves."

That is actually what many families have to do: they hire experts, have to read autopsies of loved ones and seek help wherever they can to get answers, despite the shortcomings in our system. No family should have to do that; if investigations were as thorough as they should be and made public, there would be no need.

In our case, we were told that we had an open-and-shut case of suicide. We were then faced with manipulation of evidence by Fife Police, but in the fatal accident inquiry the sheriff stated that there was no evidence that Colin took his own life.

Is our case unique? Professor Pounder, a pathologist in Dundee, informed the procurator fiscal before the Fife investigation in 2009 that great care should be taken before jumping to conclusions in Colin's case, because he had only ever seen one case like it before, which had been written off as suicide until, in the end, someone came forward and admitted homicide. Where is the review of that? How do we learn? In our case, it is obvious that the professor's input was ignored.

If the committee understood how little is required to determine a verdict of suicide in Scotland, it would see that there should be a counterbalance in order to avoid such gross errors and malpractice.

Tony Whittle: I spent 30 years as a police officer and retired as head of the criminal investigation department in West Yorkshire Police, which is one of England's biggest police forces. Since my retirement, I have trained detectives in various United Kingdom police forces, and I have worked in other countries overseas.

I spent many years as a senior investigating officer specialising in cases of homicide, and in that work I was constantly closely involved with scores of bereaved families. I know that every family needs, as part of the grieving process that they have to go through, answers to two key questions. The first is to ask what happened to their loved one and the second is to ask why it happened. Without answers to those questions, bereaved families find it impossible to make sense of their loss and move on. I firmly believe that the state, through the police and justice systems, has a duty to do all that it can to thoroughly and openly investigate all suspicious deaths, and to provide answers to those questions. That principle has been accepted for many years, and is now part of article 2 of the European convention on human rights, and part of UK law.

In all my investigations, I worked with the knowledge that I owed a duty to the bereaved family, the community and the law. I also knew

that my work would, quite rightly, be scrutinised by the criminal court or by an inquest, where I would be questioned and held to account for my actions. I believe that that level of accountability is crucial to public confidence in the police and the criminal justice system.

The impact on the bereaved family of a sudden and violent death is massive; that is particularly the case when it is a suicide. The stigma and guilt that are attached to such a finding and the difficulties that are faced by the bereaved are hard to imagine. I believe that a finding of suicide should be made only after the most thorough investigation and careful and open consideration of all the facts.

11:15

The inquest system that I am familiar with provides for that level of investigation and consideration. Every suspicious death is thoroughly and independently examined and a finding of suicide cannot be arrived at unless the inquest is satisfied, beyond reasonable doubt, by evidence that has been given under oath and subjected to cross-examination.

According to "The Scottish Suicide Information Database Report 2012", there were 830 probable suicides in Scotland in 2012. As far as I can find out, those findings of suicide seem to have been reached without any public hearing or any opportunity for those involved to question the evidence that led to that conclusion. Consequently, I am led to question whether the system that applies in Scotland meets the needs of the bereaved or of the community as a whole.

The Convener: Thank you very much for that and for keeping to time.

Stuart Graham: I am sorry, but I have something to add. Do we have time?

The Convener: If you are very brief, Mr Graham; if you take too long we will not have time for questions.

Stuart Graham: We do not believe that the process is only about the bereaved families; another important aspect to consider as regards the value of public inquests is the significant success of our fatal accident inquiries. The number of FAIs has fallen significantly over the years. That fall has been driven in part by feedback and learning that have been found through our FAIs. Why on earth would we not want to extend that positive approach to many other causes of death?

In the end, regardless of the legal requirements, surely the right decision—the only decision that there can be from a progressive nation—is to have inquests. This is an area in which we are already

100 per cent independent as a nation and can blame no one but ourselves. I think that the process has to change.

Willie Rennie (Mid Scotland and Fife) (LD): I have been involved with Stuart and Margaret Graham's case on Colin's death for about six years now. Their tenacity is to be commended and they have turned a grieving process into something constructive. The case that they have made is quite compelling. It is important to have an independent element to the process of determining the outcomes because trust—not just in the police but in the prosecution service—has broken down. If there is an element of distrust in a process, you need some independent process to adjudicate, to determine what has happened and to take things forward. The fact that such a process has been missing for so long is something that we must correct.

Obviously there are cost and time considerations, but I think that we can implement a system that does not involve a considerable cost and which will get satisfaction for families such as Stuart and Margaret Graham.

The Convener: I thank Willie Rennie for those comments. I have two questions before I bring in other colleagues.

If your petition was successful, there would clearly be a rise in the number of FAIs in Scotland—

Stuart Graham: No, I need to make a clarification. An FAI is a full judicial review and it would be overburdensome on the state if we tried to implement FAIs as a broad base. Inquests do not have to be as formal as that. We are talking about inquests, not about having FAIs as the only mechanism. An FAI is a very procedurally dominant thing. To take the extreme of that, I do not see why you could not have the release of information to a family under legal care of documentation. Just having access to the documents may be enough to satisfy a family. There is a gradient of scale involved.

The Convener: Thank you for that clarification. You are saying that you are looking for some sort of halfway house—you are not asking for a full FAI every time there is an accidental death. You would sometimes seek some lesser form of inquiry, which would be some form of public inquiry.

Stuart Graham: There could be two or three levels leading to an FAI as a final outcome—as a judicial review.

The Convener: Thank you. My other question was in relation to article 2 of the ECHR, which Mr Whittle mentioned. I looked up article 2 earlier and there is clearly a Europe-wide duty to investigate suspicious deaths. Is it your submission that the

Scottish system is not compliant with the ECHR in that regard?

Tony Whittle: No, I am not saying that at all. I think that the Scottish system complies with article 2—Lord Cullen clearly thought so and he is a lawyer. Why would I argue with him? The principle is much wider than that. I think that article 2 sets out the minimum standard that you have to comply with—you have no choice about that. However, the inquest system that I am fairly familiar with puts the family and the community at the centre of it all. It does not just comply with the law; it goes further, by involving the family in the whole process and dealing with their needs.

Stuart Graham: Although we are here as a team, I take a different view on article 2 with regard to a suspicious death. If a suspicious death is investigated and you are told only the outcome based on information from a single side and there is no right to question that, there is no public transparency. How do you determine that the investigation has been thorough in the first place when the person who is telling you that that is the case is the same person who carried it out? Transparency is lacking. Although an investigation might meet article 2 requirements, the test has never been put in place, hence the need for an inquest.

The Convener: Thank you very much—that is very helpful. I bring in my colleagues.

Chic Brodie: I understand the particular nature of the petition and share Willie Rennie's concerns. Like the convener, I thought that you were asking for an FAI to be held for any suspicious death. Will you clarify that that is not what you are asking for?

Stuart Graham: We are not asking for that. The nation has a blind spot in that we see FAIs as the only vehicle that we can use. We have failed to develop a mechanism that could lead to an FAI. For example, a gradient step could lead to an FAI, whereas we go from an investigation to an FAI with nothing in between. That is a huge hole in the system. We need a structural process that develops within the law. That is about not changing the law but embracing article 2 and using it pragmatically for the people.

Chic Brodie: There are other mechanisms in which to do that; I am sure that John Wilson will talk about one of those in a minute.

There is no point in conducting an FAI if no new evidence is likely. What is being questioned is the independence of the evidence and that that evidence should be made available to those closely involved. Is that the case? Is information in a lot of cases, some cases or very few cases withheld from those who are directly impacted by a death that is perhaps unexplained? Perhaps Mr Whittle can address that.

Tony Whittle: That is how it appears to me. My problem is that I am used to a completely different system in which every death is investigated independently.

In that system, the police get a phone call to say that there has been a murder. When I was a policeman I would, for example, turn out at 3 o'clock in the morning. At 3.30 am the coroner's office would get a phone call and someone from there would attend. They would be involved with the family from a very early stage and would meet them to share information. The family and local community would be embraced immediately in that investigation and kept up to speed with it. The investigation would proceed and, if we reached the stage at which we were not likely to find the offender, there would be an inquest. As a policeman, I would attend that inquest and give evidence about the investigation and the resources that we used. I would also be questioned routinely by the bereaved family. I was held to account by the bereaved for my work and I have been in some very uncomfortable positions in inquests.

Although inquests may not be pleasant, they are essential. As a policeman, it was my job to satisfy the public and the family that the police service had done all that it could to find a killer. That is not always possible, but at least the family goes away understanding that we have done the very best that we can. That open information sharing is crucial, but that does not seem to apply in the Scottish system, from what I have seen so far.

Chic Brodie: By your demeanour, I imagine that you would be very forthright in any inquest and helpful to the families concerned. Are you saying that—perhaps using the phrase “cover-up” would be a bit strong—full evidence is not given by the authorities to families in Scotland who are impacted by an unknown death?

Tony Whittle: That is certainly the perspective of Colin Marr's family. It seems that there is resistance to providing information. It must be asked for, pursued and dragged out—it is almost like pulling teeth. In the English regime that I am used to, the family would have that information. They have lost a loved one. They should know what has happened, why it happened and what has been done by the state. That information is openly shared and the family can question every part of it. Not allowing that seems to be a massive gap in the Scottish system.

Stuart Graham: I will be definitive: there were cover-ups that documentary evidence can prove.

Chic Brodie: We need to be careful. You are obviously privy to information that we are not.

Stuart Graham: I agree, but you asked a question and I can give a definitive answer.

Chic Brodie: I suggest that we discount that comment. I am sure that you can and I emphasise and sympathise with you.

Stuart Graham: I understand the position, but you asked Tony Whittle a question and he does not—

Chic Brodie: I was talking in general terms, which Mr Whittle addressed. He was saying that the Scottish system allows—that there are windows through which information may not fly.

Stuart Graham: Okay.

Anne McTaggart (Glasgow) (Lab): My question has partly been answered. It was about the structural steps before the FAI, which you have clearly illustrated.

My other question is about costings. Have you looked at costings?

Stuart Graham: No. The first part of any implementation is principle: you agree a principle, then figure out a way to implement it. I do not think that it is my duty to do a full analysis. We know that a full FAI is very costly if you get Queen's counsels involved. To deal with a QC costs about £6,500 before you even get to a meeting: it is a massive cost to the system that we do not want to put on families. It is a very difficult thing to gauge.

You should start from a pragmatic point of view and look for the lowest implementation cost possible, to make it accessible to most people.

Tony Whittle: Some of it can be cost free. If to share information is to press a button on a printer and hand the result out, there is no cost. You get the family involved and tell them what you have found—what the pathologist found and what the investigators found, and what they have done—and ask them whether they are happy with it. If they are, it is job done. If they are not, a second review process is needed to ask questions. It could be cost free.

Stuart Graham: There is a precedent. We are not pushing for anything for our case. We found that in the FAI full information was released directly to Colin's father, without going through our legal team. All he had to do was sign it off. The precedent has been set and the principle can be that a family can have access to a full package of information. That has happened, in a situation in which there was a potential homicide type of dialogue. The question is how you make it far more available. We are saying that the FAI was a critical step for us and asking how we make such access more available to others.

John Wilson: I want to draw out the difference between an FAI and the coroner's court. As we know from newspaper headlines, an FAI can be

long running and can cost hundreds of thousands of pounds to conduct.

Mr Whittle, you have had experience of a coroner's court. Would the creation of a coroner's court-type establishment in Scotland be a good option to help families get the type of information that you want them to have? Would it avoid having to get full establishment of an FAI-type of court system?

Tony Whittle: Yes; I think so. I will give an analogy. On 11 May 1985, 56 people died in Bradford at a football match. I was involved in the investigation team and there was an inquest and a public inquiry. The inquest looked at the cause of death: who died, when they died, how they died and why they died. The public inquiry looked at safety at sports grounds. The inquiry went on for months and months, whereas the inquest took about four or five days with a jury. It can be done very quickly.

I am not familiar with the regime in Scotland—you are, of course—but many parts of Scotland may just need an ad hoc coroner. Coroners in England and Wales are either medically or legally qualified and are appointed by the crown but paid by the local authority. Some parts of England and Wales have so few such people that they do not have a full-time coroner but have someone who is on call ad hoc: a lawyer who perhaps specialises in family law, who was brought in on Friday, could be running an inquest. Such people deal with all the inquests.

David Hinchliff is the coroner for the Leeds part of west Yorkshire, which has a population of well over 1 million. He deals with 500 inquests a year. Some of those are paper inquests that last half an hour: the family says that it does not want to come along, he reads the papers, a decision is made and recorded, a death certificate is issued and it is finished. Some of them last three or four days, but it is not unusual for him to deal with two or three a day.

Stuart Graham: As a family we requested that once we had access to the information we did not want an FAI. We wanted to use that information but what we finally got was another investigation. That FAI was very costly and, from our point of view, was not necessary. We would rather it had not been carried out, because FAIs cannot question investigations and the very thing that we wanted was to question the investigation. An inquest allows a family to do that. There is a misbelief that an FAI answers all questions. It has serious limitations because it does not satisfy some of those aspects.

11:30

John Wilson: That is the point that I am trying to draw attention to. In your submission you referred to "flawed decisions" being made by the police or whoever in relation to the outcome of the circumstances around someone's death.

Stuart Graham: What becomes important is that the sheriff has to assume that the investigation is 100 per cent thorough and that therefore all the information is valid. We cannot question the decision of the sheriff, because his decisions are valid based on what has been presented. However, the problem is that we are not allowed to question the source of the material used. It is fundamental to every investigation that if we cannot question source material, then there have to be limitations.

John Wilson: The point is that if there was a coroner's court type of scenario, then people such as the police and medical staff would be under oath to give evidence to that type of court, whether it involved a sheriff or not. My understanding of the coroner's court in England and Wales is that families are allowed to ask questions, whereas in Scotland at present to go through an FAI means taking a very costly legal route to get the same answers that could be got if a coroner's court was set-up in Scotland.

Stuart Graham: Yes.

Tony Whittle: Always.

Stuart Graham: Ironically, we have a great advantage here because we do not have such a system. As we have discussed, the system in England has its limitations because it is as if article 2 has been superimposed on a coroner's court system. Here, we can stand back and ask, "What's the best way to fully implement article 2?" We have the opportunity, from a fresh standpoint, to develop something that really fits the 21st century and is pragmatic and cost effective.

John Wilson: Mr Whittle made a point earlier about families being involved. His example was that, as a serving police officer he would get a call about a death at 3 o'clock in the morning and the coroner would get a call at 3.30. The coroner would then liaise with the family and advise them, and take any questions from them at that point. If that type of system was established in Scotland, would it assist many families to come to an earlier conclusion as to the outcome of the death of a loved one?

Stuart Graham: I am conscious that I was very specific earlier. We have had discussions with a number of families. I think that the quicker people are involved—the quicker they are allowed to participate in the questioning process—the better. If I am honest, because so many things were done

wrong in our case, I do not even know how our system should work. We never saw how the system was supposed to work; our case was an aberration. If people had listened to what our family had had to say on the night, the process would have had a different trajectory—that is just a fact. However, that did not happen.

John Wilson: One of the questions that you asked in the petition was about flawed decisions, particularly as they affect insurance claims by family members.

Stuart Graham: Yes.

John Wilson: What responses did you receive to that question?

Stuart Graham: Again, I put that issue down to our personal experience. Colin was a young man and the concept of insurance did not even hit us. We had a written decision that on that night Colin took his own life. That decision goes on the books and it does not get changed, regardless of whether a year later the case is moving to a suspicious death. That decision does not get changed and the insurance company does not pay out. The insurance company did not pay out until we got the FAI that said that there was no evidence, but that was after four years. Transfer that to another situation and imagine that it involved a young father or mother who was the sole provider for a family—that must happen.

Again, I think that there is a key point here that people perhaps do not understand, which is that in Scotland suicide is deemed as being “probably” suicide, or as we took it, “maybe”. In England, it must be proven beyond a reasonable doubt. There is one hell of a difference between those two positions, but we use the statistics as if they have the same meaning. It is interesting that Scotland has one of the highest suicide rates in Europe. I do not know the answers, but I think that there are pertinent questions in there.

John Wilson: Thank you very much.

The Convener: We are a bit short of time, so I ask for a quick question from Chic Brodie and perhaps a quick response.

Chic Brodie: I have a quick question for Willie Rennie. How have you progressed the issue with the Cabinet Secretary for Justice and associated bodies?

Willie Rennie: My primary involvement has been in getting justice for Colin, which has involved liaison with the police—in Fife Constabulary and the new Police Scotland—and with the procurator fiscal and the Crown Office in relation to getting a new investigation. That has been the primary focus. The situation has been incredibly frustrating because of the errors that

were made at the beginning of the case, from which we have never recovered.

I have not pursued the proposal in the petition with the Scottish Government. The petition is the route that the family has chosen to pursue and I am giving them all the support that they require.

Stuart Graham: An important point is that, after the Strathclyde Police investigation, we started to synthesise what we had learned. Our objective was to get an independent investigation; we were never involved in dialogue on anything other than that. We were conscious of failings in the system, which we memorised and built up. Only after we had gone through the process of getting our objective did we start to develop our proposal.

Chic Brodie: The rationale for my question to Mr Rennie was to understand how we can address faults in the system, if they exist.

Stuart Graham: On six occasions, we tried to speak to Mr MacAskill, but he has never spoken to our family. I do not know whether that is because he thinks that we want to talk about Colin’s case, whereas we are using Colin’s case as an example of how the system works. We understand that Mr MacAskill cannot get involved in the investigation, and that was never our intention. Our aim is to highlight failings of the system. The one thing that I have learned through work is that, if there is an opportunity for things to be wrong or manipulated, it will happen, so a system must be built to be robust against that. We wanted to talk to Mr MacAskill about that.

The Convener: You probably picked up from our consideration of the previous petition that we now have a summation, during which the committee decides on the next steps. My view is that the petition is important and that the petitioner has raised interesting points. I also thank Willie Rennie for coming along.

In the longer term, I would be keen to have the Lord Advocate before us so that we can ask searching questions. However, before that, it would be best to write to the Crown Office. Our note suggests writing to the Scottish Government, the Law Society of Scotland and the Sheriffs Association. I would be interested in asking Victim Support Scotland for its views, as I have had quite an interest in victims.

Stuart Graham: We are in touch with a lot of families. I do not think that any of them goes to Victim Support, because we do not fit into any camp. Our case is not quite a suicide or a homicide and we have never been able to find someone to talk to. Most of the families who are in the same place are in the same position. We do not feel represented by the system.

The Convener: That is why it would be useful to speak to such groups.

I suggest that we consider taking evidence from the Lord Advocate in the longer term and that, in the meantime, we should write to the Crown Office for information before considering next steps.

Anne McTaggart: I suggest writing to Police Scotland, too.

John Wilson: I would like us to write to Police Scotland, which Anne McTaggart suggested. When we write to the Crown Office and Police Scotland, I would like us to ask them to detail how they engage with families in such circumstances, so that we have an idea of whether they engage with and consult families and discuss the issues that surround the suspicious death of a family member. There might be lessons to learn and it would be useful to find out how such consultation is done, if it is done at all.

The Convener: Do members agree to the course of action that is in the clerk's note and to write to Victim Support Scotland and Police Scotland?

Members indicated agreement.

The Convener: We will continue the petition, which raises an important issue. When we get further information, we will discuss the petition further. The clerks will inform the witnesses of developments. I thank Stuart Graham, Tony Whittle and Willie Rennie for coming along.

Willie Rennie: I thank the committee for continuing the petition.

The Convener: I suspend the meeting to allow our witnesses to leave.

11:39

Meeting suspended.

11:40

On resuming—

Ecurie Ecosse Cars (PE1502)

The Convener: The third new petition is PE1502, by Shonah Gibbon, on saving Ecurie Ecosse cars. Members have a note by the clerk, the SPICe briefing and the petition.

Members will know that circumstances have changed, in that the collection has now been sold. Therefore, I suggest that we close the petition under rule 15.7, on the basis that what the petitioner was calling for has been superseded by events.

John Wilson: I suggest that we keep the petition open. I know that the auction has taken

place and that the vehicles that are mentioned in the petition have been sold, but it would be useful to get a response from National Museums Scotland and the Scottish Government on why they did not deem it relevant to try to purchase what is a highly symbolic collection of vehicles for Scotland.

Although I make that request in relation to the petition that is before us, we need to consider a point of principle as it relates to other national collections that may be held in private hands that could be sold in the future. It would be useful to get guidance from National Museums Scotland and the Scottish Government on the circumstances in which they would actively seek to purchase, on behalf of the people of Scotland, what might be an iconic or valuable addition to the collections of Scotland's national museums.

The Convener: In the past, there have been circumstances in which very important portraits have been purchased by the state.

John Wilson: "The Three Graces" is a similar example.

The Convener: Yes.

Angus MacDonald: I had been happy to go with the recommendation to close the petition, but my colleague Mr Wilson raises what I believe is a valid point if we are to ensure that such a situation can be avoided in the future.

Although I welcome the petition, it is unfortunate that the issue was not flagged up sooner. I note that the petition was lodged on the day of the sale at Bonhams, which raises the issue of what the petitioner thought that we could do. If a similar situation can be avoided in the future, we must do all that we can to ensure that that is the case.

The Convener: I think that that is sensible.

Chic Brodie: I disagree, because the petition relates to a particular collection, which has been sold.

As a general principle, I agree with Mr Wilson. Someone might be encouraged to lodge a much less specific petition that deals with the generalities of the issue. Unfortunately, the horse has bolted as far as this petition is concerned. I would prefer to see a more general petition being lodged or a members' business debate being held on the subject.

The Convener: I would like to sound out the views of the other two members of the committee.

Anne McTaggart: I seek advice from the clerk. Can we get the information that has been suggested and then close the petition once we receive it?

The Convener: Yes, it is competent for us to do that.

David Torrance (Kirkcaldy) (SNP): I am happy to go along with the views expressed by Angus MacDonald and John Wilson because of the principle at stake. We are talking about a very valuable collection that has been lost to the country.

The Convener: It looks like the consensus of the committee is that we keep the petition open, at least until we get responses back from the Scottish Government and National Museums Scotland on future policy on this matter. Are members agreed?

Members indicated agreement.

Current Petitions

Whistleblowing in Local Government (PE1488)

11:45

The Convener: There are two current petitions to consider. The first is PE1488 by Pete Gregson, on behalf of Kids not Suits, on whistleblowing in local government.

As members will see, we have some recommendations for actions, but I think that the key action is to seek submissions from organisations that did not respond to the committee's original request for views. I am afraid that it is a familiar story, but I am sure that all committee members will agree that we need the most comprehensive feedback possible from organisations before we make any final decisions. Do members agree?

Members indicated agreement.

Scottish Public Services Ombudsman (Parliamentary Governance) (PE1489)

The Convener: The second current petition is PE1489, by John McLean, supported by Scottish Ombudsman Watch and Accountability Scotland, on the realignment of parliamentary governance over the Scottish Public Services Ombudsman. Members will have received a note from the clerk and submissions and for the record I also flag up that I received an email from Mr McLean, asking for a formal delay in the consideration of the petition pending a submission from Accountability Scotland. That is an issue for the whole committee and I welcome members' views and guidance on whether we decide on the petition today or whether we wait for the further information from that organisation.

Angus MacDonald: Given that the petitioner has made such a request, we should take it on board and perhaps wait until we receive the further submission.

John Wilson: To be honest, I am loth to extend the time limit for Accountability Scotland, which, as I understand it, was represented when Mr McLean presented his petition to the committee. It was aware of the timescales for making submissions to the committee, and I wonder whether agreeing to delay consideration would set a precedent for all organisations that might want to delay a committee decision. As I have said, an Accountability Scotland representative co-chaired the presentation on this petition with Mr McLean, so it knew full well what timescale we were working to. Moreover, I am not sure what

additional information Accountability Scotland could provide over and above what Mr McLean has already provided.

Chic Brodie: I support those comments. The petition makes it clear that it is supported by Scottish Ombudsman Watch and Accountability Scotland. Accountability Scotland must know what is in the petition so why are we delaying it? We should just close it now.

The Convener: At the moment, I am seeking views on whether we delay consideration or not. I will come back to Chic Brodie's point when we decide what we are going to do with the petition.

Anne McTaggart: It is important that we get to the bottom of the information that we have not yet received. I fully appreciate other members' comments that there is a timescale and that we could be creating a precedent but I am open minded on this matter and think it important to get all the information before we reach a conclusion on the petition.

David Torrance: I am happy to go along with John Wilson and Chic Brodie and close down the petition. I think that Accountability Scotland has had ample time to respond—

The Convener: I am sorry but we have not quite come to that issue. The question is whether we defer the petition and wait for Accountability Scotland's submission or simply decide on the next steps today.

David Torrance: I do not think that we should defer the petition. Accountability Scotland has had plenty of time.

The Convener: So there is a clear majority not to defer the petition but to take the decision on it today.

There was also an issue about the treatment of our written evidence. Having spoken to the clerk on the matter, I should explain that the normal practice is to publish all the evidence that is sent to the committee but, in a few situations and often for practical reasons, the Parliament does not publish all the evidence that it receives. The submission in question has not been published because of its length and because it appears to duplicate much of what the petitioners had already submitted. Nevertheless, the next decision is whether the committee wishes to publish everything.

John Wilson: Convener, I would be quite happy to publish it all on the website. For clarification, and because what you have said goes in the *Official Report*, I add that there have been circumstances in the past in which committees have decided not to publish material because it might be defamatory or contentious. I just wanted to clarify for the record that there might be times

when we do not publish all the information that we receive.

The Convener: It is helpful to clarify that. Are members happy that we publish, notwithstanding John Wilson's caveat?

Angus MacDonald: Yes, I am certainly happy with that, convener. However, I appreciate the Scottish Parliamentary Corporate Body's consideration of my suggestion that the Scottish Commission for Public Audit could oversee the current arrangements. I take on board the SPCB's argument that

"legislation provides that the Ombudsman in the exercise of his functions is not under the direction or control of any member of the Parliament, any member of the Scottish Government or any member of the SPCB."

The Convener: I appreciate Angus MacDonald raising that. For the record, I clarify that I am a member of the corporate body, but in this case, the clerk to the SPCB consulted the other members of the SPCB but did not consult me. That is the correct method because, as I am the convener of this committee, it would not be proper for me to have a role in forming the SPCB's view. Just for the record, that is the current position.

John Wilson: Although I have supported the closing of the petition, I draw members' attention to the responses from the SPCB and, in particular, to its response to question 3, which is in paragraph 18:

"Under the Scottish Public Services Ombudsman Act 2002 and the Scottish Parliamentary Commissions, Commissioners etc. Act 2010 the SPCB has statutory functions to undertake in respect of the Ombudsman. These functions have been given to the SPCB by the Parliament and there is no mechanism to delegate these functions to another body or sub-committee."

Although I have said that we should close the petition, there is an issue in that response to which I take exception. My understanding is that the Parliament determines legislation and which would be the delegated body that would deal with matters that are under parliamentary scrutiny. Although it may be true at present for the SPCB to say that

"there is no mechanism to delegate these functions to another body or sub-committee",

the Government or Parliament might, at a later date, determine otherwise and take on board Mr MacDonald's suggestion that the SPSO should come under the scrutiny of another body. That would be determined by Parliament making a change to legislation. That is not clear in the SPCB's response.

The Convener: Mr Wilson's points are correct in terms of legislative competence. Obviously Parliament is supreme and, if it wishes to make a change, it can do so.

We now need to decide how to dispose of the petition. John Wilson has recommended that it should be closed. On the basis that the issues that Mr McLean has raised in his lengthy work—and we should put on the record our thanks for all the effort that he has put into the submissions that he has given because they must have taken a lot of time and effort—have all gone to the SPCB as the appropriate body at this stage, and it does not look as though it is going to accept any of those issues. Mr Wilson has proposed that we close.

Chic Brodie: Agreed.

Anne McTaggart: Agreed.

David Torrance: Agreed.

Angus MacDonald: Reluctantly agreed.

The Convener: We will close the petition under rule 15.7, but we put on the record our thanks to Mr McLean, Scottish Ombudsman Watch and Accountability Scotland for the work that they have done in this area.

I therefore formally close the meeting, although I have a couple of minor issues to raise with the committee—

Chic Brodie: Before we close, convener, could we record our thanks for the great work that has been done by the clerks on the inquiry that we have just completed?

The Convener: I echo Chic Brodie's thanks to the clerks for all the work that they have done. It was a lot of work over the months. I also thank the committee members and all the witnesses who gave help during the past 10 months.

Meeting closed at 11:54.

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