The Committee will meet at 9.30 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Consideration of continued petitions:** The Committee will consider the following continued petitions—
   - PE1693 on Independent Water Ombudsman, and will take evidence from Catherine Topley, Chief Executive, Richard Millar, Director of Infrastructure, Claire Lithgow, Director of Finance and Josie Saunders, Head of Corporate Affairs, Scottish Canals;
   - PE1463 on Effective thyroid and adrenal testing, diagnosis and treatment;
   - PE1545 on Residential care provision for the severely learning disabled;
   - PE1591 on Major redesign of healthcare services in Skye, Lochalsh and South West Ross;
   - PE1658 on Compensation for those who suffered a neurological disability following administration of the Pluserix vaccine between 1988 and 1992;
   - PE1689 on Hepatitis C Treatment Targets in Scotland;
   - PE1707 on Public Access Defibrillators; and
   - PE1712 on Soul and conscience letters.

3. **Consideration of a continued petition:** The Committee will consider the following continued petition—
   - PE1319 on Improving youth football in Scotland.

Lynn Russell
Clerk to the Public Petitions Committee
Room T3.40 The Scottish Parliament Edinburgh
Tel: 0131 348 5186
Email: petitions@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**

PRIVATE PAPER PPC/S5/19/11/1 (P)

Note by the Clerk PPC/S5/19/11/2

Note by the Clerk PPC/S5/19/11/3

Note by the Clerk PPC/S5/19/11/4

Note by the Clerk PPC/S5/19/11/5

Note by the Clerk PPC/S5/19/11/6

Note by the Clerk PPC/S5/19/11/7

Note by the Clerk PPC/S5/19/11/8

Note by the Clerk PPC/S5/19/11/9

**Agenda Item 3**

PRIVATE PAPER PPC/S5/19/11/10 (P)
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019
PE1693: Independent Water Ombudsman

Note by the Clerk

Petitioner
Graeme Harvey on behalf of Lowland Canals Association

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to establish an independent water ombudsman to—

- safeguard the interests of waterway users
- review and arbitrate on disputes with Scottish Canals
- ensure that navigation along the full length of the lowland canals is maintained for the benefit of future generations.

Webpage
http://parliament.scot/GettingInvolved/Petitions/waterombudsman

Introduction

1. At its last consideration of this petition on 20 December 2018, the Committee discussed the role of the Scottish Public Services Ombudsman; the implications of creating a new ombudsman, and the current repair backlog as stated by Scottish Canals. Members agreed to invite Scottish Canals to give evidence at a future meeting.

2. The Committee will hear evidence from the following representatives of Scottish Canals at its meeting today—

   - Catherine Topley, Chief Executive;
   - Richard Millar, Director of Infrastructure;
   - Claire Lithgow, Director of Finance; and,
   - Josie Saunders, Head of Corporate Affairs

3. The Committee is invited to consider what action it wishes to take.

Background

4. At its meeting on 27 September 2018, the Committee took evidence from the petitioners and Ronald Edward Seton Rusack MBE, Chairman, Lowland Canals Volunteer Group.

5. The Committee agreed to write to a number of organisations for views on the action called for in the petition. The following written submissions were received and are included as links in the annexe to this paper—
• the Cabinet Secretary for Transport, Infrastructure and Connectivity;
• Scottish Canals;
• the Scottish Public Services Ombudsman;
• Scottish Waterways Trust;
• the Royal Yachting Association;
• the Inland Waterways Association; and
• Audit Scotland

Committee Consideration

Asset management and diversification or regeneration projects

6. In the Scottish Canals 2017/18 external audit annual report, Audit Scotland explained that “when Scottish Canals was created it inherited a legacy fund of £10 million from the British Waterways Board, which it has invested in various longer term regeneration projects” and stated that they did not highlight any risks in respect of how Scottish Canals fulfils its statutory functions. However, the report did highlight areas of future risk—

“…around maintenance of the canal infrastructure, longer term investment in the canal assets, and how Scottish Canal’s asset planning links to longer term financial planning.”

7. Similar issues were highlighted by Graeme Harvey of the Lowland Canals Association when giving evidence to the Committee on 27 September 2018—

"we have become greatly concerned that the management of Scottish Canals has been using its profits from property and so on for regeneration projects rather than the maintenance of the waterways.”

8. Scottish Canals replied, in its 29 November 2018 submission, saying—

“To support the limited gift in aid provided by Scottish Government, Scottish Canals are committed to generating new income streams that will develop the canal corridor and raise additional revenue streams, which can contribute to the maintenance of the canals and operational running costs…”

9. The Royal Yachting Association (RYA) Scotland commented, in their 25 October 2018 submission—

“We have previously publicly stated our concerns that the strategic direction of Scottish Canals is diverging from their statutory obligations given they cite the “changing nature of our business from a canal body to an increasingly leisure related business.”

10. In addressing concerns about the funding and the asset management strategy, the Cabinet Secretary for Transport, Infrastructure and Connectivity said in his submission—
“...the grant in aid funding to Scottish Canals was increased from £10 million in 2016/17 to £11.1 million in 2017/18 and to £11.6 million in 2018/19, with a substantial increase of 75% in capital grant in aid funding from £2 million in 2016/17 to £3.5 million in 2018/19. Additional funding of £1.295 million was made available in 2017/18 and an additional £1.625 million has been made available in 2018/19 to enable work to be undertaken to repair the harbour at Ardrishaig and bridges on the Forth and Clyde Canal at Bonnybridge and Twechar. Further funding is also being made available to Scottish Canals to undertake works at Fort Augustus to address the issues that the petitioners mentioned when they gave evidence.”

11. The Cabinet Secretary went on to explain—

“Scottish Canals has been investing in commercial assets, including housing, in order to provide sustainable future income for the maintenance of the canal network. Scottish Government Grant in Aid cannot be used for commercial investments. Scottish Canals are currently undertaking work that will help demonstrate more widely how the returns on the investments, both capital returns and ongoing revenue, are returned to contribute to the operation and maintenance of the core canal network. This will help further clarify that the wider activity undertaken by Scottish Canals is in support of, rather than in spite of, ensuring the Canals are there for future generations.”

**Maintenance issues**

12. In response to concerns raised by the petitioners about the lack of maintenance, Scottish Canals stated—

“...the canals are circa 250 years old, and are working heritage assets, which are under constant wear and tear from increased usage and pressure from climate change...Each canal requires considerable investment to maintain and, due to the increasing pressure on public finances, there is a repair backlog of £70m. We are currently addressing major works which have restricted navigation on the Caledonian and Forth & Clyde Canals in recent months and are keenly aware of the frustration this has caused...”

13. In their written submissions, the Inland Waterways Association and the Royal Yachting Association Scotland acknowledged public expenditure as being a key component to enabling Scottish Canals to carry out their remit and statutory responsibilities, with both organisations calling for increased Scottish Government funding.

14. Scottish Canals submission from 29 May 2019 provides further details on the scale of ongoing maintenance costs as well as those associated with the repair backlog—

“In 2019/20 Scottish Canals received £8.5 million in revenue grant-in-aid from the Scottish Government, which is significantly less than it costs to operate and maintain the canals.”
“To manage this backlog and provide an active and accessible boating canal, Scottish Canals requires in the region of an additional £6-9 million of investment each year to maintain and repair the canals. Notwithstanding 18/19 in which additional funding was secured, and 19/20, in which our operational capital award was increased significantly from £3.5m to £6.5m, the previous six years have only seen a modest investment of £2m of operational capital to maintain and repair the canals.”

Charging regime

15. The Scottish Public Service Ombudsman (SPSO) submission advises that since 2012, it has investigated one complaint about boating charges. The published report on the complaint says—

“…by law, we must not investigate action relating to the determination of the amount of any rent or service charge. This meant we could not investigate the evidence base for pricing, or what berthing fees should be charged.”

16. In terms of those who live on canal boats, the SPSO stated—

“We also noted the concerns about the lack of protection afforded to someone living full-time in a canal boat. We have considerable sympathy for anyone in that position but would point out that a legislative change is required to remedy this. An Ombudsman cannot change laws but only look at the protections afforded by the law”

17. Scottish Canals’ submission from 29 May 2019 states that they commissioned a third-party review of mooring prices, taking into account geographic considerations, levels of facilities and level of appeal. Scottish Canals state that in 2017, moorings price increases were capped at £100 per annum and that 83 people saw a reduction in their fees. The next review of the pricing policy is due in three years, however, it is not clear from the submission when the initial review was undertaken.

18. The petitioner, in their submission from 2 June 2019, claims that Scottish Canals received a number of complaints about their pricing review, calling into question the reliability of the data used as well as the advice provided to those who’s mooring charges increased.

Dispute resolution and the establishment of a water ombudsman

19. Scottish Canals came under the SPSO’s jurisdiction in July 2012. This means that Scottish Canals must comply with the two-stage model complaints procedure that has been established for Scottish Government and related organisations. The SPSO’s submission states—

“Since 2012 we have received eight complaints about Scottish Canals… broadly, concerns have been raised with us about: administration of consultations; setting of rents and charges; attitude of staff; management of
moorings. We have no record of specific complaints about the general management of the Canals such as the maintenance of waterways or about the impact of diversification.”

20. Scottish Canals’ submission from 30 October 2018 is clear on the issue: “...I do not believe that the establishment of an independent water ombudsman is necessary at present, nor the best use of public money”. In their 29 May 2019 submission, some details have been provided about the creation of an advisory group comprising of the Scottish Canals’ executive team and boating representatives. The purpose of this group is to “share concerns, challenges as well as project/work schedules ahead of time”.

21. Scottish Waterways Trust, which exists to encourage activity on and around Scotland’s canals, stated in their submission that it did not support the establishment of an independent water ombudsman and that “the economic development of the asset base [the canals] is one way of ensuring its longer term viability and therefore the success of our own activities.”

22. The SPSO submission refers to the calls for an independent water ombudsman—

“The SPSO has a very broad jurisdiction. This reflects the size of Scotland, its public services and the population it serves. It would simply be disproportionate and unnecessarily expensive to the public purse to have a number of small, subject specific offices.”

23. The issue of cost was also raised by the Cabinet Secretary for Transport, Infrastructure and Connectivity in his written submission—

“Although we have not undertaken specific analysis of the cost of the proposals to create a new Ombudsman, there is likely to be a significant resource required to set up and to run any such body.”

24. In its written submission, the Royal Yachting Association Scotland (RYA Scotland) supports the establishment of an independent water ombudsman but on the basis of a remit broader than the petition. Expanding on this point—

“We would… recommend that any remit for an independent ombudsman service or an extension to the remit of the SPSO, should cover all canals, navigable rivers and lochs, including those where national park authorities have responsibility.”

25. The Inland Waterways Association (IWA) submission on 26 October 2018 was broadly supportive of the proposal for an ombudsman explaining that from 2005 to 2012, there was the Waterway Ombudsman. However it would be supportive of alternative solutions that would ensure Scottish Canals were held to account.

26. IWA’s submission from last year speculates that another possible solution might be to reinstate the Inland Waterways Advisory Council in Scotland
IWAC was disbanded in 2012 following the creation of Canal & River Trust—

“Unlike an Ombudsman scheme, IWAC was able to make recommendations on matters of policy. As part of the petitioners’ case is the perceived failure of Scottish Canals’ policies towards maintaining the navigations, something like IWAC might be a better way of reviewing policies, perhaps in addition to an enhanced Scottish Ombudsman scheme that can deal with individual complaints.”

27. The Cabinet Secretary for Transport, Infrastructure and Connectivity indicates in his submission that the Scottish Government does not consider that there is a need for an independent water ombudsman, stating—

“…there are existing routes for issues to be raised, Scottish Ministers do not consider that the creation of an Independent Water Ombudsman would be the most appropriate way to address the petitioners concerns.”

28. The Cabinet Secretary also notes that, in 2011—

“The Scottish Government proposed, as part of the legislative process, that the British Waterways Board, operating solely in Scotland, should come within the scope of relevant Scottish Legislation, including the Scottish Public Services Ombudsman Act. The summary of responses to the consultation in 2011 states that the Waterways Ombudsman was supportive of this proposal and no objections were raised.”

29. The petitioner, in their 2 June submission, has further specified the areas in which they believe an independent water ombudsman should address—

- “Rights for residential boaters, they do not have any rights except the right to be taken to court. Leases are granted annually and offer no security of tenure for residential boaters.
- The monopoly position of Scottish Canals, there are no alternative moorings at present although negotiations with Community Moorings Scotland have been ongoing for the past three years.
- The allocation of available finance to ensure that resources are directed to canal maintenance rather than asset development.”

30. In the same submission, the petitioner suggests a possible alternative to what the petition calls for—

“Another option may be altering the remit of the SPSO so that it is able to investigate all areas of concern on the canals.”

Conclusion

31. The Committee is invited to consider what action it wishes to take. Options include —
• To reflect on the evidence heard from the representatives of Scottish Canals at a future meeting.

• To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- **PE1693/A** Audit Scotland's submission of 24 October 2018 (113KB pdf)
- **PE1693/B** Scottish Waterways Trust's submission of 26 October 2018 (238KB pdf)
- **PE1693/C** Royal Yachting Association Scotland submission of 25 October 2018 (287KB pdf)
- **PE1693/D** Inland Waterways Association submission of 26 October 2018 (340KB pdf)
- **PE1693/E**: Scottish Public Service Ombudsmen submission of 29 October 2018 (458KB pdf)
- **PE1693/F**: Scottish Canals submission of 30 October 2018 (115KB pdf)
- **PE1693/G**: Cabinet Secretary for Transport, Infrastructure and Connectivity’s submission of 29 October 2018 (119KB pdf)
- **PE1693/H**: Petitioner submission of 29 November 2018 (145KB pdf)
- **PE1693/I**: Scottish Canals submission of 29 May 2019 (120KB pdf)
- **PE1693/J**: Inland Waterways Association of 21 May 2019 (94KB pdf)
- **PE1693/K**: Petitioner submission of 2 June 2019 (66KB pdf)
- **PE1693/L**: Ronnie Rusack MBE submission of 17 May 2019 (66KB pdf)

All written submissions received on the petition can be viewed on the petition [webpage](#).
Public Petitions Committee  
11th Meeting, 2019 (Session 5)  
Thursday 6 June 2019  

PE1463: Effective thyroid and adrenal testing, diagnosis and treatment  

Note by the Clerk  

Petitioner  Sandra Whyte, Marian Dyer and Lorraine Cleaver  

Petition summary  Calling on the Scottish Parliament to urge the Scottish Government to take action to ensure GPs and endocrinologists are able to accurately diagnose thyroid and adrenal disorders and provide the most appropriate treatment.  

Webpage  parliament.scot/GettingInvolved/Petitions/PE01463  

Introduction  

1. The petition was lodged in December 2012. It was first considered by the Public Petitions Committee in Session 4 with consideration continuing in Session 5.  

2. On 29 March 2018, the Committee published its Report on petition PE1463: Effective thyroid and adrenal testing, diagnosis and treatment.  

3. A debate on the petition was held in the Chamber on 4 December 2018. At the last consideration of the petition on 7 February 2019, the Committee agreed to write to the Health and Sport Committee to draw its attention to the calls made during the debate for a short, focussed inquiry.  

4. Correspondence has now been received and the Committee is invited to consider what action it wishes to take.  

Committee consideration  

Chamber debate  

5. During the debate on 4 December 2018, several Members acknowledged the work carried out by the Public Petitions Committee and suggested that work could be carried on by the Health and Sport Committee.  

6. Elaine Smith MSP, who has a long-standing interest in the petition, said—  

“It would be helpful if the Health and Sport Committee would consider undertaking a short inquiry into the issue, with direct evidence from the women who are taking T3 and the endocrinologists who are prescribing it. That would add to the work that the Public Petitions Committee has done.”  


7. David Stewart MSP added—

“As a member of the Health and Sport Committee—I cannot speak for the rest of the members—I support a full inquiry by the Health and Sport Committee. My colleagues on the committee and in the chamber might wish to support me in that.”

8. Miles Briggs echoed these comments—

“I support Elaine Smith’s important ask that the Health and Sport Committee undertake a short inquiry. It would be important to use that to follow up the conclusions and recommendations in the Public Petitions Committee’s report.”

Correspondence with the Health and Sport Committee

9. At the last consideration of the petition on 7 February 2019, the Public Petitions Committee agreed to write to the Health and Sport Committee to draw its attention to the calls made during the debate for a short, focussed inquiry.

10. The Convener of the Health and Sport Committee responded to the Public Petitions Committee on 4 April 2019. In this correspondence, the Convener notes the work that has been conducted by the Public Petitions Committee in relation to effective thyroid and adrenal testing, diagnosis and treatment.

11. The letter goes on to state that the Health and Sport Committee note “the series of assurances provided by the Minister to the Chamber during the debate and agreed to write to the Scottish Government seeking an update on progress”.

12. The Health and Sport Committee received correspondence from the Minister for Public Health, Sport and Wellbeing on 23 May 2019 and this was shared with the Public Petitions Committee.

13. The letter reiterates what the Minister stated during the debate on 4 December 2018 that the Scottish Endocrine Interest Group is implementing improvements to ensure a more consistent approach is adopted across Scotland. The Minister refers to improved communications around diagnosis and access to treatments stating in March 2019, the Scottish Clinical Biochemistry Network published guidance for thyroid testing.

14. The letter also commits to follow the development of the NICE guideline on thyroid disease, which is due to be published later this year.

15. During the Committee debate, the Minister made a commitment to write to all Health Boards in Scotland to clarify the Scottish Government position on T3 prescribing. The Minister sent a letter on 13 February 2019, after seeking advice from the endocrine specialist community asking boards to confirm that they were committed to—
• A holistic and safe review of patients prescribed T3 which is undertaken by a healthcare professional based on the needs of the individual patient.

• Clinicians initiating and continuing T3 where it is safe and clinically appropriate to do so, as agreed with a consultant who specialises in endocrinology.

16. All health boards have confirmed that they were committed to these two points.

17. During the debate, the Minister also stated that “If people cannot access the treatment that we all think and their endocrinologist says that they should get, I ask members to please write to me”. The Minister has since received “several letters” from patients who have queried the way in which T3 initiation requests and appeals policy works in their board. The Minister is working with relevant boards to better understand their processes and confirms that he wishes to see—

“a consistent prescribing policy towards T3 being introduced throughout Scotland and the application of this is part of our commitment towards safe and effective treatment for patients diagnosed with primary hypothyroidism”.

Conclusion

18. The Committee is invited to consider what action it wishes to take. Options include (and are not necessarily exclusive)—

• To close the petition under Standing Orders Rule 15.7 on the basis that the Scottish Government has expressed a clear commitment to a consistent prescribing policy towards T3 being introduced throughout Scotland and is taking active steps on this issue;

• To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

• PE1463/SSSS: Convener for Health and Sport Committee submission of 4 April 2019 (11KB pdf)
• PE1463/TTTT: Correspondence from the Minister for Public Health Sport and Wellbeing to the Health and Sport Committee of 23 May 2019 (361KB pdf)
• PE1463/UUUU: Maureen Hardie submission of 29 May 2019 (9KB pdf)

All written submissions received on the petition can be viewed on the petition webpage. http://parliament.scot/GettingInvolved/Petitions/PE01463
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019

PE1545: Residential care provision for the severely learning disabled

Note by the Clerk

Petitioner
Ann Maxwell on behalf of Muir Maxwell Trust

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to recognise residential care as a way severely learning-disabled children, young people and adults can lead happy and fulfilled lives and provide the resources to local authorities to establish residential care options for families in Scotland.

Webpage
Parliament.scot/GettingInvolved/Petitions/PE01545

Introduction

1. The Committee last considered this petition at its meeting on 10 January 2019 and heard evidence from the Cabinet Secretary for Health and Sport.

2. At this meeting, the Committee agreed to invite the petitioner to respond to the evidence heard. A written response has been received and the Committee is invited to consider what action it wishes to take.

Background

3. The Scottish Government has commissioned work to address the data visibility of people with learning disabilities in Scotland which includes projects by the Scottish Learning Disabilities Observatory (SLDO).

4. In the petitioner’s written submission of 16 October 2017, concerns were raised that while 60% of people with profound learning disabilities have epilepsy, there is limited reference in the SLDO’s work programme to this condition. The Committee therefore agreed to ask the SLDO what work, if any, it was progressing to understand the links between people with profound learning disabilities and epilepsy.

5. In response, the SLDO’s written submission of 6 July 2018 stated—

“Scotland has expertise on epilepsy at Edinburgh University, hence we have no current plans to try to replicate this, beyond its management in primary care.”

6. The Committee also noted the petitioner’s suggestion that the financial consequences of inadequate care for the profoundly learning disabled should be
a focus of SLDO’s work. The Committee asked whether the SLDO would consider exploring this issue as part of its work programme.

7. The Observatory responded as follows—

“The Scottish Learning Disabilities Observatory was commissioned to inform policy and practice through undertaking secondary analyses of Scotland’s existing routinely collected health and administrative data. We are not aware of any existing datasets in Scotland that include a marker for profound learning disabilities. The Scottish Government’s “SPIRE” project may in future provide a means to utilise general practitioner data, but the SPIRE team are not yet at a stage where this is operational”.

8. The petitioner’s written submission of 20 July 2018 expressed disappointment that her petition has now been under consideration for four years, but during this time, “nothing constructive and supportive has resulted”. The petitioner also expressed the view that—

“…the Scottish Government has repeatedly deflected the matter to the Learning Disabilities Observatory (LDO) in an attempt to convince the petitioner that their research is relevant to the issues raised”.

9. The petitioner is also of the view that as there are no datasets in Scotland which include a marker for the profoundly learning disabled, confirmed by SLDO in their written submission, she considers this group to be “invisible”.

Committee Consideration

Report on out of area placements and delayed discharge for people with learning disabilities and complex needs

10. In November 2018, the Scottish Government published ‘Coming home: complex care needs and out of area placements’. The report is the result of a two-year project to look specifically at the support provided to people with learning disabilities who have complex needs. The focus of the project was to gather national data on individuals with learning disabilities who have additional complex needs, and who are either placed out-of-area, or are currently within hospital-based assessment and treatment units, classed as delayed discharge.

11. The aim of the project was to provide information about the issues, and to help identify the actions that could improve outcomes for those people with learning disabilities in Scotland, who currently are unable to receive appropriate support in their local communities, and who have either been admitted to assessment and treatment units, or are living in out-of-area placements.

12. The most pertinent recommendation from the report is to consider the role of flexible support responses, to be used when placements are experiencing significant difficulty. The need for this should be informed by the use of risk
registers to identify individuals at risk of out-of-area or hospital placement. A summary of the report's recommendations can be found in Annexe B.

**Petitioner Response**

13. The petitioner feels that the ‘Coming Home’ report supports their request for high quality residential care in Scotland. Quoting the Cabinet Secretary’s oral evidence: “we must not return to the large-scale institutions of the 1980’s” – the petitioner has expressed that such a reference results in the stigmatisation of residential care.

14. The Cabinet Secretary provided examples of personalised care packages that enabled those with severe and complex needs to live in their own home in the areas of Dumfries and Galloway, Midlothian and Moray. However, the petitioner is of the view that—

> “Whilst single tenancy arrangements work for some they are beyond the coping mechanism of others, including the local authorities’ ability to cope with the complex needs of a few in this setting”

15. The petitioner goes on to quote the ‘Coming Home’ report—

> “community provision for people with learning disabilities and challenging behaviours is not meeting the needs of this client group and is the primary reason for people either going out-of-area or in to hospital.”

16. Further commenting on the report—

> “The report acknowledges the absence of appropriate services in Scotland to care for the complex needs of this group and the lack of skill-set... So the prospect of those in out-of-area-placements returning home any time soon is unlikely and in the meantime, another generation of ‘the same’ unrecognised and therefore unmet needs is coming along behind... The requirement for a transformational systems change is now vital and urgent, something Dr Anne MacDonald refers to as: “fundamentally a human rights issue and must be addressed with the urgency that context indicates.””

17. The petitioner emphasised the relationship between epilepsy and conditions such as autism and dementia, quoting the Scottish Government’s ‘Keys to Life’ strategy which estimates that 66% of those with severe and complex needs in Scotland have epilepsy. The petitioner notes that epilepsy was only mentioned once in the Cabinet Secretary’s oral evidence session on 10 January 2019 and argues that epilepsy is a key benchmark in the assessment of those with severe and complex needs—

> “The Petitioner is hopeful that the Minister for Health and Sport will acknowledge this catastrophic oversight and make it an immediate priority that this bench mark is applied as early as possible in the assessment process (ideally a Section 23 Assessment beginning in childhood) in order to identify the invisible group we are referring to and provide the essential data we are all seeking in order to avoid unmet need that leads to care-in-crisis.”
18. A Scottish Government official confirmed at the evidence session on 10 January 2019 that there are no markers/figures concerning what the level of need is for profound learning disabilities. However, the Cabinet Secretary quoted a Scottish Government estimate—

“...just over 5,000 children and 21,000 adults in Scotland with learning disabilities. About 1,000 children and 4,000 adults of those have severe learning disabilities; a similar number have profound learning disabilities.”

19. During the evidence session, the Cabinet Secretary made a commitment to carry out research that establishes the level of need for those with profound learning difficulties as well as offering to meet with the petitioner.

Conclusion

20. The Committee is invited to consider what action it wishes to take. Options include—

- To write to the Cabinet Secretary for Health and Sport to ask—
  
  o for further detail on how she intends to progress her commitment to carry out research that establishes the level of need for those with profound learning difficulties and;
  
  o how the petitioner can take up the Cabinet Secretary’s offer to meet with her to discuss the concerns raised in her petition.

- To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe A

The following submissions are circulated in connection with consideration of the petition at this meeting—

- **PE1545/AA: Petitioner submission of 29 January 2019 (377KB pdf)**

All written submissions received on the petition can be viewed on the petition [webpage](#).
Annexe B

Summary of Recommendations

Theme One: Strengthening Community Services

Recommendation 1: Develop options for access to crisis services for people with learning disabilities and complex needs, with a view to providing direct support to service provider or family placements which are at risk of breakdown.

Recommendation 2: Consider the role of flexible support responses, to be used when placements are experiencing significant difficulty. The need for this should be informed by the use of risk registers to identify individuals at risk of out-of-area or hospital placement.

Recommendation 3: Ensure that greater consideration is given to family support for the family carers of people with learning disabilities and complex needs.

Theme Two: Developing Commissioning and Service Planning

Recommendation 4: Take a more proactive approach to planning and commissioning services. This should include working with children’s services and transitions teams; the use of co-production and person-centred approaches to commissioning; and HSCPs working together to jointly commission services.

Recommendation 5: Identify suitable housing options for this group and link commissioning plans with housing plans locally.

Theme Three: Workforce Development in Positive Behavioural Support

Recommendation 6: The Scottish Government should seek partnership with a University to provide PBS training across the health and social care workforce in relation to people with learning disabilities and complex needs.

Recommendation 7: The Scottish Government should support the establishment of a PBS Community of Practice.
Public Petitions Committee

11th Meeting, 2019 (Session 5)

Thursday 6 June 2019

PE1591: Major redesign of healthcare services in Skye, Lochalsh and South West Ross

Note by the Clerk

Petitioner Catriona MacDonald on behalf of SOS-NHS

Petition summary The petition calls on the Scottish Parliament to urge the Scottish Government to reverse its approval of the major service change to healthcare services in Skye, Lochalsh and South West Ross.

Webpage parliament.scot/GettingInvolved/Petitions/skyelochalshsouthwestross

Introduction

1. This is a continued petition, which was last considered by the Committee at its meeting on 7 June 2018. At that meeting, the Committee considered representations from the petitioners and MSPs and agreed to keep the petition open for a minimum of six months to allow time for recommendations from Sir Lewis Ritchie’s Independent External View of Skye, Lochalsh and South West Ross Out of Hours Services report to be implemented. The Committee also agreed to ask the Scottish Government for its views on the findings of the review.

2. Submissions from the Scottish Government and the petitioners are included in the annexe to this paper, and the Committee is invited to consider what action it wishes to take.

Committee consideration

3. In her submission of 15 August 2018, the Cabinet Secretary for Health and Sport welcomed the findings of Sir Lewis Ritchie’s review and indicated that she was pleased that NHS Highland accepted every recommendation within the report, which she expected to be delivered in full.

4. The Cabinet Secretary indicated that regular meetings and progress reviews would be conducted.

5. In their submission dated 30 May 2019, the petitioners make reference to Sir Lewis Ritchie’s six-month review of progress of implementation and his subsequent letter to the then NHS Highland board chairman, noting progress across some recommendations but also noting concerns that progress was being hindered “due to a combination of poor communication and slow activity across too many recommendations”.

1
6. The petitioners then note Sir Lewis’ one year review of progress, conducted on 28 May 2019, shortly after a visit by the Cabinet Secretary and the NHS Scotland Director General. They refer to this review as “much more positive”.

7. The petitioners note also that community representatives have been able to meet with the new NHS Highland Chief Executive and Interim Chairman. They add—

“We now believe that the priority recommendations will be implemented during the coming weeks with the launch of the 24/7 Urgent Care Centre in Portree and re-opening of all 12 beds in Portree Hospital. We have been assured that implementation of the Ritchie report will take precedence over aspects of the redesign proposals in north Skye, and expect NHS Highland and partners to deliver on that…”

Action

8. The Committee is invited to consider what action it wishes to take on the petition. Options include—

- Close the petition under Rule 15.7 of Standing Orders on the basis that the petitioners believe that the recommendations of Sir Ritchie’s independent external view of out of hours services in Skye, Lochalsh and South West Ross will be implemented in full and are reassured that such implementation will take precedence over aspects of the redesign of health and social care proposals in north Skye.
- Any other action the Committee wishes to take.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- PE1591/AA: Cabinet Secretary for Health and Sport submission of 15 August 2018 (104KB pdf)
- PE1591/BB: Petitioner submission of 30 May 2019 (146KB pdf)

All written submissions received on the petition can be viewed on the petition webpage.
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019

PE1658: Compensation for those who suffered a neurological disability following administration of the Pluserix vaccine between 1988 and 1992

Note by the Clerk

Petitioner
Wendy Stephen

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to acknowledge and compensate individuals who suffered permanent neurological disabilities following administration of the Urabe mumps containing Pluserix MMR which was recommended and promoted by the Scottish Home and Health Department (SHHD) in their MMR vaccine campaign between October 1988 and September 1992.

Webpage
parliament.scot/GettingInvolved/Petitions/PE01658

Introduction

1. This is a continued petition, last considered by the Committee at its meeting on 21 December 2017, when it agreed to write to the Scottish Government, the Department for Work and Pensions, and the Medicines and Healthcare products Regulatory Agency (MHRA).

2. Submissions have been received, along with a response from the Scottish Government, and the Committee is invited to consider what action to take on the petition.

Scottish Government

3. The Scottish Government reiterates its position that it does not have any plans to offer ex gratia payments to individuals affected by the pluserix vaccine. It repeats that this is an issue reserved to the UK Parliament, and is covered by the Vaccine Damages Payment Scheme; policy for that scheme rests with the Department of Health and Social Care (the DHSC).

4. In its submission, the DHSC explains the purpose of the Vaccine Damage Payment Scheme, which currently provides a one-off tax-free lump sum payment of £120,000. It explains—

   “An application to the Scheme does not guarantee payment, there are two legal tests to be passed: the first is establishing, on a balance of probabilities, that the disablement was caused by vaccination against a disease covered by the VDPS. The second is that the resulting disablement is severe (60% or more)…”. 
5. The petitioner has previously said she does not agree that the Vaccine Damage Payment Scheme is a compensatory scheme, and expresses dissatisfaction with the Scottish Government’s repeated clarification of the position. She states—

“Why has the Scottish Government not challenged Westminster’s insistence that vaccine damage claims be brought in England and nowhere else? Scotland has the capacity to implement a scheme to address vaccine injury so why has this not been rigorously pursued? How can it be acceptable for those suffering injury as a result of the Pluserix vaccine to be treated differently from other Scottish groups in similar circumstances, purely because the defective product was a vaccine?”

Conclusion

6. The Committee is invited to consider what action it wishes to take. Options include—

- Closing the petition on the basis that the action called for in the petition – for the Scottish Government to provide compensation – is a matter that is reserved and administered by the UK Government, and the Scottish Government has re-stated its position that it does not have any plans to offer ex gratia payments.

- Any other action the Committee wishes to take.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- PE1658/D: Department of Health and Social Care submission of 15 March 2019 (9KB pdf)
- PE1658/E: Scottish Government submission of 21 March 2019 (53KB pdf)
- PE1658/F: MHRA submission of 28 March 2019 (52KB pdf)
- PE1658/G: Petitioner submission of 28 April 2019 (570KB pdf)
- PE1658/H: Petitioner submission of 3 June 2019 (106KB pdf)

All written submissions received on the petition can be viewed on the petition webpage.
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019

PE1689: Hepatitis C Treatment Targets in Scotland

Note by the Clerk

Petitioner
Jim Clark

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to specify ambitious and aspirational upper treatment targets for hepatitis C to encourage outreach and case-finding. This target should be in addition to the current targets of 2,000 treatment initiations for 2018/19, 2,500 for 2019/20 and 3,000 for 2020/21 onwards, which are sub-optimal and should be considered absolute minimums.

Webpage
parliament.scot/GettingInvolved/Petitions/PE01689

Introduction

1. This is a continued petition that was last considered on 10 May 2018. At this meeting, the Committee agreed to write to the Scottish Government, NHS boards, Alcohol and Drug Partnerships and the Scottish Prison Service.

2. Responses have been received as well as a written submission from the petitioner. The Committee is invited to consider what action it wishes to take on this petition.

Background

3. The Hepatitis C virus (HCV) is a blood borne virus. If untreated, it can lead to cirrhosis of the liver and liver cancer. The most commonly reported route of transmission in Scotland is through injecting drug use, accounting for approximately 90% of infections.

4. In 2016, an estimated 34,500 individuals in Scotland were living with chronic HCV, with over half having received a diagnosis. Of those diagnosed, around a quarter are currently receiving specialist treatment and 1,750 are treated each year. Around 45% of cases are believed to still be undiagnosed.
Committee consideration

 Treatment and targets

5. The Committee wrote to the Scottish Government to seek its views in relation to the action called for in the petition. The Government’s written submission states that it “is committed to eliminating hepatitis C as a public health concern and real progress has been made in this area. The submission goes on to explain that “targets for initiation on to hepatitis C treatment are a minimum and the latest figures for 2017/18 show that the treatment target for that year was exceeded”.

6. The Scottish Government’s written submission also explains that Health Protection Scotland is working to develop recommendations on how to eliminate the hepatitis C virus in Scotland and that the Scottish Government would give further consideration to a strategy for hepatitis C elimination once this expert advice has been received.

7. The Committee also wrote to health boards in Scotland to ask—

   • Whether the funding available for treatment is being fully utilised for that purpose or whether funds are being reallocated to supporting other services if minimum treatment targets have been met and;

   • Whether there is a link between a reduction in the cost of available treatments and an increase in the number of people receiving treatment

8. The petitioner’s written submission recognises that funding for hepatitis C treatment is agreed on an annual basis from the general revenue allocation and raises concern that due to budget pressures—

   “treatment budgets...are agreed and capped at the level of the Scottish Government’s minimum treatment target”.

9. The petitioner’s submission states that while health boards provide sufficient funding to meet minimum targets, it was clear from the written responses received that “exceeding the minimum treatment target is discouraged, both through the setting of the HCV budget at the level of the minimum target, and through additional measures”.

10. As an example of this, the petitioner refers to NHS Lothian’s submission which states—

   “monies that were previously allocated and that are not required to treat the minimum target have been released back for re-allocation by the finance department”.

11. The petitioner highlights that as the treatment costs for hepatitis C have fallen, the spend on treatments has decreased significantly, “despite the
limited increases in treatment targets”. The petitioner is of the view that this represents “a significant missed opportunity to re-invest savings from treatment costs and expedite the elimination of hepatitis C”.

12. The petitioner’s submission states that Alcohol and Drug Partnerships (ADPs) that responded to the correspondence from the Committee support the call for more ambitious treatment targets. An example of this support can be found in Inverclyde’s submission which states—

“IADP would urge the Scottish Government to specify ambitious and aspirational upper treatment targets for hepatitis C to encourage outreach and case-finding. This target should be in addition to the current targets of 2,000 treatment initiations for 2018/19, 2,500 for 2019/20 and 3,000 for 2020/21 onwards, which are sub-optimal and should be considered absolute minimums”.

Additional investment

13. There was a recognition amongst some health boards that in order to meet and exceed Scottish Government targets, additional investment will be required. In its written submission, NHS Forth Valley states—

“We see the only realistic way to meet and exceed the minimum treatment targets set by Scottish Government is to invest in the necessary infrastructure to provide a quality service that will ensure support and continued engagement with clients from diagnoses through to completion of treatment.

14. NHS Lothian also support the call for additional funding stating—

“…our willingness to achieve Scotland’s commitment to eliminate Hepatitis B and C will require additional investment in addressing the underlying reasons why people become infected and reducing exposure to them, specific investment in prevention, case finding and treatment”.

Waiting times

15. The Committee also asked health boards what the current waiting times were between people being diagnosed with hepatitis C and the commencement of treatment. From the responses received, none of the health boards reported waiting lists for treatment. However, in his written submission, the petitioner raises concern that—

“…waiting times between diagnosis and treatment in some health boards were concerningly long, with GGC reporting that “the wait time to see a nurse following referral to a hospital varies between centres, but typically is around 3 months”, with a further 4 week delay after the hospital visit “necessitated for pharmacy to initiate prescriptions”.”
16. It is the petitioner’s view that with “the availability of rapid PCR testing and DAA treatments requiring minimal supervision, patients should be initiated onto treatment within weeks or days of a diagnosis”.

**Petitioner's concluding remarks**

17. The petitioner is of the view that the Government “seems to have abandoned its ambition to be pro-active in pursuit of eliminating hepatitis C”. The petitioner is also of the view that health boards and ADPs are supportive of the action called for in the petition and that “increased treatment targets should be accompanied by a Government commitment to support their achievement in pursuit of eliminating hepatitis C as quickly as possible”. The petitioner suggests that this could be achieved by—

“...combining the Scottish Health and Blood Borne Virus strategic funding with treatment budgets, and ringfencing both at a health board level to encourage re-investment of treatment cost savings into additional case-finding for hepatitis C”.

**Action**

18. The Committee is invited to consider what action it wishes to take. Options include—

- To write to the Cabinet Secretary for Health and Sport to—
  - respond to the concerns raised by the petitioner including his suggestion of how to eliminate hepatitis C “as quickly as quickly as possible” and;
  - to ask for an update on any plans the Scottish Government has to develop a strategy for hepatitis C elimination following the work of Health Protection Scotland.

- Any other action the Committee wishes to take.

**Clerk to the Committee**

**Annexe**

The following submissions are circulated in connection with consideration of the petition at this meeting—

- PE1689/A - Scottish Government submission of 18 July 2018 (179KB pdf)
- PE1689/B - ADP Forth Valley submission of 1 August 2018 (14KB pdf)
- PE1689/C - NHS Grampian submission of 2 August 2018 (11KB pdf)
- PE1689/D - Scottish Prison Service submission of 3 August 2018 (266KB pdf)
- PE1689/E - NHS Western Isles submission of 7 August 2018 (383KB pdf)
• PE1689/F - NHS Forth Valley submission of 7 August 2018 (141KB pdf)
• PE1689/G - NHS Lothian submission of 8 August 2018 (132KB pdf)
• PE1689/H - ADP Inverclyde submission of 8 August 2018 (179KB pdf)
• PE1689/I - NHS Borders/Borders ADP submission of 9 August 2018 (143KB pdf)
• PE1689/J - ADP West Dunbartonshire submission of 10 August 2018 (10KB pdf)
• PE1689/K - NHS Shetland submission of 10 August 2018 (11KB pdf)
• PE1689/L - ADP Tayside submission of 10 August 2018 (109KB pdf)
• PE1689/M - NHS Dumfries and Galloway submission of 10 August 2018 (125KB pdf)
• PE1689/N - NHS Highland submission of 13 August 2018 (260KB pdf)
• PE1689/O - NHS Greater Glasgow and Clyde submissions of 14 August 2018
• PE1689/P - NHS Ayrshire and Arran submission of 16 August 2018 (411KB pdf)
• PE1689/Q: Petitioner submission of 13 September 2018 (79KB pdf)
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019
PE1707: Public Access Defibrillators

Note by the Clerk

Petitioner
Kathleen Orr

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to introduce a requirement for all new build or newly renovated or repurposed buildings with a floorspace of over 7500m2 to have a public access defibrillator (PAD) fitted to the exterior of the building, for public use, and for the PADs to be officially registered.

Webpage
parliament.scot/GettingInvolved/Petitions/PE01707

Introduction

1. This is a continued petition, first considered by the Committee on 22 November 2018, when it heard evidence from the petitioner.

2. Following this evidence session, the Committee agreed to write to the Scottish Government and stakeholders including the British Heart Foundation, Resuscitation Council UK, Chest, Heart and Stroke Scotland, COSLA, the Scottish Ambulance Service, St John Scotland and St Andrew’s First Aid.

3. Written submissions have been received from the majority of these stakeholders, and the petitioner has responded to those submissions. All submissions are included in the annexe to this paper.

4. The Committee is invited to consider what action it wishes to take on this petition.

Committee consideration

5. The submissions received were supportive of the petition. Some provided constructive observations and statistics to complement their support.

6. The British Heart Foundation and Resuscitation Council UK both stated their view that the petition has already played a role in raising public awareness and encouraging discussion and debate regarding public access automated external defibrillators (AEDs).\(^1\)

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\(^1\) The term automated external defibrillators (AED) is also used to describe public access defibrillators (PAD).
7. Both of those organisations did, however, comment on the aspect of the petition which calls for AEDs to be fitted to the exterior of all new build or newly renovated or re-purposed buildings with a floor space of over 7500m².

8. Resuscitation Council UK states—

   "PADs are best placed in strategic locations, where they are most needed, and floorspace or building size alone is not sufficient to determine the need for a defibrillator in a particular location."

9. The British Heart Foundation states—

   "There have been a number of studies, including the Stockholm Study, which have shown that the current approach to AED placement does not correlate to the location in which OHCAs [out-of-hours cardiac arrests] in public locations occur. This has led to an over-provision of AEDs in areas where fewer OHCAs occur, therefore reducing the impact of the AED footprint."

10. Resuscitation Council UK suggests that “local ambulance services, such as the Scottish Ambulance Service, are far better placed to advise on the need for a defibrillator in a specific community and where it should best be placed”.

11. The British Heart Foundation notes that there is currently “no public access data that has mapped the location of OHCAs to allow providers of AEDs to make better evidenced provision of AEDs”. It adds—

   “Following this there is still no comprehensive mapping of AEDs in Scotland which would allow us to better identify blackspots and over-provision in say, an urban city centre.”

12. The British Heart Foundation does refer, however, to work that it is conducting with Microsoft and the Scottish Ambulance Service on developing a “National Defibrillator Network that will allow Emergency dispatchers to sign-post bystanders to their nearest AED”.

13. The British Heart Foundation and Resuscitation Council UK also offer comments on bystander use and awareness of PADs, and suggest that there is insufficient evidence to suggest that simply making PADs/AEDs a legal requirement “would be sufficient to increase rates of bystander CPR, defibrillation and therefore improve rates of survival” after OHCA.

14. Resuscitation Council UK refers to a number of factors, including [lack of] knowledge and awareness; willingness to use acquisition and maintenance, and availability and accessibility.

15. The British Heart Foundation identifies four specific barriers identified as reasons not to use an AED—

   - Not knowing how the device works
   - Not being comfortable using it
   - Fear of causing harm to the patient
• Legal liability

16. Again, both organisations are clear that increased public education, awareness, and availability and accessibility of AEDs/PADs is key to improving survival rates for OHCAs.

17. There are comments within the submissions on the availability, maintenance, accessibility and registration of AEDs/PADs.

18. The British Heart Foundation is unequivocal in its support of the call in the petition that “all public access AEDs should be registered with the Scottish Ambulance Service; should be made available 24 hours per day/7 days a week; and held in an unlocked cabinet”. This position is supported by the Resuscitation Council UK, who add—

“Liaison and collaboration with the local ambulance service is crucial to the success of any public-access defibrillator scheme. It is essential to take their advice on the type of defibrillator and cabinet to install.”

19. The Caithness Defibrillator Campaign Group began a campaign in April 2018. In its submission it lists nine “very worrying” findings, which it considers shows that “the whole AED situation is a bit of a shambles and someone in authority needs to take control and educate communities…”. It adds—

“Only 4 AEDs were registered in Caithness with the Scottish Ambulance Service (SAS) when we started our campaign. We have now persuaded 28 owners to register with another 11 AED owners reluctant to register for whatever reason.”

20. In his submission, the Minister for Public Health, Sport and Wellbeing welcomes the petition. He states that the Scottish Government fully encourages the petitioner’s work in ensuring that PADs provided in local communities are registered with the Scottish Ambulance Service”.

21. Mr FitzPatrick refers to the Scottish Ambulance Service’s work with the British Heart Foundation and Microsoft in developing a UK-wide Defibrillator Network. He also refers to the University of Edinburgh Resuscitation Research Group PADs Modelling Analysis project, which is due to conclude by the end of August. He suggests—

“In terms of the issues raised in the Petition therefore, the conclusion of the Edinburgh University project would be a good opportunity to revisit and consider requirements for PAD locations.”

22. The petitioner welcomes the submissions and has responded to comments provided. She acknowledges that her petition may not be a “silver bullet, but is one way forward in increasing the number of AEDs in public places”. She notes concerns about a lack of evidence that her proposal [of legislation] would work, but says—

“It would seem logical then to test my proposal.”
23. The petitioner also agrees that “in conjunction with the aims of my petition, we need to do some work around the registration of AEDs, the maintenance and governance” and welcomes the Edinburgh University study which she says she would be happy to “inform my petition as we go forward”.

24. The Committee may wish to note the willingness among all submissions received to assist the Committee in its consideration of this petition.

Action

25. The Committee is invited to consider what action it wishes to take on the petition. Options include—

- To hold a roundtable evidence session on the petition, and to identify which stakeholders it may wish to invite to any such evidence session.
- Any other action the Committee wishes to take.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- PE1707/A: British Heart Foundation submission of 11 January 2019 (552KB pdf)
- PE1707/B: Caithness Defibrillator Campaign Group submission of 11 February 2019 (20KB pdf)
- PE1707/C: Resuscitation Council (UK) submission of 20 March 2019 (219KB pdf)
- PE1707/D: St Andrew’s First Aid submission of 25 March 2019 (110KB pdf)
- PE1707/E: Minister for Public Health, Sport and Wellbeing submission of 4 April 2019 (1,304KB pdf)
- PE1707/F: Petitioner submission of 23 May 2019 (110KB pdf)
Public Petitions Committee
11th Meeting, 2019 (Session 5)
Thursday 6 June 2019
PE1712: Soul and conscience letters

Note by the Clerk

Petitioner
Laura Hunter

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to review the use of soul and conscience letters in criminal proceedings and to produce guidance for the courts and GP practices on the use of these letters, including alternatives to court appearances if an accused person is deemed unfit to attend in person.

Webpage
Parliament.scot/GettingInvolved/Petitions/PE01712

Introduction

1. The Committee last considered this petition at its meeting on 6 December 2018 and agreed to write to the Scottish Government, the Crown Office & Procurator Fiscal Service, the British Medical Association (Scotland) and the Law Society of Scotland.

2. The requested submissions have been received. A written submission in response to these submissions has not been received by the petitioner.

3. The Committee is invited to consider any action it wishes to take in relation to the petition.

Background

4. A soul and conscience letter from a doctor is the appropriate mechanism for seeking the court’s consent to an accused person or a witness (prosecution or defence) being absent from a court hearing because of illness or injury.

5. It is in effect a medical certificate stating that a person is unfit to attend court on a particular date. Guidance produced for the High Court notes that the certificate may state either: “I certify this on soul and conscience”; or “I certify and solemnly and sincerely affirm this to be true”.¹

6. The quoted guidance notes the possibility of a witnesses giving evidence on commission – a procedure which allows the evidence of a witness to be recorded in advance of a trial. However, it should be noted that the practice note does not deal specifically with accused persons. Section 92 of the Criminal Procedure

¹ See High Court Practice Note 2 of 2018.
(Scotland) Act 1995 generally provides that no part of a trial shall take place outwith the presence of the accused.

7. The decision to postpone a trial is a matter for the court. Where the defence or prosecution seeks postponement because an accused or witness cannot attend, the court can seek further information in support of excusal. If the issue hinges on the contents of a soul and conscience letter, this may include further medical evidence – which could involve the doctor being asked to attend court. If the advice in a soul and conscience letter is not accepted by the court, the accused/witness should be advised accordingly.

8. Decisions on whether a prosecution should be discontinued in the interests of justice are a matter for the prosecution. The health of the accused can be a factor to consider in the light of all the circumstances of the case. The Crown Office & Procurator Fiscal Service has published relevant information in its prosecution code—

“where the decision has been taken to commence criminal proceedings the prosecutor remains under a duty to ensure that the decision remains appropriate in the public interest. Where there is a change of circumstances or where the prosecutor receives new information it will be necessary to consider whether the prosecution should continue. Where it is no longer in the public interest to prosecute or where it is no longer considered that there is sufficient evidence the prosecutor should not proceed with the case.” (p 11)

9. In providing a soul and conscience letter, it is important that the doctor has a good understanding of what the giving of evidence will involve, including what measures can be put in place to assist the witness. The Law Society of Scotland has noted that lawyers will often contact the doctors concerned to clarify such matters and that this can result in the advice of doctors' changing.

Use of soul and conscience letters and guidance

10. The petitioner states—

“I believe the courts should have the discretion to disregard any soul and conscience letter which it finds unsatisfactory, similar to the guidance (https://www.cps.gov.uk/legal-guidance/medical-certificates) that the Crown Prosecution Service use in England and Wales. The guidance states–

“...a court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively, the court may exercise its discretion to disregard a certificate, which it finds unsatisfactory: R. v Ealing Magistrates Court Ex p. Burgess (2001) 165 J.P. 82”.

11. The petitioner urges Scotland to develop guidance and instruction on the use of soul and conscience letters which reflects the guidance used by the Crown
Prosecution Service in England and Wales for the COPFS, defence lawyers and court representatives.

12. The Committee may wish to note that the Crown Prosecution Service guidance goes on to say—

“Circumstances where a court may find a medical certificate to be unsatisfactory include:

1. Where the certificate indicates that the defendant is unfit to work (rather than to attend court);
2. Where the nature of the defendant’s ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
3. Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.”

13. High Court Practice Note 2 of 2018 on preliminary hearings deals with medical certificates (soul and conscience letters). The Scottish Courts and Tribunals guidance is reproduced in full at Annexe B.

Alternatives to court appearances

14. The petitioner states—

“I would also like the courts to consider alternative methods of bringing accused persons to court, for example, the accused person providing evidence via video link or the GP being asked to attend court on behalf of the accused to give evidence on why the accused is unable to attend their court appearance.”

15. The Criminal Procedure (Scotland) Act 1995 generally provides that no part of a trial shall take place outwith the presence of the accused.

16. The Committee may wish to note that, as stated at paragraph 7 above, where the defence or prosecution seeks postponement because an accused or witness cannot attend, the court can seek further information in support of excusal. If the issue hinges on the contents of a soul and conscience letter, this may include further medical evidence – which could involve the doctor being asked to attend court. If the advice in a soul and conscience letter is not accepted by the court, the accused/witness should be advised accordingly.

Committee consideration

Scottish Government

17. The Scottish Government’s submission confirms that soul and conscious letters are not provided for in legislation but derive from the powers of the court to regulate their own procedures. The same applies to matters concerning the decision to delay/postpone legal proceedings, as well as the requirement for a person to attend a court hearing – witness or accused. The submission therefore states—
“It would therefore not be appropriate for the Scottish Ministers to comment on, nor seek to produce guidance in relation to, the operational aspects of the work of either the Lord Advocate, in his capacity as head of the systems of criminal prosecution in Scotland, or members of the Judiciary. The independence of our courts and prosecutors is enshrined in statute to ensure the criminal justice system operates free from political interference.”

18. The submission also provides further clarity around the determination that an accused person is unfit to stand trial—

“a soul and conscience letter does not establish that an accused cannot, at some point, stand trial. Should it accept such a letter, the court is able to discharge the jury, reserve to the prosecution the right to raise a new libel, and recommit the accused. Even where the accused is likely to be unfit for the foreseeable future the court may still discharge the jury, desert pro loco et tempore – that is, end proceedings for the time being – and reserve to the Crown the right to raise a fresh indictment.”

19. Further information on this point can be found in Annexe C.

British Medical Association Scotland (BMA)

20. In response the question of whether pressure is applied to GPs, the British Medical Association Scotland’s written submission states—

“...we are not aware of pressure being unduly put on GPs to sign or write soul and conscience letters. That is not to say this will not happen in some individual circumstances, but we have no evidence that this is any kind of common occurrence, or indeed that it happens at all.”

21. The submission emphasises that despite a soul and conscience letter allowing a doctor to provide evidence without being present in court, doctors are nevertheless aware that they may be asked to attend court and to answer to the contents of the letter.

22. Addressing the aims of the petition—

“...it is our belief that the use of soul and conscience letters provide a proportionate mechanism whereby doctors can offer important evidence to courts, without impacting too significantly on the time needed to care for patients.”

23. The submission raises concerns over any changes to the processes of soul and conscience letters, stating that this could negatively impact on the time GPs have to spend with patients, and that having to attend court would not increase the seriousness of which GPs would discharge their duties.
Crown Office & Procurator Fiscal Service

24. This submission covers many aspects addressed in the background section of this paper, however, the decision process for any delays or halting of legal proceedings was made clear—

“The decision to postpone a court hearing is a matter for the Court. It is for the Court to assess and decide whether or not the reasons put forward by any party, including an accused person or their legal representative, are legitimate and justify the postponement of a court hearing. As part of the Court’s decision-making process, the Court may require the requesting party to provide further detail in support of the request”

25. With regards to alternative forms of attending legal proceedings—

“The Criminal Procedure (Scotland) Act permits accused persons in detention to appear in court via video link in certain circumstances. This option cannot be used for hearings at which evidence is to be led.”

“The Criminal Procedure (Scotland) Act 1995 makes provision for proceedings to take place in the absence of the accused in certain circumstances. This can be granted by the Court either on the application of the prosecutor or of the Court’s own accord.”

The Law Society of Scotland

26. The Law Society’s submission acknowledges that improvements can be made to soul and conscious letters—

“There could be better information made available for the public about the meaning and effect of S and C Certificates and to the medical profession about what information is required in a S and C certificate. We would emphasise that we are unaware of any current abuse of the process. Certainly, the courts have always had a discretion to look behind S and C certificates when they are produced.”

27. The submission expands on this last point—

“In our experience, where a S and C certificate is produced which is not in the terms required, contact is normally made with the doctor to explain what is involved by the accused attending court. Then that can ascertain if in the doctor’s view they are actually unfit to attend court.”

28. Previous legal cases and guidance provide further information on the interpretation of soul and conscience letters—

[With reference to section 259 of the Criminal Procedure (Scotland) Act 1995]
“the witness is by reason of his bodily or mental condition unfit or unable to give evidence”. The wording of that section may provide some guidance as to what the scope of a S and C certificate for the accused should cover [The civil case of ‘Stuart McCallion V Apache North Sea Limited and others’ set out a number of conditions regarding the provision of medical certificates, dealing with—]

“…effective participation depending on the medical condition but also on the nature of the issues before the court and the role the party will have to undertake. That is equally in our view applicable to criminal proceedings.”

[In a High Court setting, soul and conscience letters should include the following]

“(a) that the certificate is given on soul and conscience2 (b) where necessary, explain what symptoms the witness suffers that prevent (c) shall contain a prognosis estimating when the witness is likely to be fit to give evidence; (d) shall state whether the witness is fit to give evidence on commission and, if so, under”

29. A number of issues have been highlighted around the use of technology as a means of allowing someone to participate in a trial if they are unable to attend. For example, by video link—

- “Quality of the process to ensure that the accused can hear effectively and throughout the proceedings
- The accused is alone and not being influenced by others who may be present (in contrast to prison where the accused is in a secure environment)
- The need for confidential communication between the accused and the solicitor
- The ability for the accused to be identified by witnesses
- The ability for the accused to see all documentation/videos and productions during the trial
- The ability for the accused to see the judge and witnesses as well as the jury to see the accused”

30. Concluding on the issue of alternative means to attending legal proceedings, the submission states—

“Video link does not seem possible at present to address the necessary demands of the court process as far as the accused is concerned. As advances are made there may be means of securing the accused’s evidence on commission in limited circumstances were this required.”

“There may be circumstances where the accused is unfit to stand trial. That should be accepted only in the last resort where all other considerations as to securing the accused’s attendance have been exhausted… that would be a

2 Though this is the wording of the Practice Note, we suspect that an affirmation would be accepted where a doctor is not prepared to give a certificate on sole and conscience
matter for COPFS [Crown Office and Procurator Fiscal Service] to decide in the public interest.”

31. With regards to the aims of the petition, the submission concludes—

“We are not aware of abuse, but we do consider that there is scope to improve the quality and understanding of the S and C certificates. It would be good practice for doctors through their professional organisations to be advised as to what is meant by “being unfit to attend court”. As indicated, it is not merely being physically unable to attend. They need of course to be able to follow what is taking place in court which is why the issue of longer-term prognosis too requires to be addressed.

Doctors have taken to charging for these certificates where the cost of such certificates can be in the region of £50 to £70. These may well present an access to justice issue for those who cannot afford such costs.”

Action

32. The Committee is invited to consider what action it wishes to take on the petition. Options include—

- To write to British Medical Association Scotland and any other relevant organisations, to seek views on the suggestion made by The Law Society of Scotland that improvements could be made to the information available on soul and conscience letters.
- To write to the petitioner to seek their views in relation to the written submissions received to date.
- Any other action the Committee wishes to take.

Clerk to the Committee

Annexe A

The following submissions are circulated in connection with consideration of the petition at this meeting—

- PE1712/A: Scottish Government submission of 7 January 2019 (111KB pdf)
- PE1712/B: Crown Office & Procurator Fiscal Service submission of 7 January 2019 (70KB pdf)
- PE1712/C: The Law Society of Scotland submission of 8 January 2019 (153KB pdf)
- PE1712/D: British Medical Association Scotland submission of 18 April 2019 (58KB pdf)
Annexe B

Scottish Courts & Tribunals - Criminal Courts Practice Notes and Directions

PRACTICE NOTE

No. 2 of 2018

Medical Certificates

In connection with any prosecution in the High Court of Justiciary, unless otherwise prescribed by statute, a medical certificate which certifies that a person is unfit to attend court on a particular date may bear either the words “I certify this on soul and conscience.” or “I certify and solemnly and sincerely affirm this to be true.” This Practice Note has effect from 1 October 2018.

Annexe C

Unfitness for trial

Where a person is prosecuted for a criminal offence, there is a mechanism in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) for the court to hold that a person is mentally or physically unfit to stand trial.

This follows an amendment to the 1995 Act by section 170 of the Criminal Justice and Licensing (Scotland) Act 2010, which created a new statutory plea of unfitness based on the mental or physical condition of an accused. A new section 53F was inserted into the 1995 Act, replacing the common law rule on insanity as a plea in bar of trial.

Section 53F sets out a general test for the statutory plea of unfitness for trial. The effect of the provision is that a person is deemed unfit for trial if the court concludes, on the balance of probabilities, that he/she cannot effectively participate in the proceedings because of his/her mental or physical condition. The Act lists various (illustrative) factors which the court must have regard to in determining the fitness of an accused to stand trial, as follows:

The ability of the person to:

- understand the nature of the charge,
- understand the requirement to tender a plea to the charge and the effect of such a plea,
- understand the purpose of, and follow the course of, the trial,
- understand the evidence that may be given against the person,
- instruct and otherwise communicate with the person's legal representative, and
- any other factor which the court considers relevant.
Where the court is satisfied that an accused person is incapable of participating effectively in a trial, having regard to these factors, and is therefore deemed unfit to stand trial, the court will discharge the trial diet (or in proceedings on indictment, the first diet or preliminary hearing depending upon the timing of the finding) and hold an Examination of Facts (EOF) in terms of section 54 and 55 of the 1995 Act (if the prosecution have not applied to the court to discontinue the case pro loco et tempore with the intent of re-raising proceedings when the accused is fit to stand trial.) The purpose of the EOF is to examine the available evidence in order to determine whether the person committed the alleged offence(s) and whether there are any grounds for acquitting him/her and, where the court concludes that the accused did commit the offence, to identify the appropriate disposal for the person.

This procedure allows the court to assess the evidence at a hearing where witnesses are examined under oath as if in a trial to determine whether the accused did in fact carry out the acts constituting the offence on the complaint (summary proceedings) or indictment (solemn proceedings). If the court finds that it is not established beyond reasonable doubt that the accused committed the offence(s), he/she will be acquitted. Where the court decides that a person did carry out the acts as alleged, the court will also consider whether on the balance of probabilities there are any grounds for acquittal, which includes insanity. Where there are no such grounds, the court will make a finding in this regard but it is not recorded as a conviction and the person is not “sentenced” to a criminal penalty. Rather, there are a range of disposals available to the court, which are laid out in section 57 of the 1995 Act. These include, for example, a Compulsion Order, which can authorise a person’s detention in hospital; or a Supervision and Treatment Order, which involves treatment and supervision in the community.