Dear Rob,

PETITION PE1542

Petition by Evelyn Mundell calling on the Scottish Parliament to urge the Scottish Government to accept that individual dairy farmers have human rights and that these have been breached by the operating rules of the Scottish ring fencing mechanism attached to the management of milk quotas which should have been carried out in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and avoid market and competition distortion.

You may be aware of the above petition lodged in November 2014 most recently considered by the Public Petitions Committee at its meeting on 13 May 2015. I attach the official report of our discussion from which you will see that it was decided that I would write to you. Jamie McGrigor MSP and David Stewart MSP have both spoken on behalf of the petitioner in their capacities as local members and both seek some sort of inquiry into the issues raised by her.

The Public Petitions Committee is aware of your Committee’s recent dairy industry inquiry which led to publication of the Scottish Government’s Dairy Action Plan and the debate in the Chamber. The Committee also notes the abolition of milk quota earlier this year. On that basis, the Public Petitions Committee is keen to hear your Committee’s thoughts on Mrs Mundell’s long-standing concerns, the extent to which they may have already been considered by the Committee or its predecessors and / or whether your Committee would be willing to consider them in the context of any future work being undertaken.

Background

The petitioner first brought her concerns to the Public Petitions Committee in 2009 (PE1263). The petitioner’s complaint was then (and remains) that the ring fencing of milk quotas in Orkney and the Southern Isles breached individual dairy farmers’
human rights because it put them at a competitive disadvantage in the UK dairy market and unfairly forced several farmers into financial difficulty.

The Scottish Government *does not accept* that the way that the ring fencing operated breached individual dairy farmers’ human rights. In his letter of November 2009, the Cabinet Secretary for Rural Affairs noted that the petitioner had raised these points with successive Ministers and in the Parliament over many years.

In the context of consideration of the first petition, the [Scottish Human Rights Commission](http://www.scrh.org.uk) set out the legal principles which would require to be considered in the context of any claim for breach of rights but noted “it is ultimately for the courts to consider whether a fair balance has been struck or whether the Scottish Ministers acted incompatibly with Convention rights”. The [National Farmers Union (NFU) Scotland](http://www.nfu.org.uk) said it had consistently supported the ring fencing “where this is justified and is the desire of the vast majority of producers”. It had consulted producers and reassessed when required, but on no occasion had it found reason to change its views.

In 2011, the petition was closed on the grounds that the Scottish Government planned to undertake a review of the ring fence provisions in advance of the abolition of milk quota regime by the European Council in 2015. The Scottish Government then commissioned the Scottish Agricultural College (SAG) to conduct the review. Following a public consultation, the SAG recommended the milk quota ring fences around Orkney and the Southern Isles should be retained until 2015.

In November 2014, the petitioner resubmitted her petition. Mrs Mundell attended and spoke to her petition at a meeting of the Public Petitions Committee on 13 January 2015 and voiced her concerns about the impact of the ring-fencing arrangements, the value of milk quota and the effect the restrictions had on her livelihood.

I would very much welcome your input to assist the Committee in deciding what action on this petition would be most appropriate.

Yours sincerely

John Pentland MSP
Convener
Public Petitions Committee
It is now five years since I first spoke to the Public Petitions Committee, and my view has not changed. It was unfair and disproportionate to expect constituents such as Mr and Mrs Mundell and other dairy farmers in Kintyre to forfeit their property and ruin their businesses in the name of supporting the wider community. Many of those businesses had been built up over generations—that is the nature of farming. The Scottish Government should now accept that there is a human rights issue and that most of those whom it consulted would have no knowledge of human rights legislation. Individual dairy farmers themselves were not consulted. I believe that the petition should be continued and that further questions should be asked of the Scottish Government so that the genuine concerns of Mr and Mrs Mundell and others can be addressed. I will read out a short statement from my constituents, who have travelled all the way to be here and are sitting in the public gallery. They say: “We simply cannot understand why Government are not being asked to correct the factually incorrect statements they previously made to the PPC. We believe, from the 12 Documents which we submitted to the PPC, that we have demonstrated that individual dairy farmers were not dealt with fairly regarding the Southern Isles Milk Quota Ring Fence. Consultations were not done correctly. Government knew for years that the milk price was below the cost of production. This is a scandal on a par with the miss-selling of Payment Protection Insurance, except that for the individual victims concerned, the consequences were much more devastating. It is now over 15 years since we first sought Justice and almost 6 years since we submitted the first Petition. This is completely the responsibility of the Scottish Parliament and we feel it is totally unfair to expect these widows and pensioners, as most affected now are, to take Government to Court to elicit Justice. If the PPC and Government cannot find a solution then we suggest there should be a Public Inquiry.”

David Stewart (Highlands and Islands) (Lab): I thank the committee for allowing me to come to the meeting, along with Jamie McGrigor, to add a few points. I have been dealing with Mr and Mrs Mundell for three or four years and before that, my former colleague Peter Peacock was heavily involved with the case. As Jamie McGrigor said, it is a complicated case and I know that members will have read all the background papers carefully. It is, of course, to do with the ring fencing of milk quotas, but there is a much wider issue here, too. The fundamental issue is about human rights and how people access human rights. SPICe has very helpfully provided me with a specific paper, which I have passed to Mr and Mrs Mundell, about the issues around legal aid and how people can access it. I realise that, for someone to access their human rights under Scots law, they need to go through the various stages and levels of Scots law. I will not delay the committee by talking about the difficulties in getting legal aid, but I will make a couple of points. The family have been in touch with more than 50 lawyers, either in person or by phone. The vast majority of lawyers will not touch human rights cases. Those who do say that they would deal only with human rights cases of prisoners or those who have an immigration issue. To give just one example, one lawyer who agreed to take the case wanted £25,000 up front. There is a wider issue there. As regards what action the committee could take, I know from my former role as the convener how important it is that petitions are moved on. The committee does not want to get a logjam of petitions, with a whole series of petitions that are there year after year. As the committee would expect, I have a very specific suggestion. I suggest that the committee does a brief mini inquiry that looks at the circumstances of the former ring-fenced area—the ring fencing no longer exists, as milk quotas have ended—in the southern isles. The inquiry should look at the social and economic circumstances of the farmers in that area, because the case is not just about Mr and Mrs Mundell; it is about lots of other farmers who have found that their livelihood has, in effect, been killed off, as Jamie McGrigor said. That is a breach of the European convention on human rights. A straightforward discrete inquiry into the effects on farmers in the southern isles area would be beneficial. I know from previous experience about the fearless way in which the committee took on the judiciary over a register of interests and the great work that the committee has done on social issues in relation to child sexual exploitation. Holding an inquiry would be another piece in the armoury; it would be another excellent piece of work from the committee and it would be helpful.

The issue is not just about one family, much as the Mundells are in a terribly tragic position. There has been a major miscarriage of justice. What has happened is a tragedy, not just for Mr and Mrs Mundell
but for scores of families who have had their livelihoods ruined because of what happened due to the ring fencing of milk quotas.

**Angus MacDonald:** That is a complete overreaction to the current situation from Mr Stewart. The salient point in this case is that the EU milk quota regime was abolished on 1 April this year, so it is unlikely that the Scottish Government would be willing to look at the matter retrospectively, particularly given its stance to date. However, the cabinet secretary has launched the Scottish dairy plan and acknowledged the challenges that face the islands and remote areas, including Kintyre.

The Scottish Government has advised that it does not accept the premise of the petition that the human rights of Mr and Mrs Mundell were breached. The Scottish Human Rights Commission has advised the committee that only a court could rule on the issue, and that should be taken on board. We should also take on board the fact that the petitioners have approached a number of lawyers to date. I know that the petitioners feel passionately that they have been let down. In particular, they are disappointed that they were not consulted as part of the independent review of the ring-fence provisions in 2011. It might be worth highlighting their disappointment to the Scottish Government. In doing so, given what I have already stated, I would be minded to close the petition, as the Scottish Government does not accept the charge that the petitioners’ rights were breached. However, we should place on record and acknowledge the petitioners’ clear frustration in the past few years. There is another option if that suggestion is not acceptable to the committee. Given that the Rural Affairs, Climate Change and Environment Committee is actively monitoring the current dairy crisis, it may be possible to refer the petition to it. However, I think that a mini inquiry by the Public Petitions Committee would not address the fundamental issues that the petitioners seek to address.

**Hanzala Malik:** It is always an awful shame when citizens have to fight against the brick wall of the Government to get justice. It is even worse when we have put our citizens in a position in which they cannot stand up to our Government financially. The Government exists to serve the people fairly. I know that the issue has gone on for a period of time, and I think that there is a case to be answered. Just because the petitioners are not financially able to get justice, that does not mean that they should be denied it. That is an awful sin. If we carried out a mini inquiry, that might be helpful to both parties. I do not want to pass the buck. We need to ensure that we do our best for citizens when they come to us for help. It is clear that the petitioners came to us for help, and we need to go the extra mile, if need be, to ensure that they get as close to justice as possible. I genuinely believe that we should do more for the particular family and others who have suffered in those circumstances.

**Kenny MacAskill:** We have listened to Mr Mundell and we appreciate the difficulties that are involved, but I agree with Angus MacDonald. I would be deeply concerned about our conducting a mini inquiry. It appears to me that the issue is deeply complex. From what has been said by Jamie McGrigor and David Stewart, who have made their points, we understand the complexities that arise, the difficulty even in getting lawyers to understand the matter and the view that the Scottish Human Rights Commission has taken in passing the issue elsewhere. It would be extremely difficult for us to write up terms of reference for a mini inquiry, and the complexity of the matter would make such an inquiry challenging. I have a background in law, but I would be very challenged by that, never mind the fact that I have little, if any, knowledge of rural affairs, agriculture and the specific issues relating to milk. The challenges for the committee in carrying out an inquiry would be significant. Although I have the greatest sympathy for people who have clearly suffered, it is for others to pursue the matter through other channels. As with other petitions, we have come to the end of the road.

**Jackson Carlaw:** It strikes me that Mr MacDonald is asking us to hang Mr and Mrs Mundell and all the others who have similarly suffered out to dry. It appears that their recourse is the law, but we understand that human rights lawyers are not interested in pursuing the matter and that anybody else who, it has been identified, might entertain the idea would not do so at a cost that anybody would judge reasonable. Yes, the issues are complex, but I cannot believe that they are any more complex than those in the inquiry that we held into child sexual exploitation, which seemed to be as complex as any. I do not know whether Mr MacAskill is right. He may well be right, but I am reluctant not to allow the Parliament at least to demonstrate its ability to be fearless in the pursuit of the matter. It is convenient for the Scottish Government to use its opinion of its own conduct as a reason why the petition should be closed, and a committee of the Scottish Parliament should not surrender any further investigation of the matter simply in the face of that opinion. Therefore, I would be interested in seeking to establish whether Mr Stewart’s proposal is feasible. If it is, the Parliament should be prepared to act in the matter and consider it further.

**John Wilson:** Mr Stewart is well versed in the workings of the committee, being its former convener. The difficulty that I have with his suggestion that the committee conduct a mini inquiry is the definition of what that inquiry would cover. When we took on the inquiry into child sexual exploitation, we
pursued it over a period of time and went into the matter in some detail. Angus MacDonald’s first suggestion was that the petition could not go any further and that we should close it. He then suggested that, as per the recommendations in the committee papers, we could refer it to the Rural Affairs, Climate Change and Environment Committee. I do not want to close the petition. I would be keen to refer it to the Rural Affairs, Climate Change and Environment Committee for that committee to deal with the issue, because it is dealing with dairy quota issues and recently had a debate on the matter in the chamber. The petition is part of the wider debate and must be seen in that context. Given that the Rural Affairs, Climate Change and Environment Committee is already carrying out that work, it would be appropriate for us to refer the petition to it for consideration as part of its wider investigation into milk quotas. I hope that, in that way, that committee will be able to take on the wider issues that we would have covered in an inquiry and address them using the knowledge and experience that it has of rural affairs.

David Torrance: I am happy to support John Wilson’s and Angus MacDonald’s recommendation that the petition be referred to the Rural Affairs, Climate Change and Environment Committee.

The Convener: Initially, I thought that we could invite the minister back. The remit for a mini inquiry would lie more with the Rural Affairs, Climate Change and Environment Committee, so I support the petition being referred to that committee for its consideration. Do members want to raise any other points? Are we happy with the action that has been proposed?

Jackson Carlaw: I understand that the Rural Affairs, Climate Change and Environment Committee is undertaking no such investigation at the moment. The paper simply says that we “may wish to refer the petition to” that committee “to consider in the context of any future work it” may undertake “on the dairy industry.” That does not advance the petition or address the petitioner’s difficulties in any way at all. If that is the recommendation, I oppose it formally, although that is unusual for me.

The Convener: Before we move to a decision for or against the recommendation, I would like to clarify whether, if we referred the petition to the Rural Affairs, Climate Change and Environment Committee, we could add to that referral that there has been a call for a mini inquiry into the issue. Would that make any difference?

Hanzala Malik: Convener, it would make a difference for me if you were assuring me that either we or that committee would carry out an inquiry. However, if you were not in a position to do that, it would not make any difference to me. Citizens come to us for support and help, and we must find a way of providing that if we can. We cannot allow the Government to ride roughshod over citizens who cannot afford to stand up to it—we just cannot do that. We live in a democracy, for God’s sake, and we are supposed to look after our people. We should not shy away from that.

The Convener: I do not think that I am in a position to give any such assurance.

John Wilson: Jackson Carlaw has commented on the uncertainty over whether the Rural Affairs, Climate Change and Environment Committee is going to conduct any further work on the dairy quotas issue. If we refer the petition, it goes out of our hands and over to that committee. I suggest—I am not sure how this suggestion will be taken—that, rather than do that, we ask the clerks to speak to the Rural Affairs, Climate Change and Environment Committee clerks to find out whether there is anything in the work programme of that committee that could cover the petition being raised. If there is not, we can reconsider how we, as a committee, can take the petition forward.

Kenny MacAskill: I take John Wilson’s point and would be comfortable with an approach being made to that committee, either through the clerks or directly, without our formally referring the petition. Equally, if the Rural Affairs, Climate Change and Environment Committee were not inclined to consider a mini inquiry, I would want to know why. That committee is better placed to do so and is more expert than we are. It might be that, instead of taking a decision to close the petition or to refer it formally, we could informally or “formally informally” inquire whether the members of that committee are prepared to carry out a mini inquiry, what their views are and, if they do not wish to carry out an inquiry, why not. I might then be in a better position to judge where I feel competent and capable enough to go.

The Convener: Can we agree that I will write formally to the convener of the Rural Affairs, Climate Change and Environment Committee with the points that have been raised on the issue? We will see what the response is and can move on from there.
David Stewart: I put on record my thanks to the committee for listening to Jamie McGrigor and me and for the understanding that the committee members have shown on the issue.
The Convener: Thank you. Are we agreed on the action that has been proposed?
Members indicated agreement.