The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

# PUBLIC PETITIONS COMMITTEE

Tuesday 23 June 2015

Session 4

# Tuesday 23 June 2015

## CONTENTS



## PUBLIC PETITIONS COMMITTEE

**13th Meeting 2015, Session 4**

**CONVENER**

*John Pentland (Motherwell and Wishaw) (Lab)

**DEPUTY CONVENER**

*David Torrance (Kirkcaldy) (SNP)

**COMMITTEE MEMBERS**

*Jackson Carlaw (West Scotland) (Con)
*Kenny MacAskill (Edinburgh Eastern) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Hanzala Malik (Glasgow) (Lab)
*John Wilson (Central Scotland) (Ind)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Mark Aitken (Scottish Environment Protection Agency)
Tam Baillie (Scotland's Commissioner for Children and Young People)
Chic Brodie (South Scotland) (SNP)
Chris Dailly (Scottish Environment Protection Agency)
Brian Duff (Scottish Water)
John Fegan (Scottish Association for Children with Heart Disorders)
Iain Gray (East Lothian) (Lab)
Mary Hemphill
Ian Reid
Gillian Thompson OBE (Judicial Complaints Reviewer)
Mark Williams (Scottish Water)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The Mary Fairfax Somerville Room (CR2)

# Scottish Parliament

## Public Petitions Committee

*Tuesday 23 June 2015*

*[The Convener opened the meeting at 09:32]*

## Continued Petitions

### Judiciary (Register of Interests) (PE1458)

**The Convener (John Pentland):** Good morning and welcome to the 13th meeting in 2015 of the Public Petitions Committee. I remind everyone to switch off mobile phones and electronic devices, as they interfere with the sound system. No apologies have been received.

Agenda item 1 is consideration of a continued petition, PE1458, by Peter Cherbi, on a register of interests for Scotland's judiciary. As previously agreed, we are taking evidence today from the judicial complaints reviewer. Members have a note by the clerk and a submission from the petitioner, and they were sent a link to the previous judicial complaints reviewer's annual report.

I welcome Gillian Thompson OBE, the judicial complaints reviewer, to the meeting and invite her to make a short opening statement of no more than five minutes, after which we will move to questions.

**Gillian Thompson OBE (Judicial Complaints Reviewer):** Good morning and thank you for inviting me. I will say a few words to put my appearance today in context. I have been in post since September 2014. I have a background in public service. I was a civil servant for 36 years, and since then I have gathered to myself a group of board memberships on charities and third sector organisations and now the post of judicial complaints reviewer.

I will tell you where I am with the work, because that was something that you asked my predecessor. Since I took up post, I have had 22 requests for review, 17 of which are outstanding. I am actively looking at three this week, and I hope to get rid of those by Friday. I inherited a backlog of 14 from my predecessor and I cleared those around 25 March 2015. That gives you a bit of a feel for how the work is going. The waiting time for people is around four to five months. I have not had any complaints about that, although I appreciate that it is not ideal.

I wrote to the committee at its request on 12 January. I am supportive of a register of interests. I always have been and that remains my position.

**The Convener:** Thank you, Gillian. In your letter to the committee, you wrote:

> "We live in an age in which transparency about interests and activities of those in the public eye is regarded as good practice. There is a perception that anything less is the result of attempts to hide things."

That suggests that anything less than the degree of openness that is associated with a register of interests would not constitute best practice and would be perceived as an attempt to hide things. Is that a fair interpretation?

**Gillian Thompson:** Absolutely. That remains my view.

**David Torrance (Kirkcaldy) (SNP):** Good morning. In your opening statement, you said that you were in favour of a register of interests. Will you expand a wee bit on why you are in favour of it?

**Gillian Thompson:** For the reasons that I set out in my letter in January, I do not see that there is a reasonable argument to be made against people who are in public service—I might go further and say, in particular, people who are paid by the public pound—providing information, within reason, about their other activities. People in this room, including me, keep a register of interests. In my experience, it is not particularly onerous. Of course, we would be talking about there being a register somewhere that somebody would have to keep and all the points that I made in my letter. However, registers need to be updated reasonably regularly. I will update mine shortly because I am taking on some new and different responsibilities.

For me, it is about a mindset. I cannot see arguments against it, I have to confess so, although I am experienced in giving a balanced view, I am not sure that I can do so on this occasion. People want to be able to feel that they are getting an even-handed response at court, whoever sits in judgment. They want to feel that there is no bias, and a register would go part of the way—it is all part and parcel of a wider picture—towards reassuring them that nobody is hiding anything.

**Jackson Carlaw (West Scotland) (Con):** Good morning. Do you consider yourself to be part of the establishment?

**Gillian Thompson:** I suppose that that depends on where you are sitting. No, I probably do not.

**Jackson Carlaw:** I do not know whether I am relieved. As far as I can see, the establishment—in so far as it exists—has been unanimously against any such register, as has the Government in, no doubt, the personage of Mr MacAskill, who was in the Government at the time we received the advice. He will speak for himself in due course.

Your predecessor was quite sympathetic towards a register of interests and, from what we have read, you are too. The former Lord President's principal argument seemed to be that, unlike members of the Parliament, members of the judiciary would not have the opportunity to answer back if they were challenged in some way. Ironically, however, he did not deign to come before the committee to answer back in person to defend any of his assertions on these matters, so we have always had to try to read the runes. I think that our former convener and deputy convener were able to meet him privately, but they are no longer here.

The former Lord President's argument was essentially that there was no need, in this era of transparency, for light to shine on the judiciary, and that some great malfeasance of justice could occur if it were to do so, but primarily it was that there was an obstacle to being able to rebut any assertions or claims that were made based on the register. Does that resonate with you as sufficient ground to disbar such a suggestion?

**Gillian Thompson:** No. My understanding of what Lord Gill had said before was that, as far as he was concerned, judges took an oath to uphold certain values, so nothing further than that was required, because the public would be able to rely on people in that position to know what they needed to do and to do it. I understand that, since the judicial complaints reviewer post was put in place in 2011, there is now a recusal process. Judges can recuse themselves and there is a register, or at least a list, of those people who have done so.

However, I am not persuaded by that argument. At the moment, people are able to make a complaint about the conduct of a judge in whatever form. I would have thought that some way could be found of challenging or answering back or having a review taken, if there is a list. I can see that there might be a need to extend the complaints process, but I do not know. It is a normal part of public service that people keep a register. It seems to me to be common sense.

**Jackson Carlaw:** Thank you.

**Kenny MacAskill (Edinburgh Eastern) (SNP):** I see the logic of where you are coming from, but who would impose the sanction in the event of a breach or failure? Would it come back to the Lord President or to yourself? Who would be the final arbiter of a failure to register or a failure to properly register?

**Gillian Thompson:** It is a bit of crystal ball gazing, is it not? The judicial complaints reviewer role stands and it does what it says on the tin in terms of the regulations. All that I can do at this juncture is to examine whether the rules have been followed in relation to the complaint. I do not look any further beyond that at all. There would obviously need to be consideration of how the process would work, but the Lord President currently has responsibility for sanctioning judges in the event that something is found against their conduct under the rules. I would have thought that responsibility would sit squarely on the shoulders of whoever comes along as Lord President in future.

**Kenny MacAskill:** Presumably, the register would be financial and pecuniary. A lot of the recusals that are made at the moment will be because a judge has knowledge of a witness or a relationship with them.

**Gillian Thompson:** Yes. It is a register of interests. I gave you my little register of interests, including what I am paid and which charities I support, and including my membership of the Scottish Dachshund Club, just to underscore the point. The answer to your question is yes. Why should not whatever is deemed appropriate for others, such as yourself and Government ministers, also be deemed appropriate for people who are sitting in judgment on others?

09:45

**John Wilson (Central Scotland) (Ind):** Good morning. I note that a voluntary register of recusal has been established. Can you confirm that, at present, a judge or sheriff can recuse themselves voluntarily?

**Gillian Thompson:** As far as I am aware, that is the case.

**John Wilson:** I make the point, because we have just seen the establishment of the first private bank for 150 years. It claims to have 250 shareholders, and it has been reported in the press that some of those shareholders are judges and sheriffs. Do you think that it would be appropriate for those judges or sheriffs to put themselves on the register if they were shareholders in a private bank?

**Gillian Thompson:** Why would they not?

**John Wilson:** Well—

**Gillian Thompson:** I am just raising the question—it is not an issue that I have thought about before now. My view is that anything at all that could be construed by a person in the street using everyday common sense as getting in the way or which might be perceived as getting in the way should go on a register. However, we should remember that it would not be for me to make such decisions, even if we were to get to that position.

**John Wilson:** My understanding is that you have been invited along to give us your views, because we respect the role of the judicial complaints reviewer—

**Gillian Thompson:** I appreciate that.

**John Wilson:** —and because we also took evidence from your predecessor in pursuing this petition. Your evidence will, I hope, indicate to the committee where we should go with this petition and the kinds of issues that it raises.

You said—and I am paraphrasing—that the ordinary person in the street should get to know whether a judge or sheriff has interests that might impact on their service or their hearing a particular case. How far would you want to take that? After all, there are issues about financial interests or people appearing in front of judges and sheriffs who might be members of the same golf club or, indeed, the Scottish Dachshund Club that you mentioned. If a register of interests for judges and sheriffs were to be established, how far would you want it to go?

**Gillian Thompson:** As I said on record at the outset, I am supportive of my predecessor's position. There should be a register for judges in which they note their interests. Would we ever reach the point where a judge would say in court, "I want to register the fact that I know this person. We play at the same golf club," or, "I don't know this person"? In the context of this conversation, I have to say that I do not know. It would be necessary to give a bit more thought to the practicalities of that. All I can say is that, when I go to a meeting, we are asked at the beginning whether, for example, there has been any change to the register of interests that we keep in a particular context.

Just for the sake of clarification, I am supportive of a register of interests. I think that that is what the public, if they have thought about the matter, want. I might be asked for my opinion on what that might look like in its absolutely final state, but sitting here today, I am not sure that I can go into all the ins and outs of that.

**John Wilson:** I appreciate that, Ms Thompson. Thank you very much for your evidence.

**Angus MacDonald (Falkirk East) (SNP):** Good morning, Ms Thompson. Following on from that point, there is an argument that the information on a register could be abused by the media, hostile individuals or dissatisfied litigants. Do you have any views on that?

**Gillian Thompson:** It is an inevitability that, when you put information into the public domain, different interests might cross over. I had personal experience of that recently. I had to deal with an issue that arose with what looked like some sort of cross-purposing of some different roles that I hold. However, that was just a misunderstanding on the part of the person who was seeking to investigate a bit further. In my experience, one has to spend a bit of time unscrambling such misunderstandings, but I would not say that that is a reason for not having a register.

These things need to be managed, of course, as I indicated in my response in January. Somebody would need to hold the register and it would need to be managed—there is an on-cost to all of that. However, as I understand the nature of the petition, it is about seeking some clarity for those people who are going to court about interests that judges may hold that are not known.

**Angus MacDonald:** While I have the floor, I will go back to a point that was raised earlier. You indicated that you agree with your predecessor's view that the powers of the JCR to review the complaints process are limited. If that is the case, do you have any plans to review the complaints process?

**Gillian Thompson:** It is not for me to review. I have said to the Scottish Government that we are four years into the role and I am the second person in the role so it is probably time to start thinking about the possibility of reviewing whether what was originally envisaged under the primary legislation, which was passed in 2008, is what is still required.

As a former civil servant, I am always supportive of the idea that, if we have a policy and a concept and the Parliament has agreed to legislation, once it has been in force for a while, at some point or another—a three or four-year period seems not unreasonable—we should go back to have a look at the legislation to see whether it still meets the requirements.

I am sitting in the role, but a review might say that we do not need a JCR. I am not saying that; I am just saying that there are a lot of ways to look at the issue and I would not be putting my hand up to say that we absolutely have to have the role. Bluntly, I am interested in whether the role is value for money for the public. At the moment, generally speaking, I hope that I am giving value for money. I am getting more efficient at doing the reviews, and the speed will come.

However, it is a very narrow role that looks only at whether the rules have been followed. It does not involve looking at anything else over and above that. It does not involve looking at the whys and the wherefores or asking how something could possibly happen or whether it is reasonable. There is none of that. I may have thoughts, but that is not my role.

Should there be a review? Yes, but it is not for me to do. I can give input, but the review is for

someone else to carry out should they decide that there is scope and appetite for it and that it fits with all the other work that needs to be done.

**Angus MacDonald:** I presume, however, that it will be a priority that you will raise with the new Lord President once he or she is appointed.

**Gillian Thompson:** I will raise it, as I have already raised it with the Scottish Government and my contacts in the Scottish Government, including Mr Wheelhouse, whom I met in January.

**Hanzala Malik (Glasgow) (Lab):** You made a comment about it taking perhaps four to five months to deal with cases and you have suggested that that is perhaps a little long. What would be a reasonable time? Will you be able to meet that in the near future and reduce the time that it takes? I know that you have not been in post for very long, so I appreciate that I am effectively asking you to set yourself a challenge.

**Gillian Thompson:** I have already done that. As you may be aware, the Scottish Government's contract with the JCR is for up to three days a month. I have been working more days than that, by agreement with the Scottish Government. From the middle of December 2014, I have been working four days a month.

The backlog refuses to go down, which is largely because of input. It is demand led, and a demand-led service on a restricted number of days will always be a bit of a headache for the person who is delivering the service and for the people who are waiting.

I put a proposal to the Scottish Government in May, I think, and it has agreed for me to do six days this month, next month and in August. Will I clear the backlog? No. However, with two days extra over and above the four, which is effectively twice as many days as what the contract says, I should be able to push through enough cases, but I would not like to say exactly how many. That of course depends on their complexity. Some cases are straightforward, whereas some require me to give a bit more thought and perhaps to seek clarification. Everybody is entitled to have me spend a bit of time thinking about what I will say. As the second person in the role, I have been able to pick up the processes that Moi Ali put in place. They probably need reviewing, but I do not have time to do that.

My hope is that, by the end of August, I will have substantially moved through the backlog. I have a background in public service, specifically in front-line service, and I do not think that it is appropriate for people to wait for as long as four to five months. I write to people to keep them up to date on how much longer they can expect to wait.

I do not want to put a figure on it today, other than to say that I am moving through the cases more quickly now. It takes about a day or perhaps a day and a half to do a reasonably complex case. I can do two cases in one day if they are pretty straightforward and there is not much paperwork. I would like to reach a position where there was no backlog and I was dealing with things as they came in but, frankly, I think that that is unlikely.

In addition to the 22 cases that have come to me since 1 September 2014, I have had seven inquiries. I have put a telephone number on the website, whereas there was not one before, so I get telephone inquiries, too. There are also events such as this meeting today and other meetings, which I do on days when I am not working. We need to be realistic about these things.

**Hanzala Malik:** I genuinely appreciate your response, which is honest and balanced. However, I do not think that what you are telling me actually helps you. It suggests that there is more pressure on what you are trying to achieve. I do not suggest for a moment that your work would be diluted, but there is a lot of pressure on you to get through the cases in the time that you are working. I suggest that you may want to explore the possibility of either getting more help or more days to try to achieve the good goals that you would like to achieve. I wish you good luck with that.

10:00

**Gillian Thompson:** Thank you. If there was to be a review, that would need to be part and parcel of it. Bear in mind that I do everything, such as housekeeping and maintaining the website, which really need attention. Those are things that I dream about at night—they do not keep me awake, but you know what I mean.

**Hanzala Malik:** Yes, I do—thank you very much.

**The Convener:** In an earlier response to Angus MacDonald, you said that it was not your responsibility to do a review of the rules. Do you believe that the current rules are fit for purpose?

**Gillian Thompson:** Are you talking about my role or the rules? The rules belong to the Judicial Office for Scotland.

**The Convener:** Do you believe that the complaints process that is run by the Judicial Office for Scotland is fit for purpose?

**Gillian Thompson:** It is fit for the purpose that is currently in place. I am in absolutely no doubt that the process that is in place at the Judicial Office for Scotland improved during the time when my predecessor was in post, although when she left she felt that she had not added the value that

she would have wished to. Picking up where she left off, and having had a number of conversations and meetings with the Judicial Office for Scotland, I am satisfied that the process has grown organically and improved. The way in which the office deals with throughput and writes its letters has improved.

As we would hope, the complaints process has led to service improvement in the entity that the complaints are about. The new rules, which came into effect on 1 April 2015, are an improvement. There has been a bit of sequencing and streamlining of the rules and there is a bit more explanation for people who are trying to find their way through the system. The guidance leaflet was improved.

That deals with one part of your question. The other part—I am interpreting your question—is whether the JCR is fit for purpose. As it is currently constituted, it does what the regulations require of it. It could do more, but that would require somebody to say that more is needed. As I said, the JCR is very one dimensional.

**The Convener:** As you said, the new complaints rules were published on 1 April. How far did they go to addressing the concerns that your predecessor highlighted?

**Gillian Thompson:** They did so in small measure, I think. Forgive me if I am telling you something that you know, but Moi Ali had undertaken a mini consultation among the people who asked for a review. When the Judicial Office for Scotland did a consultation, Moi did her own consultation, which she passed to the Judicial Office. You may have seen that the Judicial Office, in tandem with publishing the rules, also published a consultation response, which set out what measures it had and had not taken on.

To answer your question, the Judicial Office went part of the way to responding to the concerns that the petitioner expressed about the rules and how they work. Some of that was around the understanding of a person who comes up against the rules. Sometimes, it is difficult for people who are inexperienced in such matters to understand properly what the different rules mean.

Because quite a bit of time went by, I was asked for my view, too. I offered what I hoped were helpful suggestions. The Judicial Office took a view on the totality of the responses that it got and made a determination to which the Lord President was able to agree. That does not fully answer your question, but it does in part. The committee might be interested in the Judicial Office's response document. It is helpful in understanding the rule changes that were made.

**John Wilson:** Will you remind us how many responses were made to the review?

**Gillian Thompson:** I am not sure that I know. I have a piece of paper somewhere with me, which I can leave with you.

**John Wilson:** The information that we have in front of us says that there were five responses.

**Gillian Thompson:** It was a small handful; there were not masses. You can construe your own view on that.

I should clarify that I went back to the Judicial Office to ask whether it had taken into account my predecessor's responses on the matter. I seem to remember being told that it had not.

**John Wilson:** That was going to be my follow-up question. I was going to ask whether your predecessor's responses were included in those five responses.

**Gillian Thompson:** They were included as one response.

**John Wilson:** As one?

**Gillian Thompson:** Yes, I believe so.

**The Convener:** As there are no further questions, we will move on to deciding what actions we want to take on the petition.

**Kenny MacAskill:** We should write to the incoming Lord President, whoever he or she may be, to ask them what their views are given the clear expressions of not just one but two Judicial Complaints Reviewers. The new Lord President may be otherwise minded on the matter. It is incumbent on us to wait until we see what they say before we consider the petition further.

Equally, given Ms Thompson's view, it might be worth asking the Scottish Government whether now is an opportune moment to review the JCR. That would be for the Scottish Government to deal with, rather than the Lord President.

There is the possibility of a new regime for the judiciary with the new Lord President. Equally, after four years, and into the second Judicial Complaints Reviewer, is the job what we want it to be or should it be reviewed? That need not be a lengthy consideration or review. Is the service doing what we want it to? If the role were to expand, which would be dependent on the Lord President, how much further should that go were there to be a judicial register?

**Jackson Carlaw:** When the petition first came before us, I was deeply sceptical of it. However, given the reaction to it and to our inquiries, I became more persuaded that it may have merit.

I support what Mr MacAskill said. I wonder whether, subsequent to the incoming Lord President giving us their view, they would offer themselves up to the committee to allow us to

examine that or whether they will have the same position on appearing before the committee as their predecessor. It might be worth inquiring about that. First, however, we must see what they have to say on the matter.

I think that the previous Lord President's principal reason why it was not appropriate to come before the committee was that he did not see how, while in office, it was incumbent on him to do so. Now that he is not in office, I wonder whether he would be willing to do that, to allow us to understand further his perspective on the matter. I was always open to persuasion on the issue. It has been the lack of a reasonable, sustained argument that has led me to remain sympathetic to the aims of the petition.

The clerk has advised me that it is not competent for the committee to initiate a bill of its own. Of course, it is open to any member of the Parliament to do so, in this session or the next.

As Ms Thompson has said, there seems to be a clear public interest in the issue, which has found expression. In the absence of a more substantive argument than the impression that it is not something that people want, the committee should be reluctant to allow the petition to run into the sand. We should do all that we can to sustain it and pursue its objectives for as long as we feel able to do so.

I support the suggestions that have been made, but I wanted to offer those additional thoughts.

**John Wilson:** I suggest that, if we are writing to the Scottish Government to seek its views, we get clarification on the further evidence that has been provided by the petitioner regarding the legal advice that the Scottish Government sought.

We have the correspondence that the petitioner received, which states that the Government feels that it is not advisable to release the legal advice at the moment. Could we ask for clarification of when that legal advice was sought and why the Government felt it necessary to seek that advice?

**The Convener:** Do members agree to the action that has been proposed?

**Members** *indicated agreement.*

**The Convener:** I thank Ms Thompson for attending. I suspend the meeting for a couple of minutes to allow for a changeover of witnesses.

10:12

*Meeting suspended.*

10:13

*On resuming—*

## Sewage Sludge (PE1563)

**The Convener:** The next item is consideration of petition PE1563, by Doreen Goldie, on behalf of Avonbridge and Standburn Community Council, on spreading of sewage sludge.

We will take evidence from the Scottish Environment Protection Agency and Scottish Water. Members have a note by the clerk and submissions. I welcome Mark Aitken and Chris Dailly from SEPA, and Mark Williams and Brian Duff from Scottish Water. As both SEPA and Scottish Water have provided detailed written submissions to the committee, I will move straight to questions.

**David Torrance:** Good morning, gentlemen. The petitioner has called for sludge spreading on land to be stopped. What are your views on that, and what are the implications if more sludge has to go to landfill or be incinerated?

10:15

**Chris Dailly (Scottish Environment Protection Agency):** SEPA does not support the call for a ban. There is a place for sludge application to both agricultural and non-agricultural land. It is a valuable resource; we need to treat our waste as a resource. Sludge is a useful addition in terms of nutrients and it has many benefits for soil structure and so on. Clearly, however, there has been an unacceptable impact on communities around the country. We have to balance that and ensure that the resource is used well and regulated well.

In terms of alternatives, landfill is not a sustainable option. We need to move away from the idea that we should stick our waste resource in a hole in the ground. That is the old way of doing things. There is also an enormous cost to the public purse in landfill tax. Landfilling that type of waste also causes its own problems in terms of odours and leachates and so on, which have to be managed.

Incineration is an option and has a place; a third of Scotland's sludge is incinerated, at the moment. There is the potential for that to increase and there seems to be capacity for it. However, there is obviously an energy and financial cost associated with that. Again, it is a loss of resource.

**Mark Williams (Scottish Water):** From a Scottish Water perspective, sludge recycling to land is a safe and sustainable practice, provided that it is carried out in accordance with the rules, guidance, regulations and non-statutory controls that we cite in our submission. As a practice it is

well-established around the world, and over many decades sludge has been used as a nutrient resource and for soil stabilisation.

The key issue for us is to look again at the controls in order to satisfy ourselves that we are meeting the expectations of the environment for communities across Scotland. There are areas, between Scottish Water and SEPA and within the wider Government review, where we can identify practices that we can do differently.

We also need to set the context: sludge-to-land is one of the minority waste streams and there is a much bigger question around how we manage those resources. Sludge-to-land remains part of Scottish Water's strategy for sludge management in the future. We send some sludge for recovery via waste-to-energy incineration. That is done primarily through cement manufacture and those sort of kilns; we do not have a dedicated facility for such an outlet in Scotland. If land application were not an option for us, that would have some fairly big implications for Scottish Water, and we would have to think differently about sludge.

**The Convener:** Scottish Water is responsible for most of the sewage plants in Scotland. Can you explain the process of how sludge comes to be applied to the land once it has been produced by the sewage plant? What charges are paid in the process and to whom?

**Mark Williams:** I will hand over to my colleague, Brian Duff, who will go through our operational practices. Scottish Water is the national waste water service provider and we have some private finance initiative schemes in place, but they are accountable to Scottish Water in terms of how they are run. Brian will talk about the end-to-end process for sludge arisings and recycling.

**Brian Duff (Scottish Water):** The main process is to treat the sludge on site. Thereafter there is a three-stage process. First, we identify suitable farmland, liaise with the farmers and carry out soil analyses. Once we have accepted that the soil is suitable to be spread on, we look at the cropping details and sludge analysis to ensure that the applications rates are suitable for the nutrient levels, taking into consideration metal levels and pH. Once that has been accepted and agreed, we move on to the application stage. The application can be done in two ways: straight out to the field and incorporated or using stockpiles in the corner of a field, waiting for the next crop to come round and applying it when it is required.

**The Convener:** What charges are paid in that process?

**Brian Duff:** There are no charges.

**The Convener:** Scottish Water is responsible for most of the sewage plants. What other operators are out there and what percentage are they responsible for?

**Brian Duff:** The PFI operators do approximately 80 per cent of our sludge; the larger cities' facilities are all operated under PFI. However, we still have a duty of care to ensure that the material is recycled properly. Beyond that, there are a few smaller businesses that do private-sector tank emptying. They will deal with their sludge in their own way. Scottish Water does the highest percentage.

**The Convener:** What information is available on how much and where sludge is applied to land in Scotland?

**Mark Williams:** In relation to agricultural land, there is the annual register—I think that it is lodged with SEPA—so it is a matter of public record. The register contains information down to the level of individual fields, including tonnages and analyses of the chemicals within the material. That information sits on the annual sludge register for the regulatory controls in that space. Scottish Water has a duty to produce the information by the end of March each year for the preceding year.

**Mark Aitken (Scottish Environment Protection Agency):** The register includes the private finance initiative schemes, in addition to the information from Scottish Water. We require the PFIs to supply us with their data.

Additional data are held on sludge use on non-agricultural land. That is collected separately under waste management licensing exemption regulations.

**David Torrance:** You have said that there is a register of where sludge is spread. How many complaints do Scottish Water and SEPA get from communities and how quickly do you respond to them?

**Mark Williams:** Scottish Water is aware of the recent issues in parts of the central belt. I cannot give you an exact answer on the number of complaints, but I know that there have been complaints that have been associated primarily with stockpiles. I am aware of several complaints that are with SEPA, which it has brought to Scottish Water's attention in recent months. I do not know whether SEPA has the number.

**Chris Dailly:** I do not have a total number, but I can give the committee a flavour of some of the big incidents associated with sewage sludge that we have experienced over the past 18 months to two years. One of the biggest was in Erskine in 2014 around the time of the Commonwealth games: SEPA received over 200 complaints about storage of that stockpile, which was an example of

an inappropriate storage location close to a housing estate. When the material was spread, there were, again, upwards of 200 complaints about the spreading activity and the odour that was generated by that.

**Angus MacDonald:** I would have thought that the panel would have come to the committee today with the total number of complaints that you have received.

As my colleague David Torrance has, I have a constituency interest in the problem, which has plagued residents in part of my constituency for a number of years. The fact that the petition originated in my constituency highlights the seriousness of the issue in Falkirk East. However, redirection of sewage sludge away from the Falkirk district by Scottish Water is welcomed by local residents, and I am sure that the on-going sludge review and implementation of the Regulatory Reform (Scotland) Act 2014, which will happen shortly, will see improved regulatory controls.

It is clear that some operators flout and abuse the regulations, so there may be an argument for a fit-and-proper-person test and consideration of whether some operators should be operating. As the supplier, how does Scottish Water check that sludge is stored and applied in accordance with the regulations, and does it take into account the effect on communities of storage and spreading of sludge.

**Brian Duff:** We undertake risk assessments. The contractor provides us with the evidence and we go out and do checks to ensure that storage of sludge in stockpiles is done properly. We also take into account the effect on local communities. We have people on the ground and we are adding to that number, in order to ensure that we check every stockpile that we have out there now.

The checks that we do on contractors are just the normal procurement checks to make sure that they are fit and proper to carry out their role. We check that they have trained staff, and we check the equipment and their background in doing the job. That is all done at the procurement stage.

**Angus MacDonald:** There is no formal fit-and-proper test as yet, is there?

**Brian Duff:** We do a technical evaluation of all our contractors to make sure that they are capable of undertaking the role, and to make sure that they have adequate numbers of trained staff.

**Angus MacDonald:** That is clearly something that the Government can consider in the future with regard to potential new legislation.

What role do you have in inspecting storage and application of sludge, and what steps do Scottish Water and the Scottish Environment Protection Agency take if you discover a problem?

**Chris Dailly:** Under the current regulatory framework, SEPA's role in relation to sludge spreading on agricultural land is about collection of information and assessment of the register. Any nuisance that arises from agricultural spreading falls to the local authority, under general statutory nuisance provisions; SEPA does not have any legal powers there.

Under waste management licensing controls, SEPA regulates storage of sludge prior to agricultural or non-agricultural spreading—for example, for land restoration projects at former opencast sites and so on. All that the law requires at the moment is a notification to SEPA; there is no assessment of whether the storage location is appropriate—that is not required by the regulations—and there is no minimum distance specified from receptors. At the moment, things are not where they should be in terms of our being on the front foot in respect of storage locations, and of the law being set up to assist us and protect communities.

SEPA will assess sludge application to non-agricultural land, as with land-restoration projects. That requires an application to SEPA, which we assess to determine application rates and so on. We inspect the sites and we respond to complaints that we receive.

We also do extra compliance work. For example, in SEPA's east region, which ranges from the Borders up to Dundee and Angus, we undertook last year an initiative in which we assessed all storage locations to determine whether they were appropriate within the six-month timescale that is required by law. Any locations that were found to be breaching the rules had their exemptions removed or the stockpiles moved. That initiative was carried out in collaboration with Scottish Water.

Other enforcement options are available to us. We can remove a waste management exemption, which is the authorisation—the licence—that allows the sludge storage or application to take place. There is a minimum period of 21 days for that to take effect. We can, similarly, serve an enforcement notice to require that waste stockpiles be removed, for which—again—there is a minimum period of 21 days. Clearly, for people living in a community that is impacted by odour, that 21-day period is too long.

**Angus MacDonald:** How many inspections have been undertaken and how many have resulted in enforcement action in the past 12 months?

**Chris Dailly:** I do not have those figures in front of me.

**Angus MacDonald:** I would have thought you should have had those figures with you today.

**Chris Dailly:** I can give a flavour of the type of enforcement action that we have taken. We have removed exemptions and served enforcement notices to require removal of stockpiles right across Scotland. However, I do not have the specific numbers.

**Angus MacDonald:** Can you send them to the committee?

**Chris Dailly:** I can, indeed.

**Angus MacDonald:** I am disappointed that you do not have them with you today.

There is an added complication with regard to the mobile licences that are issued by SEPA, which have clearly been abused by a number of operators, in my opinion. Are there any plans to clamp down on mobile operators? They are continually applying for mobile licences, which are being granted because there is no way round that. Is there some way to stop that happening?

**Chris Dailly:** You mentioned the regulatory reform process, which is a partnership between the Scottish Government and SEPA. Part of that is a new permissioning framework, which will rebalance the way that we license not only organic waste to land but other waste management activities.

At the moment, there is a range of options. The 2014 act provides a framework, but the detailed proposals are to come in secondary legislation. We could require contractors who are involved in sludge application to be licensed, which would require a fit-and-proper-person assessment. At present, if a sludge contractor has a poor compliance record in one area and an exemption has been removed, SEPA can take account of that when assessing an application for future sludge uses by that contractor. The fit-and-proper-person test would allow that as part of the application process.

10:30

We could also require that mobile plant licences be used only for specific activities. I think that the legislation originally intended them to be used for on-site, in-situ remediation of contaminated land, and not for some of the more odorous activities such as lime treatment of sewage sludge, which has been a problem in your constituency.

**Angus MacDonald:** We have to ensure that the secondary legislation is as robust as possible. The sooner that it is in place, the better.

**Hanzala Malik:** Good morning, gentlemen. I, too, am a little surprised that you do not have figures with you, because I thought that that was why you were here.

You made a comment about how contractors move on. The other issue, which I sometimes find in the building trade as well, is that contractors still exist but change their names. Do you have a mechanism for policing that?

**Chris Dailly:** That can be challenging under the current regulatory framework. There could be an associated company with the same individuals but a different company name. There are no detailed proposals on the table, but there is scope to have the fit-and-proper-person test take account of associated persons. That could address some of those issues, at least in part.

**Hanzala Malik:** It is easy for people simply to change the name of the company and continue their malpractice. Accountability is important. In fact, it is vital. I would therefore really like to see some proposals from you chaps in the very near future.

**John Wilson:** I will ask about some of the health issues that the petition raises and the impact on the environment, particularly wildlife.

I read with interest in the SEPA submission that most of the research that has been done relies on research that was done by the European Commission 10 years ago and desktop studies that were done seven years ago. Is the fact that we have increasing growth of housing in the green belt and that some of the work that used to go on before is now in increasing proximity to human habitation having an impact on the residents of those houses? They fear that contamination might be taking place because of the spreading of sludge on agricultural land or, in particular, non-agricultural land, for which there is less regulation.

**Mark Aitken:** As you rightly point out, the work that we reviewed was carried out 10 years ago. There is a need for some follow-up work that takes into account the new measures and practices. Those studies, which generally did not find any implications for human health, were based on the caveat that the measures were carried out in full accordance with current regulations and guidance. However, your main point is right. Practices in Scotland have been changing and I recognise the need to consider the impact more carefully, particularly the effect of odour and nuisances on communities nearby. It is clear that communities have suffered from that.

**John Wilson:** Is it not also true that, in the past 10 years, the science has moved forward and we are identifying more contaminants in the sludge materials that are used because of the eating habits and other habits of the population from which the sludge emanates? Are we becoming more knowledgeable? We get figures. There is a

99.999 multiplier in respect of the contaminants, but it is clear that, when the science gets better, we will know what materials are being passed through the sludge and their impact on the soil.

In the non-agricultural sector, what can we do to ensure that the monitoring takes place at an appropriate level and that we do not just spread more contaminants on the soil or spread airborne contaminants to the population that surrounds the areas where the sludge is being disposed of?

**Mark Williams:** From a general Scottish Water perspective, the quality of sludge has improved over the past few decades, largely because of earlier European directives on dangerous substances and other things. That has meant that we have had more up-front controls over what has come into our waste water treatment works to start with. The sludge is therefore cleaner—if that is the right word—with fewer contaminants, including metals, than it was in the past. From an agricultural perspective, that is very tightly controlled. I suggest that we keep the other issues under review.

On the sludge to land review that is going on and wider controls, we are happy to be involved in that discussion and to see where we need to go next.

**John Wilson:** The SEPA submission says:

"SEPA do not have regulatory powers to control odour in all circumstances (such as spreading on agricultural land)."

Who has the regulatory powers? If SEPA does not have regulatory powers in that area, to whom would a concerned citizen go to get action taken? I have heard from constituents that they have gone to SEPA—I have done this, too—and the standard response has been, "That's not within our regulatory powers. You need to go and speak to somebody else." Who would they speak to in those circumstances?

**Chris Dailly:** It would be the local authority, usually the environmental health department. Where there is not a specific power in law for SEPA as a regulator to control the odour—there is not in the case of agricultural spreading—the matter falls to general statutory nuisance provisions under the Environmental Protection Act 1990, for which the local authority is responsible.

**John Wilson:** In the current review that the Scottish Government, Scottish Water and SEPA are involved in, have there been any discussions about additional powers for Scottish Water or SEPA? One of my concerns is that, when people go to an environmental health department, it will pass them to SEPA, and when they go to SEPA, it will pass them to an environmental health department. The standard response from the environmental health department is that it does not have the resources to examine the matter, but SEPA does. How do we resolve that circle that people are put into and ensure that action is taken when appropriate?

Also, is 21 days a sufficient period between a notice being issued and action being instituted against someone who is found to be in breach of the regulations?

**Chris Dailly:** I will answer your last question first. The 21-day period that is specified in law is a minimum period before the notice can take effect. To answer the question simply, that is not quick enough, as I said earlier; the period is far too long.

On the here and now and liaison with local authorities, I am aware of the picture that you painted, and we do not like to find the public in that position. We do not like them to be handed from one authority to the other. We try to work collaboratively with local authority environmental health departments. We have a good relationship with the Falkirk Council department, for example.

**John Wilson:** Is that because the residents of Avonbridge and Standburn have raised issues and, basically, pulled SEPA into the debate? Is it because of the issues that those residents face?

**Chris Dailly:** I do not think so. I have knowledge of the Falkirk area because I used to be the unit manager in that geographic area, so I know the situation quite well, but we also have examples of joint working with the Ayrshire councils and Renfrewshire Council in SEPA's west region. We try to do the best job that we can do, with good communication and interaction.

SEPA fully supports the proposal that the Sludge (Use in Agriculture) Regulations 1989 and the Waste Management Licensing (Scotland) Regulations 2011, which apply to non-agricultural land, be incorporated in a single regulatory framework. That would be better for the public and for SEPA as a regulator, if we were to have responsibility for it.

**Mark Williams:** From Scottish Water's perspective, it is in all our interests for people to have confidence in the regime. In the conversations that we have had with SEPA and the Scottish Government, we have looked at how sludge is managed and recycled under the regulations and the visibility of the activity to SEPA, because sludge needs to be looked at in context with the materials and activities on land that may have an impact on odour and other things. It would be good to have statutory controls and more overarching visibility of SEPA to give people more confidence.

On the use of sludge in agriculture, the water industry and Scottish Water have been concerned to ensure that we have clear codes of practice that

go beyond the statutory minimum. We want to pull the biosolids assurance schemes into the picture. The whole system must rest on public confidence in the activity, and we are therefore open to such conversations.

**John Wilson:** That is what the petitioner is trying to do—to get the public to have confidence in the system. It is clear that public confidence is lacking in relation to the issues that have been raised by the petitioner—and by other communities, as members have said.

Can Mr Williams or Mr Duff clarify the reference to PFI operators? The paper from SEPA refers to

"sludge producers (generally Scottish Water and PFI operators or their contractors)".

How many PFI operators and how many contractors operate in the sector? Once we start moving down the chain from PFI operators to contractors, it must become more difficult to regulate who is doing what and who is monitoring it. The paper mentions the

"testing of sludge at least once every 6 months."

Are you confident that PFI and other contractors are monitoring sufficiently in relation to the material that is produced?

**Mark Williams:** The 11 PFI concessions in Scotland have all been very involved in the biosolids assurance schemes and they work at the same levels of assurance that we expect of Scottish Water. They all adhere to common industry practice.

Brian Duff knows more about the contractual arrangements and the practicalities of the management of sludge recycling.

**Brian Duff:** There are three main contractors across Scotland that recycle sludge for both Scottish Water and the PFI schemes. The PFI schemes do their own monitoring and checks on their contractors. Because of all the issues, Scottish Water has gone on to the front foot by doing its own audits of the PFI operators and the contractors so that we have a better view of how well they are operating.

**John Wilson:** Are the PFI operators operating on behalf of Scottish Water?

**Mark Williams:** Yes.

**John Wilson:** Has Scottish Water subcontracted the work to PFI contractors?

**Mark Williams:** Yes. The PFI concessions provide the facilities and operate the plant.

**John Wilson:** My final point goes back to Angus MacDonald's point that it would have been useful for the committee to have more information today. It would have been helpful to be able to compare the incidents that have been reported in the past year with historic incidents. It seems that we have only recently had a growth in the number of incidents. It would be useful to have information to enable us to support or debunk my earlier comment that the growth of housing on the green belt has meant that more communities are coming into close contact with the spreading of this waste material. It would be interesting to know whether there is a substantial increase in reporting and, if so, what the issues are around that.

10:45

**Jackson Carlaw:** When my sons were very young, they used to have an expression during the spreading seasons, when they would put on a straight face, look at me and say, "It's not very Disney." We can probably all empathise with that. However, I understand the benefits, as you have articulated them.

I want to get an understanding of our relative use. SEPA's submission gives an average figure for Scotland of 6 tonnes per hectare in 2014-15, but there were different averages for different uses. In Europe, the practice seems to be variable. You cite a number of countries where two thirds of sludge is used as a fertiliser, but two thirds of what amount? Your submission does not give me any relative understanding of how much is produced across the European Union and how much is applied as an average across the landmass of the countries. If that were to be calculated and put in a table, where would Scotland sit in it?

**Mark Aitken:** We can certainly prepare that information for you. It is available. We extracted and summarised the information in our submission from a table. I am afraid that I do not have it with me, but we can certainly supply it to the committee.

**Jackson Carlaw:** Do you have an idea as to whether we would be near the top of the table or somewhere else on it?

**Mark Aitken:** In terms of the percentage of material that is applied to agricultural land, we would be not quite at the top but perhaps about one third of the way from the top. Countries such as England, France and Spain have a higher percentage of sludge applied to land. Of course, reflecting their population, they also produce higher quantities of sludge.

**Jackson Carlaw:** Does that equal a higher tonnage per hectare?

**Mark Aitken:** The figure is far higher in England and France, for example, in terms of the percentage of the total and the tonnes applied.

**Jackson Carlaw:** I would be grateful if a table of that nature could be produced, because it would give a better impression, to me at least, of where we sit.

Is that an evolving position or is it consistent?

**Mark Williams:** From Scottish Water's perspective, I echo the view that we are not near the top—we are roughly middling to slightly above average in Europe in terms of the proportion that is recycled to land. When we look at the trends and the emerging strategies in other European countries, we find that those are very much led by the availability of land bank and the appropriateness of using land in those areas. Some European countries, such as the Netherlands, have much less opportunity to recycle to land.

The key thing about our practice under the Sludge (Use in Agriculture) Regulations 1989 is to ensure that we are typing the sludge to the appropriate soils so that we do not present a risk. The approach is very much dictated by the topography and the land holders across European countries.

It will be a moving feast over time. New technologies might come on to the market that will allow us to do something a little differently. At the moment, as you have heard, about a third of Scotland's sludge goes to energy recovery, because that is the appropriate thing for us to do, using the cement manufacturing facilities that are available. In Scotland, the key thing is that we retain several options so that we are not stuck with one outlet.

**Jackson Carlaw:** I can sympathise with that. I guess that I want to know whether there is an evolving trend elsewhere in Europe and whether other countries could be moving towards new technologies faster than we are while we are relying on spreading. In consequence, our position on the league table could change because others have improved their performance or the use of new technologies. I would like to understand that. I am sympathetic to the underlying argument, but I would perhaps be less sympathetic if we were relying on that statistic without demonstrating that we are not falling out of step with practice elsewhere.

**Angus MacDonald:** I want to pick up on Jackson Carlaw's point on comparisons with other countries. Mr Williams mentioned that, in Scotland, a third of sludge goes to incineration or energy recovery. I have done some research into the practice in Sweden, where 50 per cent goes to incineration. Open-air disposal has become less popular in Sweden since a sludge tax of 250 Swedish krona per tonne was slapped on to such spreading. Clearly, the issue is a matter for Government, but I would be keen to hear your professional opinion on whether a sludge tax would concentrate minds in Scotland.

**Mark Williams:** I suppose that a policy principle of the waste hierarchy, which is driven by Zero Waste Scotland, is a presumption against not reusing the resource in some way. A sludge tax for applying sludge as a recyclable product would present fairly significant challenges. I cannot remember the exact figures, but the value of the benefits in terms of nutrients and so on is the best part of £150 to £200 a hectare for the cropping regimes that come on to the land. I suggest that taxing that further would probably drive down the sustainability of the practice.

I have not given much thought to the matter, but my initial reaction is that it would be a big challenge to maintain a recycling outlook with such a tax.

**The Convener:** As there are no further questions, I ask members what action they want to take on the petition.

**Jackson Carlaw:** I would like to be in receipt of the additional information that we sought during the evidence session before we take a view.

**Angus MacDonald:** Yes. It would also be good to seek the petitioner's views and hear back from her before we make a final decision. I note that she is in the public gallery.

**John Wilson:** Like Jackson Carlaw, I think that we need to get the further evidence that we requested from SEPA and Scottish Water. When we next consider the petition, I would hope that the petitioner will have responded to SEPA and Scottish Water's comments. The committee might want to consider further action at a later date, but at present I am content to await the further information that has been requested.

**Angus MacDonald:** I should have mentioned that we must wait to hear the outcome of the review before we take a further decision. Should that require a full consultation, I imagine that the matter will continue for some time. I think that the cabinet secretary told me in the chamber that the review is due to be completed at the end of the summer. That is as specific as he was.

**The Convener:** Do members agree to the action points that have been raised?

**Members** *indicated agreement.*

**The Convener:** I thank Mr Duff, Mr Williams, Mr Dailly and Mr Aitken for their attendance.

I will suspend the meeting to allow a changeover of witnesses.

10:53

*Meeting suspended.*

10:55

*On resuming—*

## Youth Football (PE1319)

**The Convener:** The next continued petition is PE1319, by William Smith and Scott Robertson, on improving youth football in Scotland. As previously agreed, we are taking evidence from Scotland's Commissioner for Children and Young People. Members have a clerk's note and the commissioner's report.

I welcome commissioner Tam Baillie to the meeting. He is accompanied by Gillian Munro, his information officer. I invite Mr Baillie to make a short opening statement of no more than five minutes. We will then move on to questions.

I also welcome to the meeting Chic Brodie MSP, who has an interest in the petition.

**Tam Baillie (Scotland's Commissioner for Children and Young People):** Thank you for the invitation. I want to set the context for the production of the report that led to today's hearing.

I believe that the petition is the second most long-standing that the committee is considering. Late last year, I was approached by the then committee convener, David Stewart. Evidence had been provided to the committee on, I think, two occasions, and it had also received lots of written evidence, some of which was conflicting. In order to provide further information to the committee, I was asked to get the views of children and young people who are involved in youth football.

We offered to do two things. As you will see in the report, we have produced what we call a child rights impact assessment, which looks at all the information that is in the public domain and assesses whether the practices have an impact on children's rights. Gillian Munro was the main author of that assessment.

We also commissioned academics from the University of Edinburgh to engage with children and young people. They involved 28 young people in focus groups and undertook individual interviews with 19 young people in a fairly comprehensive exercise. It came across difficult ethical issues. Young people who are signed to clubs are living their dream, so we had to ensure that they were properly protected when they made statements or gave us information.

I am delighted to be here. I will touch on a number of the findings. There is an issue about 10-year-olds signing what they think are contracts, and potentially being held to them throughout their formative years. There is also the issue of 15-year-olds being held to contracts, sometimes against their wishes, for a further two years until they are 17. There are also perception issues in which young people think that they are not allowed to play for clubs or that their behaviour is restricted by the "contracts". I would put that in inverted commas because there is a bit of a debate about whether what is signed are contracts. As far as the children are concerned, they have signed a contract and it impacts on their behaviour because they do not get to play for schools. That is not the case for all, but there are certainly restricted practices.

On a positive note, the young people really love their football. They would go to the ends of the earth to play football so we must ensure that they are treated respectfully and that we do not, in any way, abuse their enthusiasm and their aspirations of attaining the dream of becoming a professional footballer.

**The Convener:** Thank you for a comprehensive report, which was well received in a lot of quarters. What is the report's key message for Scottish football clubs and organisations? What is the key recommendation for the committee?

**Tam Baillie:** The key finding is that when the system operates well, all is fine and good. However, when it does not work well, you find that the odds are stacked against children and young people.

I alluded to the fact that a 10-year-old can sign a contract. There is a well-meaning system of compensation for the clubs so that they can expect certain payments, depending on how they are graded for the quality and the expense of their academy or the training that it provides. However, if a young person chooses to try to get out of their contract, they are sometimes left hostage to the original club because there is a dispute over the payment. That can last for quite a long time. In theory, they could be held year on year because the payments have not been made. That is one issue.

11:00

The second issue is that when 15-year-olds sign a contract—and I will call it a contract—it is at the behest of the club whether they are released from that contract when they turn 16 and throughout their 17th year. The rationale is that time, energy and resources have been invested in the development of that young person and sometimes it takes a while for that to blossom. When someone is 15, it might take time to assess their quality and the club wants to see whether to keep them or not, but currently only the club can make the call about whether to release them.

The third issue is about children not being allowed to play for their school. The Scottish Football Association has tried to rectify that and make it clear that such a condition cannot be built in. Allowing children to play for their schools is, however, still at the discretion of the clubs and one of our recommendations is to remove that element.

We have a number of recommendations. A young person should have the same notice period as they would in youth football. In other words, if they want to move clubs, they should be able to give 28 days' notice. That would be the end of it and they could then go elsewhere.

The registration bind on 16 and 17-year-olds should be removed—there should be no difference between the terms that young people sign up to as 15-year-olds and the previous terms.

When there are disputes, they should be resolved expeditiously so that a young person or child cannot be held for a long time and prevented from either playing for another club or moving to another club.

The recommendation on when reimbursements are paid is buried in the report. Part of the difficulty in the system just now is that compensation has to be paid up front, whereas we have so many youngsters in our system that it would be better and more sensible if the compensation kicks in when they sign a professional contract with a professional club.

There is no complaints process just now, so one needs to be built in. At the end of the day, there might be a need for regulation and monitoring, but my preference would be for self-regulation rather than what might be an expensive regulatory framework. We might discuss that later, but self-regulation would be better than having to have external regulation.

That is quite a shopping list of what we are calling for, but I thank the committee for the opportunity to lay out our recommendations.

**The Convener:** Your report has been in the public domain now for a few weeks and you have just highlighted some of the key recommendations. Overall, how do you think your conclusions have been received by football organisations and young people?

**Tam Baillie:** The purpose of producing the report was to shine a light on the issues and stimulate some improvement, because the petition is called "Improving Youth Football in Scotland". The key bodies are the Scottish Professional Football League and the SFA. We sent copies of the report to both those bodies but we did not ask them to comment on it. We received an acknowledgement from the SFA. It is within the capacity of those two bodies to look at how to improve the system. Many of the recommendations are targeted at the governing bodies.

The report has certainly got some coverage and I am pleased about that, but it is not about the publicity; it is about whether we will change how we deal with our children. I certainly think that their rights are being infringed right now because of the restrictions on what they can do and on their behaviour. As things stand, sufficient attention is not paid to the education of children and young people during the time that they are expected to be nurturing their skills.

**The Convener:** You mentioned that you have sent copies of your report to the hierarchy.

**Tam Baillie:** Yes—we sent copies to the SFA and the SPFL. As I said, the SFA has sent back an acknowledgement. The committee might be interested in the response that comes back from the governing bodies; I will come on to that point.

**The Convener:** Do you think that the SFA and the SPFL will accept your recommendations, or will they face challenges?

**Tam Baillie:** Well, they have not responded up to now. Given the fact that the petition has gone through the committee's process, the committee might consider seeking their view on whether they will implement the recommendations.

You might want to call in the SFA and the SPFL although I know that you have called them in previously. I certainly hope that you will seek reassurance from them that they will be capable of self-regulation—you can make an assessment of that—before we follow up on any recommendation for external regulatory frameworks. That would be a matter for the Government, and I think that the committee would first want to satisfy itself about the governing bodies' response.

If you are not satisfied, we should bring the issue to the Government's attention. I have already met the minister; he knows that I am giving evidence today and he is aware of the stage of the process that we have reached. It is about time that we saw an end to the petition. For me, the end point would be an improvement in the way in which we deal with the children and young people who are the talent of the future.

**David Torrance:** Good morning. Are the problems that have been identified with Scottish football clubs and children's rights associated with all clubs, or are there good working practices out there in Scottish football?

**Tam Baillie:** As I said earlier, when the system works well, it works very well. I cannot possibly comment on the practices of all the clubs in Scotland, because I am not familiar with them. I

am, however, familiar with the different star gradings and the costs of the training regimes. I am not familiar with the exact costs, but I know that some regimes are deemed to be more expensive and offer more compensation than others.

Although the system is well-meaning, one of the problems is that the clutch of clubs with the lowest star ratings might be tempted to harness and include as many young people as possible in their training regimes in the hope that other, richer clubs will come along, and the original club will get the compensation.

I will give you an example, as we have some comparisons. Germany has a population of 82 million and, during the past 10 years, it has invested more than €500 million in its state-of-the-art academies, which produce world champions. In a population of 82 million, a total of 4,735 children are involved in the under-19 academies.

In comparison, Scotland has a population of 5 million, and somewhere between 2,500 and 3,000 children and young people involved in our academies. There is something significant going on there, given that such a small country has a much greater proportion of youngsters in academies than a very successful footballing nation such as Germany does.

I do not think that we are in a position to suggest that Scotland should put in the level of investment that Germany puts in, but there is something in the way in which Germany manages to nurture the talents of a much smaller proportion of its footballing talent, whereas we seem to take a very wide approach. By doing that, we give false hope to many of our children who are involved in the academy system. They are desperate to be involved in it because it is the realisation of their dreams, but we know that the vast majority will not have that dream realised, given the numbers involved. We need to think through the issues, and consider what false hopes we are building up among many of our children.

**David Torrance:** How do we bring about the attitude change in Scottish football that you are seeking through your report?

**Tam Baillie:** It is part of a much wider issue. Our business is children's rights, and I think that a better and more informed approach to children's rights would assist.

However, the issues are not confined to the realms of football—I could go on to list a whole number of areas. I think that, by following some of the recommendations in the report, we would start to swing the pendulum back from all the power being concentrated in the hands of the clubs to at least listening to the views and opinions of children and young people.

One of the key tenets of the United Nations Convention on the Rights of the Child is the right to have and express an opinion, and for due weight to be given to it. Right now, no weight is being given to the opinions of children and young people because there are no means by which they can escape from some contracts. When a contract is challenged, all the odds are stacked in favour of the club. That cannot be right; it is so unfair.

**The Convener:** Mr Baillie, you mention in your report that you would like an independent regulatory body to be set up.

**Tam Baillie:** We said that consideration should be given to that. In the first instance, the SFA and the SPFL should act.

I cannot direct the committee and tell you what to do, but I think that consideration should be given to the organisations' responses to the report, on the premise that we need assurances. Unless the organisations implement some of the recommendations, we run the risk of breaching the UNCRC. There might be a challenge to that at some point because of the way in which we have allowed our children to be treated while they are pursuing their aspiration of becoming football players. We can treat them much better and get better results.

I will give you another comparison with the German approach. I have a document entitled "10 Years of Academies: Talent pools of top-level German football". It contains a comment from Bayer Leverkusen, which runs one of the highly regarded Bundesliga academies. The young people are in the academies for football, and yet the document states:

"'Do Not Neglect School' is the law, not just in Leverkusen but at all other clubs' academies. In the changing rooms, boards display which team has achieved the best average results in the past six months and the individual rankings of the best schools."

In other words, the academies in Germany pay as much attention to the academic achievements of the children and young people as they do to nurturing their talent.

Despite the good practice that you may identify in Scotland, we would be hard pressed to find clubs that give the same care, attention and diligence to the educational attainment of the children who are on their books. If anything, some of the clubs in Scotland—as I characterise them in the report—have as many young people as possible on their books in the hope that they can get some investment through the compensation for that child or young person.

I would be interested to know what attention the SPFL pays to the educational attainment of children and young people. If Germany can do it, we should be able to do it in Scotland.

**The Convener:** Are there any other questions?

**Chic Brodie (South Scotland) (SNP):** First, I thank the convener for indulging me by letting me attend this session, on an issue that is close not just to my heart but to the hearts of others who are involved.

Good morning, Mr Baillie. The comment that you have just made about schools is quite important. Why would there be any difference? I have spoken to Skills Development Scotland, which says that the registration forms are not worth the paper that they are written on and that the contracts do not meet legal requirements on payment.

Why, in your opinion, should there be any difference between protecting youngsters' rights—particularly when we are talking about 15-year-olds—in football, and protecting the rights of modern apprentices in other areas in which young people join up education with the exploitation of their talent?

11:15

**Tam Baillie:** First, it does not matter whether the contracts are not worth the paper that they are written on, because the perception of the young people involved is that they are contracts. In fact, they are delighted to be signing up to a club because they see it as one step closer to their dream of becoming a professional football player. That means that we have to build in extra protections, because the young people make themselves vulnerable at the point of signing. The Professional Footballers Association Scotland has produced a useful document on that; I would make it mandatory for young people to be made aware of that document before signing a contract, because at least it lays out some of the consequences of signing.

Drawing a parallel between those young people and those who have modern apprenticeships, it is true that the youngsters are having their talents nurtured and brought on, but we have to ensure that they are properly protected, especially if we are talking about signing young people of 10. Parents are keen to get involved in all this. One of the findings from the focus groups and individual interviews that we undertook was that the support of the family was critical. Families often put a high level of investment into their child in order for them to make progress in this area.

I do not know whether that answer satisfies—

**Chic Brodie:** That is fine.

Later today, I am meeting someone whose son is an under-15 international player who has signed a contract, or an alleged contract, with a major Scottish club. As you said, some clubs are okay, but the SPFL does not seem to have any control over the clubs; in fact, it is the other way round. This particular young player lives in Fife and often has to travel to train with his club in Glasgow. He is not being allowed to leave that club unless a fairly significant sum is paid by whoever he might go to. How does that situation sit with the UNCRC?

**Tam Baillie:** As I said, if we create a transfer market for children and young people we are treating them as commodities. It is difficult to make decisions in their best interest if there is a price on their head. That is why I suggested that we try to decouple the movement of children among clubs from payment. One way of doing that would be to ensure that any payment is triggered only when the child signs for a professional football club.

The payment situation needs a bit of careful thought. It is well intentioned, as it is about trying to ensure that the smaller clubs are compensated when they put time and effort into a young person, and that there is an incentive to do that. However, the impact when things do not work out—the case that Mr Brodie mentioned is an example—is that the child suffers. That just cannot be right, and it cannot be good for the development of football to have a young player who has talent that will blossom to be stymied and held back because of a dispute between two of our clubs. That just does not make sense. I am not an expert on the inner workings of football, but I know that that is in contravention of the UNCRC.

**Chic Brodie:** In the past, some of our great footballers have come up through boys clubs—there are very good boys clubs. What is the fundamental difference between that and the present approach? Is it the money aspect?

**Tam Baillie:** The people who run our boys clubs are part of a vast army of people who provide, on a voluntary basis, amazing input and support to children and young people. They are a shining example of people who would do that whether they were paid or not—although in fact they are not paid.

A much wider question is how we get some of the resources and relatively big money in Scottish football to filter down in a way that does not provide perverse incentives to our grass-roots game. That is a bigger question than any that I could answer through my report. However, if there was a review of the payment system, it would be worth looking at how we resource the lowest level in youth football.

**The Convener:** There are no further questions. I suggest that the committee reflect on the evidence that it has heard and consider a paper on that at a future meeting. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** I thank Mr Baillie and Ms Munro for their attendance, which is much appreciated.

11:20

*Meeting suspended.*

11:23

*On resuming—*

# New Petition

## National Service Delivery Model (Warfarin Patients) (PE1566)

**The Convener:** The next item of business is consideration of new petition PE1566, by Mary Hemphill and Ian Reid, on a national service delivery model for warfarin patients. Members have a note by the clerk, a SPICe briefing on the petition and the submissions. We have also received a late submission from the Anticoagulation Self-Monitoring Alliance, which is on members' desks.

I welcome Mary Hemphill and Ian Reid to the meeting. They are accompanied by John Fegan, the chairman of the Scottish Association for Children with Heart Disorders. I invite Ms Hemphill to make a short opening speech of no more than five minutes. We will then move on to questions.

**Mary Hemphill:** I thank the convener and the committee for hearing our petition today and our request for the implementation of a national service delivery model of care for patients who self-present to self-test or self-manage their warfarin levels when it is deemed safe and effective to do so by a healthcare provider. That model should include a safe, uninterrupted, co-ordinated infrastructure for patients in paediatric care who self-test their warfarin levels when they make the transition to adult services.

I am an adult congenital heart patient and, like many of our diverse, inspiring and growing paediatric and adult population, I am on warfarin to thin my blood. I am a wife and mother, and I am employed. I lead a healthy lifestyle after the implantation of two metal heart valves, an aortic root enlargement and a pacemaker.

My biggest fear is having a stroke. After my first open-heart surgery, I was carried by my husband to attend my anticoagulation service. My family were advised that the service did not provide home visits. I requested to work with my local care providers to self-test and, if it was safe and effective to do so, self-manage my anticoagulation levels. My request was refused. The explanation was not person centred, with no one actively listening to my request. It was at the directive of Greater Glasgow and Clyde NHS Board, and the reason given was that I do not work away from home.

A few weeks later, I was also refused an urgent appointment at my anticoagulation clinic, which an out-of-hours general practitioner asked me to obtain after he prescribed me a course of

antibiotics that would increase my anticoagulation levels in a way that, if not checked, could prove fatal. With our nursing staff and local clinic reduced, I found myself placed in a catch-22 situation. Had I not been fully informed and thus able to challenge the decision, the outcome could have been devastating. My concern is for those patients who would not have questioned that decision.

I went on to meet a haematologist at Gartnavel hospital, who agreed that my time in therapeutic range would improve with self-testing. I would be patient number 31 in the programme. I agreed to speak to my GP to provide my test strips on prescription. That was well supported and I was provided with my machine by our charity, as such machines are not freely available. The next day, I received a call from Gartnavel anticoagulation nurses to advise that the funding for self-testing training had been stopped.

I continued to challenge that position and wrote many letters to the then Minister for Public Health, Michael Matheson, who advised me that the decision was for individual health boards. Later, in a parliamentary motion, Mr Matheson commented that warfarin patients in Scotland were much older than the United Kingdom average of 65 years. However, I believe that the decision should not be dictated by someone's age but should be person centred.

Finally, I met the clinical manager of anticoagulation services, who provided me with a truly person-centred approach and support, as did the nurses at my local anticoagulation clinic. Last year, I met the chief executive of Greater Glasgow and Clyde NHS Board. That was well received and led to a nurses day, at which I was supported by John Fegan, the chairman of the Scottish Association for Children with Heart Disorders, and another adult congenital heart patient, who gave an inspiring insight into her long-term condition and her quest to self-test.

Standard operating procedures were drawn up for young adults who move from the Royal hospital for sick children to adult services, whose parents and carers are taught to self-test when they are prescribed warfarin in paediatrics. I am pleased to say that that standard procedure is now being used, although it is still in its early stages. It will ensure an uninterrupted care pathway for Greater Glasgow and Clyde NHS Board patients—not only those in our congenital heart community but other young adults with other long-term conditions who also require warfarin. If that is achievable for Greater Glasgow and Clyde patients, it should be easily available and accessible across Scotland.

In September 2014, I began self-testing. My time in therapeutic range has improved and I am able to take control and gain an acceptance of my long-term condition. Self-testing proved invaluable recently when I was in hospital. As a result of multiple open-heart surgeries in a short period of time, access to my veins is now very difficult. I was able to test my own levels safely and effectively.

There are approximately 80,000 warfarin patients in Scotland in 14 regional health boards. The purpose of the petition is to request a national service delivery model of care for all warfarin patients who self-present to self-test or self-manage their warfarin levels, when it is deemed safe and effective for them to do so. We want them to be given a person-centred care approach that is in line with the local delivery plan that is set out in the Scottish Government's 2020 vision for the NHS, which is

"that by 2020 everyone is able to live longer healthier lives at home, or in a homely setting and, that we will have a healthcare system where we have integrated health and social care"

and

"a focus on prevention, anticipation and supported self-management".

To achieve that, we require a whole-system approach and a culture change whereby patients can work in partnership with their healthcare providers and access information, communication, education and support. It must be an active and on-going partnership. The NHS will undoubtedly see positive benefits from that, as patients' outcomes improve and patients, parents and carers become more informed, empowered and educated about their condition or that of their child.

I refer the committee to the Scottish intercollegiate guidelines network guideline 129 and the evidence from the National Institute for Health and Care Excellence, Healthcare Improvement Scotland and the Royal College of Physicians of Edinburgh, which all support self-testing and self-management.

11:30

Patients wish to embrace the key objective in "Gaun Yersel!", the Scottish Government's self-management strategy, which is written by patients with long-term conditions for patients with long-term conditions. The strategy was endorsed by Nicola Sturgeon, who is now our First Minister but who was then the Cabinet Secretary for Health and Wellbeing. It says that we should learn from people's own experience of living with a long-term condition and that we should work in partnership with the individual and provide access to timely and appropriate information and support to enable them to make well-informed decisions about their lives. It concludes that

"life is for living, and for living well, not for enduring."

The Scottish Government writes fantastic protocol to encourage and support self-management yet, for warfarin patients, the delivery at ground level is difficult, with patients and healthcare providers facing many challenges and barriers. No one should have to fight for care, particularly at a time of ill health or uncertainty.

I wish to thank my co-petitioner, Ian Reid, and John Fegan, the chairman of the Scottish Association for Children with Heart Disorders, for supporting me today. I also thank the patient who gave an inspiring insight into her quest to self-test at a Greater Glasgow and Clyde NHS Board nurses day, and patients who have written to their health boards and who wish to be provided with the patient-centred care approach but have been refused or challenged. Finally, I thank the committee and those who have endorsed and supported our petition.

**The Convener:** Thank you for your presentation.

Self-testing and self-management have been the subject of discussion for a long time. Why has so little progress been made?

**Mary Hemphill:** There is a lack of education. The anticoagulation nurses are fantastic, but they perhaps do not have the support of the health boards. The approach is not promoted anywhere, even though there is factual research to show that it helps.

People have to have a buy-in because, to an extent, they are taking responsibility for their own care. That is why, in the way that we worded the petition, we were careful to say that people had to self-present or say that they wished to self-test. That should ensure that there is buy-in from the patients who are involved.

I wanted to take control of my condition. It was quite difficult for me to accept what had happened in such a short period of time. I was quite determined that I was not going to be a victim. I wanted to get back to work and to lead as much of a normal life as I could.

**The Convener:** I note that studies have shown that there are notably fewer strokes and deaths as a result of clots among patients who have self-monitored. To what extent do you think that that is a result of the greater understanding of their condition and of the importance of testing and adjusting dosages, which might change following illness and so on, that they have gained as a result of self-management?

**Mary Hemphill:** Initially, self-testing is a huge change for patients. At first, people might be apprehensive, because they want to ensure that their care is safe and effective at improving and sustaining their quality of life. It is a huge cultural change in the delivery of anticoagulation care. However, if we can get the help, support and clinical guidance in place, it can prove to be beneficial, worth while and cost-effective.

We have an ageing population, and if more people self-test, that will support patients who really need to see their anticoagulation clinicians. The number of people who are anticoagulated has risen by 10,000 in the past five to 10 years, from 70,000 to around 80,000. How can our clinics sustain that? I found that I needed a lot of care because my medication was changing. I was on antibiotics, which can increase a person's anticoagulation levels. When you self-test, you still work with your care providers—they are still there via telephone or email if you need them.

Patients are more educated and have more of an understanding. Families and carers in the paediatric community are already taught to self-test. That is standard in paediatric care.

**The Convener:** Do you agree that there is a case for all patients and carers to be better informed about their conditions, even if they are not self-managing?

**Mary Hemphill:** Yes, I think that there is. That might not be the case for all patients, but it is the case for those who want to learn, get engaged, understand and be educated. If the support is there, that is easily done. Initially, it was difficult for me to get someone to listen, but I pushed for it. Not everybody would do that; not everybody knows about self-monitoring or would push to make it happen.

**Hanzala Malik:** I understand where you are coming from and I understand the pressures on the health service, but I do not understand why the health boards would not want to support your proposal on self-help. Surely that would assist them in delivering the service that you need. It does not make sense to me that the health boards would not want to do that.

I think that the issue may be to do with departments in the health service—the way that they think about the costings is all wrong; if one department does not bear the cost, the other department is not interested. That is sometimes where things fall through.

I am very supportive of the petition, convener. We should encourage the health service to support the idea that Mary Hemphill has presented, because I think that it makes sense. With self-testing, not only would the patient's wellbeing be secured, but we would get value for money from the health service. It is a win-win—it ticks all the right boxes. I do not understand what the issues are, and I want to find out why health boards do not want to support what Mary Hemphill is proposing.

**David Torrance:** Only 1 per cent of warfarin users in Scotland self-assess and self-monitor—that is about 800 people out of 80,000. You said earlier on that your idea is about promotion and education. Is the problem the fact that health boards do not want to promote it? Are they the obstacle that means that so few people are self-monitoring?

**Mary Hemphill:** My first letters went to Michael Matheson. There had been a round-table event, which led to Nanette Milne having a parliamentary debate on the matter. My initial issue was with the comments that were made—they were very negative. I sent emails and letters to Mr Matheson and he replied saying that the matter was the responsibility of individual health boards but, ultimately, individual health boards are accountable to the Scottish Government. We needed someone there, not to change things at that minute—I would not expect anything to be changed on the basis of a request from just one person—but to listen.

One of the main issues that we have, in any health or social care environment, is the transition from child to adult services. I was an ordinary patient who could tell from speaking to people that there were gaps. If we were able to improve that situation for Greater Glasgow and Clyde NHS Board just by speaking to other people and engaging with them, we could achieve a lot if people would listen. I had been through a lot. I would never do anything to make my health worse or promote something to anyone else that would make their health worse.

**John Fegan (Scottish Association for Children with Heart Disorders):** I would like to come in on that. Mary Hemphill and I met Robert Calderwood of Greater Glasgow and Clyde NHS Board, and subsequently Myra Campbell, to discuss the setting up of a standard operating procedure for the care that is offered at the Royal hospital for sick children in Glasgow, and the transition into adult care.

What came out of that was an operating procedure that the board currently uses. However, somewhere in the system, when the children move on from paediatric care to adult care, they can be lost. The board says that no one gets lost in its area, but when the children move elsewhere in Scotland, when they are assessed—or not assessed, as the case may be—they find that they are no longer involved in self-monitoring and that they have to attend anticoagulation clinics. We are saying that that is wrong. It is a waste of money, for a start, and the patient, who is already used to self-monitoring, has to go back to attending clinics.

**Hanzala Malik:** I know that there is also self-monitoring in cases of diabetes.

You said that patients' quality of life and fitness are greatly enhanced by self-monitoring. That is extremely valuable, as it is important to enhance people's quality of life.

I am a little puzzled about why the health board does not recognise the benefits of self-monitoring. The only thing that I can think of is that there is a resource issue somewhere. I do not understand that, because enhancing people's quality of life has value—I would put a value on that. I very much agree with you.

**Mary Hemphill:** The factual evidence runs in parallel with the Scottish Government's strategy and what it is trying to achieve in self-management. The Government can ensure that the strategy is achieved and that that is done on the basis of facts. There is evidence that self-management works for people. The issue is joining all these things together.

**John Wilson:** I commend you on your determination to get the self-management monitoring system in place for yourself and on your discussions with Greater Glasgow and Clyde NHS Board. Do you know how many patients in the health board area who are in a similar situation to you can self-manage?

**Mary Hemphill:** I went to see Dr Mike Leach, a haematologist, who looked at my therapeutic range and said that I would be patient number 31 to self test. Compared with England and other countries in the EU, the promotion is not there in Scotland—you have to push for self-testing.

**John Wilson:** When were you told that you would be patient 31?

**Mary Hemphill:** It was about a year ago.

**John Wilson:** I am trying to extrapolate from that. There are 80,000 warfarin patients in Scotland. A year ago, you were patient 31 for self-management in Greater Glasgow and Clyde NHS Board, which we know has a high incidence of heart issues, although it is not as bad as some of its neighbouring health boards. In response to an earlier question, John Fegan said that when people—particularly young people—move out of that board's area and go for treatment in their own health boards, they are in effect being refused or denied the opportunity to self-manage and monitor their condition.

I know that you lodged the petition to get a national standard in place. Why are other health boards reluctant to introduce the self-management monitoring regime for patients?

**Mary Hemphill:** The machines that we use are not freely available—they have to be purchased. Charities purchase them for children from the Royal hospital for sick children. People have to get their GP to buy the test strips. People have to

speak to their anticoagulation clinic and—rightly—make sure that it is safe and effective for them to self-manage. It is not easy. There are quite a few obstacles before the decision can be made. I would not have realised the obstacles if I had not been through the process.

When I was fighting for self-testing, I met a few patients in the system who had faced the same obstacles. It does not come easy to patients when they ask to self-test. When we met the chief executive of Greater Glasgow and Clyde NHS Board, our request was well received and the health board listened. There was a nurses day, when the health board educated its nurses. That is good for that board, but there are 14 health boards.

My main concern is that, if self-testing is safe and effective, it should be easily accessible for everyone. When someone is unwell, they should not have to fight and write letters to help people. People know what happened to them and do not want it to happen to anyone else.

**John Wilson:** According to figures that we have in front of us, the average cost of a machine is about £400 and a test strip costs about £2.95. On average, how often would a patient test themselves?

11:45

**Mary Hemphill:** If I am stable, I will probably test myself an average of once every two to three weeks, but that varies if my medication changes. Every individual is probably different. The initial outlay would be high, but some of the research and studies show that the cost reduces dramatically in the long term.

**John Wilson:** You say that, at the moment, charitable organisations are providing the machines for children.

**Mary Hemphill:** Yes.

**John Wilson:** So they are picking up the cost. Does the health board or the NHS pick up the cost of any of the testing that is done?

**Mary Hemphill:** The test strips are covered.

**John Wilson:** Does your GP prescribe them?

**Mary Hemphill:** GPs are getting better at it, but we have seen occasions—

**John Fegan:** Patients have occasionally come to us to say that their GP will not take the cost of the strips. I know of one patient who changed their GP because she could not talk them round.

**John Wilson:** So the GP can be a blocking point as well.

**John Fegan:** Yes.

**Jackson Carlaw:** Quite a galaxy of people and organisations have supported your petition. With my colleague Nanette Milne and also Richard Lyle, Jackie Baillie, Richard Simpson and Margaret McCulloch, you have a broad range of cross-party support in the Parliament.

It appears that the Scottish Government, not individuals, needs to be persuaded of the request in your petition. I understand that the Government's view is that there is no need for what you ask for. It says that health boards already have a responsibility to have protocols in place. That does not tell me much.

Do you know what the protocols are, who is responsible for establishing and reviewing them, when they were last reviewed and whether they are consistently applied? From what I have picked up, it seems that they are not consistent. Is it each health board's decision to come up with a local protocol? Do you know whether each health board has done that and when it was last considered?

**Mary Hemphill:** As far as I am aware, there is no standard protocol; the approach is up to each health board. We are aware that the National Institute for Health and Care Excellence guidance note was updated in September 2014. We asked Greater Glasgow and Clyde NHS Board to update us, as the evidence notes that we have are not updated or clear.

**Jackson Carlaw:** I will come back to that in a moment. After the round-table discussion that took place in 2013 and the various motions lodged and questions asked by colleagues, a number of recommendations were made. In general, what progress has there been on those?

**Mary Hemphill:** None that I am aware of. I probably started looking for self-testing at that time. That is when I started reading a lot about it.

**Jackson Carlaw:** Your petition was born out of frustration that we have gone through an extensive parliamentary process—a round-table discussion, a members' business debate and a series of parliamentary questions—and, as far as you are concerned, we are not much further towards equal access across the country. That is what you are seeking so, for want of a better description, a boot up the backside to make health boards come up with a national standard would resolve the issue just as much as national service delivery.

**Mary Hemphill:** Yes. Self-testing should be achievable and accessible for all patients. If patients ask the question, someone should know where to find the answer and how to communicate it. I never got that communication.

The Scottish Government promotes person-centred care so, if a patient asks why they cannot do self-testing, it is important for them to

understand why and whether that is for their benefit. I waited until my international normalised ratio was stable before I asked; I was quite aware that I wanted everything to be settled before I asked to test myself and manage my own condition.

**John Wilson:** For clarification, you said that Greater Glasgow and Clyde NHS Board decided to allow self-testing to go ahead. Is it the health board or the consultant that allows people to self-monitor and self-test?

I am looking at the figures that you gave us. You are patient 31; you will get a badge with that on it. Did the consultant you saw decide that you could self-monitor and self-test, or is it a health board policy that every patient who presents and asks to go on to that regime is afforded the opportunity to do that?

**Mary Hemphill:** I think that clinicians are reluctant. They require to provide support and education, but I do not think that they are supported by their health board. As patients, we need to come out and speak. We need to give our stories and help people to understand the challenges that we face.

I eventually met the clinical manager of anticoagulation services. It makes a difference when somebody wants to listen and understand—when they listen to what people have been through and why they want to do something, and when they consider what is safe for people and go through people's background. That made such a difference, but that difference could have been made on day 1.

**John Wilson:** The Scottish Government could issue guidance to health boards, which could then issue guidance to consultants or clinicians. The clinicians could then make a clinical decision, as they often do, about whether the person is suitable to self-manage or self-monitor. It is a matter of getting into perspective what the guidance might look for in the expectations of health boards and particularly clinicians in their practice with patients.

**Mary Hemphill:** Yes.

**The Convener:** Mr Reid, would you like to say anything?

**Ian Reid:** Mary Hemphill has said just about everything.

**The Convener:** If there are no further questions, what action on the petition would the committee like to take?

**Jackson Carlaw:** I would very much like the committee to write to the Scottish Government. I am struck by the similarities between this petition and a petition that the committee considered on the availability of insulin pumps across Scotland. A similar Government attitude required the minister to intervene to have the various health boards report on the progress that they were making in achieving their own protocols. That had to be put in place before anything happened.

I would very much like to know what the Scottish Government's position is on self-testing. On the back of that, I might wish to recommend that we take evidence from the minister, because it seems all a bit woolly as to why no proper emphasis is being put on coming up with a consistent position and applying that across Scotland.

**David Torrance:** Can we also write to ask all the health boards what they are doing to promote self-monitoring for warfarin patients?

**John Wilson:** I was going to make a similar suggestion, but I am keen to target health boards that neighbour Greater Glasgow and Clyde NHS Board and find out what the issues might be, because young patients might be transferred into those boards' care from services in Greater Glasgow and Clyde NHS Board. I am thinking about asking Lanarkshire NHS Board in particular and maybe Ayrshire and Arran NHS Board how they perceive the difficulties for patients who have been on self-monitoring or self-management regimes when they move into adult services in their own health board and are denied self-monitoring.

**Hanzala Malik:** We could also write to the sick children's hospitals to find out what measures are in place for when children leave their area of influence. Do they pass on the casework to ensure that the service continues or do they simply abandon children? We could find out whether there is any uniformity in the follow-up treatment when people have volunteered to monitor themselves. That is important.

**Jackson Carlaw:** I will follow up on David Torrance's suggestion. If we are writing to each health board, it would be interesting to invite them to clarify what their protocols are, as that may illustrate the variability of the levels of expectation and service, which we might subsequently discuss with the minister.

**David Torrance:** Boards will also be able to tell us how many people self-monitor in their areas. Can we ask for those figures?

**The Convener:** Members have raised a number of action points. Do we agree to pursue them?

**Members** *indicated agreement.*

**The Convener:** I thank Mary Hemphill, Ian Reid and John Fegan for their attendance. We will now suspend for a couple of minutes.

11:55

*Meeting suspended.*

11:56

*On resuming—*

# Continued Petitions

## Proposed Cockenzie Energy Park (PE1537)

**The Convener:** Agenda item 5 is consideration of five continued petitions, the first of which is PE1537, by Shona Brash, on behalf of the Coastal Regeneration Alliance, on the proposed energy park at Cockenzie. I welcome Iain Gray, who has a constituency interest in the petition. Members have a note by the clerk and the submissions.

Members are fully aware of the background to the petition but, for the public, I point out that the petition calls for the development plans for Cockenzie to be halted and seeks assurances in relation to future developments. When we considered the petition previously, we noted the announcement that Scottish Enterprise had dropped its plans, which has been welcomed by the local community. Assurances have been given with regard to future plans, although I know that the petitioner does not feel that they go far enough. The Parliament recently passed the Community Empowerment (Scotland) Bill, and my view is that the issue of what might or might not happen in the future is not for the committee at this time. If new proposals come forward, our colleagues on the Economy, Energy and Tourism Committee might wish to consider them in due course.

I invite members' views on the petition.

**David Torrance:** I am happy to close the petition on the ground that the proposals for the Cockenzie area have been dropped.

**The Convener:** Mr Gray, do you want to comment?

**Iain Gray (East Lothian) (Lab):** Thanks, convener. I am glad that you noted that the petitioner feels that there are still concerns. Although the community welcomed the dropping of the energy park proposal that originally led to the petition, there is still concern about what will happen to the site and the degree to which the community's aspirations will be met.

It is fair to say that all those whom the committee wrote to following the previous consideration have pointed out that there has been agreement on the establishment of a forum to provide a proper mechanism for dialogue and discussion. That will involve all those with an interest, including the Coastal Regeneration Alliance, which is the organisation behind the petition. That progress is due, at least in part, to the work of the committee in pursuing the petition,

so I thank the committee for that. Although concerns remain, I understand why the committee feels that it should close the petition.

12:00

**Angus MacDonald:** I am sure that the local residents are relieved that the plans for an energy park have been dropped. However, it might be heading in my direction and to my constituency.

Considering the assurances that have been given with regard to consultation on future proposals, I do not see how the committee could take the petition any further, so I agree that it should be closed.

**John Wilson:** I would remind all the agencies, but particularly Scottish Enterprise, that the Community Empowerment (Scotland) Bill was passed by the Parliament last week. I hope that Scottish Enterprise will take on board the intent of that legislation and work with the community to ensure that there is the best delivery of services and that what the community has requested in its campaign is taken on board. I have a concern that, although Scottish Enterprise accepts in its letter that the energy park is not going ahead at present, it seems to have a view on how it should proceed in the future. I hope that that view will not clash with the community's intentions for the area.

**The Convener:** Does the committee agree to close the petition on the basis that the proposals for the development of an energy park at Cockenzie have been dropped?

**Members** *indicated agreement.*

**The Convener:** I thank Mr Gray for attending.

## Dairy Farmers (Human Rights) (PE1542)

**The Convener:** The next petition is PE1542, by Evelyn Mundell, on behalf of Ben Mundell and Malcolm and Caroline Smith, on human rights for dairy farmers. Members have a note by the clerk, a letter from the Rural Affairs, Climate Change and Environment Committee and an email from Mrs Mundell.

As we all remember, colleagues, the petition calls on the Scottish Government to accept that individual dairy farmers' human rights have been breached by the ring fencing rules for milk quotas. Ring fencing was introduced in 1984 and was abolished earlier this year. Mrs Mundell lodged a petition in exactly the same terms in 2009.

There is sympathy for the Mundells' position, and for that reason the committee has considered the issues that are raised in the petition and has sought views. We heard from David Stewart and Jamie McGrigor. We also wrote to the Scottish Human Rights Commission again in February, but it told us that its view has not changed since we wrote previously, in 2010. Its position remains that, in such a dispute, it is for the courts to rule on whether Scottish ministers have breached human rights. The committee is not a court of law and we cannot provide such a ruling.

The last time that we discussed the petition, we agreed to seek the Rural Affairs, Climate Change and Environment Committee's views on the issues that the petition raises and to ask that committee whether it would be willing to consider the issues in the context of any future work. The RACCE committee has now responded to us, and its letter states clearly that, as the ring-fencing decision was a democratic one, it will not be looking into the matter. It repeats that the only body that could provide the ruling that Mrs Mundell seeks is a court.

In those circumstances, my view is that we have gone as far as we can with the petition. We need to be careful that we do not create unrealistic expectations. As far as I can see, there is nothing more that the Public Petitions Committee can do. I will be grateful to hear other members' views, but I am minded to close the petition.

**Angus MacDonald:** The issue has been on-going for some time. As I have stated previously, I understand the petitioners' frustration. However, as a member of the RACCE committee, having listened to the views of other members of that committee and taking on board its letter to the Public Petitions Committee, which recommends that we close the petition, I agree with you, convener, that we have no option but to close it.

It is regrettable that no further action can be taken at this level, but it has been reiterated that only a court can rule on whether human rights have been breached, and the petitioners have been advised of that on numerous occasions. Although I have sympathy with the predicament that the petitioners find themselves in, I do not see that there is any more that this committee can do to help. The advice that only a court can make the ruling is a salient point.

**Hanzala Malik:** I am a little disappointed. I feel that the petitioners have been failed in regard to support from the Government. They have come back to this petition time and time again and they have stressed that they do not have the means to challenge the Government on the issue. I feel that we have let them down, because it is a fact of life that, unless they had large sums of money, they were not going to be able to defend themselves, so they were up against the wall from day 1.

The fact that we have not found a solution for the petitioners is disappointing. I feel that they have been let down. I feel that somehow, somewhere, there should have been a mechanism

to better protect the rights of citizens of this country. We have clearly failed them. I feel quite sad that we may take the decision to close the petition today.

I would have felt more comfortable if a solution had been found whereby the petitioners' rights could have been protected and they could have had a fair hearing in another place to pursue their human rights. I think that we have let them down. I am sorry to say that, convener, but I feel that we have not been able to reach out and support them in the way that I would have liked to see them supported.

**Jackson Carlaw:** I have some sympathy with Hanzala Malik's position. At our previous consideration of the petition, when David Stewart and Jamie McGrigor suggested the possibility of an inquiry, I thought that the idea was worth pursuing. However, the letter that we received from the Rural Affairs, Climate Change and Environment Committee is not encouraging in that regard.

The point that Angus MacDonald ultimately made—that we cannot adjudicate on a legal matter—means that, if we were to initiate an inquiry, it might well shed light on something but, in itself, it could not bring about a resolution of the issue, which is beyond our competence. I am concerned that, in those circumstances, the balance of whether or not we should do it is not proven. A bit like Hanzala Malik, I am not satisfied that Mr and Mrs Mundell's position has been resolved in any way by this committee, but I am not sure that this committee can resolve it.

**The Convener:** As there are no further questions, what action would members like to take on the petition?

**David Torrance:** I suggest that we close the petition.

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

**Hanzala Malik:** Reluctantly.

**Members** *indicated agreement.*

**The Convener:** The petition is now closed on the basis that the decision to ring fence was democratically made and the petitioner's claims and allegations can be determined only in court.

## Electric Shock and Vibration Collars (PE1555)

**The Convener:** The next petition is PE1555, by Siobhan Garrahy, on electric shock and vibration collars for animals. Members have a note by the clerk and the submissions.

**Kenny MacAskill:** It might be premature to do anything. I am at a loss to see what we should do. There is a suggestion that we get further information, but the subject does not seem to be one on which we would necessarily wish to pursue an inquiry. Unless the Rural Affairs, Climate Change and Environment Committee, for example, has a view, we seem to be reaching the end of the road as to where we go with the petition. The issue has been raised; nobody is running to make any decision one way or the other. It seems to me that we should either just leave the petition and see where things go or close it. I cannot see that any inquiry by us would be of any substance.

**The Convener:** My view is that shock collars are cruel and certainly cannot be justified. Having said that, I am not opposed to the use of vibration devices in appropriate circumstances.

It may be possible for the committee, before closing the petition, to consider one more point. The Department for Environment, Food and Rural Affairs is carrying out a second survey of those who are or are not in favour of a ban. The committee may wish to seek the views of the authors of the study, at the University of Lincoln, on what the petition is calling for. We could then bring the petition back to the committee.

**Jackson Carlaw:** I am struck by the penultimate paragraph of the cabinet secretary's letter to the committee, and I believe that it might be a bit premature to close the petition now. The letter states:

> "The previous view, therefore, was that there was insufficient objective evidence to support a ban. However, after considering the points made in the debate in January, I share the strong concerns expressed regarding the potential for misuse of these devices and I have asked for further information on the use of electronic collars in Scotland, and other countries, and the basis for the ban in Wales. Officials are currently in the process of gathering this information and have had discussions with animal welfare organisations, the Electronic Collar Manufacturers Association ... and animal behaviourists."

Given that the cabinet secretary has decided to take an interest in the matter, we might be well advised to wait at least until he is able to update us on the outcome of that consideration.

**John Wilson:** I was going to make the same suggestion. The Welsh Assembly's response notes that the Assembly is about to review the ban that has been in place. It might be worth waiting until we hear from the Assembly when it expects the review to be completed. We can then look at the issue further.

We have had various responses to date, a number of which have opposed the continued use of the collars. One of the responses in favour of their use has come from the Electronic Collar

Manufacturers Association. NFU Scotland is split on the issue and does not want to come down on either side at present.

We should hold off closing the petition, taking on board the suggestions made by Kenny MacAskill and other members. We can look at what the Scottish Government intends to do on the issue and ask the Welsh Assembly when it expects to complete its review. That information might help to inform us on whether we should close the petition or take it forward.

**The Convener:** Do members agree to wait until the Scottish Government provides further information and the Welsh Assembly gives us a date for the outcome of its review? We may also want to ask the study authors at the University of Lincoln for their views on what the petition calls for. Are members agreed?

**Members** *indicated agreement.*

## National Parks Strategy (PE1556)

**The Convener:** The next petition is PE1556, by John Mayhew, on behalf of the Scottish Campaign for National Parks and the Association for the Protection of Rural Scotland, on a national parks strategy for Scotland. Members have a note by the clerk and the submissions. I invite contributions from members.

**Angus MacDonald:** It is disappointing that we have not yet heard from the Scottish Government in response to the letter that we sent on 29 April. However, it may be the case that no news is good news: the Government may be considering the points studiously. That said, it is disappointing that it has not responded to date.

**The Convener:** Are there any more questions?

**Jackson Carlaw:** I will have a glass of whatever Angus MacDonald is on. It obviously breeds optimism. [*Laughter*.]

There is a suggestion that we contact some other organisations. In the first instance, I would really want to hear the Scottish Government's response to our original letter. That might well lead to further information being sought, but I would not want to initiate the process of seeking further information before we had that response.

I think that we should write to the Government, saying that we are slightly disappointed that we were not able to have a response before the summer recess and that it will therefore be some time before we can return to the issue. Had the Government replied timeously, that would have been to our benefit and the petitioner's advantage.

**The Convener:** Do members agree that we should write to the Scottish Government?

**Members** *indicated agreement.*

## Perverse Acquittal (PE1562)

12:15

**The Convener:** The final continued petition today is PE1562, by Alan McLean, on perverse acquittal. Members have a note by the clerk and the submissions. I invite contributions from members.

**Kenny MacAskill:** I think that the petition should be closed. There is a good deal of sympathy for Mr McLean, but—as we see from the Sheriffs Association submission—it would involve a fundamental change in the law of Scotland to change the current position.

I cannot see any merit in writing to ask about the number of times that sheriffs have sent a decision back. In 20 years of practice and seven and a half years as the Cabinet Secretary for Justice, I have never been aware of that having happened. In all likelihood, we would find that it has hardly ever been done. That brings us back to the point that the Sheriffs Association makes: we would be asking one person—the sheriff or judge—to replace a verdict of 15.

We will just have to leave the matter until such time as the Government or the Parliament, through a member's bill, wishes to change the law or until the Bonomy report moves matters further. We have gone as far as we can. With no desire for legislative change, anything else would simply run into the sand.

**The Convener:** If there are no other questions, do members agree with Mr MacAskill's proposal that we close the petition?

**Members** *indicated agreement.*

*Meeting closed at 12:16.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78568-966-6

Revised e-format available
ISBN 978-1-78568-985-7

Printed in Scotland by APS Group Scotland