



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Petitions Committee

**Thursday 10 November 2016**

**Session 5**



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Pàrlamaid na h-Alba

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**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>CONTINUED PETITION.....</b>	<b>2</b>
Shared Space Schemes (Moratorium) (PE1595).....	2
<b>NEW PETITIONS .....</b>	<b>15</b>
Criminal Injuries Compensation Scheme (PE1612).....	15
Museum of Fire (PE1620) .....	22
<b>CONTINUED PETITION.....</b>	<b>24</b>
Game Bird Hunting (Licensing) (PE1615).....	24

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**PUBLIC PETITIONS COMMITTEE**

**6<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Johann Lamont (Glasgow) (Lab)

**DEPUTY CONVENER**

\*Angus MacDonald (Falkirk East) (SNP)

**COMMITTEE MEMBERS**

\*Maurice Corry (West Scotland) (Con)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

\*Brian Whittle (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Graham McKinlay

Humza Yousaf (Minister for Transport and the Islands)

**CLERK TO THE COMMITTEE**

Catherine Fergusson

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Public Petitions Committee

*Thursday 10 November 2016*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Johann Lamont):** I welcome everyone to the sixth meeting in session 5 of the Public Petitions Committee. I remind members and others in the room to switch phones and other devices to silent for the duration of the meeting.

The first agenda item is to consider whether to take agenda item 5, which is discussion of our work programme, in private. Do members agree to consider that item in private?

**Members** *indicated agreement.*

## Continued Petition

### Shared Space Schemes (Moratorium) (PE1595)

09:30

**The Convener:** Agenda item 2 is consideration of a continued petition—petition PE1595, by Alexander Taylor, which calls for a moratorium on shared space schemes.

We will take evidence on the petition from Humza Yousaf, the Minister for Transport and the Islands. The minister is accompanied by two officials: Jill Mulholland of Transport Scotland and Sandy Robinson of the Scottish Government. Welcome to our meeting.

Before we turn to questions, I invite the minister to make any opening comments that he would like to make.

**The Minister for Transport and the Islands (Humza Yousaf):** Thank you, convener.

The Scottish Government is committed, through “Scotland’s Road Safety Framework to 2020”, to achieving safer road travel in Scotland and protecting vulnerable road users such as children, pedestrians, pedal cyclists and people with disabilities, including those with visual impairments.

The framework includes a commitment that stated that the Scottish Government would publish national guidance on designing streets that would focus on the needs of pedestrians of all abilities. The national guidance, “Designing Streets”, which was published in 2010, provides Scottish local authorities with key considerations and guidance for the design and redesign of new and existing streets. It sets out a street-user hierarchy that considers pedestrians first and private vehicles last. It states clearly that the design of all streets and spaces should be inclusive and should provide for all people, regardless of age or ability.

“Designing Streets” acknowledges the important and complex role that streets play in supporting communities and in meeting ambitions in a number of policy areas, from supporting active travel options and improving public health to reducing emissions, increasing footfall and social interaction and, importantly, reducing the speed and dominance of vehicles and creating spaces that all people can access and enjoy. To do that, it promotes a collaborative approach that is based on balanced decisions and the importance of local context and local views.

“Designing Streets” includes information on shared space and sets out some of the design principles behind that concept. It does not actively

promote or recommend shared space; instead, it highlights the potential benefits of creating streets that reduce vehicle dominance, encourage social interaction and create a positive sense of place.

An important element of the guidance in “Designing Streets” is the emphasis on the need to ensure that design is inclusive and the need to consider the needs of those with a disability, particularly people with a visual impairment. The guidance acknowledges that if shared spaces are not designed and developed in careful conjunction with road users, they can pose problems for some blind or partially sighted people, and it emphasises the importance of recognising that people with a disability may require additional supportive measures.

The detailed design of particular schemes that are developed by a local authority must recognise and respond to the needs of all users. Design should be collaborative, and representatives from local disability groups and access panels should be invited to provide input from the early stages and throughout the development stages.

“Designing Streets” sets out the national policy perspective and key design considerations, but how it is implemented and interpreted is a local matter, which needs to respond to the specific circumstances and the local context.

Scotland’s first accessible travel framework, which I launched in September, contains the vision that

“All disabled people can travel with the same freedom, choice, dignity and opportunity as other citizens.”

To achieve that vision, we are committed to listening to people with a disability and involving them in making travel more accessible.

Disabled people told us that this is not just about transport, but about making sure that they can get to transport. Accessible paths and roads, bus stops and stations must be part of that. That is why I am keen that the roads authorities—Transport Scotland for trunk roads and local authorities for their local roads—collaborate and have on-going engagement with local residents, including those with a disability and their representatives, to design better streetscapes for all.

I am, of course, happy to take questions.

**The Convener:** Thank you.

You have established a national policy and you say that it is for local authorities to implement it. I understand that the physical implementation of shared spaces makes sense, but why should there be local interpretation of the policies if simple issues of the rights of disabled people apply throughout the country?

**Humza Yousaf:** There is also some helpful and useful guidance that goes alongside “Designing Streets” and the guidance associated with that. The Society of Chief Officers of Transportation in Scotland has produced from a local level its national roads development guidance, which it thinks should apply to all 32 local authorities, and inclusivity of shared spaces is very much a part of that.

There are examples where shared spaces in local authority areas have worked well and the inclusivity of people with disabilities, including visual impairments, has been part of that from the early inception stage right the way through to development, and there are clearly areas where it could be done better.

We have worked in collaboration with local authorities and SCOTS has produced its guidance, but that is not to say that my mind is closed to seeing how that guidance can be improved. That is why we are here and we have an interest in Mr Taylor’s petition.

**The Convener:** I am trying to establish whether you recognise the national context of the rights of all disabled people, wherever they live, to planning that meets their needs. There might be room for local expression of what shared spaces look like, but there must be pretty fundamental, basic things about the rights of disabled people that apply generally. If schemes are identified that seem to be in contradiction with that, do you see a role for the Scottish Government in addressing that problem?

**Humza Yousaf:** We are always happy to see whether our guidance can be improved. We recognise that level surfaces can cause difficulties for those with a visual impairment, for example, but there are things that can be done to address that. I can come on to that later. If local policy is not meeting the national standards, there is redress. Let us remember that local authorities have public sector duties and have to adhere to the Equality Act 2010, the arbitrators being the Equality and Human Rights Commission and ultimately the courts, and there is redress if either the Scottish or the United Kingdom national guidelines are not being adhered to.

If the suggestion is that the guidance needs to be improved and further flesh needs to be put on it, I am happy to explore that, but there should not be local schemes that contradict national policy. As I said, there are some fundamental duties that local authorities have to adhere to, and if that is not happening, there are enforcement measures.

**The Convener:** It seems quite a significant escalation that somebody has to go to the courts to enforce their rights. I suppose that I am trying to

establish the extent to which the Scottish Government, in its planning guidance, is able to identify basic issues around disability.

I will give you a simple example and seek your response. “Designing Streets” says that there is a preference for controlled crossings for older and visually impaired pedestrians. I think that we would agree that the word “preference” suggests that there is a stronger liking for one option but that other options would be accessible. That characterisation differs from the strong opinions that we have heard and that come across in submissions on the petition. Will you consider changing the language in “Designing Streets” to reflect the strength of opinion that we have heard? It is not a question of a slight preference for one option or the other; there is a strong preference for controlled crossings.

**Humza Yousaf:** If the committee would like me to do that, I will of course do so. I think it is an eminently sensible suggestion. The reason why the word “preference” is used is that there can be other options. For example, there can be tactile paving or very small delineations in the road—25mm, for example—that do not constitute a kerb but are enough of a marked delineation to help somebody who uses a stick.

I am absolutely more than happy to look at the guidance. Having looked at Mr Taylor’s petition and some of the very genuine concerns that he has raised—indeed, I had the chance to speak briefly to him before coming in here—I explored with my officials whether we could work with our partners at Edinburgh Napier University and its transport research institute and perhaps set up a seminar to examine the exact concerns in the petition and find out how we might strengthen the existing guidance notes. There is our own guidance and the SCOTS guidance and, as members might be aware, the United Kingdom Government is doing some work on the back of the report of Lord Holmes of Richmond. If we can take that approach and look at suggestions such as changing some of the wording, as the convener has suggested, or having more detailed discussions on the petitioner’s concerns, I am more than happy to explore that.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I declare an interest, as I am backing the campaign in my constituency with regard to the scheme.

Part of the whole shared space concept seems to be the expected behavioural change by drivers, pedestrians and other users of the space, and a number of submissions talk about the role of eye contact in the use of non-controlled crossings. However, many people such as the visually impaired or those with cognitive issues, learning

disabilities or other conditions are simply not in a position to make such a change.

You used the word “inclusivity” a lot in your opening statement, and you have now mentioned guidance. The scheme that I am talking about is about to go live with a four-way non-controlled crossing, the very thought of which my constituents, particularly the less able, will—to be frank—find terrifying. I know that visually impaired groups and others were not consulted by the local authority in this instance; indeed, that is part of the petition’s whole premise. What could happen if there was no consultation and a scheme went ahead regardless? If people have not been consulted or listened to, is that not a contravention of their rights?

**Humza Yousaf:** As the member will understand, I am reluctant to get into the nitty-gritty of every local decision on every local high street. I cannot, as a Government minister, mandate what happens on every local high street.

That said, I absolutely understand the member’s concerns about the scheme that she as a local representative has highlighted. If what she has described is the case, that is deeply worrying. Whether it is our own guidance, the SCOTS guidance, which is produced by local authorities, or even the Department for Transport guidance, which, although not necessarily applicable, still produces very helpful outputs, it all talks about collaboration with local access panels, local disability groups and so on.

I should point out that “Designing Streets” is predominantly aimed at residential and what we call lightly trafficked streets—although that is not to say that it is not applicable to town centres. As a result, if “Designing Streets” and its associated guidance are being implemented in vehicle-dominated and vehicle-heavy areas such as town centres, consideration will have to be given to those with disabilities and visual impairments. If that has not been done and if the proposal could be dangerous for those people, we would certainly urge the local authority to do more, reconsider things and have further conversations.

In direct answer to what might have been the member’s question, I cannot overturn the local authority’s decision, particularly if there is no planning element. In some regards, that brings us back to the petitioner’s request for a moratorium and in part to why such a measure would not be effective. Many shared space schemes do not require a change in planning, because such spaces have already been designed in that way.

We are always happy to have conversations with local authorities, in this case with East Dunbartonshire Council. The Equality and Human Rights Commission could also be asked to look

into the matter if it was felt that the public sector duties were not being adhered to.

09:45

**Rona Mackay:** I do not mean to put you on the spot, but will you write to the local authority to express your concern about the issue?

**Humza Yousaf:** I will certainly have a conversation with the local authority and I will report back to the member on that. I have no concerns about doing that. Ultimately, I would have to leave the decision on the shared space to the local authority, but I am more than happy to have a conversation with it about the matter. Having read its written submission to the committee, I suspect that it would characterise what it has done on the matter slightly differently from others. Again, it is not for me to be the arbiter in that regard, but it seems to me that if there are genuine concerns about the shared space, the utmost should be done to resolve those and give reassurances in particular to our more vulnerable road users—in this case, those with a disability or a visual impairment.

**Brian Whittle (South Scotland) (Con):** Having looked at examples of shared space schemes that have been introduced in Scotland, we understand that some schemes have had controlled crossings added retrospectively. Deafblind Scotland's submission on the petition notes the difficulties experienced by people who can neither see nor hear traffic and highlighted that deafblind people

"rely on controlled crossings mainly with rotating cones and tactile markings to alert them to cross the road safely."

Deafblind Scotland argues that, without such crossings and other elements of street design, a shared space scheme might take away people's independence,

"leaving them feeling unsafe and lacking confidence, also excluding them from their town centre."

Deafblind Scotland asks why aesthetic appeal should be given priority over safety. Can you respond to that point and set out how the Scottish Government supports the development of design that protects the safety of all users?

**Humza Yousaf:** I do not agree with the premise that aesthetics takes priority over the needs of vulnerable road users. The guidance does not suggest that having a controlled crossing would mean that a space was no longer a shared space, but I know that some have that opinion. If level crossings have to be added to a shared space for the benefit of vulnerable road users, there is no reason why that cannot be done at the design stage. That is why the guidance encourages collaboration and discussion with local access panels and disability groups such as Deafblind

Scotland right from the conception or inception stage of a design idea. If level crossings are necessary in a shared space, there is no reason why they should not be in the design from the very beginning as opposed to being added retrospectively.

**Maurice Corry (West Scotland) (Con):** The other element of shared space schemes is the use of level surfaces. We appreciate that there is a balance to be struck because level surfaces might be beneficial to some but not others. However, a particular concern has been raised about what level surfaces mean for people who use guide dogs or long sticks or canes to navigate the streets, with kerbs being an essential part of that navigation. If there is no kerb, those people cannot feel when they have got to the edge of the pavement. That point is recognised in "Designing Streets" under the heading "Inclusive design", which sets out the role of quality audit and the place for collaborative design. Would you consider strengthening "Designing Streets" or providing supplementary guidance in respect of that issue?

**Humza Yousaf:** Yes is the short answer. Given what committee members have said and the concern that Mr Taylor has raised in his petition, there is definitely merit in our examining all the concerns that have been raised. I have suggested that the best forum for doing that is probably through our working with Edinburgh Napier University's transport research institute. I invite committee members and the petitioner to be involved in that discussion.

Other measures, such as tactile paving, have been put in place in some shared spaces where there is no kerb. Even a slight delineation in the road—a small one of 25mm, for example—has been shown in some instances to provide the necessary delineation to enable somebody using a stick or a guide dog to notice a difference in the level of surfaces, however subtle it might be. Certainly the member's suggestion of exploring that further is a sensible one. We should do that, and I think that we certainly will.

As I mentioned, the DFT is now doing some work on the back of Lord Holmes's report on shared space. Lord Ahmad of Wimbledon is the minister who is leading the response. That is due at the end of the year and I will be very interested to see the outcomes and outputs, which can inform our own discussions here in Scotland.

**The Convener:** It would be helpful to know the timescale for arranging the forum.

**Humza Yousaf:** It would make sense to wait for the DFT response, which is due at the end of the year and could help to inform us. I will of course speak to Edinburgh Napier University—I do not want to commit it to a timescale that it is not able



to meet—but I think that we should look to arrange the forum early next year. If it can be arranged earlier and the committee thinks that there is merit in doing that, I will explore the timescale.

**Angus MacDonald (Falkirk East) (SNP):** One of Sandy Taylor's concerns relates to the sources of funding that are available to assist local authorities in meeting redevelopment costs. Specifically, he mentioned funding allocated by Transport Scotland to Sustrans. His view is that the weighting given to applications for Sustrans funding has contributed to greater focus on meeting the needs of cyclists rather than the needs of other users. I would be interested to hear your view on that.

**Humza Yousaf:** I spoke to Mr Taylor about that before we walked into the meeting and tried to reassure him. In my first six months in this job, I have had many a conversation with Sustrans, as you would imagine. Its commitment to inclusivity and accessibility is beyond question. In everything that the organisation does, it always takes into account how it can assist and include the most vulnerable. That is part of its ethos, primarily in relation to cycling, but it also works with Paths for All and other organisations so walkways and footpaths are part of that conversation.

On the criteria for shared space schemes, any bid that Sustrans supports must comply with the national policy and the design guidance that I have described already—the SCOTS guidance and our own national guidance. That is part of what Sustrans does. I do not think that there is a conflict for it. If a scheme receives assistance and funding from Sustrans, that definitely does not give it carte blanche to ignore the needs of pedestrians and to favour the needs of cyclists, for example. In fact, Sustrans is aware of the road user hierarchy, which puts pedestrians first and the private motor vehicle last. I have read the Sustrans submission to the committee and I thought that it was very powerful. I have no concerns about any potential conflict in relation to shared space schemes.

**Rona Mackay:** Sarah Gayton, a campaigner who has looked at shared space schemes across the UK, has raised concerns about the collection of data on accidents in shared space schemes. Have any such concerns been raised with the Scottish Government?

You spoke about the schemes being primarily in residential areas. The area that the petitioner is referring to is one of the busiest junctions in the west of Scotland, with cars and lorries going through it at alarming speed. It is also a big bus route. It is far from being a residential area.

**Humza Yousaf:** I reiterate that the guidance in "Designing Streets" focuses primarily on lightly trafficked residential spaces. That is not to say that

it explicitly excludes town centres or busier areas, but it makes it clear that in such areas the needs of vulnerable road users must be taken into account and individuals must be reassured as far as possible.

I can tell from reading the written submissions to the committee that disability groups and local access panels are not convinced by the local authority's plans. As I said, I have given the member a commitment to speak to the local authority about that, because it is evident that it is not just the petitioner who is voicing such concerns.

Thankfully, the trajectory of pedestrian injuries and casualties is heading downwards, although even one casualty or fatality on our roads and in our shared spaces is of course one too many. On the member's question, we do not have statistics for casualties that are specific to shared spaces. I will speak to colleagues at Transport Scotland to explore whether it is possible to break down the statistics in that way. I am not convinced that it will be all that easy to do so, but there is no harm in exploring that aspect.

**Brian Whittle:** Following on from that point, if it was feasible to collect reliable accident data to enable us to understand whether the shared space scheme is creating a higher risk, and if certain features of the shared space were found to be associated with a higher risk of accidents, where would you see a role for Scottish Government guidance in reflecting that risk?

**Humza Yousaf:** It is not my understanding that there is a risk, and I have not had any correspondence to suggest that there is one. However, if—hypothetically speaking—the data that we collected showed that there was such a risk, national guidance would have to reflect the reasons for that.

If vulnerable road users were the victims of such incidents, we could use the national guidance to ensure that we put in place additional measures to give those users the reassurance that they needed. For example, we could look at stipulating that level crossings should be put in place, or any other measure that would help to reduce casualties. However, that scenario is uber-hypothetical. We do not yet have the data, and we do not know whether we are able to collect it or what it would reflect. Thus far, I have not had any correspondence to suggest that the existing shared space schemes are more or less dangerous than other spaces on the roads.

**The Convener:** I want to flag up another issue that Sustrans has raised. In its response to the committee on the petition, it states:

"We contend that the introduction of controlled crossings into an infrastructure project in the urban realm causes that

project to cease to be considered a shared-space scheme and become a standard, orthodox treatment for the urban environment, such as can be seen on many high streets in Scotland.”

We have already discussed the fact that “Designing Streets” refers to a “preference” for controlled crossings, and you have accepted that you may need to strengthen the wording. Sustrans contends that putting in place a controlled crossing would stop a street being a shared space. Does that match your understanding of shared space as set out in policies and statements such as “Designing Streets”?

**Humza Yousaf:** Not necessarily—that is simply the opinion of Sustrans. “Designing Streets” does not go into a definition of what a shared space necessarily constitutes and what exactly it is. We give general guidance and it is for local authorities and others to interpret that. If a level crossing was put in a shared space to make it more accessible for vulnerable road users, that should not take away from its being a shared space. I do not share the exact interpretation that Sustrans has set out.

**The Convener:** It is not a level crossing but a controlled crossing.

**Humza Yousaf:** Yes—a controlled crossing or indeed a level crossing. A shared space can have other characteristics and yet still be a shared space. What we are looking at in a shared space is the reduction of vehicle dominance. If that can be produced as the final output, I do not see why it should not be a shared space.

**The Convener:** Do you think that there is an issue in that you fund Sustrans and it has a view that is directly opposed to yours about what happens if controlled crossings are put into shared spaces? It seems to argue that that stops the space being a shared space, and you say that it does not. The petitioner and others are concerned that, because they presumably support Sustrans’s view that we cannot have controlled crossings in shared spaces, their concerns are not being addressed.

10:00

**Humza Yousaf:** It comes down to a matter of interpretation. That is why the recommendation from the petitioners and members round the table to see if we can strengthen the guidance is good, and Sustrans and local authorities should be part of that conversation.

Local authorities should use our national guidance, which we have produced in “Designing Streets”, and the guidance that SCOTS has produced. That should be the overarching guidance, and it suggests that any approach to a shared space should include disability groups. If a level crossing or a controlled crossing is included,

calling that a shared space would give me no concern from a governmental point of view. It is a matter of interpretation. However, I am happy for the guidance on that to be strengthened.

**The Convener:** With respect, it should not be a matter of interpretation. If you are funding Sustrans to deliver on national policy, we would expect it to have a position that understands that. I recognise that you are clearly saying that there is a place for controlled crossings. Sustrans says that, if there is a controlled crossing, that means that there is no longer a shared space. Would it be worth while your exploring with Sustrans its understanding of the impact of putting in controlled crossings on your commitment to shared spaces that are also safe for people with disabilities?

**Humza Yousaf:** Yes. I am more than happy to have a conversation about that with Sustrans. It receives our funding, as many organisations do, but local authorities should look towards the national guidance that we produce and the guidance that SCOTS produces when they are designing their shared spaces, and not necessarily the guidance or interpretation of third-party organisations. They should look at the guidance in “Designing Streets” and the guidance that SCOTS has produced. However, I am, of course, more than happy to take your suggestion, convener, and have a conversation with Sustrans about its understanding of a shared space.

**Brian Whittle:** I want to clarify for my own peace of mind a point that was made earlier. If local authorities are deemed to have contravened an inclusive policy, what would be the Scottish Government’s position on potential action?

**Humza Yousaf:** We are talking about guidance as opposed to what is in statute. As I mentioned earlier, organisations and individuals can seek redress through the Equality and Human Rights Commission. Every local authority must live up to its public sector duties, and if a local authority is seen to be in contravention of that, redress can be sought. There may also be the last resort of going to the courts but, as the convener suggested, the matter should not have to get there. I hope that there would be a resolution before the matter got to that stage. Petitions allow some of the issues to be aired, of course, but as a Government minister, I would not look to impose my view on every high street and local authority in Scotland, for example.

I am more than happy, as has been suggested, to have a conversation with a local authority, where that is appropriate, to express concerns that have been expressed to me and see whether we can come to a resolution on the matter. However, the guidance at the national and local levels is clear that the best approach is to include disability groups and access panels from the very beginning.

**Brian Whittle:** It seems to me that the petitioner has had to go through quite an arduous process to get his views aired. I know that we cannot speak about specifics and that you have already committed to speaking to the local authority, but it seems to me to have been an arduous process. My concern is that many people in the same position would probably give up before they got here.

**Humza Yousaf:** That is a fair point. Perhaps that can be one of the issues that we discuss in the seminar that I have committed to arranging to explore the issues. If there are real issues or concerns rather than just one lone voice—in this case, it seems to me that a number of people share concerns—the process for appealing should be made easier.

Essentially, it is up to local authorities to choose whether to listen to those voices. I say again that I am not making a judgment on a specific or individual case but, if 10 or 20 disability organisations and local access panels are saying the same thing, it would be an abdication of responsibility for the local authority to ignore those concerns or sweep them to the side—that would not be a particularly wise approach. I stress again that I am speaking in general terms and am not making a judgment on the specific case that the petition deals with.

Local authorities should listen to those voices. However, if the guidance needs strengthened to try to encourage that more strongly, we can explore that.

**The Convener:** We now have to think about how to take the petition forward.

The minister says that the guidance is clear, but it seems that, at a local level, it is not clear. There is certainly some dispute with Sustrans and others about what the guidance means. I suggest that we ask the Scottish Government to get back to us with information on how it will seek to strengthen the guidance and respond to the concerns that have been raised. I would also be interested to know whether the Scottish Government will raise the issue in general terms with local authorities. I recognise that we cannot deal with the specific case that is raised in the petition, but we can address the issue more broadly.

Further, I think that we welcome the establishment of the forum, but it would be good if the Scottish Government could get back to us about when it envisions that happening, what the forum's aims will be and what is expected to come out at the other end of the process. Do members have other suggestions?

**Rona Mackay:** I agree with everything that you have said, convener. I would also like to raise the petition with the Equalities and Human Rights

Committee, because I believe that the council that we are talking about is not complying with the Equality Act 2010. It would be good if that committee could give an opinion in that regard.

**The Convener:** I am not sure how we would do that. I think that we need to deal with the issue as opposed to the local authority, because it has not been able to argue its position. The question is whether the guidance is strong enough to protect the rights of people with disabilities and whether shared spaces as an idea are problematic in terms of equalities. When we get information back from the Scottish Government, we might want to refer the petition to another committee. At that point, we would let go of it, as it were.

**Rona Mackay:** I agree with that approach.

**The Convener:** We have also heard from the minister today that there are avenues by which the petitioner can take the issue forward.

As there are no other suggestions, I thank the minister and his officials for their attendance and for the commitments that they have made with regard to addressing the petition. This has been an interesting discussion.

10:07

*Meeting suspended.*

10:11

*On resuming—*

## New Petitions

### Criminal Injuries Compensation Scheme (PE1612)

**The Convener:** Item 3 is the consideration of two new petitions. The first, PE1612, by Graham McKinlay, is on the criminal injuries compensation scheme's same-roof rule. Members have a briefing paper along with a copy of the petition. I am pleased to welcome Mr McKinlay to this morning's meeting. He will speak to the petition and answer any questions that members have, to help our consideration of the petition.

Mr McKinlay, you have an opportunity to make a brief opening statement, after which we will move to questions from members.

**Graham McKinlay:** Thank you for seeing me. I am here today further to my petition on compensation for victims of childhood sexual abuse who have thus far been denied compensation under what is called the same-roof rule.

There are many factors and experiences in our childhood that influence our future path. I have served on a children's panel and have witnessed some pretty awful cases of neglect and cruelty, and I have been a foster carer and have witnessed the trauma that children have had to live with.

I have family members who are alcoholics. With an alcoholic, one can relatively easily spot when they have been drinking, times of sobriety and times of reckless abandon. There is usually some event that triggers the drinking—the loss of a loved one, family breakdown and so on. Their pain is obvious. The path that they walk is usually plain to see.

Sure, we all have good and bad days, but many victims of childhood sexual abuse suffer in silence. They have been abused, betrayed and let down. Often, they have been threatened to make them keep quiet—told to tell no one, or else. They experience the mental anguish that is suffered by alcoholics or those with mental health issues, for example. However, to an outsider, or even to close family members, the cause of their anguish and their pain is often hard to establish.

It is a time of silence for such victims. They dare not speak for fear of retribution. However, worse than that is the fear that, somehow, they have only themselves to blame. The abuse leaves victims feeling dirty, ashamed and worthless. They wonder, "What will happen to me if I tell my mother? What will happen to my siblings? Where does that leave me? Surely I am damaged goods.

I have been mentally and physically abused. Who would ever want to love me for me, with all the baggage that has been forced on me? If I tell someone, will they believe me? Will they help me? What help is out there? Who can I turn to, and who can I trust?"

For many reasons, many victims of childhood sexual abuse remain silent. It affects their whole lives. It affects their mental health and it can affect their physical health. Studies have shown that victims often have more medical problems and may even have a shorter lifespan because of the abuse.

10:15

I know that. I had a great childhood. I was not aware of childhood sexual abuse until I met Linda, whom I was to marry and be with for some 25 years. Linda had been abused by her father from a very early age up until she ran away from home on the day of her 16th birthday. It was a year or so after we had been together that Linda felt able to tell me about the abuse.

Linda got help and, by and large, it worked, but it did not stop the memories, the feeling of fear or the feeling of being used and of being worthless, nor did it stop the nightmares, the sense of shame or the feeling of being in some way to blame.

Linda died at the age of 58 three years ago. Poor health and terrible memories were with her every day. I am seeking not just financial compensation for such victims but something that is perhaps more important: recognition of the wrongs that were inflicted on them. To explain being abused as a child is, quite honestly, beyond any words. It involves being let down by family and by everyone else, including themselves. It involves being let down by a system that discriminates against victims because of some arbitrary dates, which have been chosen as a money-saving scheme. Linda, along with so many others, was let down by the powers that be.

I am here in Parliament, and I ask—as I request in my petition—that you give help to those who are presently excluded under the so-called same-roof rule. It is not fair, it is wrong and it must be changed. I, along with many others, have tried over many years to have the rule abolished. This is the very place—the very building—that contains the very people who have the power to bring about such a change.

The law applies equally to all. No one is above the law. All persons shall be equal before the law—apart, it seems, from those victims who have so far been denied compensation.

The issue is not just about money; it is about recognition for what happened to all those who still

suffer, many years after they were abused. I most respectfully ask for your help.

**The Convener:** Thank you very much for that. I appreciate your thoughtfulness. Given that the issue is personal to you, I know how difficult that must have been for you. I very much appreciate your statement, which was very powerful.

I want to start by asking about some of the technicalities. You suggested that there is a cut-off date simply because of financial considerations. Can you help us to understand why 1 October 1979 was chosen as the cut-off date? What was the thinking behind that?

**Graham McKinlay:** I have tried relentlessly to find that out, as have other people who have been involved in the process, including solicitors, MSPs and MPs. Nobody can give me any reason for that arbitrary date.

**The Convener:** That is the first thing that we can pursue.

**Rona Mackay:** Your petition suggests two options for making a change to enable people to claim compensation for injuries that they have suffered. We will try to tease out a bit of detail on each of those options as we go on. Do you have a particular preference for one option over the other?

**Graham McKinlay:** Not really. I think that recognition is the primary objective. Whether victims get a lump sum from whatever source or whether they get what they are entitled to through the criminal injuries compensation scheme is, in many ways, irrelevant. What is important is that they get recognition and some acknowledgement that they have not been excluded from what other people can get by law and by rights.

**Rona Mackay:** So you flag up both options, but you do not have a preference for one over the other.

**Graham McKinlay:** None whatever.

Having said that, I am aware that the money would come out of the public purse, as it were. That is at the back of my mind as well.

**Maurice Corry:** It was very interesting to hear what you had to say in your statement. You offer two suggestions in your petition. The first is to seek a change in the rules that are applicable to Scotland. How do you envisage that that might happen? Our briefing paper refers to the eligibility criteria that are set out in paragraphs 19 and 20 of the current scheme—the criminal injuries compensation scheme 2012. Could the wording be adjusted to say that those provisions do not apply to Scotland?

**Graham McKinlay:** I understand that that could happen. Money that is paid through the criminal

injuries compensation scheme to victims in Scotland comes out of the Scottish purse, so it might be simple to add to the 2012 regulations that those eligibility provisions do not apply in Scotland.

**Angus MacDonald:** As we know, the eligibility restrictions under the same-roof rule are less restrictive for cases after 1 October 1979 and apply only to adults after that date. Unfortunately, however, that position does not apply retrospectively back to 1964. We know that the power to establish a separate scheme for Scotland lies within the devolved competence of the Scottish Parliament. Clearly, we need to find out what the Scottish Government's position is on that. You suggest that the Scottish Parliament could create a separate mechanism to ensure that individuals who are unable to claim under the present scheme are fully compensated for their injuries. Have you considered how such a mechanism might work? Who would administer it and would it mean complete withdrawal from the existing scheme?

**Graham McKinlay:** I do not think that complete withdrawal from the existing scheme would be needed. I have spoken to the Criminal Injuries Compensation Authority and I think that it would be able to provide a list of people who have been refused under the same-roof rule. That would make it possible to re-examine those cases and make a decision on them, but I am not certain exactly who would do that. However, the Criminal Injuries Compensation Authority could provide a list of people and provide reasons as to why claims were refused. If a claim was refused only because of the same-roof rule, I think that that would be reasonably simple to remedy.

**Angus MacDonald:** Excluding the same-roof rule, do you think that the existing scheme works?

**Graham McKinlay:** It does, by and large, but there are inequalities in it. There are different compensation rates that depend on the nature of the injury and its long-lasting effects. Generally, the criminal injuries compensation scheme could do with an overall. I am not sure that it is up to date or as fair to everyone, not just victims of sexual abuse, as it could be. It possibly needs re-examined.

**Brian Whittle:** Our briefing on the petition notes that the same-roof rule was introduced to prevent offenders from benefiting from compensation paid to victims who lived with them and that, for cost and other reasons, successive Governments have decided not to change the rule. What is your view on the issue of preventing offenders from benefiting and on the reasons that the Government has given for not changing the rule?

**Graham McKinlay:** The Government's reason for not changing the rule is to save money, to put it bluntly. With regard to preventing offenders from benefiting from compensation, if a father abused his daughter and she received money in compensation for that, it is understandable that the perpetrator should not be able to benefit by getting his hands on that money. However, that may be a slightly misleading example, because I do not think that anybody paying out compensation money would do so to someone who was too young or if someone else could have access to it. I therefore do not think that there is a desperately valid reason for the rule.

**Brian Whittle:** Can you say a little bit about your view that changes to the rule were not applied retrospectively because it was consistent with the general Government approach that rule changes apply to future claimants?

**Graham McKinlay:** I am still uncertain as to why those specific dates exist. I am not sure why the change was not made retrospective. I am just at a loss as to why that happened and cannot explain it, but I am angry that it happened. Had my wife's claim been successful at the time, the petition would not have taken place. However, I know from having spoken to many other victims, support groups, solicitors and the like that there are still a number of people out there who have been denied what the petition seeks. I am not sure whether that answers your question.

**Brian Whittle:** That is fine—thank you.

**Angus MacDonald:** This may be a bit of an unfair question, so I will understand if you are unable to answer. Are you aware of any financial projections of how much money would be required to meet any claims in respect of abuse prior to 1979 if retrospective claims were allowed?

**Graham McKinlay:** In its annual report, the Criminal Injuries Compensation Authority publishes the number of claims that have been refused. I cannot remember the exact numbers but, given the ages that the victims are now, I do not think that there would be many and I do not think that the figure would be millions of pounds.

An alternative way of ensuring that whatever budget was set was adhered to would be to put a limit on individual claims. That figure might be considerably less than a claimant would get under the criminal injuries compensation scheme. However, if Scotland said that it would pay out in retrospective cases but that each claim would be limited to £5,000 or whatever, that would be one way of ensuring that the budget was not blown out of all proportion.

**The Convener:** Can you clarify the sense of injustice that people feel about the fact that, if someone was abused by their father in their own

home while they were living together as a family, they would not qualify for compensation whereas, if the father was estranged and living somewhere else, they would?

**Graham McKinlay:** I had a conversation about that earlier today, in a discussion about where the line should be drawn. Each case is looked at on its merits, but there is a sense of injustice when a person who was abused on one occasion by a television celebrity receives many thousands of pounds, whereas someone who was abused from age two to age 16 receives nothing because they were abused by a family member under the same roof. That is where the injustice is more apparent and more personal to me.

**The Convener:** I have been aware of that issue more generally. Survivors feel quite strongly about the attention that is sometimes paid to celebrities, sadly, in order to focus on things that are happening.

I am interested in what you say about the flaws in the criminal injuries compensation scheme. Many years ago, I dealt with a case in which someone had suffered terrible trauma—there had been a murder in his family—but his compensation was reduced because he had a conviction for a breach of the peace or something, which was probably related to the trauma of what had happened in his family. Do you have a view on the general way in which compensation is reduced according to a tariff? Would you like that issue to be looked at, too?

**Graham McKinlay:** There is possibly a good reason for having the tariff. One of the reasons for its existence is possibly that it is not fair for someone to benefit if they have committed crimes themselves for which other people have been compensated. I think that there is a need to look at the background and history of the individual who applies. Does that answer your question?

**The Convener:** Absolutely. Among other issues, you highlight the impact on somebody who is a survivor or victim of this kind of abuse. You will know that there is a national inquiry into historic cases of abuse against people in care. Do you think that the issues that you are highlighting should be fed in—not into that inquiry, because the abuse that you are talking about happened in the home—or presented to Government in the context of its broader strategy for dealing with people who are victims of abuse?

**Graham McKinlay:** I think so. I spoke to Susan O'Brien QC, who was the chair at the time, and I had correspondence with the inquiry. I think that the inquiry is superb but it obviously relates to people who have been in foster care or an institution. I would like its remit to be expanded to take account of victims who have been abused

outwith the particular areas that are being looked at.

**The Convener:** Their childhood sense of not being believed and being frightened is compounded by a system that says that their abuse does not fit into the hierarchy of abuse that it is looking at.

**Graham McKinlay:** Exactly.

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

10:30

**Brian Whittle:** I am puzzled by the idea of not getting compensation because the victim lived within the environment in which they were abused. It seems to be highly unlikely that, if such abuse was highlighted, they would remain within that environment.

**Graham McKinlay:** I understand what you are saying. My wife was abused and lived under the same family roof because there was nowhere else for her to go because she was scared to speak out. She did not speak about it until she was in her late 30s or early 40s. That is where the problem arises. Nowadays, if a child of 14 was abused and social work, the police and everybody else became involved, either the child or the perpetrator would be removed from the home. There are now a lot more safeguards, especially for younger children. However, we are really talking about victims who were not able to speak out at the time of the abuse.

People aged 80 are coming forward to say that they were abused and have lived with it all these years.

**Brian Whittle:** My point was that if abuse came to light, the likelihood is that one or the other would not be allowed to remain in the environment.

**Graham McKinlay:** Correct. One would certainly like to think that that is true nowadays.

**The Convener:** Do you have any concluding comments before the committee tries to pull things together?

**Graham McKinlay:** No. I hope that I have been able to answer your questions and explain what we are looking for.

**The Convener:** Thank you. Do members have views on how we can take the petition forward?

**Brian Whittle:** The obvious thing to do is to establish why that date was set. Who would we ask? The petitioner has commented that he has been unable to find out.

**The Convener:** It would be worth asking the Scottish Government for its comments more generally. The Criminal Injuries Compensation Authority might also be able to address the questions and the broader points that have been highlighted about its willingness to review its processes.

**Graham McKinlay:** I have notes that go back many years. I have written to the Ministry of Justice and every other Government department, including David Cameron, who was Prime Minister at the time, to establish why the dates were set. Nobody can tell me.

**The Convener:** Even if we were able to get them to accept that the date is arbitrary, that might be something. It would be interesting to see comments on that. From the information that we have, even when the issue has been highlighted to successive Governments, they have not been willing to shift on it. It would be interesting to know what the thinking on that is. Some of it is about preventing the perpetrator from benefiting from a scheme that is meant to protect victims.

Is there anything else that the committee wants to do?

**Maurice Corry:** Seeking the views of the Survivors Trust and Victim Support Scotland is important. We need to dig down a bit on some of the points that Mr McKinlay has brought out because that will be our argument against the date problem.

**The Convener:** Perhaps, with the clerks' help, we could look at what survivors organisations would have an interest. There is clearly a range of organisations for those who were abused while they were in care, but there is a sense that there has not been as much focus on those who were abused in the family, in terms of recompense and recognising their challenges.

There is quite a lot there for us to investigate. As we seem to be agreed on our course of action, I thank you for your attendance, Mr McKinlay. Once we have responses, we will get back to you to keep you informed of the petition's progress.

**Graham McKinlay:** Thank you.

### **Museum of Fire (PE1620)**

**The Convener:** PE1620, on the museum of fire, by Colin Fraser on behalf of the friends of the museum of fire, calls on the Scottish Government to meet the Scottish Fire and Rescue Service to discuss the future of the museum of fire, including its collection and location, in the context of the national strategy for Scotland's museums and galleries.

Members will note that we have received copies of correspondence between Gordon Lindhurst MSP and the chief fire officer.

Members will see from the meeting papers that since the petition was lodged the building in which the museum of fire is located has been sold to the University of Edinburgh.

The petitioner has provided a written submission to explain that the friends of the museum of fire have met the Scottish Fire and Rescue Service to agree a way forward for the museum. As such, the petitioner has indicated that he would like to withdraw the petition.

Do members have any comments or suggestions on how we deal with the petition?

**Rona Mackay:** Given that the petitioner has indicated his intention to withdraw the petition, I would have thought that it would be in order for us to close it.

**The Convener:** We can, as has been suggested by the clerks, close the petition under rule 15.7 of the standing orders, on the basis that the petitioner has indicated that he would like to withdraw the petition because the museum volunteers have come to an agreement with the SFRS on the museum's future. Do members agree to close the petition?

*Members indicated agreement.*

**The Convener:** We thank the petitioner for bringing the petition before us.

## Continued Petition

### Game Bird Hunting (Licensing) (PE1615)

**The Convener:** Agenda item 4 is consideration of a continued petition, PE1615, on a state regulated system for game bird hunting in Scotland.

I want members to note that we have received correspondence from Tim Baynes, director of the Scottish moorland group, which is part of Scottish Land & Estates, and Dr Colin B Shedden, Scotland director of the British Association for Shooting and Conservation, highlighting some of their concerns about the evidence that we received at our previous meeting when we considered the petition and discussed the option of referring it to the Environment, Climate Change and Land Reform Committee for consideration as part of its scrutiny of the wildlife crime annual report.

Before deciding whether to refer the petition on, we asked the clerks for updates on the anticipated timescales for publication and consideration of that report. Updates have been received, as members will have seen from their papers, so we are now asked to consider what action we wish to take. Do members have any comments on the best way to proceed?

**Brian Whittle:** Will you clarify a matter for me, convener? If we refer the petition on to another committee, it will be outwith our control, will it not?

**The Convener:** Yes. My view is that it would probably be useful to refer the petition to the Environment, Climate Change and Land Reform Committee and to highlight to it the correspondence that we have received in response to the evidence that we have heard. We can be reassured that, if that committee took evidence, it would do so from all sides of the issue. It would not simply be a matter of the committee having the evidence that we have heard. I am sure that it would want to take evidence from those who have corresponded with us.

**Angus MacDonald:** You referred to the correspondence that we have received from the Scottish moorland group and the British Association for Shooting and Conservation. In the interests of our committee maintaining balance and impartiality, had there not been a suggestion to refer the petition to the Environment, Climate Change and Land Reform Committee, I would have been keen to allow those two bodies to come in and give their side of the argument. It might be helpful—or not—to the Environment, Climate Change and Land Reform Committee if that were done by this committee in advance of the petition



being referred on to it. Obviously, it would be an option for that committee to hear that evidence if it so wished. If that were to be the case, I would be happy to refer the petition to it right away. However, given that our committee has taken evidence from one side of the argument, it would only be fair to take evidence from the other side of the argument.

**The Convener:** Do members have views on that?

**Brian Whittle:** I agree with Angus MacDonald.

**Rona Mackay:** I agree; that makes sense.

**Maurice Corry:** I agree. Regulations are in place that can be enacted. Taking account of everything that I have read on the topic, it is really down to the strength of the authorities to implement the regulations and bring people to book.

**Brian Whittle:** It is about their ability to do that.

**Maurice Corry:** Absolutely. It is not only about the person who has perpetrated the crime being called to justice, but about the landowner being called to justice.

Angus MacDonald is right: if we saw one side of the argument, we need to see the other side.

**Brian Whittle:** At least that would allow us to refer a much clearer picture to the other committee.

**The Convener:** That does not cut across the timescales that the Environment, Climate Change and Land Reform Committee has for dealing with the petition, does it?

**Catherine Fergusson (Clerk):** Not as far as I know, convener.

**The Convener:** Clearly, the committee has taken a view. Either way, we see the petition going to the Environment, Climate Change and Land Reform Committee. In order for us to ensure fairness and balance, which is very much the feeling that comes out of the correspondence, there should be an opportunity for the Public Petitions Committee to hear the other evidence. Once we have done that, we can refer the petition on. Is that agreed?

**Members indicated agreement.**

**The Convener:** Thank you. That ends the public part of the meeting, and I ask that members of the public leave to allow the committee to move into private session.

10:39

*Meeting continued in private until 11:13.*



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