



OFFICIAL REPORT
AITHISG OIFIGEIL

Citizen Participation and Public Petitions Committee

Wednesday 3 May 2023

Session 6



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CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE

7th Meeting 2023, Session 6

CONVENER

*Jackson Carlaw (Eastwood) (Con)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

*Foyso Choudhury (Lothian) (Lab)

*Fergus Ewing (Inverness and Nairn) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Citizen Participation and Public Petitions Committee

Wednesday 3 May 2023

[The Convener opened the meeting at 09:34]

Interests

The Convener (Jackson Carlaw): Good morning, and welcome to this meeting of the Citizen Participation and Public Petitions Committee. If you are joining us this morning, it is a great pleasure to have you with us.

Our first agenda item is a declaration of interests following the resignation from the committee of Carol Mochan. I am sorry to say that Carol was with us for only a short time, but we very much appreciated her contribution and her valuable insights to the work of the committee during her time with us. I have pleasure in welcoming to the committee, in her place, Foysoy Choudhury MSP. The first item of business this morning is to invite Mr Choudhury to declare any relevant interests.

Foysoy Choudhury (Lothian) (Lab): I do not have any.

The Convener: Thank you. So any interests that you have are as they are recorded in the register of members' interests.

Foysoy Choudhury: There is nothing relevant to the committee.

Continued Petitions

Unborn Victims of Violence (PE1887)

09:35

The Convener: Agenda item 2 is consideration of continued petitions, the first of which, PE1887, was lodged by Nicola Murray and calls on the Scottish Parliament to urge the Scottish Government to create an unborn victims of violence act, creating a specific offence that enables courts to hand down longer sentences for perpetrators of domestic violence that causes miscarriage.

At our previous consideration of the petition, on 23 November 2022, we heard evidence from the petitioner, Nicola Murray, and key stakeholders. The committee agreed to recommend that the Scottish Government creates a specific statutory offence and/or aggravator for causing miscarriage through acts of domestic violence. We also recommended that, in its forthcoming report on the provisions of the Domestic Abuse (Scotland) Act 2018, the Scottish Government should include a review and evaluation of the effectiveness of the current legal framework in bringing forward and prosecuting charges where miscarriage is caused.

The committee also wrote to the Scottish Sentencing Council, requesting that the evidence gathered be taken into account as part of the council's development of sentencing guidelines. We have since had confirmation from the SSC that it will consider the committee's evidence as part of its work.

The response from the then Cabinet Secretary for Justice and Veterans was that he would take time to fully consider the implications of any proposed changes before considering any next steps, including the potential for wider consultation. He said that officials were already exploring potential policy options and that he would welcome meeting the petitioner once that work is concluded. The cabinet secretary's response refers to a recent report on the Domestic Abuse (Scotland) Act 2018 but notes that it

"does not include a review of the effectiveness of the current framework in bringing forward and prosecuting charges where miscarriage is caused."

A little bit of work has taken place and been forthcoming in the wake of the evidence that we took from Nicola Murray. Do members have any questions, comments or suggestions that we might consider in relation to that?

David Torrance (Kirkcaldy) (SNP): Would the committee agree to seek a debate in the chamber, if we can find time in the busy parliamentary

schedule, to raise the issues that were raised in the petition?

The Convener: Do we agree with that suggestion? Having investigated that speculatively, I understand that it could be later in the autumn before the opportunity arises, which I suppose would allow us to pursue any outcomes that might be forthcoming from the on-going investigations, so that we have all that information before us at the time of the debate. Are we agreed?

Members indicated agreement.

Free Rail Travel (Disabled People) (PE1928)

The Convener: PE1928, which was lodged by David Gallant, calls on the Scottish Parliament to urge the Scottish Government to provide free rail travel for disabled people who meet the qualifications for free bus travel. We last considered the petition on 21 December 2022, when we heard evidence from the petitioner and Sight Scotland, and we agreed to write to the Scottish Government.

At the time, we agreed to wait until responses had been received from the local authorities that offer discount fares for companion travel before writing to the Scottish Government. I am pleased to say that we have now received responses from Strathclyde Partnership for Transport, West Lothian Council and Fife Council. Those responses highlight the financial pressures that are faced in operating the existing concessionary fares travel scheme, with West Lothian Council actually removing its rail concession scheme as part of its budget-saving measures.

Previously, the committee agreed to write to the Scottish Government to ask what consideration it is giving to introducing a national policy for companion rail travel—you may recall that there were issues depending on where people accessed and alighted from trains—and to ask it to confirm that the fair fares review would consider free travel for companions and people with disabilities.

We have received a submission from the petitioner ahead of this morning's meeting. He does not feel that the local authorities' responses were relevant to the aims of his petition and has suggested that free rail travel for disabled people could be restricted to specific routes or localities in order to benefit those who live in more rural areas.

In the light of the comments that we have received, do members have any comments or suggestions relating to the petition that we might consider for further action?

David Torrance: I suggest that the committee writes to the Scottish Government, as previously

agreed, to ask what consideration has been given to the introduction of a national policy for companion rail travel and to seek confirmation that the fair fares review will consider the option of extending the national entitlement card scheme to provide free rail travel as well as bus travel for people with disabilities.

Alexander Stewart (Mid Scotland and Fife) (Con): We got information from some councils, which was useful. In that correspondence, the committee might also want to highlight the responses that we received from West Lothian Council and Fife Council, because they had an impact. I am content with David Torrance's suggestion.

The Convener: Are members generally content with the proposals that have been made?

Members indicated agreement.

Redress Scheme (Fornethy House Residential School) (PE1933)

The Convener: PE1933, which is an important petition for the committee, was lodged by Iris Tinto on behalf of the Fornethy survivors group. The petition calls on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's redress scheme to allow Fornethy survivors to seek redress.

We previously considered the petition at our meeting on 23 November 2022. We agreed to write to the Scottish Government, setting out the evidence that we had gathered and specifically recommending that action be taken to widen the current eligibility criteria of Scotland's redress scheme to ensure that victims of the same type of crime, committed over shorter periods and in different care settings, are eligible for redress under the scheme.

The committee received a response from the then Deputy First Minister, John Swinney, which indicated that work was under way to test the existing eligibility criteria and guidance in relation to Fornethy and that we would receive a further update when that analysis was completed.

We have also received a submission from the petitioner, who is concerned that the matter might disappear into the long grass as a result of the recent changes in Government. The petitioner's submission also requests clarification on the cut-off date for a person who was in care and who seeks to access the redress scheme.

Fergus Ewing (Inverness and Nairn) (SNP): I wonder whether we might invite the Deputy First Minister to give evidence at a future meeting. MSPs from across the parties have expressed strong feelings on the issue. Time is marching on, and the petition is quite old. The sooner the

Deputy First Minister can give evidence, the better, out of consideration of the additional pain that is being caused to those who are impacted by the continuing delay and uncertainty. I just add that caveat.

The Convener: I suggest that, just in case the current Deputy First Minister is not familiar with all the issues for whatever reason, we restate some of what we said in the letter to the previous Deputy First Minister and the response that we received at that time, to underpin why we now seek to meet the Deputy First Minister herself.

David, do you want to add to that?

David Torrance: No.

The Convener: Are we all content with those suggestions?

Members indicated agreement.

Peat (Ban on Extraction and Use in Horticulture) (PE1945)

The Convener: PE1945, lodged by Elizabeth Otway, calls on the Scottish Parliament to urge the Scottish Government to place a legal ban on the extraction of peat and on peat imports, exports and sales in order to protect peatlands in Scotland and worldwide.

The Scottish Government's submission from last November highlights the fact that the revised draft national planning framework 4 prohibits new commercial peat extraction except in limited circumstances. Since that submission was received, NPF4 has been approved.

In its submission, the Scottish Government said that it had been working with the industry to understand "transitional issues" and that a consultation to remove peat from Scottish horticulture was expected to begin in December 2022 but that it would not be possible to implement a sales ban by 2023. The submission said that a

"delivery plan and timetable for phasing out horticultural peat"

would be developed after the consultation responses had been analysed and discussions with industry and environmental non-governmental organisations had taken place. The Scottish Government consultation was launched in February, in fact, and it closes shortly, on 12 May.

The Scottish Crofting Federation's submission urges the Scottish Government to restrict any ban on peat to horticultural sales and imports and the commercial extraction of peat for burning, while protecting the traditional rights of crofters to extract peat on a small scale for personal use.

Do members have any questions or comments?

09:45

Alexander Stewart: It is important that we write to the Scottish Government seeking a summary of responses that it has had to date to its consultation and an update on when the delivery plan and timescale for phasing out horticultural peat will be developed and produced, in light of the consultation responses. We should also seek information on whether the Government supports a legal ban on the import, sale and use of horticultural peat and the commercial extraction of peat for burning, with the exception of crofters' traditional and cultural use.

The Convener: Do other colleagues want to comment?

Fergus Ewing: I am pleased that the Scottish Crofting Federation emphasised the importance of exempting crofters from any ban of the traditional practice of burning peat for domestic use on a small scale, which is part of the history and culture of the Western Isles. I am sure that there would be threats of direct action were the ban to be extended to that practice, and I would certainly be there, manning the barricades, having recently developed a taste for direct action.

The Convener: You would be ripping the sod, to extend your current penchant for ripping into things. Out of interest, Mr Ewing, in your experience, is peat traditionally extracted from the crofters' own land? Where do crofters take the peat from for domestic use?

Fergus Ewing: It is a community effort. It is usually done by more than one person in a particular way. I think that, by and large, community land is used rather than individual land. However, I am not sure—I am no expert on it.

The Convener: Are members content with the suggestions that have been made?

Members indicated agreement.

Homeless Temporary Accommodation (Scottish Government Funding) (PE1946)

The Convener: PE1946, which was lodged by Sean Clerkin, calls on the Scottish Parliament to urge the Scottish Government to use general taxation to pay for all charges for homeless temporary accommodation, including writing off the £33.3 million debt that is owed by homeless people for temporary accommodation to local authorities.

Since our previous consideration of the petition, the Scottish Government's temporary accommodation task and finish group published its report on 30 March this year. The group made two recommendations about charges for temporary accommodation, and those are available in the clerk's note. In response to our recent

correspondence, the Scottish Government stated that

“provisions to prohibit local authorities from charging individuals for the provision of temporary accommodation have not been considered for inclusion”

in the housing bill, and that it has

“no plans to pay for homeless temporary accommodation nor waive the outstanding debt owed”.

Shelter Scotland’s written submission outlines a number of issues, including its view that a change in the financing of temporary accommodation is overdue. The petitioner’s recent submissions highlight concerns about the repossession of family homes resulting in record amounts of homelessness in Scotland, and his submission outlines information that has been received through a freedom of information request to Glasgow City Council. He states that the system is “unworkable and broken now” and that means that thousands of people need help immediately.

I invite colleagues to suggest any way in which we might proceed.

David Torrance: Should the committee write to the Scottish Government to seek confirmation of its planned work in response to the report of the temporary accommodation task and finish group? In particular, the committee should ask about recommendations 14 and 15, as they relate to temporary accommodation charges.

The Convener: As members have no more suggestions, are we content to proceed with writing to the Scottish Government as Mr Torrance has suggested?

Members indicated agreement.

Dual Mandate MSPs (PE1949)

The Convener: PE1949, which was lodged by Alexander James Dickson, calls on the Scottish Parliament to urge the Scottish Government to review the rules regarding MSPs with a dual mandate and to legislate to bring the Scottish Parliament in line with the Senedd and Stormont by preventing MSPs from holding a dual mandate in time for the next Scottish Parliament elections.

We previously considered the petition on 9 November, when we agreed to write to the Welsh Parliament, the Northern Ireland Assembly and the Electoral Reform Society. We also noted the Scottish Government’s view that the matter is one for the Parliament to consider.

We have now received responses from our colleagues in other devolved institutions. Members will have noted that the United Kingdom Government introduced legislation to prevent a member of the Northern Ireland Assembly from simultaneously being a member of the UK House

of Commons or of the lower house of the Irish Parliament. Similar legislation in Wales was introduced by the Senedd Commission, which is the equivalent of the Scottish Parliamentary Corporate Body. It appears that, if the Scottish Government has no appetite to pursue the matter, we should consider what options are available to allow the Parliament to give the matter further consideration.

I always observe that ministers hold a dual mandate, in that they have a second responsibility as well as that of being an MSP.

Do colleagues have any suggestions?

Alexander Stewart: Under the circumstances, I think that it would be better if we referred the petition to the Standards, Procedures and Public Appointments Committee, because it will have more opportunity than this committee will to look into and investigate the matter, which might result in more information. Therefore, under rule 15.6 of standing orders, I suggest that we hand the petition to that committee and ask it to take further action on it.

The Convener: Do members agree to that?

Members indicated agreement.

The Convener: For the record, I state that I am a member of the Scottish Parliamentary Corporate Body, even though, in this instance, the recommendation is to send the petition to a different committee.

Motorcycle Theft (PE1971)

The Convener: PE1971, on taking robust action to stop motorcycle theft, was lodged by Kenneth Clayton. The petition calls on the Scottish Parliament to urge the Scottish Government to prevent and reduce motorcycle theft by empowering the police to pursue and tactically engage thieves, and by reviewing sentencing policy to allow the courts to implement tougher punishment for those convicted of motorcycle theft, including the use of mandatory custodial sentences for those carrying weapons or groups who threaten individuals with violence.

We most recently considered the petition on 21 December, when we agreed to seek information from Police Scotland, the Scottish Police Authority and the Crown Office and Procurator Fiscal Service. Police Scotland has provided further detail on operation Soteria, which focused on tackling motorcycle theft and related antisocial behaviour across Edinburgh. Police Scotland also shared information on the work that its prevention, interventions and partnership team, in collaboration with others, is taking forward on the issue, which members will have read with interest.

The Crown Office and Procurator Fiscal Service noted that there is no specific common-law offence of theft of a motorcycle but that it had used its database to identify 47 charges related to motorcycle theft over the past five years. Interestingly, it also noted that 32 per cent of the relevant police reports originated from the Edinburgh area, where operation Soteria was in place.

The Scottish Police Authority's response mentions that recent reports highlight an overall increase in vehicle crime but that that is not specifically attributed to motorcycle theft. The SPA also noted that, in the past year, more than 1,800 motorcycle riders have been stopped in order to engage, educate and encourage what are described as appropriate attitudes and behaviours on the road.

Do members have any comments or suggestions for action?

Fergus Ewing: I suggest that we write to the Scottish Courts and Tribunals Service to seek information on the outcomes of the 47 prosecutions that are referenced in the response from the Crown Office and Procurator Fiscal Service. I make that recommendation because I noted in our papers a reference to the fact that the incidence of motorcycle theft in Edinburgh has led to advice being given to tourists not to visit Edinburgh. That is a particular concern, not to mention that theft is, of course, a serious matter—

The Convener: Is that advice being given only to motorcyclists or to tourists in general?

Fergus Ewing: Our notes indicate that some sort of tourist advisory group has given advice that riders should avoid travelling to Edinburgh. That is quite serious. None of us wishes people to be deterred from visiting Scotland for reasons of that nature. In deference to the petitioner and for the reasons that I have mentioned, I think that it would be worth making a further effort to explore the issue.

The Convener: Are members content for the committee to write to the Scottish Courts and Tribunals Service to establish what happened in relation to the prosecutions?

Foyso Choudhury wants to say something.

Foyso Choudhury: I apologise for coming in late. I was stuck in the car park.

The Convener: Not on a motorcycle, I trust. *[Laughter.]*

Foyso Choudhury: No. I have had quite a lot of cases of motorcycle theft. Can we ask how many of those who have committed that crime are waiting to go to court and how long the waiting

time is? A lot of the time, the same person comes back and carries out the same act.

The Convener: What would be the best way to frame that question? Should we ask the Scottish Courts and Tribunals Service that question at the same time as we make the inquiry that Mr Ewing has suggested? Are we asking whether it can give any indication of the current volume of cases and the waiting times that are associated with such charges getting to court?

Do we agree to take that approach?

Members indicated agreement.

New Petitions

Fast Food Chains (Reward Systems) (PE2003)

09:56

The Convener: The next item is consideration of new petitions. As I always do for the benefit of those who might be joining us online to watch our consideration of their petition, I indicate that, ahead of a petition's first consideration, we seek an initial view from the Scottish Government and a briefing from the Scottish Parliament information centre, or SPICe, which is the Parliament's impartial research service. That will not necessarily determine the committee's view, but it does mean that, rather than our just going through the motions of suggesting that we get a briefing, we have anticipated that that will be our course of action and will, therefore, have the evidence already before us.

The first new petition is PE2003, which was lodged by Lewis McMartin. The petition calls on the Scottish Parliament to urge the Scottish Government to stop fast food chains promoting unhealthy food choices by banning the use of reward systems. The Scottish Government's response outlines its current work to restrict the promotion of food and drink that is high in fat, sugar or salt. When consulting on its planned legislation on the issue, promotional reward systems were not specifically discussed, but it remained open to views on whether such other types of promotions should be restricted beyond those set out in the consultation. The Government is considering responses to the consultation and will publish an external analysis report.

Has the consultation concluded? I am told by the clerks that the consultation has now closed, so it is too late to suggest that the petitioner contributes to it. I am also told that the petitioner is aware of that fact. That is fine.

I felt that the term "fast food" was rather loose in its definition. There are fast food salad bars now. I was not sure whether the petitioner quite articulated who he was specifically targeting. Do we have any suggestions?

Alexander Stewart: I agree with that, convener. The term is open to interpretation, which creates difficulties for us in determining what the petitioner is trying to suggest. I concur with what you are saying, but I am not sure how we take forward the petition in these circumstances. Does it change any of the views that we might have when there is not that definition or that broad span that gives us the opportunity to look at this?

The Convener: I am slightly unsure what to do. The Scottish Government said it was open to representations, but it is not our responsibility to make those. We could ask the Scottish Government what it thinks of all this in practice, but that is not really taking forward matters, so I am uncertain. I have to say that, on this occasion, I am minded to close the petition under rule 15.7 of standing orders, but I am open to other suggestions.

Alexander Stewart: I concur with that, convener. I do not think that we can look at the matter as the petitioner is suggesting. In that circumstance, I suggest that we close it, because the petition is too wide and varied and does not give us the full opportunity to look at things.

10:00

David Torrance: I am happy to support that recommendation, convener.

Fergus Ewing: As you have stated, convener, the wording of the petition is nebulous. Irrespective of that, the issues involved are almost certainly reserved to the UK Government.

The Convener: Yes. It is not that I do not see an issue at the heart of the petition but that I am uncertain as to what productive opportunity there is for the committee to take forward the petition. Therefore, we are reluctantly minded, on this occasion, to close the petition. Are we agreed?

Members indicated agreement.

Public-private Partnerships (PE2004)

The Convener: PE2004, which was lodged by Line Kikkenborg Christensen on behalf of Jubilee Scotland, calls on the Scottish Parliament to urge the Scottish Government to abolish the use of public-private partnerships—PPPs, as they are affectionately known—and to commit to a new model of financing and managing public infrastructure in Scotland that has safety, quality, value for money and accountability to the taxpayer at its heart. The petitioner argues that public-private partnerships have left Scotland's public sector with high levels of debt, poor service provision, lack of accountability and unsafe buildings.

In responding to the petition, the Scottish Government acknowledges that the use of private finance for infrastructure projects is more expensive than conventional public borrowing, and it shares concerns about the flexibility and value for money that historical private finance initiative contracts have offered.

The Scottish Government has stated that, as part of its national infrastructure mission commitment, a new approach to revenue finance,

which includes the mutual investment model, has been announced. That follows a decision in 2019 to stop using the non-profit distributing model that was originally adopted in 2010. The Government highlights its view that current borrowing powers are limited and insufficient to deliver the ambitions of the national infrastructure mission, but adds that, should additional powers become available, it will examine all options to ensure that the lowest-cost financing route is utilised.

We have also received a submission from the petitioner offering comment on the Scottish Government's response, with reference to Audit Scotland's 2020 report "Privately financed infrastructure investment: The Non-Profit Distributing (NPD) and hub models". The petitioner calls on the Scottish Government to act on Audit Scotland's recommendations and to rethink the way in which infrastructure is managed and financed in Scotland.

That is all quite technical but nonetheless important and of considerable financial consequence. Do colleagues have any comments or suggestions on how we might proceed?

Alexander Stewart: The petition makes some valid points in reference to where we are with regard to this whole situation, and it would be useful to write to the Scottish Government to seek clarity on its response to the points that the petitioner makes in her submission. We should also ask whether the Government has considered the Scotland against public private partnerships task force position paper "Financing Public Scotland: A Proposal for an Alternative to Public Private Partnerships". If it has, what is its response to the recommendations?

As you say, convener, the matter is complicated, but, if we get some clarity from the Scottish Government, that might give us an opportunity to investigate and to get further information on it.

Fergus Ewing: I wonder whether, in addition to the action that Alexander Stewart suggests, with which I concur, we might wish to write to the Scottish Futures Trust to seek its views, because, as I understand it, its remit very much falls into this area.

I would add that the petitioner wants to abolish PPPs and to create a new model, but it is simply not clear to me what that new model would be. The statement on the new model is very much couched in abstract terms that outline what it should achieve rather than describing exactly how it would operate in practice. SFT has great expertise in that area, so it would be useful to get its insights.

The Convener: I am happy to agree with that.

Foyso Choudhury: I agree that the petitioner makes a lot of valid points, but I also agree with Alexander Stewart and Fergus Ewing that the petitioner needs to come up with some proposals on how she wants to see us proceed.

The Convener: Okay. Do we agree to write to the organisations that Mr Stewart and Mr Ewing have identified?

Members indicated agreement.

The Convener: Thank you very much. We will keep the petition open and proceed accordingly.

Adoption Barometer (PE2005)

The Convener: Our next new petition is PE2005, which was lodged by Jonathan Patrick. It calls on the Scottish Parliament to urge the Scottish Government to formally respond to the annual adoption barometer report that is undertaken by Adoption UK. The Scottish Government's response notes that it has recognised and welcomed the findings of the adoption barometer 2022 report. It highlights that Clare Haughey MSP, the then Minister for Children and Young People, attended the formal launch of the report, and that the report was referred to in a members' business debate in March 2023. The Scottish Government states that there are no plans to publish a formal written response to the report, which is consistent with its approach to previous annual adoption barometer reports and with the approach that other Governments across the UK take.

It appears that the Scottish Government's procedural approach is consistent with that in other jurisdictions. Do members have any comments or suggestions?

David Torrance: Would the committee consider closing the petition under rule 15.7 of standing orders, on the basis that the Scottish Government has welcomed, engaged with and referred to the adoption barometer 2022 report and that it has no plans to publish a formal written response to the report, in line with previous publications and a UK-wide approach?

The Convener: In light of that consistent approach across the UK and the actions that by David Torrance identifies in his recommendation, are colleagues content that we do not pursue the petition further?

Members indicated agreement.

Property Factors (PE2006)

The Convener: That brings us to the last of this morning's new petitions. PE2006, which was lodged by Ewan Miller, is on reviewing and simplifying the legislation in relation to the

dismissal of property factors. Forgive me for the slightly complicated introduction as I speak to the petition. To clarify a jargon term for the benefit of anybody listening, property factors manage the maintenance and repair of common property and communal areas in flats and housing estates on behalf of the home owners and residents. The petition calls on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act 2011 to cover dismissal of property factors, or to introduce regulations that would achieve the same aim. That could include giving the First-tier Tribunal, which is a free dispute resolution service, powers to resolve disputes related to the dismissal of property factors.

In his submission, the petitioner, as the chair of a local residents association, explains his experience of a struggle to dismiss a property factor. He argues that the legal framework around the process is complex and makes the dismissal of property factors unreasonably difficult.

The SPICe briefing explains that dismissal of property factors can, indeed, be a convoluted process, as the relevant legislation is complicated and needs to be read in conjunction with the title deeds of a particular estate. There can also be complicated legal questions on whether conditions in title deeds are enforceable. As a result, it may often be necessary to seek legal advice. Court actions may also be necessary if a dispute between home owners and a property factor cannot be resolved. Of course, all that can be quite an expensive consideration for those involved.

The briefing notes various inquiries into the system over the years, particularly in relation to landowning maintenance companies, which are property factors that own the land that they maintain—normally, open spaces on housing estates—and operate in a particularly complex legal environment.

In 2013, the Scottish Government stated:

“doing nothing is not an option, given the concerns in this area”.

At the same time, it indicated a preference to prepare a voluntary code of practice on dismissing and replacing landowning maintenance companies rather than to legislate. However, the code is yet to be introduced and, on 30 June 2022, Ash Regan MSP, the then Minister for Community Safety, responded to a parliamentary question on the timeframe, saying that the Government had prepared a draft code and planned to seek the views of stakeholders before it proceeded with publication.

It should be noted that the new code is intended to cover only landowning factors. With regard to

non-landowning factors, the Scottish Government, in its submission, states that it has

“no plans to amend the legislation”

and highlights that the current regulations require factors to provide home owners with “clear information” on the dismissal process.

As a constituency MSP, I have come across this issue and have found the whole business almost impenetrable. It is extraordinarily difficult, even for residents associations that are dealing with factors, to be confident that they can proceed, as they are confronted with what are sometimes quite threatening suggestions of the costs for which they may be liable.

Given the period over which the issue has been raised and the comprehensive lack of progress, I wonder what colleagues think.

David Torrance: I wonder whether the committee could write to the Scottish Government to seek an update on the voluntary code of practice on dismissing and replacing landowning land maintenance companies and, in particular, to ask what has been done since June 2022 to seek views on the draft code for customer-facing bodies and landowning land maintenance companies, as well as to ask when the final draft code of practice will be published.

In addition, I wonder whether we could write to relevant stakeholders, including the Property Managers Association Scotland, Shelter Scotland, Under One Roof and Citizens Advice Scotland, to seek their views on the petition.

The Convener: I wonder, too, whether there are any bodies that are representative of home owners rather than factors. When the Scottish Government says that the current regulations require factors to provide home owners with clear information on the dismissal process, I would like to know whether there is anybody who can illustrate that that actually happens. That sounds like one of those vague provisions that I suspect exists in writing but not in practice. That is just from my experience.

Alexander Stewart: You make a valid point, convener. As you identified, there are areas that we are already aware of, but there are other organisations that participate or that may be involved that we do not have information from. It would be useful to see what is there when it comes to the factor side and whether there are other areas that we could incorporate.

Our constituents continue to suffer in relation to this problem. It is about trying to find out who is in control and who has the rights, and, as you indicated, the process can become very costly for everybody. We should try to find out whether there is any other process that we can tap into.

The Convener: I wonder whether, when we write to the Scottish Government, we could, in addition, ask on what basis it is satisfied that the regulation is being properly implemented or how it would evidence that that is the case.

Fergus Ewing: I certainly do not disagree with the approach that has been recommended—inquiries should be made. I will, however, play devil's advocate a little bit.

My experience from being a solicitor over many years is that, although people do not necessarily enjoy paying factors' fees, the whole purpose of having a factor in a tenement is to ensure that there is a system for carrying out common repairs. If there is such a system, it needs to be paid for. In my experience, factors' fees are not particularly great and, in many ways, being a factor is a bit of a thankless task, because the level of the fees is generally not huge. There is therefore a general public policy imperative that it is desirable that there be a system, which is normally very clearly set out in the title conditions, for the appointment and removal of factors by a majority of owners.

The desirability of having a factor is clear. Indeed, if there is no factor, there is a serious risk of major repairs not being done and things becoming much worse. I would have thought that that would be a rather more serious issue than the few cases where there may be concerns about overcharging and so on.

I say that to stick up for the humble factors who, in my experience, are often on a bit of a hiding to nothing and who have eight masters: eight people who can phone them at any time of the day to demand that action be taken immediately on all sorts of things.

I am just playing devil's advocate, for a change.

The Convener: Thank you, Mr Ewing. I am sure that cups of coffee or something stronger have been raised in toast to your splendid defence.

I do not disagree with any of that. Where good practice is in place, all the positive attributes and advantages that were identified in everything that you have said apply. The issue is simply that, where that is perhaps not the case, residents find themselves in a difficult position—they are not entirely clear as to what they can do, and they find that quite a difficult atmosphere can obtain in trying to take matters forward. So, with an understanding of the very valuable work that is done, are we nonetheless content to proceed on the basis that has been recommended?

Members *indicated agreement.*

The Convener: Thank you all very much. That brings us to the end of this morning's public session. We will move into private session to consider our public participation inquiry. We will

meet again to consider petitions in public session on Wednesday 17 May.

10:16

Meeting continued in private until 11:20.

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