



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Citizen Participation and Public Petitions Committee

Wednesday 24 January 2024

Session 6



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**Wednesday 24 January 2024**

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**CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE**

**1<sup>st</sup> Meeting 2024, 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)

Maurice Golden (North East Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Grahame Barn (Civil Engineering Contractors Association Scotland)

Roy Brannen (Scottish Government)

Rob Galbraith (Transport Scotland)

Alison Irvine (Transport Scotland)

Edward Mountain (Highlands and Islands) (Con)

Oliver Mundell (Dumfriesshire) (Con) (Committee Substitute)

Michelle Quinn (Scottish Government)

Paul Sweeney (Glasgow) (Lab)

**CLERK TO THE COMMITTEE**

Jyoti Chandola

**LOCATION**

The Alexander Fleming Room (CR3)



**Scottish Parliament**  
**Citizen Participation and Public  
Petitions Committee**

*Wednesday 24 January 2024*

*[The Convener opened the meeting at 09:31]*

**Interests**

**The Convener (Jackson Carlaw):** Good morning and welcome to the first meeting in 2024 of the Citizen Participation and Public Petitions Committee. Because of the prevailing weather alerts, several of our colleagues are joining us online, as are all our witnesses this morning. I imagine that we will have a particularly exciting time as we try to negotiate the technology with the various participants.

The first item on our agenda is a declaration of interests. Unfortunately, my colleague Maurice Golden is not able to attend today, so his substitute, Oliver Mundell, is joining us for the first time. Although Mr Mundell is no stranger to the work of the committee, this is the first time that he is attending as a substitute, so I invite him to declare any relevant interests.

**Oliver Mundell (Dumfriesshire) (Con):** Thank you, convener. I have no relevant interests to declare.

**Decision on Taking Business in  
Private**

09:32

**The Convener:** Item 2 is to decide whether to take items 6 and 7 in private. Is Mr Torrance, who is online, content with that?

**David Torrance (Kirkcaldy) (SNP):** Yes.

**The Convener:** I see that our colleagues who are in the room are also content. Are we agreed?

**Members indicated agreement.**

**The Convener:** Item 6 relates to the evidence that we are about to hear in relation to the inquiry and item 7 relates to our pre-budget scrutiny work.

## A9 Dualling Project

09:33

**The Convener:** Item 3 is our inquiry into the A9 dualling project and, as colleagues and those who are following our proceedings in relation to this inquiry will see, we are joined once again by Edward Mountain, who is here in his capacity as a reporter from the Net Zero, Energy and Transport Committee. Good morning to you, Edward. I nearly said the net zero and Edward committee there—I do not do what an Edward committee would do if there were such a thing.

**Edward Mountain (Highlands and Islands) (Con):** It would be brilliant. [*Laughter.*]

**The Convener:** I am sure that it would have a full agenda.

Grahame Barn from the Civil Engineering Contractors Association Scotland is joining us this morning. Good morning, Grahame, and welcome to our proceedings. Later this morning, we will hear evidence from current and former Transport Scotland officials.

As members will be aware, since we last considered the issue, the Cabinet Secretary for Transport, Net Zero and Just Transition updated the chamber on the Scottish Government's plans for dualling the A9. The committee has also received material from Transport Scotland with information about the advice on the A9 dualling programme that was provided to ministers between 2012 and 2023.

As the Scottish Parliament information centre summary of evidence notes, the documents range from brief extracts of draft budget proposals for ministerial consideration to lengthy briefing documents for major parliamentary announcements—and, my goodness, there were plenty of them. There was certainly a lot of material to digest.

It is worth remembering that the committee is not only interested in the circumstances of everything that has gone before; it is also concerned to ensure that we deliver on the aims of the petition, which are that the A9 project is completed and that consideration is given to having a memorial for the people who have perished during this period due to road traffic incidents on the A9.

Mr Barn, are you content for us to move straight to questions this morning?

**Grahame Barn (Civil Engineering Contractors Association Scotland):** Yes, I am, convener. Before we begin, I would like to offer my apologies to you. I obviously never got the memo

about the dress code for this particular online committee, so I apologise for that.

**The Convener:** I think that you look very fetching and smart, Mr Barn. I do not think that you need to be concerned at all.

**Fergus Ewing (Inverness and Nairn) (SNP):** With your permission, convener, I will raise one matter at the outset of today's public session. The documents that were furnished by Transport Scotland initially maintained that, for an unspecified period, I was the lead Scottish Government minister for infrastructure projects. That is wrong. I was never the lead minister. I was, of course, bound by collective responsibility and I was, for a while, copied into some material. That practice of receiving copied material ceased in 2018.

I took the matter up with the help of our clerks and then directly with Transport Scotland. That led to Transport Scotland acknowledging that the assertion that I was the lead minister was an error. It kindly apologised for the mistake, and I am happy to accept that apology, but I wish to make that clarification on the record.

**The Convener:** Thank you, Mr Ewing. I think that that is appropriate. That clarification will now appear in the *Official Report* of the meeting.

We can now enjoy talking with Mr Barn. I will start with a more general question. Is that product placement that you have on your mantelpiece there, Mr Barn? I am looking at the Costa mug. I assume that no sponsorship fee is being paid.

**Grahame Barn:** None whatsoever, convener. I was just making myself ready for a possibly lengthy session with some caffeine to keep me going.

**The Convener:** Do you have any views on why Transport Scotland said that it would fail to meet its original 2025 deadline for the A9 dualling programme? What is your overall impression of why that did not happen?

**Grahame Barn:** I have no evidence to back this up at all, but I believe that it was because the political will to provide the funding required to do the job just was not there when required.

**The Convener:** It was as straightforward and as simple as that.

**Grahame Barn:** That would be my assertion, yes.

**The Convener:** Was that due to a lack of direction?

**Grahame Barn:** I am not sure that it was because of a lack of direction. A promise was made to dual the A9; once the promise had been made, perhaps there was not the necessary rigour

in ensuring that certain things were done at certain times to ensure that the target was met.

I believe that the target was achievable—it was difficult and challenging, but it was achievable. However, perhaps other political priorities took over. Funding might have been diverted away or it might never have been there in the first place to enable the sections to be done and to allow the programme to be completed within the time frame.

**The Convener:** I ask because this is a theme to which I might return with other witnesses. In the 2007 to 2011 session of Parliament, I was the convener of a hybrid committee that was established to work on the Queensferry crossing. It was responsible for identifying the route and the design of the project. The committee then offered to Government, with the support of Parliament, a project that was agreed in terms of what it was going to deliver. That then had to be taken forward by the Government to ensure that the project was completed.

I talked about a lack of direction. Do you feel that there was clarity around what the A9 project would encompass at all points, or that there was vagueness about how different sections would be progressed—as it seemed to me in some of the documents that I was reading—that would have allowed things to drift slightly?

**Grahame Barn:** There are elements of truth in what you say, convener. When the promise was made, there probably was not an exact plan of the exact route that the A9 would take: land would have had to be purchased and a number of public consultations would still have had to take place after that. There was perhaps not the rigour around carrying out all that work in time to ensure that the target was met. Once there is drift in a project of that size and scale, it is difficult to make it up quickly. The issue is that a promise was made and then, from a political stand point, it was, “Job done”, rather than, “Okay, that’s the easy bit done, the difficult bit now is delivering on that promise”.

**The Convener:** Interestingly, that was the issue with the Queensferry crossing, in that the committee anticipated the need for public inquiries at various points in relation to the route, because the route and not the bridge itself was, by far, the most complicated aspect of that project.

Before I move to colleagues, I turn to what seems to be at the hub of much of what I have read. Does the industry think that the current approval processes for major road and other infrastructure projects in Scotland have proved to be fit for purpose? If not, what needs to happen to make them so?

**Grahame Barn:** On too many occasions, the statutory processes that we go through tend to

slow down critical infrastructure projects across Scotland. I am not just talking about roads here—it also happens on other critical infrastructure. The planning system needs to be looked at seriously to ensure that the country has the infrastructure that it needs in place when it needs it. This issue of the statutory processes that have to be gone through is on-going for any major infrastructure projects. Although it is absolutely correct that we go through some statutory processes, they can be used to slow down projects along the way.

**Fergus Ewing:** Good morning, Mr Barn. I have three questions, which all look to see how best we can complete the promised dualling of the A9.

First, in your evidence last June, you kindly set out the changes that you felt would need to be made to the procurement process. I believe that you broadly advocated, *inter alia*, that the NEC4 contract—the type of contract that is used elsewhere in the United Kingdom—be adopted. We recently had a briefing from the Cabinet Secretary for Transport, Net Zero and Just Transition that this has now happened in relation to the retender of Tomatin to Moy. Are you able to say yet whether the industry is now satisfied that the form of contract that Transport Scotland is now apparently proposing to use—Transport Scotland accepted the thrust of your arguments last June as industry’s voice, which is very welcome—is sufficient and satisfactory to your members?

09:45

**Grahame Barn:** I would like to thank Transport Scotland for taking that leap to change to NEC4. It was a large leap for Transport Scotland, and it took it.

Transport Scotland has its own specific terms and conditions, but that is not unusual—many clients will amend the NEC to suit their own needs. The fact that a number of contractors have bid for the Tomatin to Moy section is encouraging and it tells me that contractors are content with the terms and conditions that Transport Scotland is offering. Although contractors will always moan that it is not perfect, the fact that they have bid for it is a huge step forward because we did not have a sufficient number of bidders in the past.

**Fergus Ewing:** It is a tribute to your advocacy that this welcome change has come about. Perhaps the committee’s evidence in public helped to encourage that process.

My understanding is that the level of profit that has routinely been agreed or provided in past contracts has been around 3 per cent, which seems to me a very thin return for work which will still involve a considerable risk, even though some risks are now to be shared rather than passed solely to your members. I want to raise an issue—

of which I know that you are aware—which is that many other types of work are available in the civil engineering sector in Scotland and throughout the UK. I believe that substantial works in the railway infrastructure and the electrification thereof and the pump storage projects in three or four locations in Scotland might tie up civil engineering capacity for much time to come. There are also green freeports and renewable and onshore wind civil engineering works as well as routine hospitals and schools and so on. Does Transport Scotland need to revise its view of the appropriate and fair level of profit and, if it does not do so, is there a risk of your members going after other work that might well be more profitable than roads contracts? I raise the issue because, although we might have a willingness now for the Scottish Government to provide finance for the dualling, my concern is that there might not be sufficient or willing capacity in the civil engineering sector to perform the work.

**Grahame Barn:** On the level of profit of 3 per cent, historically contractors would have done somersaults if they could have regularly achieved 3 per cent on lots of infrastructure jobs. The reason contractors were no longer bidding for Transport Scotland work in recent years is that all principal contractors lost money on all the major road building projects, such as the Queensferry crossing, the Aberdeen western peripheral route and many more. That is why we had a situation where, until things changed, contractors decided that it would not be a good use of their resources to bid for Transport Scotland work. With the use of the NEC4 contract, we now have that change that allows for greater sharing of risk and the opportunity to make money. Although I am sure that contractors would want to make more, if they make 3 per cent, they will be happy with that.

To answer your questions about the situation in the wider marketplace and civil engineering work in the public sector, we go through times when the clients have the upper hand and can therefore be quite hard-nosed about the sharing of risk and profitability, but we also have rare occasions where contractors have the upper hand—when there is plenty of work and they can choose whom they wish to work for. I believe that we will now go through a decade or a decade and a half where contractors have a great choice of work and of whom they wish to work for.

To give an example, we laid out SSE's workbook when I met it yesterday and the numbers are astonishing. SSE is just one client, and it is looking at a spend of £20 billion in the next five years in the north of Scotland and a further £20 billion up to 2030. We are looking at a potential spend of £40 billion by one particular client in Scotland in the next six, seven or eight years. That is a phenomenal amount of money—

one private client is spending more than the Scottish Government will spend on infrastructure in total in that period of time.

In addition to that, Scottish Power has just announced that it has a framework coming up for a £5.4 billion upgrade to its energy systems in the next 10 years. In the transfer and generation of electricity sector alone, £45 billion or £46 billion is being spent by just two clients in Scotland. Those are phenomenal numbers.

On top of that, Network Rail and Transport Scotland will spend about £3.5 billion to electrify the rail network and Scottish Water will spend £1 billion per annum in the next two years on its infrastructure. That is a huge spend for the civil engineering sector in Scotland. Unlike at any other time when I have been involved in the sector, Scotland is busy whereas England and Wales are less so, so you might find a drift of contractors moving from England to Scotland to deal with that work. That is what will have to happen, because we just do not have the capacity to do all this work in Scotland. That is just to give you a flavour, Mr Ewing, of how incredibly busy the industry is and will be for some substantial time.

CECA has high-level meetings with all the major clients, one of which is Transport Scotland. I will meet Transport Scotland on Friday this week and give it an overview of the sector, as I do at every meeting with all clients. Transport Scotland will be made aware, if it does not already know—I suspect that it does—just how busy the sector will be and how difficult it might be to get the necessary supply chain in place to deliver the work that you require if you are not prepared and do not understand that you have to be competitive to be able to secure it.

**Fergus Ewing:** That is really helpful. I was keen to raise the issue because we blithely assume that, if the money is there, the work can be done. In light of what you have said, that assumption might prove to be naive and optimistic, particularly with the grid work, which—I should have mentioned—has been £40 billion, which is astronomical. We might be left as the Cinderella of the civil engineering sector for roads projects. That is the concern that I wanted to raise.

To close the question, I put to you that the solution is that Transport Scotland must work more collaboratively with industry as partners, not as passive recipients of an occasional piece of work when the Government decides to get around to it, but as partners with the Scottish Government, so that it can keep abreast of the ever-changing commercial realities and challenges that might make it difficult for the Scottish Government to achieve the dualling of the A9, such as capacity and the fact that there might be other, more

competitive and financially attractive work for your members.

**Grahame Barn:** That is correct.

**Fergus Ewing:** Okay.

**Edward Mountain:** In relation to that point, are the capacity issues that you have just identified the major consideration in delivery of the project by 2035, or do you believe that, notwithstanding those capacity issues, 2035 ought to be an achievable date?

**Grahame Barn:** That would depend on how Transport Scotland wishes to procure dualling of the A9. It must engage with contractors and ensure that it has long-term relationships with them so that it has the supply chain in place, when it is needed.

That will require Transport Scotland to do two things. The first is that it must have an open relationship with contractors—which it sometimes finds difficult to do, perhaps because of contract law and procurement law.

The second is that it has to have to have a genuine and believable pipeline of work. Contractors will commit resource to Transport Scotland because they can see that it is committing seven or eight years' worth of work to them. However, in the past, procurement has been for a section of road at a time. That is quite difficult, because if it is procured one section at a time, contractors then have to hang around for a couple of years while everything goes through before they can get any diggers on to the site.

A different approach will be required, but that will require political will to ensure that the money is in place so that Transport Scotland officials can, with some degree of certainty, have a conversation with contractors, so that the money is in place for a particular project and so that it can work on long-term relationships with a pipeline of work. That will mean that contractors can have faith that the work will be there when Transport Scotland says it will.

**The Convener:** I have read into some of the narrative of your response to my question that it seems that an atmosphere such as you spoke of has not been widely apparent in conduct in the progress of the project to date.

**Grahame Barn:** Yes, that has been the case in the past. There have to be changes in behaviour on both sides, and there has to be greater trust between Transport Scotland and contractors. A change in behaviour is needed, if we are to deliver in the timeframe. I want to emphasise that it is possible to deliver in that time, but we have to be aware that the world is a different place from what it was, say, 15 years ago.

**Foyso Choudhury (Lothian) (Lab):** I have a very short question. Would you estimate the completion date for Transport Scotland's programme to be accurate? If not, what estimate would you give?

**Grahame Barn:** I can only believe that Transport Scotland has looked at that and can go through all the statutory processes and buy whatever land it needs, all in the timeframe. If that sounds like a cop out, I am sorry, but at this stage, with the information that I have in front of me, all that I can say is that I think that the timeframe is achievable, but lots of other targets must be achieved—which the contractors have no control over—to make sure that that target is met.

**The Convener:** Mr Torrance, do you have an insightful question?

**David Torrance:** Yes. Thank you, convener.

Mr Barn, I will go back to your original answer about planning for dualling the A9. Is it not very difficult for the Government to do long-term procurement and planning when it only gets a year-on-year settlement and does not know what that settlement will be?

**Grahame Barn:** I am sorry, Mr Torrance, but that is beyond my area of capability; I do not understand the settlements that you are talking about.

All that I can say is that delays in statutory processes have an impact on the delivery of projects. There is a date in mind, and it might be that officials believe that it will take them two years to go through statutory processes. However, if it turns out that the statutory processes take four years, it will be next to impossible for a contractor to make up two years when we start on the project. That is why I said that a lot of things need to fall into line within the timeframes that Transport Scotland officials have calculated, if we are to be able to say that the project will be done on time. Everything being equal, and if we get all the statutory processes done in the timeframes that we expect them to be done in, I believe that contractors can build that road in the timeframe that has been given.

10:00

**David Torrance:** Do you consider that the estimated budget of £3.7 billion for the full A9 dualling programme at 2023-24 prices reflects market reality? If not, what do you consider to be a realistic figure?

**Grahame Barn:** Again, it is hard for me to answer that question. A lot has happened in respect of construction inflation, which has been eye watering in some cases. I think that we are now getting past the really high levels of

construction inflation, but resource is very tight and very scarce. By resource, I mean people. Where there is a shortage of anything, you tend to have a price increase. There is still price volatility in relation to what we pay people to do the work. Such major projects are very labour intensive, and very skilled engineers and specialists are involved, as well as very well-paid operatives who work the plant and equipment to do the work on the ground.

Therefore, the unknown is what is going to happen to wages, because there is a definite lack of people and when there is a lack of people and a rising workload, you find that lots of poaching goes on among contractors and organisations, which pushes wages up. The budget has been set and a figure has been given, but I am not party to how Transport Scotland got to that figure.

With regard to where we are on construction costs, the budget is not unrealistic. However, it becomes unrealistic if we do not do the work in the timeframe and there is drift. When there is drift, you have increases to the budget.

That is a very long-winded way of saying that there is nothing in the budget that tells me that it cannot be done for that figure, as long as it is done in the given timeframe. If it drifts beyond that, it will be at the mercy of increasing costs.

**David Torrance:** Thank you.

I want to ask about timeframes. You just mentioned the lack of people in the construction industry. How could that affect the timescale for the work? As someone who uses the A9 a lot, I know that the environment in that area and the weather conditions at certain times of year make it difficult for people to do any work at all. How would that affect the timescales?

**Grahame Barn:** That should be factored in to the thinking about the procurement process. We understand those conditions, and the procurement process and the delivery of a lot of the work is scheduled around things such as the weather. It is also scheduled around nature requirements. We cannot go into rivers at certain times of the year because of spawning and we cannot cut down trees at certain times of the year because of nesting birds.

All that is well understood and is part of the scheduling, so that should already have been factored in to how we do the work and how long it will take to do each section, because the key issues around weather and the key difficulties around overhead lines and power lines will be understood. There are some sections where the work engages very closely with rail; how we deal with that will also have been factored in. All those challenges should have been understood—in fact, they are understood and will be factored in.

However, when it comes to the impact of the weather, for example, who knows what the weather is going to be like? It can have an impact on the timescale. You can lay tarmac only above a certain temperature; if it gets too cold, you cannot lay tarmac. Where we are on the A9, we are at the mercy of the weather, but that comes down to the contract and sharing of risk along the way. For the contractor, the sharing of some of the weather-related risk is helpful, but if the weather affects us, that might cause delays. However, if we have any weather-related problems, the delays will be months, not years.

**David Torrance:** Thank you very much for your answers, Mr Barn.

I have no further questions, convener.

**The Convener:** I am delighted to bring in our colleague and reporter from a sister committee, Edward Mountain.

**Edward Mountain:** Grahame Barn mentioned spawning, which relates to salmon. The A9 is next to the bottom part of the River Spey, and I have a wild salmon fishery on the river, so I have an interest in relation to salmon that is not particularly relevant, but I wanted to make that clear.

**The Convener:** Is that a declaration from the Edward committee? [*Laughter.*]

**Edward Mountain:** Yes, it is from the Edward committee. I have no land next to the A9.

Grahame, I want to go back to the comment that you made about statutory processes. There were issues with the Aberdeen western peripheral route. No prior work was done relating to some of the infrastructure adjacent to it and we had huge delays because gas pipelines and electricity lines were discovered.

I was a surveyor for 15 years, so I know that the compulsory purchase process is fairly straightforward. On the A9, the process is probably the easiest one in the world to do, because there are not many landowners along it until Dunkeld. Why is the statutory process holding up the project, despite there being few landowners and infrastructure assets running along the edge of the A9 that could be affected?

**Grahame Barn:** The fact that the A9 runs through a national park could be a key factor in the issue with statutory processes. Because it goes through an area that is designated as a national park, more consultations have to take place and there are many interest groups that have to be consulted along the way, and they can delay progress if they feel that they are not getting the answers to the questions that they ask.

It is a difficulty. The A9 is a long linear road. I agree that there is not a huge number of

landowners on the northern parts of the road, but the northern part of it goes through a national park, which brings its own issues.

**Edward Mountain:** As we found out with the 400kV electricity line that went through it, there will be pressure in relation to the national park.

You mentioned the importance of sharing risk. On the AWPR and the Dalraddy to Kincaig sections of the A9 that I saw being built in the previous session of Parliament, there was huge risk to contractors, so many—as we know—dropped out and would not take part in the construction. Will the first test of whether the industry believes that Transport Scotland is really sharing the risk be when the first problem comes up on the A9 and there is a massive increase in cost, which is bound to happen on some sections?

**Grahame Barn:** Yes—there will always be discussion between contractor and client on such jobs. We are in procurement at the moment for the Tomatin to Moy section of the A9, so the contractors are aware of the terms and conditions and the risk-sharing profile, and will be pricing their bids accordingly. I have no sight of that detail—I am not allowed to have any, because it is a procurement process—so I do not know what each individual contractor is thinking about risk. However, they will be pricing it and it will be interesting to see what the three contractors' prices are—whether they are close to each other and what the differences are.

I will never see that detail, but I presume that Transport Scotland, which will mark the bids, will see it and has an understanding of how contractors are pricing risk along the way. Once Transport Scotland has awarded the job and there is a contract in place, it is for the client and the contractor to have a discussion if they feel that the risk is unfair but, by that time, the contractor will have signed up to it. The contract is all-important, in that respect.

**Edward Mountain:** When we listened to the cabinet secretary talk about the A9 project, it was made clear that several sections would happen at once—that the work would not be done just one section at a time—otherwise they would never meet the 2035 deadline. Is there a contractor that is big enough to do all that work, or do you see it involving multiple contractors? Would that approach put off the bigger ones, because they would not see a long-term project going into the future for them?

**Grahame Barn:** I think that the work will be done in multiple stages—that is how the procurement will go. Although one vast contractor might be interested in doing all the work, we have to understand who will deliver it. The very large operators are managing contractors who do not

employ workers directly. They have a supply chain of contractors that physically do the work, and they subcontract packages of work. We might see lots of different contractors—each with their own vans, lorries and plant—working on the road, even if one large managing contractor is delivering the project on behalf of the client.

I suspect that, given what I have said about the scale of the work for SSE that is going on, it is already ahead of the game and is talking to the massive international contractors. It is talking to CECA now, because it understands that it needs a supply chain to help its principal contractors to deliver its work. I think that the A9 work will be done within the timeframe, because that route is critical to getting all the equipment up to and down from the north of Scotland to allow SSE to upgrade the network. That work is being done to ensure that the increased demand for electricity—twice the current amount—that we believe will happen in the next decade, can be delivered. The A9 is therefore absolutely crucial to the economy not just of Scotland, but of the whole United Kingdom.

**Edward Mountain:** Convener, may I ask a final brief question?

**The Convener:** Yes.

**Edward Mountain:** Is one large managing contractor with all those other people working underneath it a joint venture by another name?

**Grahame Barn:** Yes.

**Edward Mountain:** Will subcontractors have confidence that their risk will be minimised under such an arrangement? One of my big fears is that they will not.

**Grahame Barn:** Yes. It is within the power of the client to ensure that the terms and conditions that it agrees with the principal contractor are shared down the supply chain. We have exactly that arrangement with Scottish Water. The terms and conditions that it has with its framework contractors are applied down through the supply chain, and the client regularly checks to ensure that that is the case. One way that Transport Scotland could ensure that its supply chain is fairly treated would be to write that into the terms and conditions of the contract. It might have done so already for the Tomatin to Moy section. I am not aware of whether that is the case, because I have not seen the terms and conditions.

**The Convener:** Finally, Mr Ewing, do you wish to come in briefly?

**Fergus Ewing:** I will, just to pursue the issue that was raised previously, about framework long-term contracts for your members so that they have guaranteed work—a pipeline, or a preparation pool, as it might otherwise be termed, of work—

over seven or eight years. That is in contrast to the current position: I believe there are no road contracts in Scotland at all at the moment. If we want to get from where we are now to having framework contracts, should we be advocating to the Scottish Government that such an arrangement be deployed? Would you argue that, for that to work, there needs to be much more clarity about the work that will be available over that seven, eight or 10-year period?

Therefore, would you welcome three things? First, would you welcome early clarity on the mutual investment model contracts that are to be used for the central and northern sections of the A9? As I understand the situation, those are still subject to a caveat that they will be reviewed in 2025.

10:15

Secondly, would you welcome an early process for made orders relating to the A96 between Inverness and Auldearn, including the Nairn bypass section, so that that would form part of the preparation pool? That section is also a firm commitment of the Scottish Government. Finally, do you agree that, because disruption is a practical factor in relation to how the work is best carried out on the A9, and because you cannot do everything at once—otherwise, the A9 would have to be closed, which is just not possible—would it help to spread the disruption across the network? Would that point to industry desiring that the A96 contract go ahead concurrently with the A9, rather than the ludicrous prospect of having to wait until the A9 dualling is complete?

**Grahame Barn:** How that work is scheduled has to be thought about seriously. If you were to say to contractors, “You’re all going to be working on the A9 at the same time,” we would find a way to do that. There would be disruption, but we would find a way to do it. The sensible way to minimise that would be to ensure that there are other bits of work going on that would keep the pool of contractors that you are working with busy. It needs a bit of thought and collaboration, and sometimes commitment to other projects.

We are talking about the A9 here, but you mentioned the A96. A political promise has been made on the A96—let us see where that one goes. The Rest and Be Thankful is another probably £500 million project that needs to be done. It is about how all that gets fitted in along with all the other road projects that might come to market.

Fergus Ewing mentioned a framework. A framework approach is a good way of doing things that is used by Scottish Water—it has a framework of contractors—by SSE and by Scottish Power. A

framework is a way of ensuring that you have contractors who have the skill set that you need. What the contractors in a framework like about a framework is that they have some security and an understanding about working with the client, so they can make investments in people and equipment to ensure that they have the ability to deliver on the work that is coming in the next three or four years.

Transport Scotland has two frameworks that I am aware of, but the main framework that I am talking about is the trunk road network framework. That framework has Amey and BEAR Scotland in it. That allows those two contractors to invest in the skills and delivery that they need to ensure that our trunk road network is maintained to an acceptable standard.

**The Convener:** Mr Barn, thank you very much for joining us again this morning. You have given us more time than we had anticipated you would have to give, and your answers have been extremely helpful. We might speak to you again; we certainly look forward to reflecting on everything that you have said today.

**Grahame Barn:** Thank you, convener. In that case, I will be better dressed the next time we speak.

**The Convener:** That is your challenge. We will vote on that. [*Laughter.*]

10:18

*Meeting suspended.*

10:19

*On resuming—*

**The Convener:** We are back. Our colleague Oliver Mundell has had to leave us due to another commitment. I apologise for that to our colleagues and to the witnesses who now join us. I hope that you were able to hear the earlier evidence session. I see that you were. It was very interesting.

From Transport Scotland, we are now joined by Alison Irvine, interim chief executive, and Rob Galbraith, head of project delivery,. We also welcome Roy Brannen, a former chief executive of Transport Scotland, and Michelle Quinn, who is both a former director of major projects and a former interim chief executive of Transport Scotland. A very warm welcome to you all.

You will have observed our previous discussion with Grahame Barn. I want to emphasise that our inquiry has two purposes. First, we have an interest in the events that led to the delays and why we are where we are today in respect of the project. However, secondly, the aim of the

petitioner is, of course, the delivery of a completed A9 route and one or two other issues, including a memorial. Our focus is very much on ensuring that we deliver on that. This is not some sort of kangaroo court of inquiry into the events of the past. We are interested in those as they reflect on where we are today and how we can ensure that we complete the project.

If everyone is content, we will move straight to questions, starting with Fergus Ewing.

**Fergus Ewing:** Good morning. It will be simpler if one person answers a question, rather than all four. Otherwise, we will be here until 5 o'clock. However, I will leave that up to you, convener.

First, I want to pursue the issue, as raised by Grahame Barn, that witnesses will just have been hearing about in the earlier evidence session, namely congestion of work. Grahame painted a very clear picture, setting out that the future will not be like the past. Grid, rail and possibly pump storage work involving tens of billions of pounds is going to be available. Frankly, my concern is that road works might be the tail-end Charlie. I am concerned about that because we have seen the Tomatin to Moy tender fail. A lack of interest in making bids led to that failure. We have seen—belatedly, but it is welcome—Transport Scotland change the policy that has deterred bids and competitive interest; NEC4 is being adopted and the sharing of risk is now being agreed.

Therefore, how can we ensure that, in Scotland, provided that the finance is available, we will be able to do the road work? Will the capacity be available? Do we not also need Transport Scotland to adopt in a full-throated way, and recommend to its political leaders in the Scottish Government, the use of framework contracts and the provision of a preparation pool of work over a long period so that companies will proceed knowing that they are likely to have work over eight years, not one or two years? If you are employing specialist engineers, what prospects do they have if they are guaranteed work for only one or two years? It makes no commercial sense whatsoever. Sadly, that is the situation that we have found ourselves in over the past few years.

It is good that you have moved on the NEC and the sharing of risk. Across the four main parties at least, we all welcome that. However, will you now move to provide a preparation pool over a long period? Mr Barn mentioned some of the main candidates, which we all agree with. Secondly, will you use framework contracts so that companies can have long-term relationships and a partnership arrangement, with the security of knowing that they will have work for their staff and for the company to perform over as long a period as possible?

**The Convener:** I will turn first to the current holders of office in that respect. Alison Irvine, perhaps between you and Rob Galbraith, you could respond to Mr Ewing.

**Alison Irvine (Transport Scotland):** I can do that. Good morning. Thank you for inviting us today. I will pick up on a few points in your question, Mr Ewing. Yes, it is recognised that there is a lot of construction work that is in the preparation and planning stages across various sectors. As part of our work to deliver the roads aspect of our portfolio, we do a lot of engagement across those sectors to understand that.

We have also, as you have recognised, made a significant step on the NEC—

**The Convener:** Alison, could you move your microphone slightly nearer? It is just a little bit hard to hear you.

**Alison Irvine:** Is that better?

**The Convener:** That is slightly better. We will do our best to cope.

**Alison Irvine:** Apologies for that. I can hear you loud and clear.

As I said, we are aware of the extent of planned and proposed construction work that is out there—for example, as was discussed, in the energy and rail sectors—which is why we undertake as much market engagement as we do.

Can you hear me okay now?

**The Convener:** We are following you, yes.

**Alison Irvine:** Good.

In terms of the capacity, we keep a close eye on the market; we do a lot of market engagement. As Mr Barn recognised, we have regular engagement with CECA, and we are meeting it again on Friday.

On the framework contract proposition, I would caution that the contracts that we have under consideration along the A9, which is the primary one—the A96 and the A83 were also referred to—are of such a scale that a framework contract would not necessarily be the most appropriate type of contract. We have also got to take into consideration how these projects are to be funded, which has a bearing on the procurement route that we would take.

There is no doubt that improving contractor confidence helps to make the market much more attractive across the different sectors, and we work as hard as we can to do that. I will leave it there for now. Rob Galbraith may want to come in.

**The Convener:** Mr Galbraith, is there anything that you would like to offer by way of reflection on that question?

**Rob Galbraith (Transport Scotland):** I might just expand slightly on it. The contracting approach that the cabinet secretary set out in December involves a number of individual design and build contracts and two mutual investment model contracts. Those MIM contracts are not frameworks in the sense that Mr Ewing is describing. They are large packages of work that allow a contractor to make resource plans over an extended period, so they create some of the opportunity that Mr Ewing is alluding to.

**Fergus Ewing:** I find Alison Irvine's response a bit disappointing, because things have got to change—otherwise, we will find grave difficulty in getting the work done. I say that having listened to industry for some time now and having looked at the history, which has been pretty sad.

Could you turn to the mutual investment model? The outline plan that the cabinet secretary set out recently says that mutual investment model contracts are subject to

“further decision making in late 2025, based on an updated assessment of expected market conditions.”

Can you say what that means? Is there not a worry that it is a caveat that means that the rug could be pulled out from under the process? If that is the case—it must be the case, because that uncertainty is there—does it not defeat the purpose of what we are trying to do, which is to engender confidence in the sector that there will be work for several years to come?

If that is correct—and, respectfully, I think that it must be correct—would it not be better for the Scottish Government to revisit that and make the decision about MIMs as soon as possible? You have had years to deal with that. Frankly, I do not know anybody who understands why so little progress has been made over such a long period.

Specifically, will you consider advising ministers to bring forward the 2025 assessment? Will you look again at how confidence can be engendered in the sector over the long term, whether through framework contracts or other means, such as by the provision of a proper pipeline preparation pool, with a timetable of when the work on the Rest and Be Thankful, the A96 and other key, essential projects for Scotland can be done?

**Alison Irvine:** On the point about bringing forward the MIM decision from 2025, I can provide some level of assurance to the committee that, as part of reaching the decision that the cabinet secretary outlined on 20 December, we considered a number of funding and procurement routes. We considered a full design and build option and we considered a full MIM option, split into different sections. The optimum option is the one that the cabinet secretary set out on 20 December. That is optimum in terms of market

capacity, and we consider it to be optimum in terms of the level of disruption and the challenging financial situation in which the Government finds itself currently.

10:30

The next stage in the decision-making process is 2025. That will allow us the time to understand whether market conditions will be more favourable to us and whether the cost situation will improve. Over and above everything else, you will understand that we all have a duty to ensure that there is best value and value for money for taxpayers. The advice, which was accepted, is that progressing a full MIM project is not the best course of action at this point.

I am sorry, Mr Ewing, but I have forgotten the second part of your question.

**Fergus Ewing:** The basic point was about engendering confidence. I want us to have what we have not had over almost the past three years of this session of Parliament: confidence that a stream of work will go ahead in future.

I want to finish off my point, convener. If there is time for me to come back to entirely different matters, I would appreciate that, but other members will want to have their shot.

I have spoken to companies, which I will not name, that are involved in the provision of private capital—whether that is through MIM or by other means is not really important. There is massive appetite to provide private capital to the Scottish Government, because it is recognised as a secure long-term form of investment. Having spoken to three of those companies, I know that there is a desire in Britain and Europe to provide private capital. That means that there is the potential for competitive interest and for Transport Scotland to get a good deal. That approach would involve less risk than investing in, for example, a private plc.

Given that that appetite exists—I heard Transport Scotland officials acknowledge and corroborate that in the recent briefing that we had—is now not the time to strike forward and make progress, rather than kick the can down the road? My constituents have seen that happening for nearly the past three years, and they are sick and tired of that.

I ask you again, Alison Irvine: will you not look again and urge the Scottish Government to reconsider the timescale? People are worried and very sceptical about whether, when 2025 comes along, there will be rapid moves into procurement of the middle and northern sections, which involve my constituency.

**Alison Irvine:** We are aware that there is significant private finance interest in the potential

work on the A9 dualling programme, because we have done quite a lot of market testing, which was done through the advisers we brought on board, and we have also done a lot of engagement with the Welsh Government, which has used the MIM approach.

If it is okay with you, Mr Carlaw, I suggest that Rob Galbraith says a bit more about the work that we have done on that.

**The Convener:** Yes, please do, Mr Galbraith.

**Rob Galbraith:** To pick up Mr Ewing's previous point, I completely agree that there is a high level of appetite from the lending market for opportunities such as those that the A9 MIM contracts would provide. The competition that that would create is around the premium—the profit margin, in effect—that lenders would put on the money that they are lending, but that is not the sole element of price for the cost of borrowing. We have to look at the total cost of borrowing, because the lowest-risk borrowing is usually buying up Government debt. Government debt prices drive the borrowing market prices and, right now, Government debt prices are higher than they have been for a while. That is pushing the total overall cost of borrowing higher than it would have been 18 months or two years ago.

**Fergus Ewing:** That is not such a factor for long-term contracts. For long-term borrowing, the interest rate levels out. That point that has been put to me by the industry, which says that Transport Scotland does not seem to have understood it.

**Rob Galbraith:** Just to be clear, the advice that we have received from specialist financial advisers is based on the price that they would expect to be achieved in the market for such borrowing at the expected financial close date, so it is specialist market advice.

**Fergus Ewing:** Thank you.

**The Convener:** As we are on this area, I will ask a question before I come to Mr Choudhury.

The committee has received a lot of briefings, and my question partly refers to historical material that we have received. In 2021 and 2022, Transport Scotland's cost estimates for completing the project ranged between £4.5 billion and £6.25 billion. In December, though, the cabinet secretary announced a total programme cost of £3.7 billion at 2023-24 prices. I am keen to try to understand how we have arrived at £3.7 billion, having had those two earlier cost estimates quite recently prior to that.

**Rob Galbraith:** I can address that if my colleagues wish me to. The figures of £4.5 billion and £6.25 billion that you referred to are for two different things, and they are outturn prices. One

will have been for a capital-funded design and build option and the other for a resource-funded private finance option. Both figures included operation and maintenance costs, and future indexation. The quote for £3.7 billion at April 2023 prices does not include forward indexation or operation and maintenance costs. That is what we call a total scheme cost estimate, which has a specific technical meaning that is used in the preparation and construction of contracts.

**The Convener:** Right. Okay. That is quite interesting, in terms of where we might end up.

**Foyso Choudhury:** Good morning, panel. I will ask the same question that I asked Mr Barn. How confident are you on the timescale? If you are not confident, what estimated time are you guys thinking of?

**The Convener:** Who is going to commit to the timescale? Alison Irvine has indicated that she will respond.

**Alison Irvine:** The earliest completion date by 2035 has been subject to quite a lot of assessment work by the team. It represents what we think is the most realistic date if we combine factors such as market capacity, financial availability and levels of disruption along the route. That does not mean that it is not without risk: none of us would go into a project of this size and scale without recognising that risk exists. However, we believe that that date is achievable, and there has been quite a lot of testing of it.

**Foyso Choudhury:** Has reasonable consideration been given to the key reasons for the failure to deliver the project by 2025 resurfacing?

**Alison Irvine:** We are now in a different place than we were back in 2011-12, when the original 2025 timescale was set out. We have substantially completed the statutory processes, and we have just one section around Dunkeld where that work needs to be completed. That takes out a major element of risk associated with the delivery of the programme. We are now into the territory of risks being around delivery. Looking back, I would say that the work that has been undertaken over the past few years, which has got us to the present time, puts us in a much stronger position to manage the overall delivery of the programme.

As you would imagine, we will take steps to ensure that we have the resources in place in Transport Scotland to do that and to ensure that we have the governance associated with it right so that we can be as open and transparent as possible. We are keeping stakeholders—landowners and other partners—involved as we go through the programme. That is the intention.

**Foysoyl Choudhury:** I do not have any other questions.

**The Convener:** Mr Galbraith, would you like to respond to that?

**Rob Galbraith:** No.

**The Convener:** I am sorry. I had a note that you did, but that might have been in relation to the previous question. That is fine.

**Alison Irvine:** I think that Mr Brannen wants to come in, convener.

**The Convener:** My apologies. We are crossing wires.

**Roy Brannen (Scottish Government):** No problem, convener.

I will pick up on the point about the statutory processes, which Grahame Barn also mentioned. Alison Irvine covered it well. We have 92 per cent of the statutory processes through and completed. Way back in 2011, when the original timetable was set out, we estimated about six years to complete the statutory process. Rob Galbraith can say a bit more about why it takes a road project that length of time. Principally, it is because we follow the guidance in the “Design Manual for Roads and Bridges”, which is applicable across the UK. That is a three-stage process—corridor options, then route options, and then a preferred route—and then the preferred route goes through the statutory order process.

The reason why we do that is that we try to get through the statutory process in a way that means that those from whom we are procuring land feel as if they have been well engaged and that we come through the other end without the need for a public local inquiry. In the case of the A9, we were about one to two years later than we programmed for those statutory processes, but that has resulted in a more engaged approach with 300 landowners.

The scheme is complex, and a lot of people think that it is much simpler than it really is. However, there has been only one public inquiry, which was for the Killiecrankie section. We had a public inquiry for the Luncarty section, but Network Rail pulled out at the last minute, and the other sections required written evidence only. In my experience—I have been driving forward transport projects for more than 30 years—it is unusual to get to a point where you have potentially acquired all that land at the made-order stage without significant disruption through public inquiries.

Grahame Barn mentioned that we have one national park to deal with, but we have 14 scheduled monuments, 12 sites of special scientific interest, seven areas of conservation and two special protection areas along the full length of the corridor, as well as 142 ancient woodlands. It

is pretty complex to complete the statutory processes in that period—up to 2019—and get to the point where we move straight into construction.

To answer Mr Ewing’s point, the team has now set out a clear plan to the market that the next three schemes will be capital. We will take a decision in 2025 around the availability of money and the price of that money to continue on the next two schemes in the mutual investment model.

**The Convener:** I referred earlier to the Queensferry crossing project, for which I was the convener of a hybrid bill committee. The internationally renowned engineer David Climie was employed—understandably, on a significant salary—to manage that project all the way through. Given the complexity and the timeline associated with the A9 project, was thought ever given to whether an overall figure should be appointed to manage it? Would it have helped to have had a parliamentary committee that worked with Transport Scotland, as we did successfully on the Queensferry project, to try to navigate the different processes that might have been political obstacles along the way?

10:45

**Roy Brannen:** I chaired the Queensferry crossing board for the last few years of its construction, and Michelle Quinn was the director of major projects and senior responsible owner for the project.

On your first question, the statutory process was, if you will recall, slightly different. An act of Parliament was required for the crossing, whereas the statutory processes involved in taking forward the A9 were different. That is why parliamentary scrutiny is different.

As for the right individual to lead the project, that has been Michelle Quinn. Michelle was the director of major projects and ran not just the A9 project but the AWPR, the Queensferry crossing and a host of others—the M8, the M73 and the M74—at the same time, most of them to successful completion, and on time and under budget.

For the next stage, the discussion that I am now having with Alison Irvine and the team is about how to set up the next level of oversight as we go through the construction period. As for whether that involves a David Climie-type project director for the next sections, I would just say that, now that we have certainty about what the programme looks like, the issue will be considered by Alison and the team going forward.

**The Convener:** That was interesting. In that case, I will turn to Michelle Quinn.

Good morning. A number of projects were operating concurrently. Do you have a view as to where the A9 sat in that complexity?

**Michelle Quinn (Scottish Government):** Throughout that period, we were doing everything that we could to progress the statutory processes, and, indeed, we took forward some of the early schemes such as Kincaig to Dalraddy. If you cast your mind back to that time, you will remember that we had a number of different projects going on simultaneously right across the country.

To go back to some of the evidence that you have received from Grahame Barn, I would just note that we had a lot of interest in our projects at that time. It is the case that despite or because of the terms and conditions that we had—it depends on how you look at it, I suppose—I was having regular engagement with the construction industry, and we gave it clarity on the way in which we procured projects, and time to understand precisely what its risk profile was going into the projects. We allowed the industry the time to do its diligence.

We need to remember that, during those procurement periods, which in some cases were nine to 12 months long, the contractors undertook their own design. They had opportunities to get significant extra information through additional ground investigation, and they had an opportunity to work through their programme, because of their expertise in that field and their ability to do that. We respected that expertise, but when they submitted tenders, they absolutely assured us that they had done sufficient diligence and were satisfied with the sufficiency of their tenders. In that scenario, we felt it appropriate to award contracts to the most economically advantageous tenderers.

When we make an award, we are all locked into the terms and conditions, and it is then our responsibility to enforce those terms and conditions and ensure that the public purse does not take on any additional risk. That is what we did.

I suppose, then, that the thing that I am not sure is coming through in a balanced way is the fact that more than one party—that is, the client—is involved in this process. It is important that the contracting industry does not get so competitive with itself that it underprices projects in any way, because that puts us all in difficulty. It creates risk for everybody; it creates risk for these projects; and that is unnecessary.

I welcome Grahame Barn's statement that the contracts are being priced accordingly. We accept—and Transport Scotland has acknowledged and, as a result, changed the terms and conditions in its contracts—that the macro

environment has changed and that there is the kind of competition that Mr Ewing mentioned earlier. The NEC4 contracts reflect that, but responsible tendering and responsible bidding are still required. I take this opportunity to urge contractors to bid in that way as we go forward, to ensure that we have a successful delivery for the A9.

**The Convener:** Thank you. I have a number of other questions, but I am keen to bring in colleagues. David Torrance has a question.

**David Torrance:** Good morning to the panel members. On that point, what discussions did Transport Scotland have with the civil engineering industry and financiers before deciding on a hybrid procurement approach? How confident are you that that approach is deliverable?

**Rob Galbraith:** We had market consultation going back to the beginning of 2021, I think, and we have kept that consultation going with financial lenders, with large-scale design, build, finance and operate contractors and with contractors who would have more of an interest in the design and build market, in order to get an understanding of their appetites and what they are looking for from contracts.

We believe that the hybrid approach, although not necessarily giving each of those parties everything that they would have wished for, at least gives them something that we understand would be attractive to them. We have had early discussions since the statement with at least one of the lending parties, which is continuing to express an interest in participating in future MIM contracts, for example.

**David Torrance:** In the evidence earlier, we heard about adverse weather conditions and the lack of workforce in the construction industry. Will that have an impact on the 2035 completion date for the A9? Are those factors being built in?

**Rob Galbraith:** Those factors are considered when we look at the construction timetables and durations that are required. With any contract, the kind of thing that can always affect ultimate completion is if you have a very bad winter in the last winter of construction, for example. Everybody is always at the mercy of that last piece but, in the overall durations, we have made provision for not working during the expected periods of poorer weather and for not carrying out certain kinds of work over the winter months. For example, road surfacing was referred to earlier—you would not attempt to carry that out over the winter months, as you would not expect the temperatures to support such activities. That is all built in as part of construction planning.

**David Torrance:** Thank you.

**Edward Mountain:** Most people's perception is that if there is a budget in a Government department, it will be spent. Looking back, did you have the budget for the A9 improvements? If so, what was the hold-up in spending it?

**Roy Brannen:** Given where we were at in terms of prep and design for the statutory processes, we did have the budget. As we were progressing the schemes through the statutory processes, there was enough funding in place to provide the necessary support for our framework consultants, which we used in developing the scheme to support the work on ground investigations, engagement with communities, buying the land, setting up, looking through the forms of tender and so on. That was all in place.

As two of the schemes came forward early—Luncarty and Dalraddy—we were able to get the money available in terms of capital for building them out. The big issue that has been apparent since 2014 is in relation to the not-for-profit distribution model. The Office for National Statistics classification meant that that came on the books of the Scottish Government. Therefore, it was no longer a resource option for the Government to continue to proceed with that as a procurement model. It was not until MIM—the mutual investment model—in 2019 that the Scottish Futures Trust had gone through that process and identified a new resource revenue model to take forward.

That brings in the question of affordability—that is, have you got enough capital and revenue? I look after around 40 per cent of the total Government capital budget at the minute, which covers all offshore wind and all the other investment that we talked about. The key thing is that ministers have agreed that the next three schemes will be capital, and a decision will be taken in 2025 on the remaining five schemes as a revenue-supported model.

**Edward Mountain:** Will you clarify that for me? You had the money to do the prep, but you did not have the money to do the work and actually build it—is that right?

**Roy Brannen:** At that point, we were not building anything; we were still going through the statutory process. That was the forward look on the financing in budgets into the future. We did not have a requirement at that point, because we were not building anything. For the two schemes that were ready to be built, the capital was there, and we built them.

**Edward Mountain:** Looking at those schemes, I can see that the Dalraddy to Kincaig section, which may have opened on budget, was certainly not on time. It was opened on the right day and then closed for another three months. In addition,

the contractor on the AWPR said that it ended up losing money because there were extra costs. Do you think that that put contractors off looking at the A9 again until you came up with this new contract?

**Roy Brannen:** I do not think so, because we had a contractor bid for Luncarty that came off the back of one of our previous contracts. I will bring in Michelle Quinn on the AWPR. Earlier, she covered quite well the evidence about the process that leads up to any signing of a contract, which in that case, was a design, build, finance and operate contract. You make sure that those risks and the understanding of what is required in a contract are transparent, and then you require the market and the contractors to bid accordingly. In that case, the risk transfer was very clear at the outset of the job. If the tender does not turn out the way the contractor anticipated, it is the job of the client to protect the public purse, because the contract will have been signed on a particular basis.

Michelle might want to add more.

**Michelle Quinn:** The question comes back to responsible bidding: getting a keen understanding of the risks that are being passed to the contracting party and ensuring that those risks are priced appropriately. That happens very successfully in some cases, but in other cases it has not happened, for a variety of reasons.

At the point when the contract is awarded, we are all locked into our duties and responsibilities. As the public sector, we have no remit to, at that stage, renegotiate what the risk profile would look like, and, arguably, nor should we. There would not be a renegotiation if the risks pan out in a different way.

It is important that we recognise what everybody's role is and understand what happens when a contract gets locked down. In the event that a contractor pursues a claim and is due that claim, it is important that that claim is paid. Our sense is that we fairly operate the contracts, and there is no evidence to suggest otherwise. Whether those contracts pan out the way that contractors originally anticipate that they might is a different matter, as is whether contractors go into those contracts with their eyes open.

11:00

What I can tell you from my personal experience is that, before entering into some of these contracts, when I have had questions about the diligence work that has been undertaken and the level of understanding, I have met senior representatives from contractors, asked them whether they are satisfied that they have undertaken that diligence work and asked them whether they have absolute clarity about the level of risk that they are undertaking. They have

assured me that they have, and I am not sure what more we can do as a client organisation once we are at that stage in a process.

However, we recognise that the macroenvironment has changed, and we have changed to reflect that.

**Edward Mountain:** Earlier, Roy made a comment about there being 300 landowners; that is over 80 miles of road on the A9. It is probably every compulsory purchase practitioner's dream that there are so few, because that makes it relatively simple.

I will turn to the future, because I want to push on something that the convener mentioned, if I may. Alison Irvine, you suggested having a David Climie equivalent for the A9 work. The A9 project will cost £3.7 billion, according to Government figures. It could well increase—the cost is based on 2023 figures—by the time that it is finished in 2024. That is probably going to be closer to £4.5 billion. Are you going to have an overall supremo, making sure that all of that project works and that we get it done? I would say that, with its current staff, that is clearly outwith Transport Scotland's ability.

**The Convener:** That was a very evenly put question. Alison Irvine, would you like to respond?

**Alison Irvine:** I am going to disregard the comment that it is beyond Transport Scotland's capability at the moment. Now that we have this well-defined plan, it is appropriate that I consider the resources that we have in place to ensure that we deliver on that for ministers. As Roy Brannen set out earlier, that is exactly what we are doing at this time.

**The Convener:** Thank you. Mr Ewing has another question and I would like to go back to a couple of things. This is a slightly more circular approach, because I want to go back to the more historical aspect.

We are grateful for all the material that you were able to supply, which was quite a high pile when it was all stacked up and took quite a bit of digesting. One aspect that I wrestled with slightly was that for a great deal of time there was a conviction that the project could be delivered by 2025, which was evident throughout all the written submissions and evidence that we got by way of our inquiries and the material that we asked for.

Somewhere around 2018 or 2019 there was a change and discussions seemed to emerge about different funding models for the project, which did not feature in any of the narrative that have I read on what was happening up to that point. What is not clear to me is where the direction that was given for consideration of alternative funding models came from. Did it come from ministers and

civil servants down or did it come from Transport Scotland up?

When I read all that, I was unclear why that area of discussion opened up at that point and who was leading on it. Where did the direction that was given for that change come from?

**Alison Irvine:** I see that Roy Brannen has his hand up so I will defer to him, then I can pick up anything that I need to.

**Roy Brannen:** On the timing in 2018, we were pushing on through the statutory processes and we were clear about what was required in construction terms. The non-profit distributing model disappeared in 2014 and we did not have a new model for delivery. The budget profile for TS, as a close-in executive agency, is set by ministers, and it is set in the context of the wider capital programme that ministers are taking forward. Back in 2018-19, the infrastructure investment plan had set out a range of things that were required to be delivered and a range of models for delivering those. That was the first time that MIM was considered as a new revenue model that could be taken forward.

In 2018, when we updated our ministers, we were clear that, because of the time that it would take us to get advisers in to develop a new model and to construct a mechanism that would address how the special purpose vehicle and the equity share would work, the 2025 date would not be achievable on a revenue finance basis, but that, if the capital was available at the necessary scale—lots of other projects would have been competing for it—theoretically, the project could still be delivered in that timeframe. Rob Galbraith will correct me if I am wrong, but I think that, at that point, a six-year construction period was anticipated for all the schemes. That was the thought process.

Transport Scotland's capital budgets were considered within the wider budgets of the Government, and different models were looked at for financing all those projects, with a revenue finance model potentially coming forward through MIM that would have enabled us to deliver the A9 project. However, at that point, if that route had been chosen, 2025 would not have been achievable, for the reason that I have explained.

**The Convener:** It sounds as though some of the initiation for that came from within Transport Scotland.

When you say that you "updated our ministers", I assume that you do not mean that you got rid of the ones that you did not like and got new ones. I assume that you mean that you briefed them accordingly.

I note that, at that point, Mr Neil and Mr Brown—Keith Brown—who had to manage a number of projects simultaneously, stopped being involved and Michael Matheson came in. There is a suggestion that that is when a degree of drift and delay crept into the whole project, which affected its momentum. I know that other events unfolded two years later, when we had the pandemic and everything else, but it is not clear to me whether, from the point of view of ministerial direction and oversight, there was the same degree of focus on the project as there had been up until that point.

**Roy Brannen:** No—it is 100 per cent the case that there was the same degree of focus. Every minister under whom we have worked has been very well engaged on the A9 programme. We needed to find an affordability route and a procurement route. At the time that Mr Neil decided that we were going to take forward the project, the NPD model was available to us. It was available right up until 2014, when the ONS classified it differently. That meant that such finance came on to the books of the Scottish Government. It was clear that such a big project could not be financed in that way.

Therefore, the SFT worked through the process to identify a different model that was based on the Welsh model. Ministers were fully engaged in that process. However, the A9 project was captured in the wider budget-setting process for capital, so it was competing for capital with all the other projects that were in the IIP.

**Fergus Ewing:** I have one final question for our witnesses. Your big office is in Buchanan house in Glasgow, and Inverness is 168 miles away. In two or three years' time, the dualling of the A9, which will be the biggest project that the Scottish Government will ever undertake, and, I trust, the dualling of the A96 from Inverness to Auldearn, including the Nairn bypass, will be going ahead. Given that almost all your spend will be in the Highlands, around Inverness, on the A9 and the A96, do you not think that it is time that you moved some of your staff and based them in Inverness? Would that not engender rather more confidence in Transport Scotland among people in the Highlands than there is at the moment?

**The Convener:** Is that question for Alison Irvine, in the first instance?

**Fergus Ewing:** Whoever.

**The Convener:** Alison, I think that that might be for you.

**Alison Irvine:** I will pick that up to start with.

For awareness, over the course of the work that we have done on the A9 and the A96 over the past few years, we have had a local presence in the area. However, I think that your point about

central belt bias is well made. We are working hard to go against that, so to speak, or to improve our standing in that respect. As I am sure that you will appreciate, I cannot, at this point, commit to our moving the offices of Transport Scotland, but that is not to say that I do not recognise the point that you make.

**Fergus Ewing:** Thank you for that answer, but what do you mean by “presence”? I know that certain companies have been involved, such as Jacobs and Atkins, which have had a presence—an office—in the north, although I think that at least one of those companies pulled out of its Elgin office, because of the lack of progress on the A96. What do you mean by the “presence” that Transport Scotland has in Inverness?

**Alison Irvine:** Sorry—I did not say Inverness; I meant in the area concerned. I do not know whether Rob Galbraith can help me out here on the detail of what we have had in place over the past few years.

**Rob Galbraith:** I am afraid that I do not have that information to hand directly. I know that, during the design and development phase, we have had local teams based in the likes of Inverness in order to be accessible to a range of people they were engaging with. I am afraid that I could not quote numbers; we can perhaps provide that information in written form afterwards.

**Fergus Ewing:** You would be very welcome to do that.

**The Convener:** Using the technology has been quite complicated, and I am very grateful to you all. We have run on quite a bit after the time that we had anticipated, and there are lots of other things that we would have been very happy to discuss, but I thought that I would give you the opportunity, Alison—perhaps through your colleagues—to volunteer anything further for the record at this point.

**Alison Irvine:** First, I thank you for accommodating the need for us to appear virtually today. The impact of storm Jocelyn on the transport network has been significant.

I am looking through the things that we have covered and the things that Mr Barn has picked up, and I do not think that I have anything to add. I am looking to the rest of my colleagues, and they are not giving me any indication.

**The Convener:** That, I think, is an indication.

**Rob Galbraith:** I will mention one thing briefly in relation to a question that you asked, convener, about resource-funded models. Just to be clear, the Scottish public finance manual requires consideration to be given to private finance models for major infrastructure projects. That would normally be considered as part of the

development or procurement strategy for an individual project or programme of projects, as we are considering in this case. That is part of standard practice, if you like.

**The Convener:** Is that in relation to events around 2018?

**Rob Galbraith:** As background to the things that you have been picking up in the papers for 2018, yes.

**The Convener:** Right. You will appreciate that there is a sense about what was happening at that point. Many people have been keen to identify why there was a very clear track or line towards delivery of a project by 2025 and to ascertain at what point that started to become less clear, or murky. To me, coming to the matter only as someone who uses the A9 from time to time, and looking at the papers, it struck me that a drift seemed to materialise around 2018 or 2019, and it was not communicated to the public or the wider world, who still thought that 2025 was the project delivery date and that all was in hand. It looks to me that, at that point, there was serious reservation and doubt about it all internally. I was not clear as to whether that was emerging from the ground up or from the top down.

**Rob Galbraith:** As I have alluded to, the points that have been discussed will have come through the work that was being carried out to deliver the Scottish public finance manual requirements, as part of looking at the procurement strategy. There was always the option under that procurement strategy to continue to use, or choose to use, a design-and-build, capital-funded approach for completion of the whole programme. However, there is a process that has to be gone through to reach a holistic decision, rather than a piecemeal decision.

**The Convener:** Okay—thank you very much. I am not sure I have fully understood or come to an appreciation of what happened at that point.

David Torrance has indicated that he wishes to come back in again.

**David Torrance:** When the committee makes inquiries and takes evidence, we do so to benefit the aims of the petition. I found the statement that Edward Mountain made earlier about the ability of Transport Scotland not helpful at all. It does not help our cause at all when members of the committee make such statements.

**The Convener:** That is noted for the record.

Thank you all very much for joining us this morning. I am really very appreciative of you working within the restrictions imposed across the country today, and for everything that you have contributed.

11:15

*Meeting suspended.*

11:21

*On resuming—*

## Continued Petitions

### Island Community Representation on Boards (PE1862)

**The Convener:** Agenda item 4 is consideration of continued petitions, the first of which is PE1862, which was lodged by Rona MacKay, Angus Campbell and Naomi Bremner on behalf of the Uist economic task force. The petition calls on the Scottish Parliament to urge the Scottish Government to introduce community representation on boards of public organisations that deliver lifeline services to island communities, in keeping with the Islands (Scotland) Act 2018.

We previously considered the petition at our meeting just before Christmas, on 20 December, when we heard evidence from all three petitioners. During the evidence session, the petitioners spoke about ways to ensure that island residents can influence and truly feel part of the decision-making process. Specifically, they spoke about the importance of including local island knowledge as an essential criterion in the skills matrix for appointments to public boards.

Having had the opportunity to reflect on the evidence that we heard, and following our brief informal discussion after the evidence session last month, do members have any comments or suggestions for action?

**Fergus Ewing:** I suggest that we write to the Commissioner for Ethical Standards in Public Life in Scotland and to Western Isles Council, Orkney Islands Council and Shetland Islands Council to seek their views on the action that is called for in the petition—specifically, the suggestion that island knowledge should be added as an essential criterion in the skills matrix for boards that deliver lifeline services to island communities, and the processes for encouraging island residents to apply for those roles.

In addition, we should write to the Minister for Transport to seek a response to the four suggestions that are set out in the background information on the petition; to ask what consideration has been given to developing a more structured role for local councils to suggest potential candidates when vacancies arise on public boards that deliver lifeline services to island communities; and to seek further information on the methodologies that are being used to encourage more applications from island residents and give them confidence to engage with the recruitment process. For example, video conferencing technology could be used to allow people to participate in interviews, rather than

there being a requirement to physically travel, which can involve an awful lot of time and expense and is a deterrent in some cases, as we have heard.

**The Convener:** The point about individuals being able to participate in interview processes was well made. That is a comprehensive list of suggestions. Do colleagues have any additional suggestions?

**Foyso Choudhury:** We should also write to island community councils to get them involved.

**The Convener:** I am happy to include them in the list.

Are we content with those suggestions? If Mr Torrance can just nod his head, I will know that he is content, too.

*Members indicated agreement.*

**The Convener:** We will keep the petition open and take forward the action that the committee has agreed to take.

### Rape Charges and Convictions (Record of Sex) (PE1876)

**The Convener:** Our next continued petition is PE1876, which was lodged by Lucy Hunter Blackburn, Lisa Mackenzie and Kath Murray—despite my wonky eyesight, I might have seen some of them in the public gallery. The petition calls on the Scottish Parliament to urge the Scottish Government to require Police Scotland, the Crown Office and the Scottish Courts and Tribunals Service to accurately record the sex of people who are charged with or convicted of rape or attempted rape.

We previously considered the petition on 6 December last year, when we took evidence from two of the petitioners: Dr Lucy Hunter Blackburn and Lisa Mackenzie. During the evidence session, we heard the petitioners' concerns about a lack of ethical leadership from the Scottish Government and Police Scotland on the policy of recording crime statistics and about the possible impact on wider public policy decisions and the allocation of resources. We also explored the issue of public trust in statistics and whether there might be local variations in the way in which the police record data on rape and sexual offences. The committee felt that important issues were raised in the evidence session.

Do members have any comments or suggestions for action?

**Foyso Choudhury:** We should write to Police Scotland to seek a clear explanation of how its policy on recording the sex of perpetrators of crimes aligns with the organisation's values. We should also seek further information on whether a

consistent approach to recording crime data is taken across Scotland and, in particular, on whether there is a central database for recording information on rape and sexual offences.

**The Convener:** Thank you, Mr Choudhury. There seemed to be a gap between warm words and operational practice in Police Scotland's approach, so those questions need to be put to it directly.

It seems that no other member wishes to comment further. Is the committee content to keep the petition open and to progress the issues with Police Scotland directly, along the lines that Mr Choudhury suggested?

**Members indicated agreement.**

### **Reusable Water Bottles (PE1896)**

**The Convener:** The next petition is PE1896, which seeks to provide every primary school child in Scotland with a reusable water bottle. Members might recall that the petition was lodged by Callum Isted, who, at the age of just seven and still in primary school, was the Parliament's youngest ever petitioner. I have to say that the petition has been open for so long that he is now almost heading off to secondary school. The petition itself calls on the Scottish Parliament to urge the Scottish Government to replace the disposable water bottle that is provided with primary school lunches with a sustainable reusable metal bottle.

We last considered the petition at our meeting on 19 April 2023, when we agreed to write both to the Minister for Green Skills, Circular Economy and Biodiversity and to the then First Minister. We requested information on the methods of water provision in each local authority-run school and on how authorities are meeting their sustainability requirements. We were particularly keen to hear whether local authorities would be interested in participating in a national procurement exercise for the supply of reusable metal water bottles.

The Scottish Government received responses from 26 local authorities, and a summary of those findings has been provided as a written submission. It reveals that the automatic provision of reusable water bottles to pupils, or the use of single-use bottles, is not an authority-wide policy in any Scottish local authority area. Of the responses, 15 noted that single-use bottles are available in schools; of those, 13 also offered reusable plastic cups and the remaining two provided reusable water bottles. We heard that 13 councils indicated that they would be interested in taking part in a national procurement exercise, while 12 clearly stated that they would not. Of those that marked no, six already provided reusable water bottles.

Sue Webber, who was previously present with Callum Isted and his family, is unable to attend our meeting this morning as she is convening the Education, Children and Young People Committee's stage 2 proceedings elsewhere in the Parliament. However, she has asked that her support for Callum's petition and on-going campaign work be noted on the record.

I come back to what, for me, is still quite a vivid memory of Callum Isted presenting his petition. Against a background of so much emphasis being placed on education and change of practice in the next generation, he came forward with a petition designed to achieve a material and practical change. There does seem to be interest in his proposal—at least from the 13 heroic councils that said that they might consider a national procurement exercise.

Do members have any suggestions for action that we might take?

11:30

**David Torrance:** Considering that 13 councils have expressed an interest in a national procurement exercise, the committee could write to the Cabinet Secretary for Education and Skills to ask whether, in light of the response from local authorities, she would consider progressing the petition's aims with the 13 councils that indicated an interest in a national procurement service.

**Foysoil Choudhury:** We should congratulate the petitioner, because reusable water bottles have a lot of environmental benefits and encourage kids to drink more water.

**The Convener:** Absolutely. We should congratulate the petitioner again. When writing to the cabinet secretary, we might point out that, although Mr Isted is not an ageing individual, unlike me and other members of the committee, he is set to leave primary school eventually, so it would be nice if we were able to take forward, to some extent, the aims of his petition.

Do we agree to take that approach?

**Members indicated agreement.**

### **Cemeteries (Local Authority Actions) (PE1941)**

**The Convener:** PE1941, on stopping the destruction of headstones in community cemeteries, was lodged by Councillor Andrew Stuart Wood and calls on the Parliament to urge the Government to monitor and regulate actions taken by local authorities when undertaking their statutory duty to ensure health and safety in our cemeteries.

We previously considered the petition on 19 April 2023, when we agreed to write to the Scottish Government. Its response states that, once they are finalised, the new burial regulations will set out minimum standards for all burial authorities in Scotland and will work alongside existing guidance and a burial code of practice. Regulations will also be brought forward to introduce inspection for burial, cremation and funeral directors, with inspectors inspecting against the legislation, guidance and codes of practice. Two public consultations have taken place in relation to that work.

The committee has also received a written submission from David Brunton outlining specific concerns about Scottish Borders Council's cemetery improvement programme. He states that the guidance has not been followed in practice and that the use of individual notices for signalling planned works in cemeteries needs to be enforced. He raises concerns about listed building consent not being obtained prior to works being carried out and about poor communication when people seek information from councils about their rationale for taking stones down.

Colleagues will remember our evidence session on the petition, when we were provided with quite graphic illustrative examples of the way in which headstones had been routinely destroyed in cemeteries without reference to any of the families concerned. However, the Scottish Government appears to be making progress in that regard. I am aware that the petition throws up a number of issues beyond the ones that we are considering here.

Do members have any suggestions as to how we might proceed?

**David Torrance:** You know that I like to close petitions when the Government has consulted on the issue, but I would like the committee to write to the Scottish Government to seek an update on the consultation on the burial regulations. Specifically, we should ask when the consultation responses will be published and what work the Government intends to prioritise as a result of the responses that it has received.

**The Convener:** I think that there is still widespread interest—represented by colleagues from all around the country, in all parties—in how the matter progresses.

**Foysoil Choudhury:** We could also ask whether there is a database with information about the families. For example, if something went wrong with a headstone, would we have the family's contact details?

**The Convener:** We could ask that, but I think that the evidence suggests that such information is very fractured; it depends on individual practice. I

do not think that there is a national database on such matters.

**Foysoil Choudhury:** Could we ask whether one could be provided?

**The Convener:** We could certainly ask whether anybody has given any thought to whether that might be an option.

Are we content to proceed on that basis?

**Members indicated agreement.**

### Unexplained Deaths (PE1948)

**The Convener:** PE1948 seeks to improve the way in which unexplained deaths are dealt with. One of our more sensitive and long-standing petitions, it was lodged by Alex O'Kane and calls on the Scottish Parliament to urge the Scottish Government to encourage Police Scotland to review its practices for dealing with unexplained deaths from initial recovery through to the support offered to family members. We last considered this petition on 19 April 2023, when we agreed to write to Police Scotland.

In advance of this meeting, the clerks have engaged with the Criminal Justice Committee's clerking team to consider areas of overlap between that committee's work programme and this petition. The Criminal Justice Committee's action plan includes work on trauma-informed training across the criminal justice sector, with the committee receiving updates on progress towards the further roll-out of training every six months. It is also taking evidence on the Victims, Witnesses, and Justice Reform (Scotland) Bill and will then take evidence on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

In a response that it has submitted to our committee, Police Scotland explains that identifying relevant complaints received about the way in which unexplained deaths are investigated is not possible, because the professional standards department database cannot be filtered to identify specific complaints relating to the investigation of unexplained deaths. However, the submission does note that professional standards department investigations west maintains an additional index of such complaints in the west command area, and that 13 complaints had been recorded, one of which had been referred to the Police Investigations and Review Commissioner for a complaint-handling review.

I should add that a national complaint investigation model has been implemented, with the aim of improving future recording and analysis capabilities. Moreover, at the time of writing of Police Scotland's submission, the investigation of death national guidance was with senior

management for review prior to consultation taking place.

Do members have any comments or suggestions for action?

**David Torrance:** Would the committee consider closing the petition under rule 15.7 of standing orders, on the basis that the key issues raised by the petition are being considered by the Criminal Justice Committee? Trauma-informed training has been identified in that committee's action plan as an issue to pursue with Police Scotland and the Crown Office and Procurator Fiscal Service, and the committee is also undertaking scrutiny of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill and the Victims, Witnesses, and Justice Reform (Scotland) Bill. In 2023, the Scottish Government published a trauma-informed justice knowledge and skills framework, which underpins the key aim of the Victims, Witnesses, and Justice Reform (Scotland) Bill to embed trauma-informed practice in justice systems.

Moreover, in closing the petition, could the committee write to the Criminal Justice Committee to highlight the issues raised by the petitioner and Stephanie Bonner, and could the clerks also assist them in submitting written evidence to that committee, particularly on the complaints process and the codes of ethics, for its consideration as part of its scrutiny of the Police (Ethics, Conduct and Scrutiny) Scotland Bill?

**The Convener:** I think that that additional link is important. Colleagues, are we content to act on Mr Torrance's suggestion?

**Members** *indicated agreement.*

**The Convener:** I thank the petitioner and all those who have been concerned in the petition's progress. As Mr Torrance has said, our colleagues elsewhere are taking forward some of the issues that the petition covers. We will seek to facilitate engagement between the petitioner and the Criminal Justice Committee, as he proposes. I see that we are all content with that.

### **Public-private Partnerships (PE2004)**

**The Convener:** PE2004, which seeks to abolish the use of public-private partnerships in Scotland, was lodged by Line Kikkenborg Christensen on behalf of Jubilee Scotland. It calls on the Scottish Parliament to urge the Scottish Government to abolish the use of PPPs and to commit to a new model for financing and managing public infrastructure in Scotland that has safety, quality, value for money and accountability to the taxpayer at its heart. We last considered the petition on 3 May 2023, when we agreed to write to the Scottish Government and the Scottish Futures Trust.

The response from the Scottish Futures Trust states that the model proposed by the petition would require a renegotiation of the fiscal framework to enable the Scottish ministers to borrow finance capital expenditure. The response also offers information on the mutual investment model, which cropped up in our earlier evidence session. We know from our work in relation to the A9 that the mutual investment model is an option that is being actively pursued by the Scottish Government.

In its submission, the Scottish Government offers a response to the petitioner's recommendations, stating that the use of private finance has allowed for the delivery of much-needed schools, hospitals and other key infrastructure. The Government also states that it is working with Audit Scotland to develop clear governance and decision-making processes on the use of the mutual investment model.

We have received a submission from the petitioner, which highlights cross-party support for seeking alternatives to public-private partnerships and expresses concern that the Scottish Government is not fully aware of the financial, social and environmental costs of PPPs.

Members will have noted from our papers that, in addition to the working group that the petitioner mentioned, the Public Audit Committee is due to take evidence from the director general of the Scottish exchequer on matters related to infrastructure investment.

Do members have any comments or suggestions for action?

**Fergus Ewing:** I propose that we close the petition under rule 15.7 of the standing orders, on the basis that a working group that includes MSPs from all parties has been established to explore alternatives to PPPs, and the Scottish Government has provided a response to the recommendations proposed by Jubilee Scotland and is continuing to work to improve the financing models at its disposal.

In closing the petition, perhaps the committee could write to the Public Audit Committee to draw its attention to the issues that are raised by the petition ahead of that committee taking evidence from the director general of the Scottish exchequer, which the convener alluded to.

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

**Foyso Choudhury:** I have a comment to add. Considering the concern surrounding corporate confidentiality and lack of accountability relating to PPPs, the petitioner may wish to consider how the freedom of information reform proposed by Katy Clark's proposed member's bill could affect the

accountability of private companies that deliver public services.

**The Convener:** Thank you. That observation is there for the petitioner. That is subject to the progress of the proposed member's bill, of course.

Are members content with the suggestions that have been made?

**Members** *indicated agreement.*

## New Petitions

### Child Circumcision (PE2052)

11:41

**The Convener:** Agenda item 5 is the consideration of new petitions. As I always say, because there could be people joining us, including online, we write to SPICe, which is the Scottish Parliament's independent research body, and the Scottish Government for their views in advance of our consideration of each new petition. We do that because our experience was that, if we did not do so, we would do that after the first meeting at which we considered the petition. That is a matter of routine practice so that we can have as informed a discussion as possible.

Our first new petition is PE2052, on banning child circumcision unless it is medically necessary, with no less invasive solutions available. The petition has been lodged by Taylor Rooney. The petition calls on the Scottish Parliament to urge the Scottish Government to give boys the same level of bodily autonomy and protection that was given to girls in the Prohibition of Female Genital Mutilation (Scotland) Act 2005, which banned all forms of female circumcision.

In its response to the petition, the Scottish Government states that it recognises non-therapeutic male infant circumcision on religious grounds, and it notes that national health service guidelines are in place for that practice. The Scottish Government states that it does not regard male circumcision as comparable to female genital mutilation.

In his written submission, the petitioner argues that children's bodily autonomy and religious rights should take precedence over the beliefs of parents, as children may not follow the same religion in adulthood. He states that male circumcision shares many of the negative effects of the most common forms of female genital mutilation, including loss of sensitivity, and that, regardless of potential benefits, it is still unethical to cut into healthy children's genitalia.

We have also received submissions from the Scottish Council of Jewish Communities and the Scottish Ahlul Bayt Society. Both argue that circumcision is important for religious and parental autonomy, with parents acting in the best interests of their children within the established legal and medical frameworks.

The Scottish Council of Jewish Communities referenced UK-based research that found that more than 80 per cent of respondents would consider a prohibition of brit milah to be at least "a fairly big problem". The submission explains that,

because of its centrality to Jewish life, denying milah to a Jewish boy undermines his sense of wellbeing and his right to cultural heritage and identity.

The Scottish Ahlul Bayt Society notes that Shia Islam categorically condemns mutilations of all humans, especially children, and that there is a “crucial distinction” between its practice and genital mutilation.

Coincidentally, I am aware that this practice is quite common in, for example, the United States, where I understand that the overwhelming majority of men are circumcised at birth.

Do members have any comments or suggestions for action?

11:45

**Fergus Ewing:** I recommend that we close the petition under rule 15.7 of standing orders, on the basis that the Scottish Government recognises non-therapeutic male infant circumcision on religious grounds and does not regard male circumcision as comparable to female genital mutilation.

**The Convener:** I think that that is a very clear direction from the Scottish Government with regard to the aims of the petition. Given that, are colleagues minded to agree and to close the petition on that basis?

**Members indicated agreement.**

**The Convener:** We thank the petitioner for raising the issue but, clearly, the committee can keep a petition open only if we think there is an opportunity to advance its aims. I think that the direction from the Scottish Government is quite clear.

### Community Link Workers (PE2053)

**The Convener:** PE2053, which is on stopping the cuts to community link workers and helping to secure their long-term future within general practice teams, has been lodged by Peter Cawston on behalf of Scottish general practitioners at the deep end. It calls on the Scottish Parliament to urge the Scottish Government to take action to ensure that the number and hours of community link workers who are currently serving the poorest communities are not cut in the next financial year, and to take binding steps to secure long-term funding for community link workers in GP practices across Scotland. The issue is one that colleagues might well have had raised with them by GP practices in their constituencies.

We have been joined for our consideration of the petition by our former colleague Paul

Sweeney. Welcome back to the committee, Mr Sweeney.

The petitioner has told us about the support that community link workers provide and has expressed concern that, without a change in the way in which the posts are funded, health inequalities across Scotland are at risk of widening. Members will have noted from our papers that, although the Scottish Government has announced additional funding covering the next three years to preserve the existing community link worker programme in Glasgow, the petitioner remains concerned that the call to secure long-term funding for the programme has not yet been addressed.

Before I turn to committee members for any suggestions or comments, I ask Paul Sweeney whether he would like to contribute to our thinking.

**Paul Sweeney (Glasgow) (Lab):** Thank you, convener. It is a pleasure to return to the committee to discuss such an important issue.

I am really pleased to be here to support the petition, and I was pleased to work with community link workers and the GMB trade union over the summer period in opposition to proposals from the Glasgow city health and social care partnership to cut the number of community link workers in Glasgow from 70 positions to 42. With the Scottish Government stepping in and awarding the partnership the money to maintain the level of community link worker posts in the city, it might on the face of it seem that the petitioner’s ask has been met. However, the intervention was made only after some months of uncertainty and significant distress among the workforce and associated GP practices.

Indeed, the petition’s latter ask, which is to secure the long-term future of these roles, is the fundamental issue for the committee’s consideration today. It is clear, certainly to me, that the current model of yearly funding awards for community link worker posts across the country does not provide sufficient job security or forward planning capacity for the workers, or sufficient consistency for the deep-end GP practice teams, for whom the community link worker posts are crucial as part of wider team efforts to support vulnerable patients.

Link workers play an invaluable role in communities, particularly those with high levels of deprivation. They work with patients on personal, social and financial issues that are not necessarily clinical, such as housing benefits, loneliness, isolation and debt, which not only improves outcomes for the patients but helps to free up valuable GP time. As we all know, GPs are already hard pressed to support other patients with clinical needs.

Evidence of the value of the link worker role is not merely anecdotal. Indeed, as the petitioner has highlighted to the committee in his submission, there is a proven social return on such investment. Under the Health and Social Care Alliance Scotland community link worker programme in Glasgow, 7,800 people were supported in 2022, at a cost of £2.1 million, which generated around £3 million in gross value added, £800,000 in cost savings, £500,000 in tax revenues and, crucially, £18.2 million in wellbeing benefits for communities in Glasgow and the west of Scotland. That equates to a benefit of £8.79 for every £1 of public money invested, which is an impressive ratio.

The positive impact that community link workers have on patients, GP surgeries and the local area in which the service is provided has been clearly demonstrated. Long-term funding is therefore necessary to ensure that that positive impact is sustainable and given best effect, to allow GP surgeries to plan ahead and to give the workforce the basic job security that I think we all agree is reasonable.

Therefore, I encourage the committee to keep the petition open and to invite the Scottish Government to review its current model for funding link workers through health and social care partnerships, with a view to looking at a longer-term funding model. Perhaps the committee would consider taking submissions from the Glasgow city health and social care partnership, the trade union that represents the workers concerned—the GMB—and deep-end GP practices, representatives of which could perhaps describe in detail the benefits that the posts provide to their practices. That is a starter for 10. Thank you for listening to me.

**The Convener:** Thank you very much, Mr Sweeney. As I think that you suggested, one might take the view that, superficially, with the Glasgow position having been resolved in the short term, the aims of the petition have been realised. However, I suggest that we keep the petition open and write to Health and Social Care Scotland and the organisations that you identified: the deep-end practices, the GMB and—

**Paul Sweeney:** The Glasgow city health and social care partnership.

**The Convener:** Yes. We could also write to the Health and Social Care Alliance Scotland to seek its views in relation to the petition.

In addition, we could write to the Cabinet Secretary for NHS Recovery, Health and Social Care to highlight the petitioner's submission and to seek further information on the steps that the Scottish Government is taking, particularly with reference to its considering future funding models, so that we can ensure that there is a clear and

consistent provision of community link workers across Scotland.

I thank Mr Sweeney for his suggestions. As colleagues have no further suggestions, are we content to hold the petition open and to seek further information and evidence on that basis?

**Members indicated agreement.**

**The Convener:** Thank you very much for joining us this morning, Mr Sweeney.

**Paul Sweeney:** Thank you, colleagues.

### Exportation of Live Animals (PE2055)

**The Convener:** PE2055, which was lodged by Ann Mulhearn, calls on the Scottish Parliament to urge the Scottish Government to stop the exportation of live animals from Scotland to any country as a matter of priority and, until such time, to ensure that animals are treated humanely during transit and, where animals are to be slaughtered after arrival, that that is done in a humane manner and to a high standard.

The Scottish Government's response to the petition states that it is committed to banning live exports of animals for fattening and slaughter. It welcomes the UK Government's announcement that a bill will be introduced to ban live exports, and it states that it will work jointly with the UK Government and other devolved Administrations to implement that.

It appears that there is a UK-wide approach and that the Scottish Government expects and hopes to work with the UK Government on the way forward in respect of the aims of the petition.

Do colleagues have any suggestions for action?

**David Torrance:** I wonder whether the committee would consider closing the petition under rule 15.7 of the standing orders on the basis that the UK Government has now introduced the Animal Welfare (Livestock Exports) Bill, which aims to ban the live export from Great Britain of animals that are destined for slaughter or fattening for slaughter, and the Scottish Government has confirmed that it will work to implement a ban.

**The Convener:** The aims of the petition will therefore be achieved. In light of that, are members content to close the petition?

**Members indicated agreement.**

### Shared Parenting (Promotion) (PE2057)

**The Convener:** PE2057, which was lodged by John McMaster, aims to promote shared parenting and prevent the separation of children from their parents. The petition calls on the Scottish Parliament to urge the Scottish Government to ensure that the frequency and duration of parental

contact are equal; to promote the use of parenting arrangements; to require that the evidence of accusations from one parent to another is provided within 14 days of any civil action; and to raise public awareness of the importance of both parents in a child's life. The petition states that its purpose is not to take any of the necessary protections away, but to prevent abuse of the current systems, which are knowingly abused to alienate children.

The SPICe briefing provides information about the Children (Scotland) Act 2020, most of which is not yet in force. The act says that the court must look at the impact of any court orders on the child's relationships with their parents and other important people in their life.

The briefing notes that, in its stage 1 report on the Children (Scotland) Bill, the Justice Committee stated that it was not persuaded by a presumption in favour of shared parenting, as that could cut across the key principle of the welfare of children being the paramount consideration. The Scottish Government's response reiterates that view and adds that, where parents cannot agree, it should be for the courts to decide what parental contact arrangement is in the best interests of the child on a case-by-case basis.

The submission also refers to "Your Parenting Plan", which is a guide for parents with a joint agreement to structure and record discussions about the future care and welfare of their children. In addition, it is noted that the Government provides funding to Relationships Scotland, whose network provides family mediation services, and to Shared Parenting Scotland.

Work is also under way to improve judicial case management, which will lead to court cases being resolved more quickly. Under section 30 of the Children (Scotland) 2020, the court will be required

"to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose."

An important issue has been raised, and we have received some quite informed responses. Do members have any comments or suggestions for action?

**Foyso Choudhury:** I suggest that we write to the Law Society of Scotland, the Mental Welfare Commission for Scotland, the British Medical Association and the General Medical Council to seek their views on the action that the petition calls for, including on the potential resource implications for medical professionals.

**The Convener:** I am slightly confused, Mr Choudhury. Are we talking about the same petition?

**Foyso Choudhury:** We are dealing with PE2061, are we not?

**The Convener:** No, that is not the petition that we are discussing. We are dealing with PE2057, on shared parenting.

**Foyso Choudhury:** Have I got the papers mixed up?

**The Convener:** I think—in fact, I am certain—that you have jumped on to the next petition.

**Foyso Choudhury:** Yes, I have.

**The Convener:** I withdraw your suggestion in respect of this petition.

**David Torrance:** I would like to close the petition under rule 15.7 of the standing orders on the basis that the Justice Committee stage 1 report on the Children (Scotland) Bill stated that it was not persuaded by the presumption in favour of shared parenting, as that could cut across a key principle of the welfare of children being the paramount consideration, and that the Scottish Government agrees with the Justice Committee's comment on shared parenting. In addition, the Scottish Government works to promote parenting agreements through "Your Parenting Plan", and work is on-going to resolve family and civil partnership cases more quickly. Furthermore, once fully commenced, the Children (Scotland) 2020 will require the court

"to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose."

**The Convener:** We could also draw to the petitioner's attention the fact that, over time, should they feel that those measures have not led to the issues being properly addressed, there would be an opportunity to lodge a fresh petition.

Are colleagues content with Mr Torrance's suggestion?

**Members indicated agreement.**

**The Convener:** We thank the petitioner for raising the issue. It is an important matter, and work appears to be under way that directly addresses the issues that have been raised. However, as I said a moment ago, if the measures that have been outlined do not lead to a satisfactory outcome in respect of the issues that have been raised in the petition, the committee would be very happy to receive a petition again after the appropriate time has passed.

### **Vulnerable People (Capacity) (PE2061)**

**The Convener:** PE2061 is the final new petition that we are considering this morning. This is the petition that you focused your attention on, Mr Choudhury. The petition, which was lodged by Laura Johnston-Brand, calls on the Scottish

Parliament to urge the Scottish Government to help to prevent coercion of vulnerable, frail and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

I have been aware that a couple has been with us in the gallery all morning. They have stuck it to the end, so I will conclude that they are here for this petition. Thank you for joining us.

The petitioner has explained that, while terminally ill in hospital, her father was asked to sign legal documents affecting the value of his estate. The family raised their concerns with the Law Society of Scotland, and a solicitor was thereafter found guilty of misconduct and fined.

The SPICe briefing notes that, although there is no general requirement under common law to have someone assessed before they enter into a legal agreement, the Law Society's guidance on meeting the needs of vulnerable clients makes it clear that solicitors cannot simply rely on the presumption of capacity.

12:00

In its response to the petition, the Scottish Government stated that it is already best practice for a solicitor to obtain a medical opinion if there are doubts about a client's capacity. The response went on to note that the question of a "golden rule", similar to that which operates in England and Wales, has been considered by the Scottish courts, which ruled that such a strict requirement is not necessary.

We have also received a submission from the petitioner that responds to the Scottish Government's view. The petitioner remains concerned that the Law Society's rules are insufficient in deterring solicitors from taking actions that they should not take, and notes that the complaints procedure can be a long and distressing one and that it is challenging for members of the public to navigate, with solicitors facing minimal consequences even when complaints are upheld.

We have had notes of interest in the petition from Alex Rowley and Liam McArthur, and representations have also been made to me by Claire Baker and Finlay Carson. Therefore, there is quite a wide range of interest among colleagues on the issues that the petition has raised.

Colleagues exchanged views during our period of consideration ahead of looking at these matters today. Some important issues have been raised, and I believe that we want to keep the petition open at this point.

Are there any suggestions on how we might proceed? Maybe Mr Choudhury would like to offer a suggestion to us now.

**Foyso Choudhury:** Sure. I will repeat what I said earlier. I suggest that we write to the Law Society of Scotland, the Mental Welfare Commission for Scotland, the British Medical Association and the General Medical Council to seek their views on the action called for in the petition, including the potential resource implications for medical professionals.

**The Convener:** Thank you. Following on from the submissions and notes that we have received in relation to the Scottish Government's view that the "golden rule" that obtains elsewhere in the UK is not necessary in Scotland, it would be good to ask the Law Society when we write to it why it feels satisfied that the current arrangements are sufficient. It is clear that, across the rest of the UK, that is not the judgment that has been reached. Individual circumstances can be very detrimental, and the current outcomes can be quite tragic.

Important issues have been raised in the petition, and I am not terribly satisfied with the brush-off response that we have received so far. I think that we need to drill down and interrogate a bit further in respect of all this. Do colleagues share that view? Mr Torrance, are you waving your glasses to say something, or are you just waving your glasses?

**David Torrance:** I am waving them in agreement with you, convener.

**The Convener:** Thank you. We will keep the petition open and drill down a little bit further. We will write to the various organisations that Mr Choudhury suggested writing to, and specifically the Law Society. I would like to ask the Law Society whether it can give any indication to us of the outcomes of its operational practice as it currently stands. What can it point to that it believes means that the current arrangement is satisfactory, given that there is a much more stringent application of practice elsewhere in the UK?

It has been a long morning for our petitioners in the gallery. I hope that they are content that we are keeping the petition open and will be pursuing its aims. Of course, as petitioners, they will be kept abreast of any information in relation to the progress of the petition.

That brings us to the end of our public session this morning. Our next meeting is on 7 February. I hereby close the formal part of our meeting.

12:04

*Meeting continued in private until 12:15.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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