

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 29 February 2000  
(*Afternoon*)

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### PUBLIC PETITIONS COMMITTEE

#### 4<sup>th</sup> Meeting 2000, Session 1

##### CONVENER

\*Mr John McAllion (Dundee East) (Lab)

##### DEPUTY CONVENER

\*Pauline McNeill (Glasgow Kelvin) (Lab)

##### COMMITTEE MEMBERS

\*Helen Eadie (Dunfermline East) (Lab)

\*Phil Gallie (South of Scotland) (Con)

\*Christine Grahame (South of Scotland) (SNP)

\*Mrs Margaret Smith (Edinburgh West) (LD)

\*Ms Sandra White (Glasgow) (SNP)

\*attended

##### WITNESS

Jim McPhie (Shettleston Traders Association)

##### SENIOR ASSISTANT CLERK

Steve Farrell

##### ASSISTANT CLERK

Jane Sutherland

##### LOCATION

Committee Room 3



## Scottish Parliament

### Public Petitions Committee

*Tuesday 29 February 2000*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:05*]

**The Convener (Mr John McAllion):** I welcome everyone to the fourth meeting this year of the Public Petitions Committee. It is perhaps noteworthy that, at this meeting, we pass the hundred mark in the number of petitions that have been submitted to the Parliament. That said, petition PE99 has been withdrawn and will no longer be considered by the committee. Shettleston Traders Association would have had the distinction of being the 100<sup>th</sup> body to petition the Scottish Parliament, but will now have to fight it out with Milton Housing Forum.

I understand that Shettleston Traders Association requested to speak to its petition at this meeting. However, the clerk was told at about 1.30 pm today and I did not find out until 1.55 pm. That is a bit short notice; other petitioners are at the meeting. We need to establish a procedure for agreeing which petitioners can speak to their petitions at the meeting. The clerk will make some proposals at the next meeting. The form that we send out will ask people to indicate whether they wish to speak to their petition; then the deputy convener, representatives from all the parties and I can decide whether petitioners can speak at the meeting. We cannot make a rule that people can speak at short notice. Is that agreed?

**Members indicated agreement.**

**Ms Sandra White (Glasgow) (SNP):** I approached the Shettleston traders, only one of whom wishes to speak at the meeting. However, we did not know whether that would happen until we spoke to Steve Farrell at 1.30 pm and I did not actually meet the traders until 1.20 pm. They would be quite happy to speak for only two minutes. I will respect the wishes of the rest of the committee; but perhaps the convener could indulge us this one time as the petition has 17,000 signatures and the traders have already travelled through to attend the meeting. It will be the last petition that we hear this afternoon, anyway.

**Phil Gallie (South of Scotland) (Con):** I have no difficulty with that if it will last only for two minutes. After all, the petition has 17,000 signatures, which suggests that a lot of effort has been put into it.

**Christine Grahame (South of Scotland) (SNP):** In the circumstances, I support Sandra White and Phil Gallie. However, I take your points on board, convener, and think that it is a very good idea that people give advance notice on the form of whether they want to speak. That might sort out any future problems.

**The Convener:** Given that three members of the committee have already said that they want the petitioners to speak, I have no problem with that. However, it is very important that we establish a procedure, because if everyone speaks to every petition, the committee will make no progress whatsoever.

**Phil Gallie:** You said that we have had 100 petitions already. If it were not for Mr Frank Harvey, how many petitions would we have had?

**The Convener:** I do not have that information to hand.

## New Petitions

**The Convener:** It is sad that Mr Frank Harvey was not the 100<sup>th</sup> petitioner—it may have been appropriate for him to have been. He is the 91<sup>st</sup>. Members will see that the first three new petitions are from Mr Frank Harvey. The first concerns the Scottish water authorities, and calls on the Parliament to restore them to local authority control. It has been suggested that this petition be passed to the Transport and the Environment Committee, to be noted only, and that no further action should be taken unless that committee considers that it is appropriate to do so. Is that agreed?

**Members indicated agreement.**

**Ms White:** I agree with you entirely, convener. The subjects of the first three petitions have been raised by MSPs anyway. Perhaps Mr Harvey should be made aware of the fact that MSPs are raising these issues.

**The Convener:** We write to Mr Harvey, telling him what has happened to the petitions, so that information can be passed on to him.

Mr Harvey's next petition is on the subject of a national health service inquiry. It calls for the Scottish Parliament to hold a public inquiry into staffing and waiting times in accident and emergency departments in Scotland. It also calls for an inquiry into the number and type of beds that are available in NHS hospitals in Scotland. We have discussed Mr Harvey's petitions in the past, and know how to handle them. This case should be passed to the Health and Community Care Committee, to be noted only. That committee should not be asked to take further action unless it feels that it is appropriate to do so. Is that agreed?

**Members indicated agreement.**

**The Convener:** The next petition from Mr Harvey, petition PE93, is on the subject of Falkirk hospital. It asks the Scottish Parliament to amend legislation to make it a criminal offence for a surgeon to remove healthy organs or limbs from patients in any Scottish hospital. It also calls for a full inquiry into the recent limb removals at Falkirk royal infirmary. Given the background to Mr Harvey's petition, I suggest that we pass this to the Health and Community Care Committee, to be noted only, and suggest that no further action be taken unless that committee considers that it is appropriate to do so. Is that agreed?

**Members indicated agreement.**

**The Convener:** The next group of petitions—PE96 and PE99—should have been taken together, but Mr Allingham has withdrawn his petition. We have only Mr Berry's petition to consider at this meeting. The subject is sea cage fish farming. The petition calls on the Scottish Parliament to hold an independent and public inquiry into the adverse environmental effects of sea cage fish farming and the regulatory failure to recognise and prevent significant damage to our natural heritage, the environment and other interests that are dependent on the integrity of Scottish coastal waters.

We have received around 60 e-mails—not 40, as the briefing says—in support of this petition. The Scottish Parliament information centre has advised us that some of the suggested links between cage fish farming and amnesic shellfish poisoning have been identified elsewhere. Several of the references that are attached to the petition appear to have come from reputable sources, and many environmental groups have seriously questioned the impact of fish farming.

We have also been contacted by Mr Berry, who has written to the clerk to highlight his concerns over the handling of this petition by the Parliament. Mr Berry says that much of the material that supports his petition has been in the hands of the Scottish Executive's rural affairs department for some time. He has also passed copies of that material to the Rural Affairs Committee, the Transport and the Environment Committee and the relevant ministers. He is concerned that, apart from acknowledgement letters, he has not received responses from either of those committees or from the ministers. It is his view that it would not be appropriate for this committee to pass his petition to either of those committees, as a key component of the petition is his concern over what he terms the "regulatory failure" of the Executive ministers and the parliamentary committees to address his concerns previously.

Mr Berry suggests that, in the circumstances,

the petition should be passed to the Standards Committee for consideration. However, it is my view that it would be inappropriate for this committee to accept the petitioner's request. It is not for petitioners to judge the way in which petitions are dealt with by the Parliament. That is the role of this committee, and I suggest that we continue to emphasise that. The Rural Affairs Committee received the material to which Mr Berry refers in November, shortly after the publication of its second report on amnesic shellfish poisoning. That committee passed it on to the rural affairs department and fisheries research services, to seek comment. Mr Berry was informed of that by letter. There is no suggestion that his submission was ignored by that committee.

I suggest that we pass this petition to the Rural Affairs Committee for further consideration, and ask it to respond to Mr Berry's concerns. However, I am open to the committee's views on this one.

**Christine Grahame:** Did you say that it had been referred to the Transport and the Environment Committee?

**The Convener:** It was referred to the Rural Affairs Committee.

14:15

**Christine Grahame:** Perhaps the Transport and the Environment Committee should also see it.

**The Convener:** It has also been before that committee.

**Christine Grahame:** It might be useful to send a copy of Mr Berry's comments to that committee and to ask its members for their comments. It is not for this committee to comment, but it might be useful to hear some evidence from Mr Berry. The Justice and Home Affairs Committee sometimes considers requests from outside the committee to take evidence.

**The Convener:** Good point.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I support what you said, convener. The committee should decide where the petition goes. It is more an environmental than a rural affairs issue. It is a good petition in that it highlights an issue that the Transport and the Environment Committee might want to examine.

I understand from the briefing papers that Mr Berry has included some of his own work as evidence in the petition. That should be excluded from circulation—we are not in the business of suggesting what evidence other committees should consider. We should not use our mailing lists for the circulation of other people's work. Sending out all the information would require a lot of photocopying to be done.

**The Convener:** All the background papers associated with any petition are passed to committee members for information. If the committee's view is that there is too much information to distribute, we can ask the clerk to be careful about what is distributed.

**Helen Eadie (Dunfermline East) (Lab):** I agree with that. Petitioners might want to take on board some concerns about the presentation of the material that is sent to the committee. I do not want to diminish in any way the substance of the information that is given to us, but Sandra White and I think the font that has been used in the papers is difficult to read. That detracts from our ability to digest the key points that the petitioner is trying to put over. I hope that other petitioners will take that on board. I have no problem with the type of information that we are given—it gives us an insight into the issues.

I am also concerned about where petitions go after they have been before this committee. We are charged with deciding where they should go. Others might like to suggest where they should go, but it should be borne in mind—I am sure members will endorse this—that the committee must decide what are the most urgent and important petitions.

The petition should be passed to the Rural Affairs Committee and to the Transport and the Environment Committee.

**Christine Grahame:** I disagree with Pauline. It is a matter for the committee that will consider the substance of the petition to decide what value to place on evidence that is included with a petition, be it evidence from the petitioner or from another independent source. Other committees receive written submissions and give such evidence weight according to its merits.

I still feel that the petition deals with an environmental issue—the Transport and the Environment Committee should be the lead committee on the matter.

**Phil Gallie:** The issue will have an effect on the fish farming industry and that industry is extremely important to rural communities. There is a rural economic aspect to the matter and that suggests to me that both those committees should be involved.

**The Convener:** In any case, most of these papers have been passed to the Rural Affairs Committee and the Transport and the Environment Committee, so they have them in their possession. We should decide to pass the petition to the Rural Affairs Committee and ask it to consult the Transport and the Environment Committee on how it should respond. I take Christine's point that Mr Berry's comments to the clerk of this committee should be passed to those

committees for their consideration so that they can respond appropriately to him.

The role of this committee is to ensure that each petition receives a proper response from the appropriate committee. The discussion so far suggests that that committee is the Rural Affairs Committee, with the Transport and the Environment Committee. Is that agreed?

**Members indicated agreement.**

**The Convener:** Petition 97 is from Mr Thomas Gray. It calls for the Scottish Parliament, by whatever powers available to it, to limit agricultural support to one farm per farmer—the one on which the farmer resides and works—and to have all future European Union support to the farming industry similarly applied forthwith.

I am not sure that we have the power to do that. Members will have read the vision for Scottish agriculture that is attached to this petition and will know that it is a passionate plea to reverse the depopulation of our farming communities and use the available investment to encourage the European small family farm model rather than the big agribusiness model, which tends to be the case at the moment. This petition should go to the Rural Affairs Committee for it to consider further action.

**Christine Grahame:** I disagree. The petition should go to the European Committee to consider whether there is any remit within the European regulations to deal with this matter. As the petition concerns European support and how it is applied to farms, the European Committee could do a bit of filtering by looking at it. If the petition is sent to the Rural Affairs Committee, it will just send it to the European Committee.

**The Convener:** Does farming receive only European subsidies? I thought that there were other subsidies, particularly from the Scottish Executive.

**Christine Grahame:** The petition calls on the Scottish Parliament

"to limit agricultural support to one farm per farmer . . . and, to have all future EU support".

I thought that the petitioner meant European agricultural support.

**The Convener:** I think that it includes European support, but he is referring to limiting agricultural support as a whole, which includes subsidies that come from the home Government.

**Phil Gallie:** He is talking about subsidies that fall under European directives and the way in which they are delivered. This matter affects the farming community considerably, so it would be irreverent not to pass this petition to the committee that looks after farming interests in the first

instance, which is the Rural Affairs Committee.

**The Convener:** We can pass the petition to both committees.

**Ms White:** We should pass it to both committees. I read the petition the same way as you, John. It asks for all future moneys from Europe to be limited to one farm per farmer. At the moment, it is not limited in that way in Europe or here. The petition should go to the European Committee. Perhaps the clerk could advise us on how he sees it.

**The Convener:** If agricultural support is coming from the Scottish Executive, the Westminster Government or the European Union, the petition should go to the European Committee and the Rural Affairs Committee. The clerk could consult the clerks of both those committees to decide which is the appropriate committee. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** The petition may go to the European Committee. It should, but we will consult on whether it should go to the Rural Affairs Committee as well. I think that it should.

**Ms White:** So it is going to both committees?

**The Convener:** It is going to both of them.

Petition 98, from Mr Frank Harvey, is on rural sub-post offices. It calls for the Scottish Parliament to raise the closure of sub-post offices with the Government and to take whatever action is necessary to keep rural post offices open. There was a members' business debate on this issue, on a motion lodged by David Mundell. John Home Robertson, the Deputy Minister for Rural Affairs, responded. He shared the concerns that were expressed in the debate and said that the Executive would convey them to the UK Government. He also indicated that the Minister for Rural Affairs had met the managing director of Post Office Counters Ltd in Scotland and had made clear the Executive's determination to ensure the retention of a proper network of rural post offices.

It is understood that the Rural Affairs Committee is shortly to undertake an inquiry into the impact of rural employment change on rural communities. The broader issues referred to by the petitioners may be considered during that inquiry. There is about to be a much bigger petition on the same issue from a community council in Ayrshire. The recommendation is that we pass this petition to the Rural Affairs Committee, only to note at this stage, with the suggestion that some of the issues it raises might be considered as part of its inquiry into the impact of rural employment change. Is that agreed?

**Members:** Yes.

**The Convener:** Petition PE100 is from the Shettleston Traders Association and is about the Shettleston Road bus corridor. Perhaps the petitioner would like to come forward now, rather than have me introduce it.

**Jim McPhie (Shettleston Traders Association):** My name is Jim McPhie. I run a baker's business in Shettleston Road. With me this afternoon is Mrs McAlpine, who runs a newsagents on the same road. I thank the convener and the committee for this opportunity. When we set off by train from Glasgow this morning, we had no idea that we would be breaking new ground.

The traders of Shettleston are extremely alarmed by Glasgow City Council's proposal to create what it calls a new quality bus corridor all the way along Shettleston Road to Baillieston and, the other way, out to Faifley and Clydebank. Having just received November's report from Bristol University, which indicates that we are the most deprived area in the UK—coming bottom of the league of more than 600 parliamentary constituencies—we feel that the last thing we need is the closure of any businesses in the east end of Glasgow, particularly in the Shettleston constituency.

With that in mind, we ask why the bus corridor is needed. We cannot see a reason for it. The council's reasoning is driven by First Bus, which is putting money into the route. European and council money is also being invested, based on the rather misguided view that this will get us all to use the bus. We have a perfectly adequate service at present. We also have an excellent rail service that runs parallel with Shettleston. With a little attention to park and ride, we could easily deal with increased traffic over the next few years. We feel that the council's proposal is unnecessary and will lead to more closures in an area that is already steeped in deprivation.

As I know that I have only a couple of minutes, I will end there, but I would be happy to speak to the committee anytime, anywhere and at great length about the economic issues that affect the east end of Glasgow.

**The Convener:** Thank you. Mr McPhie has explained the petition far better than I could. It is now open to the committee to consider how to dispose of it. Local bus corridors are within the remit of elected local authorities rather than the Scottish Parliament. We can intervene when we think that the process of local democracy has malfunctioned, but at this stage we cannot say that that is the case.

I recognise that there is no local government equivalent of the Public Petitions Committee and



that this is one way of ensuring that people's petitions are put on the agenda. At issue is whether we should pass this petition to the Transport and the Environment Committee or to Glasgow City Council to take into consideration as part of its consultation exercise, and whether we should pass on any comments to Glasgow City Council.

**Helen Eadie:** I cannot talk about Glasgow, because that involves west-coast politicians and I am an east-coast politician.

**The Convener:** I have been both.

**Helen Eadie:** Having been transport and roads spokesperson for Fife Council, I can say that it is not uncommon for such issues to be brought to councils' attention. The principle that the Scottish Parliament has always tried to adhere to is not to suck up powers from local government, but always to recognise that local government has a fundamental role to play.

That does not mean to say that we cannot pass comment. The only comment that I would make in this instance is that whenever this circumstance arose in Fife, officers and politicians bent over backwards to work with the local community to find ways forward that would satisfy everyone.

We never left a scenario until we were sure that everyone's needs had been taken on board. That meant that change had to be managed and that we had to recognise that change sometimes means having to operate in a slightly different way. I appeal to our colleagues in Glasgow to do that, although I am sure that they do. It is very bad of me even to say that. I hope that the council is working with Mr McPhie and his colleagues to ensure that it recognises their needs as well as the need for dedicated bus routes.

14:30

I came over the Forth road bridge by car this morning, as I was going to Dalkeith, which is why I am late—I apologise, convener. A dedicated bus route is being worked on on the road between Fife and Edinburgh, thanks to a recognition that the trains simply cannot cope at peak commuting times and that other solutions must be found. A park and ride is being devised at the north side of the bridge so that people can park their cars there, get on the buses and get a fast ride into Edinburgh, overtaking the cars that will be sat in the lane. The idea is to persuade people to get out of their cars and on the buses to minimise congestion in the town centre.

I understand where the traders are coming from. It is imperative that ways are found to ensure that car drivers can pull off the road, go to the shops to get whatever they need—a quick purchase—and

drive on. I hope that the petition will go back to Glasgow City Council, although I am reluctant to make a recommendation like that—it is like teaching your grandmother to suck eggs. I am sure that the people there know a lot more about this issue than I do. That is perhaps an unsatisfactory answer.

**Ms White:** I know that we cannot go into the ins and outs of the petition—the bus routes and so on—as we are here to decide where the petition should go, but we can discuss certain aspects of it.

I think that the petition should go to the Transport and the Environment Committee and that, as recommended, Glasgow City Council should be made aware of the petition and of any comments that the Transport and the Environment Committee has.

The petition is important. The Minister for Transport, Sarah Boyack, announced proposals for an integrated transport system on 10 February and mentioned the importance of high-quality bus services. She said that the Executive would back quality partnerships, but that if they did not turn out the way it wanted it would have not so much carte blanche as an ability to pull them in to consider any necessary service improvements.

The petition fits into the Executive's agenda, because it relates to the integrated transport system that the Executive is asking local councils to implement. Glasgow City Council also seems to be trying to implement something, which is not necessarily the proper way ahead for the traders and residents in the communities, although the Executive wants it to go ahead.

The petition should go to the Transport and the Environment Committee to ensure that every aspect is considered properly. I could go into all the issues that have been mentioned, but I will not. We cannot go on forever. I simply make the plea that the petition raises social issues to do with communities, jobs and the economy.

**Christine Grahame:** First, I commend the petitioners for having obtained 17,000 signatures. That is almost as many as the Borders rail petition.

I have a great deal of sympathy for local shops, which serve many older people and families who do not have cars or do not have the mobility to get about. Local shops are essential to the social structure of areas. However, my recommendation—Mr McAllion, you will see that we are never whipped on this; I never agree with my colleagues—is to send the petition directly to Glasgow City Council, which is in the middle of a consultation exercise. The petition has 17,000 signatures. It is primarily the council's responsibility. I also suggest that a copy of the petition and of our cover letter to Glasgow City

Council be sent to the Transport and the Environment Committee for information only, so that it is aware of what we have done and in case the petition ever comes back to it.

**Pauline McNeill:** To prove further that there is no whip on this, I wholeheartedly support what Christine Grahame has just said. There is a danger of this committee wanting to get involved in the content of petitions. I will resist the temptation to respond to what Sandra White said because I do not think that she is looking at the whole picture.

It is important that we look at the whole picture. To echo Helen Eadie's comments, this is a local issue. It is crucial that this goes back to Glasgow City Council. There may be parties other than the council involved, but I would be happy for the convener to ask for an immediate response from the council so that we know when the consultation period is. In that way, we could give the right sense of urgency, if that is required, to the Transport and the Environment Committee, which may consider this at a later date.

**Phil Gallie:** I would like to go back to Helen Eadie's earlier comments, and tell her that I am a west-coast politician who escaped from the east coast.

I align myself with some of Sandra White's comments. This is an Executive-driven programme, and on that basis it has a home in the Scottish Parliament's Transport and the Environment Committee.

Just to make sure that I am on everybody's horse, I will go along with what Pauline McNeill and Christine Grahame were saying too. There is an element of urgency. It is a local authority matter, and somebody needs to do something about it quickly. The Transport and the Environment Committee will consider it in the longer term; Glasgow City Council should consider it in the short term. The petition should therefore be referred to both committee and council.

**The Convener:** Well, as an east-coast politician who escaped from the west coast, I do not think that we are all that divided.

I suggest that we pick up on Pauline McNeill's suggestion, and refer this back to Glasgow City Council, with a covering note from me saying that we have been impressed by the level of support that has been expressed in the petition. We should ask the council to reply immediately to the committee to tell us how it intends to proceed. We will forward any correspondence to the Transport and the Environment Committee and keep it informed of any response from the council. Is that agreed?

*Members indicated agreement.*

**The Convener:** Petition 101 is from the Milton Housing Forum. It is another call for the Scottish Parliament to

"place a moratorium on all housing stock transfers until such time as its concerns in relation to such transfers are addressed."

We have had a whole series of such petitions, and again I suggest that we should send it to the Social Inclusion, Housing and Voluntary Sector Committee to inform its inquiry into stock transfers.

*Members indicated agreement.*

**The Convener:** The final petition this morning is from Mr James Ward and it relates to the sequestration process. This is a complicated one. He is calling for the Scottish Parliament to

"investigate the current process involved in sequestration cases and to consider amending the law to allow the right of appeal for those involved in such cases."

Mr Ward was the victim of what he believes to be a miscarriage of justice in relation to his sequestration. He claims that he turned up at court with enough funds to avoid sequestration but was told by the sheriff that matters had progressed too far to allow settlement in that way. As a result of that decision by the sheriff, he has suffered a whole series of harsh consequences. From my reading of the papers, he may be £20,000 out of pocket. He has been involved in a lengthy and detailed legal wrangle over the sheriff's right to make such a decision.

Mr Ward believes that the system should be changed to ensure that this does not happen in future cases. He believes that there should be an appeal process for those who consider that the correct process has not been followed in sequestration cases. The legal advice from the Scottish Parliament is that Mr Ward is right: no legal remedy exists in the form of a right of appeal against an award of sequestration. However, the person sequestered can petition the Court of Session for recall of the award of sequestration, and the Court of Session has very wide discretion indeed to recall any sequestration if it thinks it appropriate to do so.

The procedure would be to petition the Court of Session. The Scottish Parliament's legal team is of the view that legal aid may be available for that, subject of course to the usual income test, tests of probable cause and so on. From the papers, it seems that Mr Ward's solicitors were considering lodging such a claim for legal aid on his behalf, although it is not clear whether that claim was made or, if it was, whether it was successful. Mr Ward is concerned about the failure of his solicitors to advise him, at the time, that he could petition for recall of a sequestration on the circumstances of his case.

The legal team has advised us that any person can complain to the Law Society of Scotland about the conduct of its solicitors. The Law Society has powers to investigate the complaint and to have the client's work carried out by the solicitors that are involved or any other solicitor. In certain cases, the Law Society can report a solicitor to the Scottish solicitors discipline tribunal. Proceedings of that tribunal are similar to those of other tribunals: written pleas are lodged and there is a hearing. That tribunal can impose serious sanctions on a solicitor who is found to have breached the rules. There is also a legal service ombudsman, who will get involved if a person who complains is not satisfied with the way in which the Law Society handles his or her complaint.

This is a difficult issue. The papers suggest that differences of legal opinion exist on whether the sheriff was right to reach this decision. As Mr Ward points out, there is no legal appeal as he would like it. Therefore, it is suggested that we pass this petition to the Justice and Home Affairs Committee, for consideration of whether the current procedures to petition for recall of sequestration are adequate and whether there should be an additional appeal process for those who consider that the correct procedures have not been followed in sequestration cases.

**Pauline McNeill:** I realise that I might be in a minority, but I am not happy to accept petitions in which the circumstances of individual cases appear in print before this committee. That is my position. If it is a minority position, so be it.

I am happy to proceed on the basis that is recommended, as there may be a general point in the petition. I would not want us to miss the point about the procedures in relation to sequestration, and the Justice and Home Affairs Committee is the right committee to pass the petition on to. I support that action. However, I caution the committee against accepting petitions that detail individual circumstances, as this one does. We are setting a dangerous precedent by accepting a petition in that form. For the record, that is my view.

**Christine Grahame:** As somebody who declares judicial knowledge, having been involved in civil practice and sequestrations, I know that there are procedures for recall. As we do not know the full details of this case—we have some papers here, but not all of them—I suggest that this petition should not be remitted to the Justice and Home Affairs Committee on the particulars of the case, but that it should be referred to the Law Society if a solicitor has failed either in the procedures of sequestration or in not following through recall of sequestration. The latter procedure is open, and I have done it myself, although it is heavy handed to go to the Court of

Session. The procedure itself is another issue that might be raised by the justice committee.

The particular circumstances of this case are a matter for the Law Society, which is able to obtain the solicitors' file of papers and all papers that relate to the case. It can undertake a thorough investigation and will call on a solicitor to answer questions if it feels that there are failings. That is the course of action that I suggest on the specifics of the case.

It might be appropriate to send the petition to the justice committee, as the whole issue of diligence—which would also involve sequestration, which is used as a form of diligence—is going to be addressed by the Executive. One of the issues that might come up is whether the procedures for recall of sequestration should be addressed in the sheriff court, which is much more amenable to people than the Court of Session as well as much less expensive.

The specifics of this case should be remitted to the Law Society, and that remedy is open to Mr Ward, to find out whether his solicitors have failed him at any stage. The Justice and Home Affairs Committee might consider the matter of procedures and hold it in reserve until we deal with the matter of diligence.

**Helen Eadie:** I support the point that Christine Grahame has just made about referring this matter to the Law Society. I recently had to deal with a case not dissimilar to this, and that was the advice that I was given when I consulted the professionals. I strongly recommend that we take that route. I cannot comment on the second point, not being a lawyer, but I certainly support the first point made by Christine Grahame.

14:45

**Ms White:** As a layperson, a non-lawyer and a non-member of the Justice and Home Affairs Committee, I take Pauline McNeill's point about the individual case. It has a far wider reach, however, for anyone else who goes through sequestration. As Christine Grahame says, if the justice committee is considering sequestration anyway, can this petition just go to that committee for it to examine as part of its work, rather than forwarding this individual case to the Law Society? It could form part of the committee's papers. The committee has done the same with housing and other social matters that it has been addressing in depth. The matter could be brought to the Executive's attention that way, for its consideration of this part of the law. Perhaps the lawyers here can tell me if I am wrong.

**The Convener:** Like you, Sandra, I am not a lawyer. My reading of the papers is that there are two distinct parts to this petition. There is concern

about the alleged failure of Mr Ward's solicitors to advise him in time that he could petition for recall of the sequestration. That is a matter for the Law Society. We could reply to Mr Ward, saying that he should take that matter up with the Law Society.

He also makes the general point that he is unhappy with the sequestration process, which involves the right of the judge to take the legal decision that he did in relation to Mr Ward's case, and with the fact that there was no right of appeal against that decision. I think that that should be a matter for the Justice and Home Affairs Committee. I would be very reluctant for this committee to become involved in individual cases—that is not for us to do. However, the point about a change in the law is a matter for the Scottish Parliament.

I take Pauline McNeill's point, that petitioners often petition because they feel passionately about an individual case. It is not really the role of Parliament to become involved in individual cases that are before the law. Sometimes, however, it is the only way of illustrating the point that a petitioner is trying to make, and, as long as it is considered to be background, and we are not being asked to take action on the individual case, I think it is legitimate.

**Christine Grahame:** I appreciate that. The request of the petition is

“to investigate the current process involved in sequestration cases”.

That is fine. I was trying to make it clear that that is what the Justice and Home Affairs Committee could consider. The other issues which Mr Ward rightly, in his view, raises are for him to pursue through the Law Society.

I take it that we could write to Mr Ward, saying that it would be a good idea for him to forward his papers to the Law Society, who will then ask for his solicitors' files. The solicitors must yield them. There is a remedy in that, if he has a grievance.

**The Convener:** I accept that, but the petition, in general, is asking for a change in the law, and that should be referred to the justice committee.

**Christine Grahame:** That is correct, but the second part, which concerns Mr Ward more, is the alleged failure of his solicitors.

**The Convener:** That is a matter for him and his solicitors to sort out with the Law Society.

Do members agree that we send petition PE102 to the Justice and Home Affairs Committee to consider as part of its inquiry into diligence in general, into whether the current procedures for petitions for recall of sequestration are adequate, and into whether there should be an additional appeal process for those who consider that the

correct procedures have not been followed in such cases?

**Christine Grahame:** Could our letter also say that we have written to Mr Ward, advising that, on the particular point that he has raised, we have recommended that he make the appropriate complaint to the Law Society? That would make it plain to the justice committee that that part of Mr Ward's petition has been dealt with separately.

**The Convener:** We will advise Mr Ward as Christine has described, and we will advise the justice committee that we have done that. Is that agreed?

**Members indicated agreement.**

**The Convener:** If I can find the agenda, which is buried under all these petitions, we will move on to the next item.

## Current Petitions

**The Convener:** Members will remember that at the last meeting we considered PE83, from Concern for Justice, relating to the case involving the wee free church and the Reverend Macleod. It was agreed that further advice should be obtained from the legal team before deciding what action to take on the petition. We have not yet received the advice from the legal team and we must leave the matter until the next meeting of the committee on 14 March. We hope to have the legal advice by that stage. Is that agreed?

**Members indicated agreement.**

**The Convener:** We have received a series of answers to some of the petitions which have been attached to your papers.

PE57 is a petition from Mr Frank Harvey about the right of way in Yorkhill park in Glasgow. Glasgow City Council has responded, indicating the steps that it intends to take to confirm the right of way that is disputed by the developers. It is currently carrying out a consultation exercise, after which it will reach a view on whether the route is a right of way. If the council decides that the route is a right of way, it will consider the best method of confirming that. It is recommended that the council is taking adequate steps to resolve the matter, that a copy of its response should be passed to Mr Harvey and that no further action should be taken. Is that agreed?

**Members indicated agreement.**

**Ms White:** Could I just point out that the letter says that

"The Council is satisfied that a Public Right of Way exists between Gilbert Street and Ferry Road."

The letter also says that

"Following receipt of responses, the Council will then embark on an internal determination to decide if the route constitutes a Right of Way".

That does not seem to make sense.

**The Convener:** It is because it is a consultation process. The council must await responses.

**Ms White:** Even though the council already says that it is a right of way?

**The Convener:** That is the council's view, but that view might change depending on responses to the consultation. I doubt that the council will change its view. It is taking steps to remedy the matter about which Mr Harvey was concerned.

The second half of the letter deals with PE50, also from Mr Harvey, on the closure of toilets in Peel Street in Glasgow. The council has said that the toilets were closed as part of a budget saving

option, which all councils must consider these days. The council's view is that the closure of the facility impacts on both disabled and able-bodied people alike and therefore is not in breach of the Disability Discrimination Act 1995. Such decisions are well within the powers of the council. I do not think that it is a matter on which the Parliament can intervene, particularly if the Parliament does not give the council the resources to provide all the services that it would like to deliver.

I suggest that we copy the letter to Mr Harvey and that no further action should be taken in respect of the petition. Are we agreed?

**Members indicated agreement.**

**Phil Gallie:** We could express our sympathies, as did a certain Scottish minister, who, prior to the previous election, complained that local authorities were underfunded by some £300 million a year.

**The Convener:** I am not a minister, so it could not have been me.

We have had a detailed response on PE55 from Tricia Donegan, which called on the Scottish Parliament to conduct an investigation to establish why the full powers of the law are not enforced in all cases that involve death by dangerous driving.

Members have a copy of the correspondence from the former Lord Advocate, which rehearses the background to the case against Daniel Tasker and explains how the vehicle involved came to be destroyed without being examined on behalf of the defendants. The sheriff who heard the case directed the jury to return a verdict of not guilty on the charge of causing death by dangerous driving, given that he had upheld a plea that the defence had been given no proper opportunity to examine the car.

The former Lord Advocate says that

"as far as the Crown was concerned the accused was given a clear opportunity to have the vehicle examined"

and had been advised by the procurator fiscal that it might be in his best interests to do so. The Crown did not expect that his failure or refusal to take such action would undermine proceedings to the extent that it did. He makes clear that although it is not possible for the Crown to appeal against the acquittal of an accused who has been prosecuted on indictment, he is keen to avoid a repetition of what happened in the case. He concedes that

"it would have been better if the Procurator Fiscal had delayed release of the car until after he had intimated to the accused that criminal proceedings were being contemplated, that the car was no longer needed by the Crown and that it would be in his best interest to have the vehicle examined".

Officials at the Crown Office have been instructed to clarify and highlight departmental guidance to

procurators fiscal in that respect.

The former Lord Advocate has said that he was disappointed that the sheriff took the decision and that he understands the anguish that the legal decision has caused Ms Donegan. Although the former Lord Advocate is unable to bring about a review by the High Court of Daniel Tasker's acquittal, he has indicated that appropriate steps are being taken to minimise the possibility of a repeat of the circumstances that led to that acquittal.

It is suggested that we send a copy of the response to Ms Donegan. Members are invited to say whether they think that any further action is required. We might decide that the former Lord Advocate has taken steps to resolve the particular procedural difficulty to which the petition refers and that no further action is necessary. Alternatively, we might decide that the petition, together with the response from the former Lord Advocate, could be passed to the Justice and Home Affairs Committee, which could be asked to decide whether the steps suggested are adequate or whether anything further needs to be done in this respect.

**Christine Grahame:** I will volunteer the justice committee for that. I am not a criminal practitioner, and there may be sound, philosophical, principled reasons for this, but I am astonished that the Crown does not have the right of appeal under the Criminal Procedure (Scotland) Act 1995 against acquittal of an accused who has been prosecuted on indictment. Why is that?

I make no comment on the circumstances or facts, as I have not read the evidence, but it appears that if the sheriff erred here and the decision was made, the Crown was left with no options. In other circumstances, the Crown can appeal against a sheriff passing a sentence that is too lenient or making the wrong legal judgments. This is an issue that the justice committee could consider, so that this kind of thing does not happen again. The defence was given the opportunity to do something but did not do it; it was then in the position where the sheriff took this view. In other words, the issue has not been tested at a higher court.

**Phil Gallie:** I am well aware that sheriffs can appeal against sentences that are perceived to be lenient. My understanding is that once a decision has been taken in a court against an individual, that decision stands, although I might be wrong. I welcome the opportunity for this to be considered by the Justice and Home Affairs Committee. The whole thing leaves a terrible stain, let us say, on justice. Considering the anxieties felt by Ms Donegan, it would be good to think that, somewhere along the line, some good will come of it.

As far as the destruction of the evidence goes, I am in danger of going into too much detail. It is sufficient to say that I back Christine's comments.

**The Convener:** Is everyone agreed that not only should the correspondence be copied to Ms Donegan, but the entire petition and the reply from the former Lord Advocate should be referred to the Justice and Home Affairs Committee, for it to consider whether the law needs to be changed in response to this?

**Christine Grahame:** I am sure that the convener, Roseanna Cunningham, will spot it a mile off, but shall we draw the justice committee's attention to that paragraph?

**The Convener:** That is the paragraph about the Crown not having the right to appeal.

**Christine Grahame:** The Crown is prohibited by the Criminal Procedure (Scotland) Act 1995 from appealing.

**Pauline McNeill:** We should seek a judicial review—that would be the remedy. There is something that the prosecution could do but it has to be done by judicial review. I am still in favour of us considering the reply, particularly in relation to the law of evidence. You may want to consider that, as opposed to whether the prosecution has the right of appeal. There are issues here that we should consider before we leave the matter entirely.

**The Convener:** Pauline, you are saying—

**Pauline McNeill:** I am saying that you should do what you have recommended, which is to highlight it.

**The Convener:** Any particular part of the correspondence?

**Ms White:** I do not think that it is necessary to highlight it. It is up to the justice committee to pick out the bits and pieces that interest them.

**Christine Grahame:** I am not unhappy about the law of evidence. That can all be dealt with. However, I am unhappy about the statutory prohibition here. It is not possible to appeal against the acquittal of an accused who has been prosecuted on indictment. It might be worth the justice committee considering why that is and whether the Criminal Procedure (Scotland) Act 1995 could be amended to allow that, so that the sheriff's view of the evidence could be tested. The prosecution thought that the sheriff's view was completely out of kilter with any prior decisions on evidence. That may or may not be the case, but the fact that the sheriff's view cannot be tested surprised me. Gordon Jackson would probably have more to say about that.

**Phil Gallie:** The point that Pauline McNeill is, quite rightly, querying concerns the preservation of

evidence. Perhaps the justice committee could consider time scales. The accused could be given a set period, after having had defects intimated to them, in which to have the evidence checked. The individuals involved seem to have had every opportunity to check out the vehicle but they closed their minds to it.

**The Convener:** Perhaps we should send a covering note saying that the committee was extremely concerned about the nature of the Lord Advocate's reply to the petition. It would be well worth the while of the justice committee to consider the matter and decide whether it recommends any changes in the law that would protect people in such circumstances. Is that agreed?

**Members indicated agreement.**

**Christine Grahame:** That is a diplomatic answer.

15:00

**The Convener:** The next response, to petition PE73 from Mr Frank Harvey, is from Glasgow City Council. The petition concerns the recent case of a child whose parents allowed her to spend several months in a plaster cast. The letter gives details of the widespread action that the council has been taking in relation to the case. The suggestion is that we simply copy that correspondence to Mr Harvey for his information. Is that agreed?

**Members indicated agreement.**

**The Convener:** The next letter is from Almondell Terrace Residents Association. It is a nice letter, thanking the Public Petitions Committee for all the help that we have given them.

**Christine Grahame:** Does it enclose a cake with candles?

**The Convener:** No. After the 100<sup>th</sup> birthday of the Labour party, I have had quite enough cakes for the moment.

The Almondell Terrace residents want to put on record their thanks to Mr Farrell, our clerk, and to the rest of the committee for helping them. Their letter says that we can be assured of future support from all the residents in Almondell Terrace. It is nice to get recognition sometimes, and that is the first such letter that we have received.

**Christine Grahame:** I think that they should also write to Andrew Neil of *The Scotsman* commending the work of a committee of the Scottish Parliament.

**The Convener:** I do not think that Andrew Neil

will commend anything that we do.

**Christine Grahame:** That is why such a letter is needed.

**The Convener:** The final letter relates to the petition from Mr and Mrs Dekker. It has been circulated for information rather than for discussion.

We have also received a number of other responses. The first is from the Lord Advocate and concerns the petitions on the legality of nuclear weapons in Scotland. He has passed to us the reference that the Crown has made to the High Court of Justiciary against the decision of the sheriff at Greenock court in favour of the three women. It sets out the Crown's view. The Lord Advocate will respond to the High Court's decision and we can seek his views at that stage. We also await correspondence from Jim Wallace, which will be circulated when it arrives.

There is also a letter from Greater Glasgow Health Board to Paul Martin MSP, which clarifies that point that he raised at our last committee meeting about how the health board responded to my request to postpone a decision on the medium-secure unit at Stobhill hospital in Glasgow. That letter is for information, but any questions arising from it can be put on the agenda for our next meeting.

I shall give members time to read those letters. At such short notice, we cannot decide today how to deal with them.

## Convener's Report

**The Convener:** The meeting in the Borders is to take place on Monday 27 March in the Volunteer Hall in Galashiels. The date and venue have been agreed after consultation with the Borders rail link petitioners, who are content with the proposal. The meeting will be at 2 o'clock.

A news release publicising the meeting will be published shortly. It has been suggested that either the clerk or I should write to all MSPs representing the Borders or South of Scotland, informing them of the meeting and indicating that they are welcome to attend. As a matter of courtesy, we could also send such a letter to the local Westminster MP and to the Scottish Borders Council.

**Christine Grahame:** Do you want to notify the Borders rail cross-party group, or should I, as convener of the group, do so? I could let the members know. I think that they would like to come.

**The Convener:** Thank you, Christine. Other details about that meeting will be available in due course.

The conveners liaison group has approved the paper suggesting the procedures that should be followed when any committee decides to have a petition debated at a meeting of the whole Parliament. That paper now goes to the Parliamentary Bureau for its approval. That is not to say that we will immediately use that power, but it will be there if this committee decides that the Parliament should debate an issue that is raised by a petition.

**Christine Grahame:** Probably it is very naughty of me to ask this, as I could read the standing orders, but when the Public Petitions Committee brings a matter to Parliament, how is it presented? Is it the convener who leads the debate?

**The Convener:** If this committee decides that there should be a full parliamentary debate in response to a petition, I lodge a motion in the name of the committee and write to the Parliamentary Bureau to say that it is the view of the committee that there should be a debate. The bureau then decides whether a debate should be held. If it is agreed that there should be a debate, I or, if the committee agrees, some other member, will lead the debate.

**Christine Grahame:** Is it in the standing orders?

**The Convener:** No. We are trying to change standing orders to allow that to happen.

**Christine Grahame:** I was just curious.

**The Convener:** If the bureau approves the

paper, it will be passed to the Procedures Committee, which will then change standing orders.

**Christine Grahame:** That is interesting.

**The Convener:** For your information, public petitions will now appear on the Scottish Parliament website. New and current petitions will appear first, and will be followed by the remainder. Petitions will be scanned as soon as they are received. Eventually, there will be a complete record on the website of petitions that have been submitted to the Scottish Parliament.

**Helen Eadie:** At a meeting that I attended last week some members of the public who access the website asked whether we could ask our information technology staff to examine the portable document format. People who understand IT will know that there are different formats in which one can download material from the internet. PDF presents problems for users at home, so our IT people need to examine that matter.

**The Convener:** We will certainly pass those comments on to the appropriate people.

**Mrs Margaret Smith (Edinburgh West) (LD):** I thought that PDF was the stuff they use on "Changing Rooms" instead of wood.

**Ms White:** I am very pleased to note the progress of petition PE14, which was submitted by the Carbeth hutters. I should have raised this matter earlier when we discussed the progress of previous petitions. The Justice and Home Affairs Committee, where the petition was passed, has reported that it should encourage the Scottish Executive to include in legislation additional protection for hutters. That is a nice result.

**Christine Grahame:** We move fast on the justice committee.

**Mrs Smith:** I want to inform you of the position on the Stobhill petition. The Health and Community Care Committee will publish its full recommendations on the matter on Thursday. You should be able to see them before they are published. Richard Simpson produced the interim report before the previous meeting of the Public Petitions Committee, and people were able to comment on it. At last week's health committee meeting, we discussed Richard's full report and conclusions in the public part of the meeting, and then considered in private session the recommendations that will form the basis of our report.

On behalf of the Health and Community Care Committee, I thank the Public Petitions Committee for forwarding this matter to us, as it has opened a large can of worms. It has been a useful petition in a number of ways, both locally and at the national



and strategic level of consultation and accountability in the health service.

**Christine Grahame:** We should stop while we are winning.

**The Convener:** I thank members for their attendance.

*Meeting closed at 15:08.*



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