

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 27 March 2001  
(*Morning*)

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# CONTENTS

**Tuesday 27 March 2001**

|                                     | <b>Col.</b> |
|-------------------------------------|-------------|
| <b>NEW PETITIONS</b> .....          | 1003        |
| <b>CURRENT PETITIONS</b> .....      | 1020        |
| <b>INADMISSIBLE PETITIONS</b> ..... | 1038        |
| <b>CONVENER'S REPORT</b> .....      | 1039        |

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## **PUBLIC PETITIONS COMMITTEE**

### **5<sup>th</sup> Meeting 2001, Session 1**

#### **CONVENER**

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

#### **DEPUTY CONVENER**

Helen Eadie (Dunfermline East) (Lab)

#### **COMMITTEE MEMBERS**

\*Dorothy-Grace Elder (Glasgow) (SNP)

\*Dr Winnie Ewing (Highlands and Islands) (SNP)

\*Rhoda Grant (Highlands and Islands) (Lab)

George Lyon (Argyll and Bute) (LD)

\*John Scott (Ayr) (Con)

\*attended

#### **THE FOLLOWING ALSO ATTENDED :**

Mr Lawrence Fitzpatrick (Scotland Opposing Opencast)

#### **CLERK TO THE COMMITTEE**

Steve Farrell

#### **ASSISTANT CLERK**

Jane Sutherland

#### **LOCATION**

Committee Room 1



## Scottish Parliament

### Public Petitions Committee

*Tuesday 27 March 2001*

*(Morning)*

[THE CONVENER *opened the meeting at 10:04*]

**The Convener (Mr John McAllion):** Good morning and welcome to the fifth meeting this year of the Public Petitions Committee. We have received an apology from Helen Eadie, who has had a fall and damaged her shoulder. She may be off for some weeks, so I am sure that we all wish her a very speedy recovery. We also have an apology from George Lyon, who will be unable to be here. Dorothy-Grace Elder's train usually comes in a little too late, so we can expect her to arrive later in the meeting.

Without further ado, let us turn to the agenda. We have five new petitions to consider this morning, and five important responses to previous petitions.

### New Petitions

**The Convener:** The first new petition is from Mr Lawrence Fitzpatrick on behalf of Scotland Opposing Opencast. The petition calls on the Parliament to take various steps to protect local communities and the environment from the adverse effects of opencast coal mining in Scotland. Mr Fitzpatrick is here this morning.

We usually give petitioners three minutes to address the committee, after which members ask questions. After two and a half minutes, I will indicate that you have 30 seconds left.

**Mr Lawrence Fitzpatrick (Scotland Opposing Opencast):** I will start by declaring that I am an elected member of West Lothian Council. However, I have no remit on planning, as I am not on any of those committees. I would like to thank the Public Petitions Committee for hearing this petition and offering me the opportunity to give evidence.

There are three essential components to this petition. First, the Lothian joint structure plan introduces wide search areas. We consider that the modifications to the plan will have serious disadvantageous impacts on local communities, on planning authorities and on inward investment. We are puzzled as to how the Scottish Executive decided on those search areas and we wonder whether any environmental assessments were carried out. We believe that if the modifications are

approved, that will indicate that the Scottish Executive gives greater emphasis to an industrial lobby than to democratically elected local authorities.

Our second concern is the failure of national planning policy guideline 16 to provide adequate protection to the environment and to local communities. NPPGs are statements of Government policy on nationally important land use and other issues. This is the central issue of the petition. NPPG 16 is littered with vagueness—such as the phrase “demonstrable harm”—and is full of caveats. In our petition, we have indicated some of the serious weaknesses in the guideline—weaknesses that have been exploited by the opencast industry, as has been evidenced by the rising output and consented tonnage from Scottish opencast fields.

Thirdly, we ask the committee to consider paragraph 59 of NPPG 16. We recommend that the Scottish Executive and the Scottish Parliament consider whether to empower planning authorities to charge fees, especially to cover the cost of monitoring and enforcing mineral permissions. Without that safeguard, we believe that the opencast industry will continue to fail to pay adequate regard to existing planning advice notes and other controls. We consider that the existing guidelines in Scotland fail to take properly into consideration the legitimate health concerns of local communities.

Although we recognise that the Scottish Executive has yet to respond to responses to its 2000 consultation paper “Surface Mineral Workings and Dust” it is clear that its approach has major shortcomings when considering the understandable concerns of communities. To the people who have authored NPPG 16 or those who have decided on the search areas for opencast, I ask this question: have you ever handled a mineral planning application? In our view, those people lack professionalism and have not had adequate input from seasoned mineral planners.

We request that these matters be put to the Parliament's Transport and the Environment Committee and that a short-term working group be set up. That group should comprise the chief planners from affected Scottish local authorities and engage in meaningful participation with concerned bodies.

We regret that planning guidelines in Scotland since 1997 have developed to provide an even greater presumption in favour of opencast. We consider it the duty of this Parliament—the Parliament of the people of Scotland—to institute a clear presumption against.

**The Convener:** Thank you—that was clear and concise.

Before I open the meeting up for questions, I welcome Dorothy-Grace Elder. We will have to do something about the trains from Glasgow, because they never get you here in time.

**Dorothy-Grace Elder (Glasgow) (SNP):** I have yet another environmental problem with my local toxic dump.

**The Convener:** Do members have any questions for Mr Fitzpatrick?

**Dr Winnie Ewing (Highlands and Islands) (SNP):** You have helpfully provided a list for us, Mr Fitzpatrick.

**Mr Fitzpatrick:** I am sorry, but I am having difficulty hearing.

**Dr Ewing:** I am sorry—I will speak up.

In the list of concerns that you have provided, you talk about the replacement, in NPPG 16, of the proposal that mineral extractions

“should only be permitted in exceptional circumstances”

with the idea that they

“are likely to be unacceptable”.

Do you know why that change was made? It takes away protection from local communities.

**Mr Fitzpatrick:** I could only guess, Dr Ewing. I was not the author of the changes or the co-ordinator of all the comments that led to the changes. However, from my experience of consulting on documents on this issue, somewhere along the line, someone draws a line. Someone has decided on this change. As to the reason for it, I can only presume that it demonstrates the power of lobbyists.

**Dr Ewing:** Do you know of any specific case where permission has been given under the new wording—“likely to be unacceptable”? Is there an example of opencast mining that would not have satisfied the previous test but satisfies the new test?

**Mr Fitzpatrick:** It is difficult to say that a decision on opencast has been given on that one particular point. It is the duty of the planning authority and, subsequently, an inquiry reporter, to consider a whole host of evidence. However, planning policy guidelines such as NPPG 16 have a significant effect on the planning officers who write the paper and on the inquiry reporter who gives the decision.

**John Scott (Ayr) (Con):** Are you saying that there is now, in effect, a presumption in favour of opencast where before there was not?

**Mr Fitzpatrick:** There is a much greater presumption in favour of opencast. In the past few years, there has been a great weakening of the position. It is clear that the planning guidelines and

the protection of the environment are much tougher in England than in Scotland. That is why opencast operators are concentrating on Scotland so much—as has been evidenced by the massively increased tonnage that has been approved. Those are coal banks that opencast companies build up so that they can exploit them in future years.

**John Scott:** Why might they do that?

**Mr Fitzpatrick:** Politics.

**Dorothy-Grace Elder:** Politics and profits.

Have you had any evidence, facts or assistance from the Scottish Environment Protection Agency?

**Mr Fitzpatrick:** I have had dealings with SEPA in the past, but the main source of enforcement is through the local planning authorities. They are cash-strapped. There is no additional money for the enforcement measures and monitoring that are required. If it is a planning condition that blasting cannot take place on a Saturday and Sunday and blasting does take place, there is no money to ensure that communities are protected. No one is paid to be on the spot to check.

**Dorothy-Grace Elder:** Some opencast developments, such as one that I have seen in Lanarkshire, are extremely close to housing. Do you know how close they generally are to housing?

**Mr Fitzpatrick:** It would be wrong to give a general answer, but I remember seeing one in the Morningside area in North Lanarkshire. Huge mounds are formed from earth and stone that is scraped away from mother earth to allow access to coal seams. Although the opencast may be 400m or 500m from someone's back garden, by the time those mounds are piled up they are huge. People look right into them when they get out of bed in the morning. They are very close. Ones that I have seen seemed to be within 100m or so.

**Dorothy-Grace Elder:** But in official terms, even 400m to 500m away is close, because of dust blowing around and so on. Do you have any public health evidence about dust inhalation?

10:15

**Mr Fitzpatrick:** A welter of evidence on the effects on health was given at the Blackridge opencast inquiry and at the one at Greengairs two or three years ago. The problem is that a lot of emphasis has been given to the Newcastle study, which considered the effect of opencast dust on the health of children. It ignored people with cardiorespiratory diseases, the elderly and the stress effects. Opencast often occurs in former mining areas, where there is a large number of elderly people and a high incidence of respiratory

and cardiorespiratory problems.

**John Scott:** Are those applications the subject of environmental impact assessments? You hinted in your presentation that they are not—I find that hard to believe.

**Mr Fitzpatrick:** The applications are normally accompanied by an environmental impact assessment which, in my experience, is not very good. In the case of Harthill, when the question of birds was being considered, the so-called expert had walked over the field on certain days and had seen a blackbird, two robins and a crow. We brought in a local ornithologist who, as he was a hawk, had over the years noted in his book the number of hawks and red-listed birds that had the site as their habitat.

I have never placed much credence in the ability of environmental impact assessment studies to establish what is growing and what mammals and birds there are. One such study was carried out in November. I do not know how you can tell in November what grows on the site. The Lothians—especially East Lothian and West Lothian—have been targeted as suitable for opencast, but we do not think that any environmental assessment has been carried out in advance of that.

We are individuals who care about Scotland and its environment. There are declining mammal and bird populations everywhere. For example, the water vole is becoming scarce. We have had to help local communities at inquiry reporter stage. We walk in and there is a £300,000 team in front of the local community. That £300,000 team consists of Queen's counsels from the planning circuits and top experts from here and there. There is a beautiful, glossy report that takes many hours of reading for local people such as Bill Allison from Blackridge, who spends night after night going through it to find errors and things that he can concentrate on. Local people have to pick up the cost of photocopying, postage and so on.

We have the European convention on human rights, but where is the equality of arms? What chance do small, usually poor, former mining communities have when they take on such a team? The system is geared against such communities. If a person was accused of a serious offence and was being prosecuted by a top QC, the state would tell them they were entitled to representation.

I have dealt with people who have had sleepless nights and have lost a lot of money in trying to fight proposals. There is an unequal balance. The whole game is about money and getting tonnage. Scotland does not need the coal. We have overcapacity in energy, but due to commercial interests, companies are pursuing opencast. The coal reserves stretch from East Lothian to the west

coast and down to Ayrshire, parts of the Borders, and Dumfries and Galloway. They stretch up through Stirlingshire, out into Fife and Clackmannanshire, and even up into parts of Perthshire. One only needs to see an opencast site to understand the Flower commission in 1980, when it said that this is the most destructive environmental process in the United Kingdom. It has got worse since then.

**Dr Ewing:** Appendix A of your petition, which refers to paragraph 66 of the NPPG, says:

"This now permits—

it is clearly another of the changes that have gone against the interests of communities—

an application to be resubmitted 2 years after a previous application had been refused on appeal even when there is no material change in the circumstances. It follows that communities have no protection from having to oppose repeated inappropriate applications".

That seems unjust. You have explained how difficult it is when a decision is reached and two years later they come and do it all again, with the QCs there again.

**Mr Fitzpatrick:** There was a major opencast inquiry at the Wester Torrance farm at Harthill. The inquiry reporter and the minister found against the opencast application. We have to go through the whole process again in April or May, albeit on a technical appeal about what certain words mean. It is the same huge team, with the QC, against the community.

**The Convener:** I am interested in the difference between Scotland and the rest of the UK. Is the difference largely a result of the fact that the available coal reserves are mainly located in Scotland, or there are different planning regimes north and south of the border?

**Mr Fitzpatrick:** There is a totally different planning regime south of the border. It is much tougher on mineral workings. I have here the industry's own magazine—I am happy to leave it with you. There are two articles in it that more or less say that the future for opencast is in Scotland, because the planning regime is much easier.

**The Convener:** That interests me, because you refer in your petition to the Labour party's 10-point plan before the most recent general election. That presumably was a UK-wide plan, which appears to have been interpreted differently in the Scottish end of the Labour Government—if I can put it that way. You describe the Scottish Office consultation document, the draft planning policy guideline and NPPG 16. Scotland has interpreted the 10-point plan differently from the rest of the UK.

**Mr Fitzpatrick:** Obviously, there has been much greater emphasis in England and Wales on environmental protection and a whole raft of other

issues than there has been in Scotland.

**The Convener:** If there are no further questions, we will move to our discussion of the petition. Thank you, Mr Fitzpatrick. If you have any further documentation I would be pleased if you would leave it with the clerks and we will ensure that members have access to it.

**Mr Fitzpatrick:** Thank you, convener. I leave with you the document for the clerks and the additional petitions from Ayrshire, Clackmannanshire and so on.

**The Convener:** Thank you.

It is made clear in the suggested action that it would be inappropriate, not only for the committee but for the Parliament, to interfere in the proposed modifications to the Lothian joint structure plan, which is a statutory process in which the Parliament has no remit to intervene. It is for the Scottish Executive to make any amendments to planning guidelines. However, we could agree to seek a response from the Executive on the issues raised in the petition, especially in relation to the changes in NPPG 16 that have been highlighted by Mr Fitzpatrick this morning and which he claims will be detrimental to the protection of rural communities and the environment. In light of the response from the Executive, we could reconsider the petition. At this stage we can send the petition to the Transport and the Environment Committee for its information. We will decide what to do once we get the Executive's response.

**Dr Ewing:** I would like the Public Petitions Committee to visit two opencast sites to see them with its own eyes. That should not be too difficult, as they are not far away.

**The Convener:** The problem is that if we send the petition to the Transport and the Environment Committee, it would be for it to make such a visit; that is within its remit rather than ours.

**Dr Ewing:** I do not know whether I accept that. It would be better if, before we send the petition to the Transport and the Environment Committee, we were armed with information about what we want to say about the guidelines. We can ask the Executive to change the guidelines. I am especially concerned about paragraph 66 of NPPG 16. I think that there is a legal problem. We could ask the Justice 1 Committee to consider that paragraph.

**The Convener:** We should get the Executive's response first. It will have to respond in detail to all the points in the petition, including the points about paragraph 66. When we get the Executive's response, we may decide that it is worth our while making a visit, but I am wary of jumping into the remits of other committees; they resent our getting involved in their areas.

**Dorothy-Grace Elder:** I agree with you, convener: a site visit is within the remit of the Transport and the Environment Committee. Would you go so far—when we get to that stage—as to recommend that that committee make a site visit? It is necessary to see it to believe it. Parts of Scotland are beginning to look like the ravaged valleys of Poland and Russia, where opencast and similar things are allowed willy-nilly. One wonders why we are importing Polish coal. Where is all the coal that is being extracted going? At the least, this seems to be a dilution of local democracy. I am quite alarmed by the changes to the planning guidelines. Could you emphasise that point in your letter, convener?

**The Convener:** Certainly.

In addition to the petition and the supporting documentation, we should send the Executive a copy of the discussion that we are having to draw its attention to the fact that the committee believes that Parliament should be making a site visit, whichever committee of the Parliament eventually does it, and that we believe that the petition raises serious concerns that must be answered by the Executive. We can consider what further action we might take once we get the Executive's response.

**Rhoda Grant (Highlands and Islands) (Lab):** When we write to the Executive, could we ask it to address community consultation, which is a huge issue? As has been said, the community has the resources only of the people who are there. Elderly people, who may be retired, often take on a lot of the work in campaigning on behalf of the community—writing letters and so on. I know of cases where elderly people's health has suffered. They are up against people with money and back-up. Small groups of people are trying to fight campaigns. We must consider how we can help communities to stand up for themselves; we must give them a voice and allow it to be heard.

**The Convener:** There will be no problem with that. The Executive is forever claiming that it is in favour of community empowerment. If it is, it must empower communities to take on big companies that try to overrun what the community stands for. We will draw the Executive's attention to that in the letter.

**John Scott:** Is not this the dichotomy that the Government faces? There is a marked policy movement towards more mining of coal and this change is the consequence of that policy movement. This might be the unacceptable face of that movement, but it is a consequence of the Government's policy of trying to use more coal and less gas. Coal is perhaps more easily accessible in Scotland because of the interpretation of NPPGs here. This is a consequence of Government policy and it is a matter for the Executive, or perhaps the national



Government, to address.

**The Convener:** I accept that, but from the evidence that we received this morning it would appear that the regime south of the border is much stricter than the one north of the border. That glaring inconsistency needs to be explained. If Scotland is different, the Executive will have to make a case for the difference; if it has not made the case, Parliament will have to do something about it.

**Dorothy-Grace Elder:** It is ironic, given that the deep mines were closed and the miners were treated very badly, that a few years later opencast is exploding all over the place.

**The Convener:** When we pass the petition to the Executive and ask it to respond, we will draw its attention to all the factors: community empowerment; the differences between the planning regimes in Scotland and England; and the need for the Parliament to inform itself through a site visit. We will ask the Executive to respond in detail to all the points in the petition and those made by the petitioner when he addressed the committee this morning.

**Dr Ewing:** Convener, in your letter can you make the point about communities being legally disadvantaged when they face one of these inquiries and that they may have to face an inquiry every two years?

**The Convener:** Yes. That is a very good point.

**John Scott:** It would be fair to say that that is a general point when anyone is objecting to a business development. I would have to declare an interest, but we were in a similar situation in relation to electricity transmission in south-west Scotland.

**The Convener:** I have been reminded that, as a result of petitions that were previously presented to this committee, the Transport and the Environment Committee is currently examining changing the law to allow third party rights of appeal against planning decisions, which would empower local communities to appeal against a decision to allow these projects to go ahead.

10:30

**Dorothy-Grace Elder:** But that would not give people any assistance.

**The Convener:** It would not give them assistance, but it would give them a power that they do not currently have.

**Dorothy-Grace Elder:** The petitioner has raised a big issue. We have known for years about the enormous stress that people are put under in these situations. I remember Robert Kemp, the novelist, fighting the inner ring road proposals in

Edinburgh. The poor man died within a year or so of it. People's lives are wrecked through trying to fight city hall.

Can we take the stress issue up separately? We touch on it in our discussions on almost every petition.

**The Convener:** Let us see what kind of response we get from the Executive. We will consider the petition further when the Executive responds and decide then what to do. Is that agreed?

**Members indicated agreement.**

**The Convener:** We will move on to the next petition, PE350, from Mr Mike Sutherland. Jamie Stone indicated that he might attend the committee to support the petition, but he is not here so we will go ahead and consider it.

The petition calls on the Scottish Parliament to ensure that implementation of special area of conservation status in the Moray firth will not compromise the livelihoods of people who use the firth by restricting their fishing methods. The arguments are set out in the petition.

The notes on our suggested action point out that interfering in the designation of individual SACs is not within our remit. We will deal with information on the designation of SACs in response to petition PE246, in connection with which we received an answer from the Scottish Executive. We could send that answer to the petitioners and take no further action because, as is pointed out in the Scottish Executive's response, socio-economic factors cannot be raised on SAC designations; they can be considered only after the designation has been awarded.

There is not much we can do about the petition other than tell the petitioners about the situation, give them the Scottish Executive's response and suggest that they approach the Executive directly so that it can consider the issues that are raised in the petition if the area is designated as an SAC. We should also suggest that the petitioners contact the management group that was set up following a previous SAC designation in the area. It includes representatives from Scottish Natural Heritage, fishermen, local authorities and port authorities.

**Rhoda Grant:** I spoke to SNH about the management group. SNH seems to be keen to work with the fishermen and not cause them hardship. Would it be worthwhile writing to SNH to say that we have received this petition? It might meet the fishermen to allay some of their fears and work with them to find ways round this. It would be helpful to set up a line of communication with the fishermen.

**The Convener:** We are already writing to the

petitioners to suggest that they contact the management group, which includes SNH, but there would be no harm in writing to SNH to draw its attention to the fact that fishermen have petitioned us about this matter.

**Dr Ewing:** Are the fishermen from Avoch? Is Mr Sutherland not here?

**The Convener:** He is from Tain.

**Dr Ewing:** The fishermen from Avoch are also concerned.

**Rhoda Grant:** A lot of fishermen are concerned. If two groups work together, it may make a difference.

**John Scott:** I am concerned that the interpretation that Sam Galbraith, in his reply on the other petition, is putting on the European judgment that has been handed down is that there is no right of appeal. It appears that no one can challenge the designation. I do not accept that that is the case or should be the case. If it is the case, it is creeping European domination. People object to it everywhere, daily. I do not think that it is to be encouraged. How we change it I do not know, but I find it hard to believe that there is no right of appeal, which is essentially what Sam Galbraith's letter says.

**The Convener:** The letter does not necessarily say that there is no right of appeal. It says that, when a decision is made on whether to designate an area as an SAC, only scientific factors can be taken into account. Non-scientific factors are not allowed to influence the decision. Any economic, social or cultural factors have to be considered subsequent to the designation of an area by the Government.

**John Scott:** By that time, the designation is de facto and the damage is done to the socio-economic conditions.

**The Convener:** Unfortunately, the decision of the European Court of Justice seems to confirm that that is the case.

**John Scott:** I accept that, but I cannot say that it cheers me up.

**The Convener:** It does not cheer me up. I do not think that the committee can change that at the moment.

We should say to Mr Sutherland that nothing can be done at this stage because of the way in which the European system works, but suggest that he contact the Scottish Executive and the management group. We should write to SNH and ask that it contact the Scottish Executive and the management group to ensure that, if anything can be done, it is done.

**Dr Winnie Ewing:** Could not we ask the

European Community to examine whether the lack of an appeals procedure fits with the European convention on human rights?

**John Scott:** That has already been investigated.

**The Convener:** Can we wait until we get to the response to petition PE246 to deal with that? With petition PE350, we are not really dealing with Sam Galbraith's letter. We will talk about the letter when we come to it.

Do members agree to the action for petition PE350?

**Members indicated agreement.**

**Dr Winnie Ewing:** Yes, but I agree with John Scott that it is unsatisfactory.

**The Convener:** The next petition is PE347 from Mr Kenneth Mitchell. It calls on the Scottish Parliament to investigate the practice of coupling Clydesdale horses and to introduce legislation to make such a style of shoeing illegal unless it is sanctioned for medical reasons by a veterinary surgeon.

The petition points out that the coupling of Clydesdale horses is usually practised for shows. It involves the use of shoes that exaggerate the Clydesdale's naturally close-hocked, toe-out stance, which is considered a desirable feature in the show ring. A series of diagrams, which tries to illustrate exactly what coupling does, is attached to the petition.

The petitioner also points out that, although coupling is sometimes used to correct foot abnormalities, in the majority of cases it actually causes abnormalities, including, in the short term, lameness, interference injuries and puncture wounds and in the long term, degenerative joint diseases.

The petition has a wide range of support from the World Association for Transport Animal Welfare and Studies, the Laminitis Clinic, professors in veterinary science, various farriers, the British Horse Society, the British Equine Veterinary Association, the International League for the Protection of Horses and various veterinary surgeons. Dr Sylvia Jackson and Nick Johnston have lodged motions in the Parliament in support of the petitioner.

It is suggested that, as a first stage, we seek the Scottish Executive's views on the animal welfare issues that the practice raises, along with the views of the Clydesdale Horse Society, which represents owners and breeders of Clydesdale horses. Once we have those responses, we can consider what to do with the petition.

Do members have any other suggestions?

**John Scott:** I would be interested to know how long coup shoes are worn for. A great number of practices in showing animals are temporary and do not make the animals suffer in any way.

It is also sensible to record that the people who own Clydesdale horses own them, by and large, as a hobby and not for any commercial reasons. The last thing that they want to do is to hurt or damage the animals. I know that for a fact.

I do not accept the premise of the petition at all.

**The Convener:** That is the reason for asking the Clydesdale Horse Society to respond.

**John Scott:** Its views should have been sought already.

**Dorothy-Grace Elder:** I find the petition uplifting. It gives me a wee bit of faith in human nature that somebody has cared so much to put so much work into all the beautiful diagrams. Having grown up among Clydesdales and having had to hold their feet while blacksmiths shod them—an easy job, because Clydesdales are so nice and gracious and do not normally kick—I would say that we should pass it on to the cross-party animal welfare group as well as go down the other avenues that the convener has suggested.

The practice of coupling is concerning. John Scott asked whether the shoes are fitted temporarily for shows. We do not know. Clydesdale horses are used worldwide—they can be seen pulling drays in Florida. They are a wonderful symbol of Scotland. If coupling harms their feet, we must do something about it.

**Rhoda Grant:** Coupling harms more than their feet; it harms their stance. Dr Sylvia Jackson spoke to me at great length about it when she lodged her motion. She has loads of information; it might be worth asking her for it. The people with whom she was dealing were not animal welfare groups as such—if that is a concern for John Scott—but people, such as farriers, who deal with horses and know the effect of the work that they are being asked to carry out. We need to treat the petition seriously. Coupling is a big problem.

**John Scott:** I accept what Rhoda Grant said, but we must remember that the point of showing the animals is historical and that they are working animals. The way a horse works is to pull things. It cannot do anything other than pull.

Consider the diagrams. The shoes are there to coup the horse. If the straight up-and-down structure of the horse's legs is put under pressure—this is simple engineering—the legs go out. That damages the joints in the legs. If the legs have a natural tilt in, that compensates for the legs going out and allows the animal to pull more strongly. That is why an animal that was naturally tight hocked looked a better bet as a working

horse 100 years ago and why coupling has become a show point.

I can accept that there is no need for coupling these days. Nonetheless, the breed characteristics that made Clydesdales important are still there. If coup shoes are being worn only for temporary, showing purposes, I cannot see that it makes any difference at all to the animal.

For example, do any of the ladies here wear high-heeled shoes?

**Dr Winnie Ewing:** Often.

**John Scott:** Indeed. You do not wear them all the time and you will be well aware that they do you damage, but you still wear them. We should keep a sense of proportion.

**Dr Winnie Ewing:** High-heeled shoes have ruined my feet.

**Rhoda Grant:** The difference is that we do it through choice; the horse does not.

**Dr Ewing:** We choose to be vain and stupid.

**The Convener:** We are anticipating the arguments that we may hear in responses from the Scottish Executive and the Clydesdale Horse Society.

It has been suggested that we contact the cross-party animal welfare group to ask whether it has any comments on the petition and that we contact Dr Sylvia Jackson, who apparently has a lot of information on coupling.

**Dr Ewing:** As one who goes to dozens of shows in the summer and sees the beautiful creatures, I just want to say that they are beautiful anyway. We do not need to worry too much whether the horses' feet point one way or another, because they are all beautifully decorated and there is plenty to look at.

**Dorothy-Grace Elder:** Oh! We used to have to braid their manes.

**The Convener:** We will no doubt return to this debate when we get the responses.

**Dorothy-Grace Elder:** It was not in the least cruel. The horses were quite proud when their manes were being braided.

**The Convener:** If we agree to the action, we can move on to the next petition.

**Members indicated agreement.**

**The Convener:** PE348 from Mr James A Grant calls for the Parliament to implement a pilot study of the manner and methods of psychiatric care and treatment in the national health service in Aberdeen during the past 25 years.

The petitioner makes a number of

recommendations relating to the Millan committee report on the review of the Mental Health (Scotland) Act 1984. He suggests that Parliament might be able to make a better-informed response to the report if it was aware of the experiences of patients and carers under the present legislation. To facilitate that, there should be a study of the methods of psychiatric care and treatment in the national health service in Aberdeen during the past 25 years. Through the care of his daughter, Mr Grant has long experience of the service in Aberdeen.

The Millan committee presented its review of the legislation to the Scottish Executive in January this year. In the report, the Millan committee recommended a new mental health act to replace the 1984 act. It is suggested that it would not be appropriate for the Parliament to conduct the study that the petitioner requests, because the Millan committee report was presented to the Executive, not the Parliament. It is not for the Parliament to consider the report yet, so it is recommended that we suggest to the petitioner that it would be more appropriate for him to direct his request to the Executive, to be taken into account as part of its response to the Millan committee report. Should the Executive accept the Millan report's recommendation that the Mental Health (Scotland) Act 1984 should be replaced, the Parliament would scrutinise any new bill on mental health.

It is suggested that no further action should be taken, other than to inform the petitioner of the best way of pursuing his case for a private study. The Parliament would come into play once any new mental health act had been proposed. At that time, Mr Grant's information will become relevant.

10:45

**Rhoda Grant:** I suggest that we copy the petition to the Health and Community Care Committee for information, so that it knows about those views when a new mental health bill is presented to it. That would allow that committee to contact Mr Grant for further information if necessary.

**The Convener:** We will send a copy to the Health and Community Care Committee for its information and suggest that that committee consider the petition when it receives any new mental health legislation. Is that agreed?

**Members indicated agreement.**

**The Convener:** Petition PE349 from Mr Thomas Stevenson has more than 2,200 signatures. It calls on the Scottish Parliament to conduct an urgent investigation into the reasons why cancer rates are statistically higher in East Lothian than they are elsewhere in the Lothian Health board area. The petitioners provide alleged evidence from Dr

Van Steenis, who suggests that East Lothian's location in relation to Grangemouth oil refinery and past environmental pollution raise valid concerns.

The petitioners allege that other factors such as the chemical incinerator at a research station near Tranent and the reputed deal between Blue Circle Cement and Michelin to burn tyres in cement kilns add to the increased pollution. They are unhappy with Lothian Health's claim that the increase is due to diet, smoking, lack of exercise, deprivation and the fact that East Lothian has an older population. The petitioners do not think that those factors are significant enough to explain the increased number of cancer cases and they are unhappy with East Lothian Council's response of buying a computer to monitor pollutants, which the petitioners describe as a waste of money. They say that the money would be better spent on testing soil and attic dust in older houses.

It is suggested that, as a first step, we should seek the comments of East Lothian Council and Lothian Health, before responding to the petitioners. John Home Robertson, the local member of the Scottish Parliament, contacted the clerk to say that an East Lothian environmental group had approached him about the problem. That group wrote to him, other MSPs and the health board, and John Home Robertson has taken up the issue. As members may have noticed, yesterday's front page of *The Scotsman* was taken up with the issue. It called the area around Grangemouth Scotland's corridor of death. The issues are serious enough for us to seek the responses of East Lothian Council and Lothian Health before further considering the petition. Is there anyone else to whom we should talk?

**Dorothy-Grace Elder:** We should talk to the nuclear authority. I notice that the petitioners do not mention Torness. It is unfair to single out one cause at this early stage, but while concentration is on Grangemouth and other factors, the gigantic plant at Torness might make us want to call in its authorities to give evidence.

**Rhoda Grant:** The convener said that an environmental group had been in touch with John Home Robertson on the issue. Might it be worth our contacting that group for information? It may have information that the petitioners do not have.

**The Convener:** We could try to contact that group through John Home Robertson.

**John Scott:** We could also ask for a view from the National Radiological Protection Board, because there is a great number of power lines in the areas that are involved. Given the recent study and Sir Richard Doll's change in position, I suggest that it might be worth seeking the board's views, to find out whether they have changed.

Why does the background to the petition say

that the petitioners provide “alleged evidence”? Have we some reason for suspecting the evidence? Is it different from other evidence that we receive from other petitioners?

**The Convener:** The evidence is the petitioners’ claim. We cannot accept it as evidence until we hear the other side of the argument. We are not saying that there is anything wrong with the evidence. We are simply saying that, at this stage, we are not in a position to make a judgment on the evidence.

**John Scott:** But we accept evidence or views at face value from everyone else.

**The Convener:** The wording is cautionary. It makes no judgment on the evidence. Until we have heard both sides of the argument, we are not coming down one way or the other.

We will seek responses from the NRPB, the East Lothian environmental group, whoever is responsible for Torness—I cannot remember whether it is British Nuclear Fuels or another body—and the Scottish Executive, because it has an interest in the issue. We have already said that we will contact Lothian Health and East Lothian Council.

**John Scott:** You said that Blue Circle Cement and Michelin might be burning tyres. It might be politic to ask for their views too. I read somewhere that burning tyres can cause increases in dioxins.

**The Convener:** The petitioners refer to the reputed deal between Blue Circle Cement and Michelin, but we do not have evidence of that.

**Dorothy-Grace Elder:** Over the years, there has been a regular story about tyre burning in East Lothian causing a problem. This is not a one-off reference.

**The Convener:** The council has a responsibility in relation to such deals, so we will ask it to comment. We will gather all the information then decide how to respond to it. Is that agreed?

**Members** *indicated agreement.*

## Current Petitions

**The Convener:** The first current petition is PE227 from Mr Alistair MacDonald. The petition called on the Parliament to approve a thorough investigation of the actions of the National Trust for Scotland on its current proposals and policies for Glencoe, which involve the creation of a woodland grant scheme and a new visitor centre at Inverigan. Some committee members visited Glencoe on 2 October last year. At our meeting on 24 October, we agreed to pass the petition to the Transport and the Environment Committee for its views. We asked it to consult the Rural Affairs Committee as appropriate. We also agreed to pass the petition to the relevant Scottish Executive ministers for comments.

We have now received responses from Allan Wilson, who was the Deputy Minister for Environment, Sport and Culture, and from the Transport and the Environment Committee. The minister confirms that the National Trust for Scotland

“is not a part of Government and does not receive funding from the Scottish Executive, except ... for specific projects”.

He says that planning permission for the proposed visitor centre in Glencoe is a matter for Highland Council and that there are no reasons for ministers to intervene. The minister is also

“satisfied that the treatment of the National Trust for Scotland was no different to that of any other applicant under the Woodland Grant Scheme.”

The minister makes it clear, and asks me to emphasise, that he has found nothing to support the serious allegation that the Government affords the National Trust for Scotland preferential treatment.

The Transport and the Environment Committee agreed to write to the Scottish Executive to seek further information on the steps that might be taken to improve procedures for local consultation on planning, but that committee noted that the request for investigation into the role of the National Trust for Scotland as a major landowner in the Highlands was a matter for the Rural Development Committee. The Transport and the Environment Committee therefore agreed to inform us that it did not wish to conduct an inquiry into the issues that the petition raised.

The visitor centre and woodland management scheme proposals that the petitioners oppose have already received the necessary permission. The Parliament can do nothing to reverse those decisions. The Transport and the Environment Committee said that it was for the Rural Development Committee to conduct the inquiry that is sought. We could agree that the clerk should write to that committee and ask whether it

would be minded to conduct such an inquiry, taking into account its work load. Alternatively, we could decide to do nothing.

**Rhoda Grant:** The issue might be considered when evidence is taken on the bill on land reform. Not just the Rural Development Committee, but one of the justice committees might be involved. It has not yet been decided how the bill will be split between committees, if it is split.

**The Convener:** John Scott and I went to Glencoe with others. The petitioners' concerns were about those two projects, which have gone ahead. To a large extent, the petitioners' interest has been overtaken by decisions. The only outstanding question is whether there should be an inquiry into the National Trust for Scotland's role as a landowner in the area. The Rural Development Committee might wish to conduct an inquiry into that, but it would be for that committee, rather than us, to make that decision.

**John Scott:** In fairness to the petitioners, the matter should be referred to the Rural Development Committee because there is still a huge amount of feeling about it.

Perhaps more crucially, there is a consultation issue that the Transport and the Environment Committee refers to in its letter. I would be happy to take advice on how we can best address that issue. There seems to have been inadequate consultation. Time after time on the committee, we hear from people who seem to learn too late about lodging their objections. Perhaps there is a flaw somewhere in the consultation process on planning guidelines.

**The Convener:** To be fair, the Transport and the Environment Committee has considered that and has agreed to take up with the Executive the matter of what steps might be taken to improve consultation.

Do you still want the petition to go to one of the justice committees?

**Rhoda Grant:** I suggested that the petition should go to one of the justice committees or to the Rural Development Committee—whichever committee deals with the proposed land reform legislation—because there are complaints along those lines throughout the Highlands about landowners going against the wishes of communities. That matter will have to be looked at as part of the proposed land reform legislation. It is not clear what committee will deal with that—that is why I suggested also sending the petition to one of the justice committees. The committee conveners would then decide which committee would take on the matter and perhaps consider it as part of its consultation.

**The Convener:** As well as sending the petition

to the Rural Development Committee, therefore, we will send it to one of the justice committees. The clerks can sort out which one. They could ask the committees if they would be interested in considering the petition as part of their consideration of the proposed land reform legislation.

**Dr Ewing:** I often visit National Trust for Scotland properties and it is not very common for the trust to seem to be in competition with local businesses as it is in this case. Usually, the trust complements rather than competes. In this case, the problem is that the people in Glencoe village feel that they will be in serious competition. It is a fragile village at the best of times.

**The Convener:** The issue has divided the village. A new visitor centre was erected that was badly needed because the old visitor centre was in a dreadful state.

Do members agree to the action proposed?

**Members indicated agreement.**

**The Convener:** The next response that we have received relates to PE246 from Kildalton and Oa community council, Kilarrow and Kilmeny community council and the Kilchoman and Portnahaven community council, and Councillors J Findlay and R Currie. The petition requests Scottish Natural Heritage, the Scottish Executive and the appropriate minister not to proceed with the designation of the south-east Islay Skerries special area of conservation.

At the committee's meeting on 12 September 2000, we agreed to copy the petition to the Minister for Transport and the Environment and asked for the petition to be considered as part of the consultation process on the area. We agreed to draw the minister's attention to the view expressed by members of the committee that local opinion on the matter should be taken into consideration.

At our meeting on 24 October 2000, the committee considered a letter that we had received from Scottish Natural Heritage that provided information on the consultation process carried out by SNH and countered claims made by the petitioner that that process had been inadequate. The committee agreed to ask the Executive for its views on whether the recent designation of a number of sites around Scotland is fully justified or whether it is an exercise designed purely to meet the requirements of the European Union habitats directive.

At our meeting on 23 January 2001, the committee considered a response from the Scottish Executive and agreed to seek its further comments on various points raised by members. A response to those comments from the Executive

has now been received. It states that the UK Government

"could not take account of economic, social or cultural factors when deciding what sites to propose to the European Commission as candidate SACs under the Habitats Directive."

The letter says that that principle

"has been affirmed in subsequent judgements of the ECJ"

and that

"non scientific factors should be taken into account only following designation, in accordance with Article 6 of the Habitats Directive."

In response to a question posed by the committee on ECHR compliance, the Executive is

"of the view that the implementation of the Directive does comply with the ECHR".

In response to members' queries regarding fining of countries that do not comply with the terms of the habitats directive, the Executive gives an example from July 2000 when the Greek Government was fined €20,000 per day for failing to comply with a previous court ruling. To date, Greece has paid €2.98 million in fines for the case. The Executive therefore makes the point that

"the threat of severe penalties by the ECJ is indeed real."

The petition has already been passed to the Executive to form part of its consultation process. Recent letters from the Executive have clarified several issues. It is clear from those letters that neither the Scottish Parliament nor the Scottish Executive can take the action that is requested by the petitioners. It has therefore been suggested that the committee should agree to pass a copy of the Executive's letter to the petitioners and take no further action.

I know that members have concerns about the issue.

11:00

**John Scott:** It is an inescapable fact that all the local democracies involved in arriving at a decision as to whether the designation should go ahead are against it. Yet a position has apparently been reached at which, because a designation has been made by SNH, that is it. SNH must consider if it wishes to proceed in the face of enormous local opposition. The option is open for SNH to withdraw the designation. It does not have to proceed with the designation, but it appears that there is no recourse other than to ask SNH to withdraw it.

**Dr Winnie Ewing:** The third paragraph of the petition says that the proposal has "no scientific legitimacy". Those are genuine grounds for appeal. All the councils are saying that. The proposal has neither electoral support nor

scientific legitimacy. Is that not a good reason to support those communities?

**The Convener:** That is the problem. SNH takes the view that it has scientific evidence.

**Dr Ewing:** Why does the common seal need protection? We need protection against the common seal.

**The Convener:** For the record, some elements of the community—environmentalists for example—support the designation.

**John Scott:** The community councils are against it and the Argyll and Bute Council voted unanimously against it.

**The Convener:** There are, however, other people in the area who support the designation.

**Dr Ewing:** Why do we need to protect the common seal? Common seals are on the increase everywhere in the Highlands and Islands. There is a legitimate argument for culling a lot of seals because of the damage that they do to fish stocks. That is not a popular thing to say. I am an animal welfare person and always have been, but the common seal needs to be culled. Why on earth are we protecting the common seal? They are not birds.

**The Convener:** To be fair, the petition is being considered by the minister as part of the consultation process into designating the area as a special area of conservation. However, a legitimate issue of processing is involved. It appears that social, economic and cultural factors cannot be taken into consideration until after an area is designated. By that time, it is too late.

**Dr Ewing:** In this case, not only social and economic factors are involved.

**The Convener:** There is an argument over the scientific factors.

**Dr Ewing:** On those grounds, can we not ask for the proposal to be withdrawn?

**The Convener:** No, because the minister has taken the petition into consideration as part of the consultation process in deciding whether to proceed with the designation.

**Dr Ewing:** Can we draw his attention again to the point about scientific legitimacy?

**The Convener:** That has been done.

**Rhoda Grant:** We could refer the petition to the European Committee, as suggested for an earlier petition.

**The Convener:** We could certainly ask that committee for its comments on the process.

**John Scott:** Who is the minister responsible for the environment now?

**The Convener:** Ross Finnie.

**Dr Ewing:** I agree with Rhoda Grant. I think that the petition should go to the European Committee. We need to know and are entitled to know what on earth the scientific justification is.

**John Scott:** It would be fair to say that many designated sites throughout Scotland are meeting enormous objections. It would be equally fair to say that those sites are the difficult ones that SNH has left until last.

SNH and the Government cannot be surprised that such sites are causing a great deal of aggravation. All the easily designated sites were designated five to seven years ago. However, there are difficult sites that public feeling is by and large against and it appears that there is no recourse in any way to SNH's designation of those sites.

**Dr Ewing:** Except on scientific grounds.

**John Scott:** In my view, that is not enough.

**The Convener:** The area may have been included in the list of designated areas that was recently sent to the European Union. We will check that out.

You are suggesting that we copy the correspondence that we have received to the European Committee and ask it to consider whether the process whereby areas are designated as special areas of conservation should be reconsidered. We can ask whether there should be a right of appeal against such designations on economic, social or cultural grounds.

**John Scott:** Should we refer the matter to members of the European Parliament? It is their legislation that we are burdened with, over which we have no right of appeal.

**The Convener:** I am worried that that would go way beyond the bounds of what the petitioners are asking for. That is not the role of the committee. Individual members can take the matter up with MEPs if they so wish. Does the committee want to send the correspondence that we have received to the European Committee, asking it to examine the designation process?

**Dr Ewing:** There is enormous opposition to this designation and to others. Berneray is a case that springs to mind, where the whole population is against the designation. However, they did not produce scientific arguments.

**The Convener:** We can ask the European Committee's view on the correspondence and the designation process, to find out whether any changes to that process can be suggested.

**John Scott:** That committee's view could also

be sought on how the local community's feelings might have an effect on the decision-making process.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**The Convener:** Petition PE262 is from Louise Robertson, on behalf of the Save the Vale campaign, and it contains more than 6,500 signatures. It urges the Scottish Executive to provide funding for the NHS to ensure that the Vale of Leven district general hospital has the level of health care that it deserves.

In September, we passed the petition to the Minister for Health and Community Care. Responses have been received from the Scottish Executive and the chief executive of the Argyll and Clyde Acute Hospitals NHS Trust. I point out that, although the response from the NHS trust is dated 17 November 2000, it has only just been received by the clerks. The response from the Scottish Executive describes its role as

"ensuring national strategic frameworks are in place"

and stresses that it is for the local service providers to make decisions that affect local communities. The Executive has been informed by the local NHS trust that it has not made any decisions on the future of either geriatric or maternity services at the Vale of Leven hospital.

The response from Argyll and Clyde Acute Hospitals NHS Trust explains that the proposals for the restructuring of maternity services are at an early stage and will be subject to full consultation. The options for other services, including geriatric services, are being formulated and will be subject to similar consultation in due course. The response gives reasons for the review of those services and details the proposed consultation.

It is suggested that it is not in our remit to interfere with or overturn executive decisions of public bodies such as health boards or NHS trusts. The NHS trust has indicated that it will conduct wide-ranging consultation as part of its review of maternity and other service provision. It is therefore recommended that the committee agree to pass copies of the responses that we have received to the petitioners and take no further action. I think that the petitioners will be reasonably happy with those responses. Detailed information on the consultation process can be made available to the petitioners, to allow them to know exactly what is going on.

**Dorothy-Grace Elder:** I have not seen that document.

**The Convener:** We have only one copy.

**Dorothy-Grace Elder:** It is the statement about full consultation that interests me. That would fall



within our remit more than some of the other aspects.

The reply from the NHS trust was received mysteriously late, as it was dated 17 November 2000. That is how I have seen consultation carried out in the past—through letters that are four or five months out of date. Would it be possible for us to write to Argyll and Clyde Acute Hospitals NHS Trust, asking for clarification of some of the points that are not addressed in the document that we have received? For example, are midwives' groups and the Royal College of Midwives being consulted?

**The Convener:** Staff involvement in the consultation is referred to in the final paragraph of the document. The consultation has not begun yet. When it is initiated, the staff will be involved. A redesigned project steering group has been set up, which has produced a report that is now being considered by the NHS trust. The consultation has not begun yet.

**Dorothy-Grace Elder:** It is just about to start. We know what it was like in Glasgow, when consultation was carried out on the acute hospitals service review. That was not consultation at all: it was, "Here is what we are going to do to you. Say yes or no." No alternative plan was provided.

**The Convener:** The chief executive and other representatives of the trust met local community councils this month, to provide an update of the position and to answer any questions on the trust's proposals. They are genuinely trying to involve everyone concerned—staff and the community—in the proposals for change, and there is a detailed plan of consultation. That is what the petitioners are looking for. Like you, Dorothy, they feared that they were going to be railroaded. However, the trade unions have been involved, as we are told in the final paragraph of our briefing.

**Dr Ewing:** It is ironic that, years ago, maternity cases were transferred from Oban to the Vale of Leven hospital. That caused enormous concern because of the road down the side of Loch Lomond. People nearly died on the way. Women pretended that they were not in labour, so that their babies could be born in Oban and they would not have to go down the Loch Lomond road. I am therefore concerned that the NHS trust is considering interfering with local maternity services at the Vale of Leven hospital, as that upsets local communities. However, it is not clear whether that is going to happen.

**The Convener:** The proposals have not yet been finalised.

**John Scott:** There should be adequate consultation and people's responses should be listened to. That would be better than the NHS trust telling the local communities what is best for

them. If the communities' concerns were listened to once in a while, consultation might be a worthwhile process. It obviously failed in the case of the Glencoe petition. There may also be difficulties of communication in Argyll, because of the distances that are involved or because the local press is not reporting the issue as it should. The fact that the consultation is being carried out should be well publicised, so that people can take advantage of it.

**The Convener:** We are always available to hear from people if they think that the consultation process is not being carried out properly. Members will remember that representatives of Tayside Health Board were pulled before a parliamentary committee following the board's failure to consult properly on its proposals for change.

**John Scott:** But did that make any difference?

**The Convener:** It did. The process of change in Tayside has slowed down enormously and there is full consultation on the proposals.

**Dorothy-Grace Elder:** The situation is still bad at Stracathro, and the petition in that case drew 25,000 signatures.

**The Convener:** But no decision has been made on Stracathro, partly because of the Parliament's response to the petitioners. The situation is being handled very carefully by the local health board and the NHS trust, which are trying to ensure that public opinion is on their side. It does make a difference.

**Dorothy-Grace Elder:** The word consultation still troubles me. Someone could phone the unions for two minutes this afternoon or receive a letter from the Royal College of Midwives and ignore it. There should be no objection to certain key bodies attending the meetings of those who are appointed by the NHS trust to carry out the review.

**The Convener:** As I said earlier, the redesigned project steering group includes representatives of primary care trusts, individual GPs, local and national childbirth trusts and clinical teams for each of the units. There have also been open forum meetings with the staff who are involved and informal and formal meetings with employees and trade union representatives. There are locality-based focus groups, groups of consumers, open hearings, eight value-based workshops incorporating the views of 120 members of the public, which are held in four different areas, and a range of other consultation measures that are mentioned in the trust's document. The trust is making a genuine effort to consult.

**Dorothy-Grace Elder:** The consultation process seems better than most. However, surely sensible and knowledgeable people—one representative

from the Save the Vale campaign and one representative from the Royal College of Midwives—should attend the project steering group meetings right through the process. They should not have to rely on public meetings on a wet Monday night, which few people would attend; they should be able to see that the trust has consulted fully.

**The Convener:** To be fair, the impact of the Parliament and the fact that people come here to complain about the way in which consultation is carried through at the health board level is having an effect. The health boards are taking a much more sophisticated approach to consultation than they previously did. The Scottish Parliament has proved to be a weapon that can be used by local communities against local trusts and boards.

11:15

**Dorothy-Grace Elder:** The situation is much better than it was before, but we still do not have people in at the beginning. They are kept at arm's length.

**The Convener:** I am sure that the Health and Community Care Committee will examine the matter when it deals with the administration of the NHS in Scotland. Dorothy-Grace Elder and I are both members of that committee.

**Dorothy-Grace Elder:** Highly unbiased ones.

**The Convener:** Are we agreed to follow the suggested action?

**Members indicated agreement.**

**John Scott:** On a point of clarification, can someone tell me what a value-based workshop is?

**The Convener:** Not off the top of my head.

**Dr Ewing:** Dear me, what can it mean?

**Dorothy-Grace Elder:** Something that sounds like consultation.

**The Convener:** I am sure that it is worth while.

The next petition is PE274, from Mrs Patricia Drysdale, and calls on the Parliament to ensure that there is an inquiry into the safety and welfare practices in operation at Jessiefield prison in Dumfries. In October, we agreed to seek the view of the Scottish Prison Service and we also agreed to copy the petition to the Deputy Minister for Justice for his information and to keep him informed of subsequent progress.

At our meeting in January, we considered a response from the SPS and agreed to pass a copy to the petitioner seeking her comments. We also agreed to write to the Scottish Executive seeking comments on whether the revised routine that was introduced at Jessiefield prison is now followed in

all prisons and whether details about the impact of the privatisation of the prison doctors service were available as well as information about how standards of medical care are monitored in prisons.

We have received a further response from the SPS that indicates that the procedure that was introduced at Jessiefield is now part of the SPS security standard and that compliance is checked through the SPS security audit process. It also points out that the outsourcing of medical services has allowed a new contractual framework to be developed that, for the first time, requires such services to be delivered against published health care standards. It says that the SPS has established a contract monitoring group that reviews the performance of Medacs forensic services, which is the outsourced service, in delivering primary care medical services across Scotland's prisons.

The petitioner has also submitted further information that relates to her case. It can be viewed by members in room 5.16 of the Parliament's headquarters.

It is suggested that we pass the latest response to the petitioner and take no further action as it appears that the service has changed its working practices to ensure that similar tragedies will not occur again, either in Jessiefield or at other prisons in Scotland. Of course, we know that there has been a recent fatality at a private prison in Kilmarnock. I do not know if such incidents can ever be eliminated.

**Dorothy-Grace Elder:** I know quite a bit about the prisons crisis that has arisen since 1 November 2000, when the prison doctors service was privatised. Over Christmas, I got desperate calls from prisons in Scotland. It was claimed that three prison doctors walked out of the prison in Dumfries because they were disgusted by the new conditions that were being forced on them. That holiday period, of course, is one of the peak times for suicide.

Other prison doctors are continuing to protest. I do not believe what the response tells us about improvements. Anyone in the prison doctors service will tell you that the situation is getting worse. The contracts are imposed by Medacs Healthcare Services, which is based in Yorkshire. The company has requested a change to coverage that led prison doctors to fear that they might have to run between, for instance, Greenock and Dumfries. Part of the doctors' remit is to be able to attend to an urgent case within half an hour. That would be impossible in the example that I gave.

A cross-party group chaired by George Reid that concerns prison officers is being established. I

went along to a meeting last week to put the case of prison doctors. We must take further action. I assure the committee that the response from the SPS is absolute nonsense.

**The Convener:** I have no reason to disagree with anything that you say, but what concerns me is the petitioner. The petition is asking for a certain action that I think may already have been taken. It is open to anyone to send in a further, more general, petition about these issues. The petitioner was asking for an inquiry into the safety and welfare practices in operation at Jessiefield prison in Dumfries, which has now taken place. It may be difficult to build a more general inquiry on the back of this petition.

**Dorothy-Grace Elder:** Perhaps we could send some letters to the Minister for Justice.

**The Convener:** We could even pass the petition to the justice committees to see whether they are interested.

**Dr Ewing:** How on earth can someone from Yorkshire be responsible for this? What is the point of that?

**Dorothy-Grace Elder:** Quite.

**Dr Ewing:** We are supposed to have devolution.

**Dorothy-Grace Elder:** The document is dated 1 November 2000.

**Dr Ewing:** Do we know who is responsible?

**Dorothy-Grace Elder:** It was the Scottish Prison Service, which is under the Executive.

**The Convener:** The decision was taken under the devolved Administration.

**Dr Ewing:** Can we not go back and ask what on earth people were playing at?

**Dorothy-Grace Elder:** That is the whole problem.

**The Convener:** These issues are of great interest to us as individual members, but it is not in our role as a committee to go into such matters. We can do so individually; there is nothing to prevent any of us from doing that.

**Dr Ewing:** The letter from the SPS does not answer the petitioner—it was pretty obvious that the woman's son died because the check did not involve seeing the face of the prisoner and getting a response. The SPS says that that has been dealt with.

**The Convener:** That was done in answer to previous correspondence.

**Dr Ewing:** That is good. However, I am concerned by what Dorothy-Grace Elder says about doctors being called to incidents within half an hour, when they physically cannot do it.

**Dorothy-Grace Elder:** The half-hour time limit has always been in place for urgent cases. Doctors are now asking how they can meet that target when they have to run between prisons, Dumfries being one of them.

**The Convener:** I am not opposed to any further inquiry into that, because I, too, feel that it is a serious issue that requires investigation. All that I am saying is that the petition is not the right way of doing that. An additional petition might allow us to investigate further, or to get the Parliament to investigate further. However, we cannot do that on the back of this petition.

**John Scott:** I entirely agree with that, but we must bear in mind the fact that, at any time of year, not just at Christmas and new year, it can be almost impossible for members of the general public to get a doctor, never mind being guaranteed one within half an hour.

**Dr Ewing:** I agree.

**Dorothy-Grace Elder:** We are talking about young lads who are trying to take their lives.

**John Scott:** I am talking about young children as well, and elderly people.

**Dorothy-Grace Elder:** The response from the Executive refers to the "outsourcing", as it is now called—which means the privatisation—of medical services, which has

"allowed a new contractual framework to be developed which for the first time requires such services to be delivered against published Healthcare Standards."

The prison doctors are up in arms precisely because of the contract that is referred to in that response. That is a very misleading statement.

The mother who has sent us her petition has been noble and valiant in what she has done. I realise that what we have just said is not entirely the subject of her petition, because she first petitioned the Parliament in September, before the prison doctor service was privatised. However, she was referring to safety, and I wonder whether that is still not covered.

**The Convener:** I accept everything that you say about the necessity for investigation. However, I think that we should pass a copy of the response to the petitioner and explain that the committee is of the view that further work needs to be done by the Parliament and that we would welcome a further petition from interested parties. I think that we should wait for a further petition, because we do not want to get this wrong and be ruled out of order by other committees or by the Executive.

**Dr Ewing:** I agree.

**John Scott:** Would it be improper to pass the matter as it stands to the justice committees?

**The Convener:** The justice committees may feel that the response deals with the petition and that there is nothing more that they can do. The wording of petitions is important. We are considering the response that is before us today without remembering the first response, which dealt with the issues that the petitioner raised about her son's case. However, there is a wider issue about the prison doctor service and the implications for the safety and health of prisoners, and we need another petition on those lines.

**Dr Ewing:** The prison doctors should send a petition if they are concerned.

**Dorothy-Grace Elder:** I can let them know, but do not forget that they are hauden doon on those contracts.

**The Convener:** Any individual can petition the committee. The petitioner does not have to be an organisation.

**Dorothy-Grace Elder:** Nevertheless, please can we write to the Minister for Justice, referring to the fact that the Executive's response is not wholly accurate—to put it mildly—and to our concerns about the prison doctor service?

**The Convener:** The clerk suggests that it might be better if individual members, rather than the clerk, were to write to the minister.

**Dorothy-Grace Elder:** A letter would have more clout if it came from the committee. The Executive knows that I am always banging on about prisons.

**The Convener:** I could write.

**Dorothy-Grace Elder:** I would be grateful if you would, convener. Could someone write to the mother to thank her, as her actions may have saved lives in the future?

**Dr Ewing:** She should be thanked for her action.

**Dorothy-Grace Elder:** She has been marvellous.

**The Convener:** We will do that.

**Dorothy-Grace Elder:** She is a brave woman.

**The Convener:** Do members agree to take that action?

**Members** *indicated agreement.*

**The Convener:** The final response is to petition PE324 from Ms Kay Reid, which has nearly 5,500 signatures and which calls on the Parliament to call for a fatal accident inquiry into the sudden death of Dwayne Hood. It also requests the Scottish Executive to institute a right of appeal to the Lord Advocate when a fatal accident inquiry has been ruled out. At our meeting in December, we agreed to pass a copy of the petition to the Lord Advocate for his comments.

A response has now been received from the Solicitor General for Scotland, on behalf of the Lord Advocate. That response indicates that the procurator fiscal met Ms Reid and her husband three times and provided her with

“all the information that he had about Dwayne's death.”

The letter sets out why a fatal accident inquiry would not have answered Ms Reid's questions regarding Dwayne's medical care. More generally, the Solicitor General states that fatal accident inquiries are mandatory

“in the case of a death in custody or arising out of an accident at work. In other cases, the Crown has discretion”

and takes those decisions seriously.

The Solicitor General points out that decisions taken by the procurator fiscal are administrative, not judicial, and must be taken

“independently of any other person”.

The letter goes on to say that the

“whole system of Fatal Accident Inquiries was established by ... Parliament”

and that Parliament gave

“discretion to the Crown”.

Finally, the Solicitor General says:

“There is no right of appeal and it is difficult to see to whom a right of appeal could be addressed. As with all administrative actions, there may be the possibility of judicial review of the decision.”

The clerk has pointed out to the committee that the Parliament has no powers to call for a fatal accident inquiry in a specific case. Given that a mechanism already exists to review the administrative decisions made by procurators fiscal in relation to fatal accident inquiries—that is, judicial review—it is recommended that the committee should agree to pass a copy of the Solicitor General's letter to the petitioner and to take no further action. We could also agree to advise Ms Reid that it is open to her to pursue civil proceedings if she feels that there is evidence of negligence.

Alternatively, we could agree that further consideration should be given to the call for a right of appeal to be introduced when a fatal accident inquiry has been ruled out. The committee may, therefore, wish to refer the petition to the relevant justice committee.

The issue comes down to whether we think that the law, as it stands, is right or whether a further right of appeal should be written into it. If we think that the latter should happen, we should refer the petition to one of the justice committees for further consideration.

**John Scott:** It is not up to us to decide whether the law is inadequate, although it might be up to

us to decide whether the petition should be referred to one of the justice committees.

The law was considered in 1976, at which time it was reckoned that the system that had been put in place was adequate. What we are proposing, or what one of the justice committees might wish to consider, is a significant departure from the existing law.

**The Convener:** We could pass the correspondence and the petition to one of the justice committees and ask that committee to consider whether there is any merit in making further changes to the law.

**John Scott:** That might be an appropriate step to take.

**Dr Ewing:** The letter from the Solicitor General has not answered the point about appeal very well.

The mandatory list is interesting, as it is small, covering only

“death in custody or arising out of an accident at work.”

I can speak about the weird case of the death of an SNP member, Willie McRae. It was thought that he had hurt himself in a road accident, when in fact he had a bullet in his brain. I would have thought that any case of death by bullet in the brain should have been the subject of a fatal accident inquiry, but such an inquiry was refused. I had a lot to do with the investigation of that case.

We can ask one of the justice committees to consider only whether it could add to the mandatory list. I do not mean that a lot of things should be added, but I would have thought that death by shooting should be included.

**The Convener:** If there was to be a change, I think that it would be made through an addition to the list of cases for which an FAI is mandatory. The Solicitor General seems to be suggesting that any right of appeal in this case could be provided only through such a change.

**Dr Ewing:** Kay Reid has not produced independent medical evidence. I do not think that she would be able to pursue a civil action, but it is an option.

**Dorothy-Grace Elder:** I hate to tell the suffering public to take any form of civil action, because we know the cost, stress and agony of doing so. Civil actions can go on for years, constantly reviving memories of a child's death. I would have thought that a civil action was the last resort in almost every case and that the state must have some responsibility. It is a difficult issue. I really do not see why having no right of appeal in such cases is regarded as just.

11:30

**John Scott:** We should note that there is a right to judicial review in the system as it stands—other members will correct me if I am wrong about that. That offers almost a de facto right of appeal and it is why the system is regarded as adequate. That is also why changes have not even been suggested since 1976. Nonetheless, we should pass the petition to one of the justice committees.

**Dr Ewing:** We cannot possibly suggest that the list of mandatory FAIs should include deaths in hospitals.

**John Scott:** I accept what the convener says—the list of mandatory FAIs could be extended.

**The Convener:** Let us be clear about what we are agreeing. It is recommended that a copy of the Solicitor General's letter be sent to the petitioner; that we advise the petitioner that it is open to her to pursue civil proceedings if she feels that there is evidence of negligence; and that we pass the petition and the correspondence to one of the justice committees to find out whether there is any merit in changing the law, particularly in relation to the mandatory list of fatal accident inquiries, or to any other issues that are considered relevant.

**Dorothy-Grace Elder:** The petitioner has collected 5,443 signatures. Imagine what that woman has been through to do that, since the death of her child—a youngster—on 9 June 2000. She will be haunted by that for ever.

**The Convener:** Is the course of action that I just described agreed?

**Members indicated agreement.**

**The Convener:** For the benefit of new members, I will explain the final matter under this agenda item. The document entitled, “Progress of Petitions Considered by Committee at Previous Meetings” is produced periodically. It sets out the petitions that are still on the books for which we await responses. If they think that further action is required, members of the committee can approach the clerks at any time to raise issues in relation to those petitions. We will receive the document quarterly.

**John Scott:** I have an issue in relation to petition PE45. I understand that as recently as last week, courts in England found that compensation should be awarded to sufferers of hepatitis C that had been induced through bad blood transfusions. I would like to know whether the Scottish Executive will take that ruling into account and whether it will make similar compensation available to sufferers of hepatitis C in Scotland who contracted the disease in the same way as the people who are to be compensated in England.

**The Convener:** Dorothy-Grace Elder and I are aware that the Health and Community Care Committee recently took evidence from the sufferers themselves and from the Scottish National Blood Transfusion Service. The committee is currently considering what action to take as a result of that evidence. No doubt we will see the Minister for Health and Community Care about the matter again. It is a live issue and it is likely to be progressed in the near future.

**John Scott:** The courts in England certainly decided last week that they are going to—

**The Convener:** That factor will be included in the Health and Community Care Committee's consideration. I cannot speak for that committee, but I stress that it is a live issue.

**John Scott:** So you can assure me, convener, that you will do all in your power to ensure that the Health and Community Care Committee takes account of the English courts' decision.

**The Convener:** We can write to the Health and Community Care Committee, drawing the English ruling to its attention and requesting that it ensure that it takes it into consideration.

**John Scott:** Yes, please.

**The Convener:** If no other issues arise from the "Progress of Petitions" document, we will move to the second last agenda item.

## Inadmissible Petitions

**The Convener:** It is a long time since we heard from Mr Frank Harvey, but he has petitioned us again, calling on the Scottish Parliament to withdraw from the European Union common fisheries policy immediately, to keep Scottish waters for Scottish fishermen and to take over the management of the Scottish fishing industry.

Membership of the EU common fisheries policy is a UK Government matter, so the Scottish Parliament does not have the authority to make the decision that the petitioner requests. Therefore, the recommendation is that we advise the petitioner that petition IP7 is inadmissible.

**Dorothy-Grace Elder:** It is a perfectly sensible petition, but it is inadmissible.

**The Convener:** Are we agreed that petition IP7 is inadmissible?

**Members** *indicated agreement.*

## Convener's Report

**The Convener:** I was one of the conveners who went to the European Parliament to examine relationships between the Scottish Parliament and the European Parliament. It was a successful trip, which showed that there are many ways in which we can establish relationships with committees of the European Parliament.

I spoke to the deputy convener of the European Parliament's Petitions Committee, who informed me that members of his committee are coming to the UK in June. They will visit one of our committee meetings and we will host a dinner for them while they are in Edinburgh. The visit will enable us to discuss the different ways in which petitions committees operate. The European Parliament Petitions Committee operates differently from ours, partly because of the sheer size of the European Parliament. One difference is that it has an open committee membership: all European Parliament members can join its proceedings at any time. I do not know whether we want to follow that example; our meetings might last for ever.

**Dr Ewing:** Membership of European Parliament committees used to be fixed. All members of the European Parliament can attend any committee meeting. Subject to the convener's approval, which is usually given, they can ask questions in the same way as committee members can.

**The Convener:** That is the same as in the Scottish Parliament.

**Dr Ewing:** It is similar.

**The Convener:** He also pointed out something that had not occurred to me, which is that the European Parliament's Petitions Committee has to be careful not to disclose the names of individual petitioners. We tend to discuss petitions and petitioners in public. He told me that members of his committee must be careful not to reveal details of individuals, as that would be seen as a breach of personal security. As petitions involve taking companies to court, many of the cases that they consider end up being almost quasi-judicial.

**Dr Ewing:** Citizens of other member states have enormous powers of privilege, unlike us.

**The Convener:** Members will find it interesting to meet members of the European Parliament Petitions Committee. They have a lot to tell us about how petitions committees operate at other levels. I recommend that members attend the dinner.

We are still working on the proposal for our committee to visit Germany to consider the work of the Bundestag petitions committee and of some of

the Länder petitions committees.

**John Scott:** What is the proposed date for that visit?

**The Convener:** We are considering October, but first of all we have to get permission.

**Dorothy-Grace Elder:** Do we have a date for the visit of the European Parliament's Petitions Committee?

**The Convener:** It will be sometime in June. The visit will be timed to coincide with one of our committee meetings.

**Dorothy-Grace Elder:** That sounds good. We will have to get plenty of petitions in from Mr Harvey before the visit takes place. I am glad to hear that he is alive and well. I was getting worried, as we had not had a petition from him for a long time.

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

*Meeting closed at 11:37.*





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