

PUBLIC PETITIONS COMMITTEE

Tuesday 6 November 2001
(*Morning*)

Session 1

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PUBLIC PETITIONS COMMITTEE

13th 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)

*Phil Gallie (South of Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*John Farquhar Munro (Ross, Skye and Inverness West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mary Darke

Ann Fraser (Scottish Sports Association)

Karen Gage

Alison Irvine (Scottish Countryside Access Network)

Dr A P McBain (Action Group for Chalmers Hospital)

Aileen McDermott

Paul Martin (Glasgow Springburn) (Lab)

Dave Morris (Scottish Environment LINK Access Network)

Sandra Napier (Action Group for Chalmers Hospital)

Nigel Seligman (Action Group for Chalmers Hospital)

Stewart Stevenson (Banff and Buchan) (SNP)

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Ruth Cooper

LOCATION

The Chamber

Scottish Parliament

Public Petitions Committee

Tuesday 6 November 2001

(Morning)

[THE CONVENER *opened the meeting at 10:06*]

The Convener (Mr John McAllion): I welcome everyone to the 13th meeting this year of the Public Petitions Committee. I apologise for the slight delay to the start of the meeting. We have some distinguished visitors with us this morning; I take this opportunity to offer a special welcome to a delegation from the European Parliament Petitions Committee, led by the committee's chairman, Nino Gemelli.

A programme of events is planned for later in the day, including a briefing on electronic petitions. There will also be opportunities to meet members of the Scottish Parliament European Committee over lunch and dinner. We are very much looking forward to discussing issues of common interest with Signor Gemelli and his colleagues and I hope that this is the beginning of a long and lasting relationship between our two committees. I hope that the delegation finds this morning's meeting interesting.

No apologies have been received. I was hoping that Winnie Ewing and Dorothy-Grace Elder would get here on time this morning. They are probably in the wrong committee room.

New Petitions

Hospital Services outwith Cities (PE407)

The Convener: The first petition before us is PE407, from Ms Sandra Napier, on funding for hospital services outwith cities. Ms Napier is here and will make a brief presentation in support of the petition. I understand that Stewart Stevenson, the MSP for Banff and Buchan, would also like to contribute to the debate. Before I invite Ms Napier to speak, I should mention that she is a former interpreter at the European Parliament. We could perhaps call on her services this morning if we need them.

Ms Napier, you have three minutes in which to make your presentation. I will indicate when there are 30 seconds to go. After you have finished, I will invite committee members to ask questions.

Sandra Napier (Action Group for Chalmers Hospital): Convener, members of the Public Petitions Committee, MSPs, MEPs, ladies and gentlemen, thank you for allowing me to speak to you today. I am here on behalf of the Action Group for Chalmers Hospital in Banff to ask you to shed your everyday image, to become rebels and to bring about a revolution. I am asking you to bring about a rural Scotland where

"access to services essential to our life and work"

is improved; where services that are necessary for

"quality of life will depend on what you need, not where you are";

and where any

"additional costs of delivering health care in remote and rural areas"

are taken into account.

You have guessed it: I am no rebel and the people whom I represent are not rebels. I have been quoting from the stated aims of the Scottish Executive. However, I am here to tell the committee that in Scotland, outwith cities, those aims are not being fulfilled—on the contrary. I offer you the example of Chalmers hospital in Banff. It is by no means the only community hospital that faces dire problems; I use it purely as an illustration.

Members may have looked at the pictures of the hospital that we have provided on the internet; if so, they will have seen how rundown it is. Banff is 50 miles from the big hospitals in Aberdeen. No one has disputed the need for a community hospital in the Banff area. We were long ago promised that our hospital would be rebuilt and redeveloped. Suddenly this summer we were told that we may not get our new hospital. In the meantime, the windows of Chalmers hospital have to be taped up to exclude the draught and, in our

otherwise excellent radiography department, we have buckets standing to catch the drips when it rains. For almost two weeks last month, bed-bound patients could not be admitted—in spite of the fact that there were vacant beds in the wards upstairs—because the hospital's only lift was out of order.

The redevelopment of Chalmers hospital was urgent 10 years ago. I hardly need tell the committee that it is now critical. Our doctors and nurses, however dedicated, cannot carry out their work without the proper facilities. It is becoming increasingly difficult to attract general practitioners and other medical staff to our area under these conditions. I have to tell the committee that confidence in our medical services and in social cohesion is declining.

As the medical facilities in our area decline, our old, our sick and even our terminally ill increasingly have to travel the 100-mile round journey to Aberdeen, along winding country roads dotted with tractors, not just for major operations—that is to be expected—but for minor procedures, even to get the result of a blood test.

Apart from the personal anguish, I believe that the fact that our hospital services are diminishing will have a domino effect on our economy. That spells not only centralisation, but eventually depopulation. Please do not let that happen.

The Convener: Thank you very much. Would Stewart Stevenson like to add some comments?

Stewart Stevenson (Banff and Buchan) (SNP): I would like to say a word or two about Chalmers hospital, which is in my constituency. The committee has heard about the state of the building. That is important, as we cannot deliver health services in a building that is crumbling. The essence of the argument is that a range of services must be delivered in that hospital or in a replacement for it.

I will comment briefly on one or two of those services, including consultants clinics. We have a primary care facility in Banff that delivers acute care facilities, in partnership with others in the city. It does so extremely well. At consultants clinics in community hospitals in places such as Banff, about 90 to 95 per cent of people who are expected turn up. In the city, that rate can fall to as low as 60 per cent. The reason is that, in Banff, the hospital is in the community and is accessible. Furthermore, the continuity of service that can be provided in a small hospital is often absent from large city-centre hospitals. I am told that, if a patient from Banff goes to Aberdeen, they will attend hospital on average once more than they would in the local community hospital. That is because they will see a variety of consultants in Aberdeen, whereas they will see one in Banff. The

consultant in Banff will have the confidence to discharge the patient earlier than would be the case in Aberdeen.

A community hospital is an anchor point for a community. The petition is important for Banff. It reminds the Executive that the grand plans that are developed and spoken about in Edinburgh may sometimes not be delivered with the perfection that we desire.

The Convener: Before I open up the discussion to members of the committee, would the petitioner like to introduce her two colleagues?

Sandra Napier: I would love to introduce them. I am very pleased to have them here with me. They are Dr A P McBain and Nigel Seligman, who is a chartered accountant.

Rhoda Grant (Highlands and Islands) (Lab): You say that you have been promised a new hospital for some time and that you are now under the impression that there will not be one. Have you been told that officially or do you just feel that, as time goes on, it looks unlikely that one will be built?

Sandra Napier: This summer, we were told officially that the whole project is now under review, along with every other project in the Grampian region.

Rhoda Grant: Under review looking for cost savings, or under review to see how the project can be brought forward? Have you been given any comfort at all?

Sandra Napier: No.

Phil Gallie (South of Scotland) (Con): We must recognise the benefits of changed communication links. Are there links between the hospital in Banff and Aberdeen, where the bulk of consultants and the range of expertise are? Is there a direct link—via television, or whatever—between Banff and Aberdeen, to enable the hospital in Banff to benefit from the expertise of those consultants?

Dr A P McBain (Action Group for Chalmers Hospital): I am a retired GP and I was associated with Chalmers hospital for 30 years. There is a telephone link with Aberdeen, but there is no television link of which I am aware.

Phil Gallie: Surely one of the arguments for having large city hospitals or a central hospital in an area—even a rural area—is that expertise on a range of illnesses can be brought together to provide support for patients, who have a range of complaints. If Chalmers hospital has to continue, would it be possible to provide such links? Would that be of benefit or do we have to accept that the range of consultants is best provided at the centre?

10:15

Dr McBain: Such a link would certainly be of benefit but would not detract from the argument for the necessity of a new hospital.

Phil Gallie: When you talk about the rural scene, I am aware of the fact that your area is on the borders of the Highland region. You have talked about a 50-mile trip to hospitals. Do you have any idea of the difficulties that the communities in the Highlands have to face when they have to attend the main hospital at Inverness?

Sandra Napier: Yes, we do. However, you must understand that we are not rural in the sense of being remote—as on the islands, where there are specific problems that I would not deny. We are a sort of hybrid area that is neither city nor completely remote. Our little community is falling apart because people no longer believe that, if they have minor complaints, they will be looked after within a distance that they will be able to travel, if they have transport. We are talking about travelling on a rural road that has tractors on it. Travelling 50 miles on a motorway may be nothing, but travelling 50 miles on a winding road with tractors on it, on a dark winter's night, is pretty difficult. Travelling was even difficult for us last night, and we are neither old nor ill.

The Convener: I have been asked to remind committee members to speak slowly this morning, as we have interpreters operating today. As someone who was born in Glasgow, I am the worst sinner in terms of speaking quickly. I remind everyone to speak as slowly as possible.

Helen Eadie (Dunfermline East) (Lab): Can you describe the consultation process that has taken place about the decision? Have you had meetings with the health board or the health trusts?

Sandra Napier: Discussions have been held through what we call the professional and public panel, although I have not been involved in them. The panel worked hard for four years, trying to find out what sort of clinics and how many GP beds were needed. All the details were hammered out meticulously and included in a report that was sent to Grampian Health Board, which accepted the project on that basis. We thought that we were home and dry and that we were going to get the necessary redevelopment of Chalmers hospital. Then, suddenly, we were told that the issue is all back in the melting pot.

Helen Eadie: In my constituency, we have a health service plan called "Right for Fife". Do you have a similar plan in your area?

Sandra Napier: I do not know.

Dr McBain: When the proposal for Chalmers

hospital was reconsidered this year, Grampian Health Board announced that it had a Grampian action plan, part of which was that Chalmers hospital would be reviewed. That may be similar to what you describe. I do not know whether the Grampian action plan is the same as the Fife plan.

Nigel Seligman (Action Group for Chalmers Hospital): When we discussed the Grampian action plan and how Chalmers hospital would be compared with all the other projects that were being considered, we were not told the parameters within which the health board would decide how to compare projects. We understand that, until recently, the health board had not even decided the parameters, which made it difficult for us to be confident that the plan would be considered objectively.

Dorothy-Grace Elder (Glasgow) (SNP): You mentioned—rightly—the difficulty of slow tractors on the 50-mile stretch of road. I presume that tractors operate only in reasonable weather. What happens in winter? Has the ambulance service commented on delays in winter, when the roads are in a pretty bad state with snow and ice?

Sandra Napier: I am unaware of any official report from the ambulance service, but it is generally known that it is extremely unpleasant to drive on the road in winter conditions. The road is winding and slippery and accidents occur on it. As it happens, we had to take a long detour on the way here, because of a serious accident near Oldmeldrum.

Dorothy-Grace Elder: Do you know of other hospitals local to your area that have closed in the past 10 to 15 years or so?

Sandra Napier: I do not know whether any hospitals closed. We speak for one hospital; it is hard to think that we may be asking for something that not everyone can have. It is within our remit to speak about our hospital and hospital services outwith cities in general. I would not like to comment on any other hospital. I hope that you understand my reason for that.

Dorothy-Grace Elder: A pattern of closure of local hospitals has been established.

Sandra Napier: It has indeed.

Dorothy-Grace Elder: Many of us deplore that. It is almost a fashion to push as many services as possible into a gigantic hospital. We do not know how that will work out in the long run. Sending everyone from Banff to Aberdeen seems unsuitable.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning, folks. I understand precisely the situation that you face in rural parts of your area. Do I understand correctly that in the recent past a new hospital was

constructed at Elgin?

Dr McBain: Yes. That hospital is large, but not as large as Foresterhill hospital in Aberdeen. The hospital in Elgin has undergone a reconstruction programme in the past 10 to 15 years.

John Farquhar Munro: The hospital in Elgin has substantial provision. What is the travelling distance between Banff and Elgin?

Dr McBain: The distance is 37 or 38 miles. The hospital in Elgin is good and has much provision, but it does not have the medical provision that Foresterhill has. Patients who are unsuitable for Elgin must be referred to Foresterhill.

John Farquhar Munro: Could not the health board be encouraged to extend the facilities at the Elgin hospital to meet the demands of the rural area there?

Dr McBain: I am sure that the health board has that in hand. However, I do not know how much is being done at Elgin.

Chalmers hospital is a bit larger than the average small cottage hospital. Over the years there have always been consultant clinics at the hospital, with consultants coming from Aberdeen. We have had X-ray facilities, GP beds, maternity services and all sorts of other services. The problem now is that the building is dilapidated. Consultants like coming to the hospital and they will continue to do so. However, they do not like working in places where there are no facilities there for them. That is why the hospital needs to be upgraded.

A GP hospital can deal with many cases that do not need to be referred to centres of expertise. The consultants have suggested to us that we could do all the preliminary assessments on patients requiring surgery, so that when they go to Foresterhill hospital most of that work has been done. That would take a load off the higher centres. Our MSP said that attendance at the out-patient clinics at Chalmers hospital was very good. In fact, it stands at 91 per cent, whereas at Foresterhill it stands at 60 per cent. Consultants like to come to a community hospital such as Chalmers, which is quite a large hospital, because the attendance rate is high and they are not interrupted by side issues of the sort that arise at Foresterhill—they do not get dragged away to do other things and are not forced to desert their clinics.

There is also a place for specialist nurses in community hospitals. The chief nursing officer at Chalmers hospital, Miss Jarvie, has produced a document in which she argues for an increased role for specialist nurses. A community hospital such as Chalmers hospital is an ideal place for specialist community nurses. They could be

responsible for cancer care, palliative care, renal dialysis, diabetic care, asthma care and other treatments that do not need to be carried out in a large hospital.

Phil Gallie: The pictures that you have submitted to us suggest that, if the hospital is to be maintained in its current location, it will need either a major renovation or a totally new building. What do you see as the requirements?

Sandra Napier: We were promised that the hospital would be totally rebuilt. Our situation has been compared to that of very remote areas. However, in our catchment area there are 17,000 people who depend on Chalmers hospital for everything except major procedures.

The Convener: I would like to ask a final question, for the sake of complete clarity. You know that the future of Chalmers hospital is the executive responsibility of Grampian Health Board, which is answerable, through ministers, to the Parliament. This committee cannot become involved in decisions relating to Chalmers hospital. However, this morning you have argued that Chalmers hospital's predicament is symptomatic of a situation that exists throughout Scotland and that rural areas in general are poorly served by community hospitals. Can you develop that theme, as we need to identify the committee's role in this process? Do you agree with what I have said?

Sandra Napier: Yes. I realise that Grampian Health Board has to prioritise, but ultimately funding has to be agreed by the Scottish Executive. For that reason, the committee is very much involved in the process. We are making the general point that hospitals are needed in areas outwith cities. That is our concern. The hospital that we know about is the one on which we depend, and it is in a dire state.

The Convener: Thank you very much for your clear presentation, which got the message across. You may stay while we discuss how to dispose of the petition. Thank you for attending.

We have heard what the petitioners had to say. The suggested action is that we should initially seek the comments of the Scottish Executive on the issues that the petition has raised and that we should send a copy of the petition to the Health and Community Care Committee for information only at this stage. Is any member otherwise minded?

10:30

Phil Gallie: I acknowledge that we cannot pick up on the issues relating to individual hospitals throughout the country. Decisions relating to the petition revolve around the situation in Banff. Perhaps we should approach Grampian Health

Board and ask it what its position is and why it appears to be going back on its decision on the new build. In Ayrshire, in which I have a particular interest, a new and very valuable community hospital has recently been provided. Some contact with Grampian Health Board to get the background would be of use.

The Convener: Yes. We can write to Grampian Health Board explaining that we are considering the wider picture and that we would like the health board to respond to the petition.

Dr Winnie Ewing (Highlands and Islands) (SNP): I am sorry that I came in late. My plane was late, I had to queue for half an hour for a taxi and then there was a traffic jam. I am very sorry. I should have come to Edinburgh yesterday, but sometimes that is not possible.

One of the petitioners mentioned that the catchment area has a population of 17,000. Do we have comparisons with similar hospitals that have similar catchment areas? Have you done that kind of homework?

Sandra Napier: Not that I am aware of.

The Convener: We have moved on from questioning to consideration of the petition, but never mind.

Dorothy-Grace Elder: The issue goes beyond the petition, which is perfectly legitimate in relation to Chalmers hospital. Members should recall the petition on Stracathro hospital. The issue is national. I remember that an ambulance overturned a few years ago on the road between Kyle of Lochalsh and Raigmore hospital. A mother and her unborn child died in that accident because of bad winter weather. We are up against our geography all the time. Many of us are extremely concerned about the closure of local hospitals for winter reasons, apart from anything else.

The Convener: I am perfectly happy for the committee to approach the Scottish Executive and Grampian Health Board to ask for their responses. The petition is important and deserves to be considered by the committee. We will wait for the responses and then decide what to do with the petition. We will, of course, keep the petitioners informed of progress on the petition at all times. Is that agreed?

Members indicated agreement.

Crime Victims (PE408)

The Convener: The next petitioner is Aileen McDermott. Petition PE408 concerns procedural issues for victims of crime. Paul Martin, MSP for Glasgow Springburn, who has an interest in the petition, is also in attendance.

I welcome the petitioner. Take your time and

settle down. The procedure is the same for all petitioners. You have three minutes to make a presentation and then we open up the meeting to questions. Paul Martin will also get a chance to say something.

Aileen McDermott: I will need three hours.

The Convener: There is no reason to be nervous—the committee is normally on the petitioner's side. If you would like to make a short presentation, please go on.

Aileen McDermott: Thank you for inviting me to speak. I will speak about the justice system in Scotland. There is no justice for victims. I will talk briefly about my personal experience.

My sister was harassed for two years by an ex-partner and she received no help from the police. She was murdered in 1998, and the man who killed her was convicted of her murder in 1999. Only through my campaign to have laws changed did I hear—through the media—that he had lodged an appeal. The appeal went before three and then five judges and the man was granted a retrial. I felt that there was no fight from the prosecution at that time.

We were given a date for the retrial, which was to be in April. All my family work, so we all took time off work. From then, the retrial was postponed 12 times. Each time we got a phone call the night before the postponement. We received numerous phone calls and citations saying that we had to go to court to be witnesses. We thought each time that the court case would go ahead. We were all wound up about the retrial because it was years down the line and we wanted to get on with our lives. We would get a phone call the night before the due date saying that the trial had been postponed. That happened 12 times.

Each time we were told that the trial would be in a different place, for example Kilmarnock or Paisley. I can understand the trial being moved from Glasgow High Court, where the original trial was held, because of the publicity. Kilmarnock and Forfar were mentioned—buses were even arranged for 60 to 70 witnesses to travel to Forfar. When the retrial was eventually held, the man was again convicted by the jury. It was brought to my attention—again by the media—that he had a makeshift knife with him in the court in Edinburgh.

We have been told that he has lodged another appeal. He had, apparently, two weeks to lodge the appeal and six weeks to go forward with it. I am an ordinary working-class person and I do not know the ins and outs of the system. I have described my experience, although it is not only my experience. Through speaking to other people, I know that they are going through similar situations.

The man had six weeks to make up some kind of case. We were told that he got an extension for another two weeks and we have since been told that he has been given another extension. When I spoke to the appeal court, I was told that an infinite number of extensions can be made and that the process can go on for 10 years, if he comes up with something. Meanwhile, my whole family is on antidepressants because we cannot move on with our lives. The children cannot get criminal injuries benefits.

What is the cost to the country of that process? The man has been before three and then five judges. I mean no disrespect to any defence lawyer, but defence lawyers are prolonging the matter. A large amount of money in legal aid is coming from the taxpayer while we hear people talking about hospitals and so on. Surely there is a better way for the system to work—at least there should be a limit to the number of times that somebody can appeal. Two juries—30 normal people—have convicted the man of murder, yet defence lawyers are still finding loopholes.

I have been told that the police, the prosecution and the judges made mistakes in the case. I am an ordinary person and I want to know where the justice is for the victims.

The Convener: Thanks very much. That was clear and powerful.

Paul Martin (Glasgow Springburn) (Lab): My first point is that Aileen McDermott and her family are decent, respectable people. The murder of Aileen's late sister, Marilyn McKenna, meant that, through no fault of their own, the family found themselves in a horrendous position. The circumstances surrounding Marilyn's death—the fact that she was a victim of stalking and that Stuart Drury had been convicted for that offence—were particularly horrendous.

The main issue for the family is the way in which it was treated by the justice system, particularly in relation to changes of venues during the appeals process. As Aileen McDermott pointed out, on no fewer than 12 occasions there was a change of venue and a change of date. It is difficult for a family to deal with being told the day before a trial—as happened on many occasions in this case—that the court venue has been changed.

Marilyn McKenna's son, Brian—a young man of 15 or 16 years of age—was a witness at the retrial. Members will appreciate that it was a difficult enough experience for him to have to give evidence at appeal stage without the venue being changed on 12 occasions. People must see that.

As Aileen McDermott pointed out, there was an error by a judge in respect of misdirection of the jury. One of the issues that the Justice 2 Committee should consider is whether we are

monitoring judges during those processes. Is the situation such that judges can continually misdirect juries with no action being taken against them? I am not saying that that happens, but there exists the opportunity for it to happen. As a result of the error that the judge made, Aileen McDermott and her family must go through the horrendous ordeal of an appeal. I wonder whether, if people in other walks of life make such mistakes, consideration would be given to taking action against them.

I spoke to the convener of the Justice 2 Committee. We must consider whether we can refer the matter to the Justice 2 Committee for it to consider as part of its inquiry into the justice system. That committee could consider issues such as victims' families in particular, and whether they are in a position to change venues. As Aileen pointed out, we accept that the venue in the case in question should perhaps have been changed from Glasgow—although that is still in question—but I do not think that people appreciate the difficulties that consideration of 5 or 6 different venues causes for victims' families and witnesses.

I ask the Public Petitions Committee to ensure that the Justice 2 Committee gives petition PE408 serious consideration and that it takes into consideration the fact that the families who are involved are decent families who find themselves in that position through no fault of their own. We should give that serious consideration.

The Convener: Thank you. Before I open up the meeting to questions from the committee, I ask Aileen McDermott's colleague to introduce himself.

Aileen McDermott: This is my husband—he is here to give me a wee bit of moral support because I am so nervous.

The Convener: He is very welcome to contribute if he wants to at any time.

Before I open up the meeting to questions, I have been advised that we should not get involved in the details of the specific case. We are questioning the treatment of victims and families because petition PE408 is about improving the treatment of such people.

Phil Gallie: I identify with the case because of my previous involvement on the Justice 1 Committee and the Justice and Home Affairs Committee. I recognise many of the issues that lie behind the petition. I will add something when we come to discuss what we do with the petition, but I have a question to ask Aileen McDermott while I have the opportunity to do so.

One of the points that she raises is that the accused's previous criminal record is made no mention of in court during a trial or a retrial. Although I am sympathetic with many of the points that she makes, does she feel that mention of

such a record could prejudice a case against an accused person? Would not it be an easy option for police to simply pick up somebody who had a track record? At the end of the day, would that allow the victim the satisfaction of knowing that the person who has been properly convicted of the crime is the person who committed the crime?

Aileen McDermott: I understand what you are saying, Mr Gallie. I feel that if somebody has committed that type of crime before and has gone on to do it again and again, nothing has stopped them from doing it. If a jury knows that a person is capable of committing the same crime, such as assaulting or abusing women, it gives them an insight into the type of person that the accused is.

Such people must be punished. I do not understand why everything seems to be in favour of the criminal. The European convention on human rights is all about criminals' civil rights. What about victims' civil rights? Criminals know that they do wrong; they commit a crime, go to court and they want that brushed under the carpet so that it does not come out until after another trial. I feel that knowing about an accused's criminal record would help juries to make decisions.

In the case of my sister's murder, the accused could have been anybody; the jury did not know about any criminal record at the time. It would perhaps help if the jury had a record of previous charges for a particular crime. The jury would then be able to see that the accused was a potential killer. If a person continues to commit the same crimes against women, perhaps a psychiatric report or something similar must be made.

Phil Gallie: I sympathise with your objectives, but at the end of the day it would be no satisfaction to the victims or their families if the wrong person were convicted of such a crime. If a jury were made aware of an individual's track record, and if that track record were fairly horrendous, the jury might switch off from everything else and convict him simply on the basis of his track record. I am quite sure that you would feel that to be wrong.

10:45

The Convener: We are now in danger of debating the rights and wrongs of the petition, when all that the committee is concerned with is where we dispose of it. I do not want to get into a debate about whether the trial was just or unjust. That is something that must be taken into consideration, but we are not making very good progress this morning.

Phil Gallie: The reason for my asking those questions is that the recommendation that we have been given does not fully recognise the

content of the petition and I want to clear up the matter.

The Convener: We can debate that when we decide what we do with the petition. However, before we do, I have a list of other members who want to speak.

Rhoda Grant: My questions are about how you felt you were treated as a victim of crime and what assistance you were given. Was there somebody who liaised with you, told you what was happening and explained how the legal system works? I certainly do not understand how the legal system works, nor do I understand all the complex issues that are involved. Did somebody support you by sitting down with you and telling you what was happening and why?

Aileen McDermott: First, we were allocated a family liaison officer from the police force, with whom we could never get in touch. When we phoned her, there was always an answering machine on and she never kept us in touch with what was going on. Paul Martin supported us in trying to get information from the procurator fiscal's office, but I had to go and fight and ask to be put in the picture about everything. At one point I was told, "If this wasn't such a high profile case, you wouldn't be getting all these phone calls." Now that everything has settled again, I must make the phone calls. I have to pay out the money to phone people in Edinburgh to push the matter, but nobody is phoning me and telling me what is happening.

That is one of the things that should happen. What the family is going through should be considered—we should be told what is happening and why. When we asked about how to lodge a new appeal, we were told, "We don't know yet. We have to wait and see." What does that make us feel? Three years down the line, the whole family is on antidepressants. We try to go to work and live normal lives, but we cannot because we do not know when the phone call is going to come—and we do not get the phone call, because it is me who must do all the phoning. I phone the fiscal's office, I phone Edinburgh and I phone everybody else, and the family are on at me for information.

I do not feel that there is any liaison. When we went originally to the High Court, we were basically told that we would get a rollicking if we were seen speaking to each other and that we had better not discuss the case. That is fair enough, but we had never had dealings with courts before and were already nervous wrecks about being at the High Court in the first place. When we went to the appeal court, my mother—who suffers from emphysema—took a plastic bottle of water into the court with her in case she had a coughing fit. She was told that she was not allowed to bring it into the court and that if she wanted water she must

get up and go outside. She was told that if she did that during the judge's summing up she would not be allowed back in.

Mr—I will mention no names. The man who was convicted of the murder had a makeshift knife in the court. Was not he searched before he went in? My mother, who has emphysema, was told that she could not take in a plastic bottle of water, while that man sat there with a knife. He could have attacked my sister's son, me, the judge or the prosecutor. That is how we were treated—we were made to feel as if we were the criminals.

I have always felt as though we are the criminals and we are always being told that the criminal has civil rights. When somebody has committed such a wrong, has hurt so many people and split up three children who now live with different people, I do not understand what is just about that man having those rights. I have been told that everybody is innocent until proven guilty, but he has twice been proved guilty.

Rhoda Grant: Did you receive any support from Victim Support Scotland?

Aileen McDermott: I worked for the victim support group in Springburn in 1994 and I know a few of the people who still work there. The support that they can give is not enough. They can show you round courts and listen to what you have to say, but what you really need is some sort of liaison worker who takes a specific interest in the case and who can give all the details about what is going on and when.

Dorothy-Grace Elder: Thank you for coming here today. I am sure that everyone realises how brave you have been to do this. I want to clear up one or two points about the time span of events. You mentioned three years. Is it three years since your sister was murdered?

Aileen McDermott: Yes. It happened in 1998.

Dorothy-Grace Elder: The family has been suffering for three years. You mentioned that one of your sister's children, Brian, is now aged 15.

Aileen McDermott: Brian is 16.

Dorothy-Grace Elder: Was he a witness?

Aileen McDermott: Yes. He was a witness at the retrial.

Dorothy-Grace Elder: How old are the other two children?

Aileen McDermott: Laura stays with us. She is 12 years old and was nine when it happened. The youngest boy, Ross, is now eight years old—he was five at the time. He stays with his father. The three children are split between the families.

Dorothy-Grace Elder: Were the other two

children witnesses?

Aileen McDermott: The children were in the house during two years of harassment. They were there when the telephone wires were cut and they were all in one bedroom with a wardrobe against the door while the man banged against the door, threw bricks through the window and everything else.

Dorothy-Grace Elder: The children were very young—even toddlers.

Aileen McDermott: Brian was the oldest at 13.

Dorothy-Grace Elder: Do you think that this is a case in which the perpetrator wishes to continue harming and hurting the family of the victim through constant appeals and court procedures?

Aileen McDermott: Yes. Yesterday, the prosecutor from the Appeal Court said that the process could carry on for X years. I asked whether it was another way for the man to get at the family. The prosecutor basically said, "Yes, it looks like it."

Dorothy-Grace Elder: Of course the system is co-operating with that. I have dealt with many cases in which the system is absolutely appalling. The changes and so on are a waste of police time as well. Thank you, Mrs McDermott.

Dr Ewing: I feel almost as though I should apologise for having been a defence lawyer. I am appalled by the story that this brave lady has brought to us. We are not meant to look at the particulars, but I wonder what on earth was the reason for there being five different venues and so many delays. I do not accept that a case can go on for 10 years. There is an end to appeal time.

There is no doubt that since I was a defence lawyer many years ago, people have begun to consider the victim. In my time, the victim was ignored. Now, the Scottish Parliament is considering the plight of victims. I think that you will find much sympathy in the Parliament for the points that you are making, with the exception of the point about having the criminal record of the accused made known in court. It is not possible to maintain the presumption of innocence while presenting a previous criminal record. That is true of the average case, at any rate. The situation in respect of rape cases is being reconsidered. Perhaps rape and harassment should be considered together.

We should do everything that we can to draw the issue to the attention of the powers that be—the Scottish Executive. We should also ask the Justice 1 Committee to investigate why a venue for a hearing should be changed five times. That must present considerable costs to the state and to the victims. There is also the emotional strain on all the witnesses. We must make a strong plea.

The case involving the Chhokar family has, after all, had great publicity. We heard a statement from our current Lord Advocate—who was not the Lord Advocate at the time of the case—that was very critical of the Crown Office.

The Convener: I remind members that we are meant to be asking questions of the witnesses. We will have a chance to debate the petition later.

Dr Ewing: It is very strange—it is the strangest case that I have heard about in a very long time. My sympathy goes out to the petitioners.

The Convener: I thank Aileen McDermott for her attendance here this morning. You have made a powerful case in support of your petition. We will now move on to consideration of the petition.

I draw the committee's attention to the fact that the Scottish Executive has launched a Scottish strategy for victims, which has been endorsed by Victim Support Scotland. That strategy has been drawn up with the co-operation of the Crown Office and Procurator Fiscal Service, the Association of Chief Police Officers, the Scottish Court Service and the Scottish Prison Service. Furthermore, the recently passed Protection from Abuse (Scotland) Act 2001 increases protection of individuals from abuse by enabling a power of arrest to be attached to certain interdicts. Notwithstanding those steps, which have already been taken by the Executive and the Scottish Parliament, it is suggested that we write to the Scottish Executive to ask it for an update on the implementation of the Scottish strategy for victims and for comments on how the strategy and recently passed legislation might address the petitioner's concerns.

Paul Martin has asked that we refer the petition to the Justice 2 Committee so that the petition can be part of that committee's inquiry into the justice system. I have no problem with that, but it might help that committee if first we send a letter to the Scottish Executive asking for its response and pass that response to the Justice 2 Committee.

Dorothy-Grace Elder: I suggest that we write to the Crown Office and ask it to account for itself. The Crown Office is arrogant and has been so for many years. We are all sick of it. I also suggest that the Justice 2 Committee be asked to consider whether some extra form of compensation could be made available for victims. I know that criminal injuries compensation already exists, but it is hard for families to get anything. Perhaps there should be a new system in addition to that. If the Crown Office were billed in cases in which there were unnecessarily long ordeals for families, that might improve the office's efficiency.

The Convener: I am advised that the Scottish Executive will answer on behalf of the Crown Office.

Dorothy-Grace Elder: We are sick of that. The Crown Office should answer directly to us. The Lord Advocate should respond.

The Convener: The problem is that, if the Crown Office responded, it would be to the Justice 2 Committee, not to the Public Petitions Committee. Representatives of the Crown Office will give evidence to the Justice 2 Committee, which will have this petition. In a sense, therefore, the Crown Office will be held to account, but not to the Public Petitions Committee. We are in danger of taking over the issue rather than passing it on. However, we can include in a letter to the Scottish Executive the points that Dorothy-Grace Elder makes about criminal injuries compensation.

Phil Gallie: On Dorothy-Grace Elder's comment, I accept that the Scottish Executive will answer for the Crown Office. To a degree, that is unfortunate, but I will accept it as long as the Crown Office is involved to some degree.

I must point out that the Scottish strategy for victims does not cover all the issues in the petition. That is why we must widen our range of questioning. There are fundamental flaws in our justice system; those are identified in the petition and they go to the root of the way in which we run our justice system. Those issues must also be addressed. I do not know which of the justice committees should deal with those flaws—perhaps both should. First however, the Scottish Executive should be asked to comment on each of the points that are highlighted by the petition.

The Convener: The suggested action is that we ask the Scottish Executive to address the points that are raised in the petition that are not addressed by the Scottish strategy for victims.

Rhoda Grant: The petitioner mentioned the fact that the children in the family are unable to access criminal injuries compensation because of continuing appeals. That is surprising, because it is obvious that they are victims of crime, a fact that is not altered by the fact that the accused is appealing against the conviction. Could we ask the Executive to consider that point? It will be important for the children to access that money. It might not be a lot of money, but it might give them more security.

The Convener: We can add that to the letter to the Executive together with the points that Dorothy-Grace Elder made about criminal injuries compensation.

Helen Eadie: I support colleagues' suggestions and the recommendations for suggested action. We can also send a copy of the *Official Report*, which will include everything that the presenter of the petition and members have said. Should we also ask Victim Support Scotland for its comments and send it a transcript of proceedings? We could

ask it how we can help the petitioner or whether it can address the petitioner's concerns in any way that has not been addressed by the local organisation.

11:00

The Convener: We could send an *Official Report* of the proceedings to the Scottish Executive and Victim Support Scotland and ask them to respond—that is perfectly fair.

Dr Ewing: Will we send the petition to the Justice 2 Committee?

The Convener: At this stage, we could send the petition to that committee for information. We will send letters to Victim Support Scotland and the Scottish Executive. Once we receive responses, we will decide on referring the petition with the responses. If we refer it to the Justice 2 Committee, there will be a delay as it writes to the Scottish Executive. It would be better for this committee to start things off and get things moving as quickly as possible.

Do members agree that we should write a letter to the Scottish Executive with the suggested additions and ask for a response and that we should write to Victim Support Scotland?

Members indicated agreement.

The Convener: I thank the witnesses, who have already gone.

Scottish Ballet (PE410)

The Convener: The next petition is PE410, from Mrs Mary Darke, on the retention of Scottish Ballet as a classically based company. The petition has almost 2,500 signatures. I invite Mrs Darke to introduce her colleague and make a presentation, for which she has three minutes.

Mary Darke: Good morning. I thank the committee for allowing us to speak to it. My colleague is Mrs Karen Gage, who is a graded examiner for the Royal Academy of Dance. She has a large ballet school in Ayr.

The petition calls for Scottish Ballet to retain its focus as a classical company. We targeted the petition at the parents of our pupils and estimated that we would get 2,000 signatures. In fact, there was so much support and interest that we nearly doubled that figure and obtained more than 3,500 signatures.

Traditional classical ballets such as "The Nutcracker", "Swan Lake" and "La Sylphide" receive the best audience support. The public want to see such ballets. When Scottish Ballet did its "nighTLiFe" triple bill two years ago and its recent triple bill, it received only about half that support. The Scottish Ballet board seems

determined to take that road, but the public want much less to go down it.

We have been assured that classical training will be maintained in the new contemporary modern dance format. However, that does not necessarily mean that the skills to perform the classical ballets will be maintained. Classical ballets require particular and special skills. Modern dance does not require the same precision, exactitude and academic excellence.

Sixty children came with me to present the petition. Royal Academy of Dance teachers teach thousands of children throughout Scotland. Those children love to learn the art form. It gives them a goal, a pinnacle and something to which they can aspire. They like goals and challenges. Classical dance has a magic that no other form of dance has. The children want to see Scottish Ballet performing classical ballets. They dream of being up there themselves.

For many years, Scottish Ballet has suffered from underfunding, but it has always managed to keep within its budget. Scottish Opera has not. If it were a contemporary modern company, it would have fewer overheads. Tickets would cost less and there would be fewer performances because audience figures would be halved. Greater investment is needed to produce classical ballets, but there is far greater audience support for such ballets. More performances can be given and more can be charged for tickets. The extra investment would therefore be offset and would be justified as being in the public interest.

The boards of Scottish Opera and Scottish Ballet operate through the same chief executive and the same director of services. We feel that that is to ballet's disadvantage. For example, there could be a conflict of interests in sponsorship deals. If all decisions have to pass through the same two members, who have joint responsibilities, it does not seem that the companies can be served on an equal basis. We feel that ballet deserves to have a separate board that has its interests at heart.

The general public is overwhelmingly in favour of keeping the traditional ballets as an integral part of the repertoire. We hope that committee members will feel able to recommend the ideas that we have presented. Thank you very much for hearing us.

The Convener: Thank you. Before I invite members to ask questions, I remind them that the Education, Culture and Sport Committee has already begun an inquiry into Scottish Ballet's decision to reposition itself as a major new force in contemporary dance. On the day when petition PE410 was handed in by the 60 children and Mrs Darke, that committee met to consider its draft

report. We ensured that the committee was aware of the contents of the petition and we were assured that it would take the petition into consideration as part of its report. The Education, Culture and Sport Committee has yet to publish its report, but we should be conscious of the fact that it has been considering this issue. Please bear that in mind in your questions, because we need to make progress this morning.

Dr Ewing: I want to ask about the career of the ballet dancer. If a dancer is trained in classical ballet, that must be advantageous to the dancer's career.

Mary Darke: It most certainly is.

Dr Ewing: It must therefore be disadvantageous if the dancer is not trained in classical ballet.

Mary Darke: Yes, I would say that that is so.

Dr Ewing: Were the amazing changes a result of cuts? Was it all a question of money?

Mary Darke: Yes, I certainly think that it was. Scottish Ballet has been struggling hard against underfunding. Because it has been underfunded, it has been a little less effective than it might have been. The changes were seen as a way of saving money.

The Convener: I have been asked again to remind everyone, including myself, to slow down for the benefit of the interpreters.

Dorothy-Grace Elder: When I had a life—before I entered politics—I was a great fan and attender of Scottish Ballet. I could not agree more with what has been said. "The Nutcracker" is a magical memory for thousands of Scots. However, from everything that I have read, it seems that the boards took a bullying attitude. People were simply informed of what was going to happen and the dancers and staff were not consulted.

Mary Darke: They were not consulted. The artistic director, Robert North, was informed only on the morning on which the original press release came out. He was not consulted at all.

Dorothy-Grace Elder: Scottish Ballet and Scottish Opera used to be run separately.

Mary Darke: There were two separate boards, but now there is one joint board.

Dorothy-Grace Elder: There were two separate organisations and Scottish Ballet seemed a happy company in the past. Will you comment on the type of audience that Scottish Ballet gets? I know the audience, but I would like to hear your comments. To me, it seems a very across-the-board, egalitarian audience. It includes absolutely everybody. Everybody and their granny used to go to Scottish Ballet and there was no snooty attitude.

Mary Darke: The audience is very wide. You can tell that from the response to the petition. It was targeted at the parents but, as you suggest, the grannies, the childminders and others were happy to sign. The audience contains a lot of children, who will be the audiences of the future. When you go to the theatre to watch ballet, you see a wide spectrum of people.

Dorothy-Grace Elder: Do the public want classical ballet?

Mary Darke: It has always been popular.

Karen Gage: Absolutely. For example, the forthcoming presentation of "The Snowman" is a classical ballet and it is very suitable for children. Children are the audiences of the future, and they must have their cultural education like everyone else. Bookings are currently at 90 per cent, and there are still seven weeks to go before the performances begin. That is for a classical performance. That may be compared with the quarter-capacity that was reached last month for contemporary dance.

Phil Gallie: In asking this question, I acknowledge that I live in a cultural desert. However, ballet means something to me as it is a recognised form of dance. I think back to my childhood in Dunfermline—Moira Shearer perhaps creates a link for me. If Scottish Ballet is to go, how would ballet in Scotland be maintained? Would all our youngsters go off to England? Would we lose contact with an international dance form?

Mary Darke: I think that we would lose contact. There are other contemporary dance companies in Scotland and, even if we have the best contemporary dance company in Europe, we should still have a classical ballet as well. The children who are currently training through the vocational dance scheme or at the Dance School of Scotland will have nowhere to go other than England, or even Europe, to get further training and to get employment in classical ballet. The loss of Scottish Ballet would be grave.

The Convener: If there are no further questions, we now move to discuss how to handle the petition. Thank you for your very clear presentation.

Members will note that the Education, Culture and Sport Committee has already stated that it is not prepared to take any further written evidence on the matter. However, it is suggested that we now refer the petition to that committee formally—it has already seen the petition—and that we ask it to respond directly to the petitioners, on the basis of its report on the inquiry into Scottish Ballet.

Dr Ewing: For the comfort of the petitioners, I point out that the Education, Culture and Sport

Committee received 100 submissions on the matter, 95 per cent of which were against the proposal to change the focus of Scottish Ballet. That committee must be aware of the whole situation.

The Convener: I think that that is true. We should re-emphasise that the substance of the petition is known to the Education, Culture and Sport Committee and has already been taken into consideration, but we have now to refer the petition to that committee formally and recommend that it respond directly to the petitioners, so that they know immediately what that committee's response is.

Mary Darke: We introduced our petition when news of the proposal first came out, which was well before the Education, Culture and Sport Committee met to discuss the matter. By that time, the petition was almost complete. We continued with the process in order to present the petition.

The Convener: There is absolutely no criticism of you intended. I was simply going over the timing of events.

Dorothy-Grace Elder: I cannot stress enough that Scottish Ballet is a world-class company. Nureyev and Fontaine were its first patrons. In fact, Nureyev once chose Scottish Ballet to come to Paris when he could have had the pick of any other company in the world.

We have had another arrogance outbreak in the way in which the board has treated people. The public have said that they want classical ballet, but they are not to get it. The dancers and the staff are not to be consulted. Can we not at least write to the board asking it to justify itself as well as to the Education, Culture and Sport Committee?

The Convener: The Education, Culture and Sport Committee is working on the matter and has already approached the various bodies concerned. It is really for that committee to write to the board, but we can certainly indicate your views when we pass the petition to that committee. However, it is for that committee, not us, to handle the petition now.

Phil Gallie: I back up what Dorothy-Grace Elder said and remind you, convener, of the answer to my earlier question. I think that the board of Scottish Ballet ought to have a duty to guarantee that youngsters in Scotland will have access to the appropriate facilities and training, which have supported Scottish Ballet in the past. If that is not done, our youngsters will lose out. It would be a fair question to ask the board how it intends in future to deal with this traditional dance style.

The Convener: But we are agreeing to refer formally the petition to the Education, Culture and Sport Committee and it will be for it to ask the

board about that. The remarks of Phil Gallie and Dorothy-Grace Elder will be drawn to that committee's attention, so that its members know the views of the Public Petitions Committee.

Do members agree to refer the petition to the Education, Culture and Sport Committee?

Members indicated agreement.

The Convener: I thank the witnesses for their attendance and their presentation.

Access to the Countryside (PE415)

The Convener: The last petition this morning for which petitioners are present is PE415 from the Scottish Environment LINK Access Network, the Scottish Countryside Access Network and the Scottish Sports Association. The petition has almost 15,000 signatures. Representatives of the petitioners will make a brief presentation in support of the petition.

I welcome the petitioners to the meeting. Please begin by introducing yourselves. You have three minutes in which to give your presentation and then we will ask questions.

11:15

Alison Irvine (Scottish Countryside Access Network): I represent the Scottish Countryside Access Network. With me are Dave Morris, who represents Scottish Environment LINK Access Network, and Ann Fraser, who represents the Scottish Sports Association. Together, we represent more than 40 organisations and a broad spectrum of people who are involved in every aspect of access: users, providers, land managers, conservationists and access officers.

In under two months, the petition acquired almost 15,000 signatures, which demonstrates that many people in Scotland and throughout the world—it is worth noting that we used the e-petitioner system as well as a paper system, so we have attracted signatures from throughout the world—believe that responsible access to the land and water of Scotland should be enshrined in law. As members may know, our petition has been supported by a motion that was lodged by Bristow Muldoon MSP.

The petition shows that the public do not believe that the draft access legislation will bring the benefits that it claims to bring. We may end up worse off tomorrow than we are today. The process of providing access to the outdoors will be more bureaucratic and confrontational and certainly will not provide best value for money. There will be less social inclusion and social justice.

We want to make three main points about our

petition. First, it is essential that, before the Parliament considers new access legislation, it understands the existing situation and does not diminish traditional lawful access. At present, many people—including users and land managers—are confused, and we must ensure that the new legislation is easily understood.

Secondly, in an excellent example of pre-legislative practice, the access forum responded to the Government's request for advice. Consensus was reached and a set of simple, balanced and flexible recommendations was agreed. There is a deep sense of disappointment that the Government has not taken proper account of the access forum's views. We believe that the Parliament must return to the recommendations of the access forum.

Finally, access must be defined in the legislation in simple, easily understood terms. The detail of how access can be enjoyed should be contained in the Scottish outdoor access code. The Executive has made the primary legislation in the draft bill detailed and complex and a similar approach was taken with the new access legislation south of the border. That approach is not appropriate for Scotland.

In summary, we ask that the bill return to the proposals of the access forum. We ask the Parliament not to introduce laws that criminalise the public while they enjoy the outdoors. We also ask that the bill should not give land managers, local authorities and the police new powers to keep people off the land, but give local authorities the duty and the necessary resources to improve countryside access opportunities for all.

We would like the Public Petitions Committee to forward our petition to the Justice 2 Committee, which will be leading the land reform bill through the parliamentary process, perhaps with a covering note to ensure that our petition's calls, which are supported by all those people, are taken into account as the legislation goes through Parliament.

The Convener: Thank you. Just for the record, I again emphasise that almost 2,500 signatures to the petition were submitted electronically. Furthermore, committee members have a full brief on the electronic petition, including an account of various comments about the petition from people who have visited the website. I speak for the committee as a whole when I say that electronic petitions often provide the committee with far more information than standard petitions and are very helpful to us. After that wee plug for the international teledemocracy centre, I seek questions from members.

Helen Eadie: From the papers that we have received, I see that submitting the petition to the

Parliament has proved to be an interesting process. I gather that the convener had his photograph taken with horses and that the petitioners' journey included canoes and everything. I congratulate you on your initiative.

How will the new bill militate against the kind of access to the countryside that we all hope to have?

Dave Morris (Scottish Environment LINK Access Network): One of the most worrying aspects of the draft bill is its proposal to increase powers for the police in relation to the regulation of access, powers for landowners to suspend access, and powers for local authorities. It is worth bearing in mind that the Scottish Law Commission, which has commented on some aspects of the bill, has called the proposals a regulation of access and has highlighted the confusion that it will create among the police, local authorities and the public.

Alison Irvine: In our journey with the petition from Dunfermline, which was the home of the first Scottish Parliament, to Edinburgh, we had to approach the local authorities for assorted permissions. They took it upon themselves to check weather forecasts and advised us to take extra care because it was going to be misty. However, the draft bill proposes that local authorities should have, for example, the power to close land in adverse weather conditions. Local authorities are currently not capable of taking a sensible view on such matters and it is not fair to ask them to do so.

Rhoda Grant: Many of your points have been expressed to me by my constituents. I raised those concerns with the Executive and was assured that the bill is only a draft and is part of a consultation process. As well as submitting the petition, have you clearly raised those points in your response to the consultation paper?

Ann Fraser (Scottish Sports Association): Yes. I think that there were more than 3,000 responses to the draft bill, which emphasises the strength of people's concerns about it. We have submitted the petition because we are not fully confident that the Scottish Executive will take on board our concerns. Furthermore, the access forum's original advice to Scottish Natural Heritage on the draft land reform bill appears to have been ignored, which is also a matter of concern. We want the Scottish Executive to return to that advice to ensure that we end up with a simple bill that everyone can understand.

Dr Ewing: You say that there was a departure from the initial proposals. Did all the bodies that you mention make those proposals?

Ann Fraser: No. It was the national access forum that did so.

Dr Ewing: You are trying to define the term “responsible access”. Do you propose that the local authorities should still have a function in this matter?

Ann Fraser: The initial advice suggested that the term “responsible access” should be defined in a Scottish outdoor access code that would be introduced by secondary legislation. That would leave us with a simple bill giving people a right of access across land and water with responsibility.

Dr Ewing: Who in our society wants to restrict the responsible access that you are talking about?

Dave Morris: There are some difficulties. It is true that the access forum worked for a number of years and achieved consensus. The forum involved 19 different organisations, including a wide range of land management interests such as farmers, foresters, crofters and deer managers. The committee should be aware that, on the day the draft legislation was published, the National Farmers Union of Scotland announced that it was withdrawing from the access forum. Today the access forum does not exist in any operational sense.

On the day the draft bill was published, the Minister for Justice indicated on the BBC that the NFU's representations had been significant in making some of the changes that have appeared. The representations from that sector have had the greatest influence.

Phil Gallie: What barriers to access currently face the relay of walkers, cyclists, disabled ramblers, canoeists and climbers who have brought the petition to the Parliament?

Ann Fraser: There is a lot of uncertainty among recreational bodies about what their rights are. Many walkers, cyclists, horse riders and canoeists are not certain what their rights in the countryside are. A lot of land managers also are not certain, or choose to be uncertain, about what people's rights are in the countryside.

Phil Gallie: Many people have used the countryside in Scotland over many years; for many of them right of access has always been assumed. I have never had difficulties. What concerns me is that by introducing legislation—rather than clarifying the situation for the individuals to whom you refer—we will make matters worse. Is one of the lessons that we should learn from recent proposals on access that we are perhaps better off with what we have now?

Ann Fraser: We are before the committee to ensure that access does not become more restricted. Our concern is that when the bill is produced, it will restrict access. That is why we ask that the bill be a simple one, which gives us a right of access with responsibility. We are aware

that if the bill that is passed is anything like the draft bill, access will be far more restricted.

Dave Morris: It is true that there is a lot of confusion about whether there is a law of trespass and so on. As far as the Scottish Environment LINK Access Network is concerned, there is no confusion about the legal position. Over the past few years we have done a great deal of research into that. There was no confusion for many years last century. The law has been misinterpreted since the 1960s. That has led to confusion in public statements by officials and people within local authorities. That is one reason why we have recommended that the Executive should clarify the current legal position. In effect, we are asking the Scottish Law Commission to confirm the current legal position. The Parliament will have great difficulty in producing new legislation if it does not understand the starting position.

Dr Ewing: Is the Scottish Rights of Way Society part of your pressure group?

Dave Morris: Yes. It is a member of the network and has contributed a great deal to discussions.

Dr Ewing: We are not bothered by the fact that English law is different, are we? Is the Executive trying to go along the path of English law?

11:30

Dave Morris: That is one of the great worries. When the access forum discussed what sort of model to use for legislation in Scotland, it was agreed that the benchmark should be legislation in other northern European countries, such as Norway, Sweden, Denmark, Finland, Germany and Austria, which provide far better models than the legislation south of the border.

The position has become more difficult since the introduction of the Countryside and Rights of Way Act 2000. There is a drift towards some of those ideas in the Executive's proposals. Although we are aware that ministers have indicated that they intend to make changes before introducing the bill, our discussion with Executive officials pointed to real difficulties. They tell us that they cannot write a simple bill along the lines recommended; they have to follow the Westminster model that is being used for other legislation. Apparently, they must write a complex definition of “right”—the i's must be dotted and the t's must be crossed. That is why there is so much support for the arguments in our petition.

If officials follow the Westminster route, we will end up with a complex bill supported by a complex code. The Parliament must find a way of returning to the access forum's basic recommendation that the right of access to land and water should be defined in simple terms. There are plenty of

examples from other European countries that could be used as a model.

Phil Gallie: You referred to the 1960s, when everything seemed to be clear. Given the current situation, would the best thing be for the Scottish Executive to remove the assets section from the bill and, as you suggested, ask the Law Commission to consider precisely what “rights” are, to clarify current legislation?

Dave Morris: No. We do not agree with that approach. There is a need for legislation on three important principles. First, we need confirmation of people’s right—or freedom or liberty—to have access to land and water. Secondly, we need new arrangements to help secure access routes, such as footpaths and routes for cyclists and horse riders, in the countryside. Thirdly, we need an arrangement that leads to a much better relationship between those who manage land and those who use it for recreation. We should look to the much more harmonious relationship that exists in other countries in the rest of Europe.

There is no doubt that in the past 20 or 30 years, many landowners—particularly those who have come to Scotland and bought land and who do not understand the traditions—have seriously eroded the traditions of access. In effect, they are creating private kingdoms in Scotland. The current law does not deal with that. That pattern was followed in other places in Europe, such as Denmark, where private rights eroded public rights. The Danish Government had to correct the situation.

We are strongly in favour of access legislation being introduced this session. In particular, we need legislation to confirm people’s traditional freedom of access to land and water and to introduce completely new modern arrangements for safeguarding access routes.

Alison Irvine: I want to clarify my reference to social inclusion. There are many people in Scotland who do not have the confidence to go out into the countryside because of the lack of clarity. We want to push one of the recommendations of the access forum, which was to introduce core paths—networks of easily used paths—for the majority of people.

The Convener: Thank you very much for your evidence. It was clear and informative and will be very helpful to the committee. I congratulate you on the imaginative way in which you delivered your petition. It is by far the most imaginative petition that we have received to date. Well done. We will now discuss what to do with it. You are free to stay to listen to the discussion.

Our problem is that only a draft bill for consultation has been published so far, so no committee has yet been charged with dealing with the bill. It is suggested that in the meantime, we

write to the Scottish Executive to ask it to respond to the issues raised in the petition and in this morning’s discussion. It is suggested that we also copy the petition—for information at this stage—to both the justice committees, as one of them will deal with the bill. Is that agreed?

Dr Ewing: Our briefing states that the draft bill would give landowners power to suspend access in a range of circumstances, including bad weather. That is silly. No local authority would want to have that kind of power.

The Convener: I would not think so. We could ask the Executive for its views on that point.

Dr Ewing: People involved in mountain rescue, who are volunteers, do not want to stop being volunteers; they do not want to restrict access to the mountains. They know that many fools go up in bad weather, but they think that it is those people’s right to do that and they are willing to rescue them if necessary. We should cling desperately to that tradition.

The Convener: I do not think that any member of the committee would oppose that. Do we agree that, pending the publication of the bill, we will approach the Scottish Executive on behalf of the petitioners and pursue the points that the petition raises, with a view to passing on the petition to whichever committee is charged with dealing with the bill?

Members indicated agreement.

The Convener: I thank our witnesses for attending and wish them all the best with their petition.

Scottish Prison Service (Age Discrimination) (PE404)

The Convener: We now move to consideration of petitions for which the petitioners are not present. The first such petition is PE404 from Mr Walter Limond, on the subject of age discrimination by the Scottish Prison Service. Under Scottish Prison Service rules, employees who were employed before November 1987 are entitled after 20 years’ service to have each year counted as two years in respect of their pensions. However, part of the deal was that those concerned would have to retire at 55 rather than at 60, unless there were exceptional reasons for their not retiring.

Mr Limond is petitioning the Parliament because he is being forced to retire at 55, rather than being allowed to continue until he is 60 to gain his full entitlement to the double years. He has asked the Parliament to intervene in his case. It is suggested that we agree to seek a statement from the Scottish Prison Service on the background to and operation of its retirement policy, with which the

petitioner has taken issue. It is also suggested that we seek the views of the Scottish Prison Officers Association on the issues that are raised in the petition. Once responses have been received, we will consider the petition again. Is that agreed?

Members indicated agreement.

Complaints against Solicitors (PE405)

The Convener: PE405, from Mr James Duff, concerns complaints against solicitors. Mr Duff has provided background information on his personal case; indeed, he has provided additional information that the Public Petitions Committee received today. The clerk has copies of that additional information, if members are interested in seeing it.

We cannot get involved in Mr Duff's individual case, because that is not this committee's role. However, the petitioner raises the issue of the failure of the Law Society of Scotland to investigate his complaints about the handling of his case since 1984. Members may recall that similar issues were raised in PE361, from Scotland Against Crooked Lawyers, which is being considered by the Justice 1 Committee as part of its inquiry into the regulation of the legal profession. It is suggested that, given the related subject matter, we should refer PE405 to the Justice 1 Committee for consideration as part of that inquiry. Is that agreed?

Dorothy-Grace Elder: Poor Mr Duff. His case is like the opening chapters of Dickens's "Bleak House", in which people go round endlessly thinking that they can get justice out of the system.

Taxpayers in Scotland pay billions on the civil side, never mind the criminal side, to uphold a system that has reduced people—after a decade of fighting—to heaven knows what state of ill health.

The Convener: The issue is serious.

Phil Gallie: Once again, I echo Dorothy-Grace Elder's words to a degree. Time and again we come across such cases. Somewhere along the line, it must be recognised that in the long term people will not accept what they see as in-house scrutiny. We have dealt with similar matters—we are considering independent police review committees and so on. The volume of petitions that must be hanging around out there underlines the importance of Mr Duff's point.

Dr Ewing: I positively object to the people who lobby outside our Parliament and who call all lawyers crooked. I am a member of the Law Society of Scotland and I am incensed, because a lot of my work was done pro bono—for nothing. I am absolutely furious at the use of the word "crooked". I have always been in favour of ending

in-house scrutiny, but I object to those people and to the way in which they behave outside the Parliament. I wish to goodness that they did not have the credibility of the name being there as if it was a respectable body.

Dorothy-Grace Elder: They are desperate people.

The Convener: Mr Duff is not necessarily part of Scotland Against Crooked Lawyers. He petitioned the Parliament independently, so the remarks that Dr Ewing made do not refer to him. Is it agreed that we pass PE405 to the Justice 1 Committee?

Members indicated agreement.

Post-mortem Organ Removal (PE406)

The Convener: The next petition is PE406, from Miss Margaret Doig, on the law and code of practice covering post-mortem organ removal when the deceased has no relatives. I should declare an interest: Miss Doig is one of my constituents and has written to me on the issue. Her concern is with individuals who have no surviving next of kin and therefore have no rights on post-mortem organ removal, because nobody can represent their wishes after their death.

I suggest that we refer the petition to the Health and Community Care Committee with a recommendation that the committee establish whether the examinations of the review group on retention of organs at post-mortem cover the specific issue of acquiring authority for post-mortem and treatment of organs of those with no relatives. If the issue is not covered by the group, we should recommend that the Health and Community Care Committee invite comments from the Executive and consider whether the petition should be brought to the group's attention or treated separately. Is that agreed?

Members indicated agreement.

Bus Companies (Regulation and Control) (PE409)

The Convener: PE409, from Mr Douglas Smart, concerns the regulation of bus companies. Mr Smart has submitted an additional letter to the committee. The petition calls for legislation to regulate bus companies so that public bodies have control over fares, routes, levels of service, timetables and the co-ordination of bus-to-bus and bus-to-train services. Kenny MacAskill MSP has considered introducing a member's bill to allow the City of Edinburgh Council—with which Mr Smart is most directly concerned—to regulate local bus services.

The Transport (Scotland) Act 2001 provides for quality partnerships and quality contract schemes,

which might make possible many of the measures for which the petition calls. I suggest that the committee request comments from the Executive on the issues that are raised in the petition and refer to the implementation of relevant provisions in the Transport (Scotland) Act 2001, particularly quality contract schemes. I also suggest that we seek the comments of the City of Edinburgh Council on the issues, send a copy of the petition to Kenny MacAskill and ask for information on the progress of his member's bill proposals. We should also pass a copy of the petition to the Transport and the Environment Committee for information. Do members have comments?

Dorothy-Grace Elder: I want to add a point to Mr Smart's petition. The petition mentions a need for information on local buses in the vicinity. We also need considerable improvement in the information on buses that is given to the public by the phone service. ScotRail is excellent, in that it provides information 24 hours a day, but it is extremely difficult to get through to some bus stations to find out times. People who use public transport frequently switch to the train at the last minute because they cannot get through to the bus information service.

The Convener: That is a fair point. We will make that recommendation to the Executive.

Are we agreed to follow the recommended actions?

Members indicated agreement.

Scottish Water Authority (PE411)

The Convener: PE411, from Martin Meteyard, calls on the Scottish Parliament to consider the case for the establishment of a mutually owned and managed Scottish water authority, to commission a feasibility study into the proposal and to make representation to the UK Government seeking to exempt Scotland from, or delay the implementation of, the provisions of the Competition Act 1998 as they apply to the Scottish water industry.

PE411 is similar to PE399, which we considered at our meeting on 23 October, although it calls for a different solution to the perceived problem of the Scottish water industry, and it falls within the remit of the Transport and the Environment Committee's consideration of the restructuring of the water industry under the Water Industry (Scotland) Bill. It is therefore suggested that we refer PE411 to the committee with a recommendation that it be taken into account when the committee considers the Water Industry (Scotland) Bill at stage 2.

11:45

Helen Eadie: I declare an interest in that I am

sponsored by the Co-operative party and was elected as a Labour and Co-operative party MSP.

I suggest that we also seek the views of the Scottish Executive on the petition.

The Convener: It has been suggested that, if we want the views of the Scottish Executive, we should write to the Executive first before referring the petition to the Transport and the Environment Committee, as we could refer the response to the committee as well.

Rhoda Grant: Can we still copy the petition to the Transport and the Environment Committee today?

The Convener: Yes. Are we agreed to seek the views of the Scottish Executive before formally sending the petition to the Transport and the Environment Committee?

Members indicated agreement.

Sheriff Courts (PE416)

The Convener: The last current petition is PE416 from the GMB union. The petition relates to a draft order that concerns sheriff courts in Scotland, which is about to come before the Justice 2 Committee. The order is designed to increase the jurisdiction limit of the sheriff court in civil cases from £1,500 to £5,000 and also to have all civil actions of less than £5,000 in value thrown out of the Court of Session and dealt with under sheriff court summary case procedure. The petition claims that that would be against the interests of justice and undemocratic.

The GMB is concerned about the lack of consultation by the Executive on the draft order and believes that its view is not being taken into account by the Executive. On the other hand, the Executive claims that it consulted the GMB and other trade unions. The Justice 2 Committee will consider that draft order on 14 November, which is just over a week from now.

It is suggested that we refer the petition to the Justice 2 Committee with the recommendations that the petition be taken into account when that committee considers the draft order at its meeting on 14 November and that the specific issue of the effectiveness of the consultation that was carried out by the Executive in relation to the order is examined by the committee.

Dr Ewing: It seems that the GMB objects not to the increase in the jurisdiction limit of the sheriff court, but to the withdrawal of a right of access to the Court of Session. The two things do not necessarily have to go together, as it is clear that they are two separate issues. We could emphasise that point to the Justice 2 Committee.

The Convener: We can do that.

Helen Eadie: Again, I declare an interest in that I have been a lifelong member of the GMB. I have a concern about the effectiveness of the consultation. I am concerned about whether that point will be discussed on 14 November, because that gives us no time to seek the Executive's view on the type of consultation that took place. It is all very well to say that consultation has taken place, but members of this committee have learned that consultation means different things to different people.

The Convener: I have been advised that the Justice 2 Committee is actively seeking information on the consultation process from the Executive so that it can include that aspect in its consideration of the order.

Are we agreed to refer the petition to the Justice 2 Committee and to emphasise the point that Winnie Ewing made?

Members *indicated agreement.*

Current Petitions

Employment of Teachers (Religious Discrimination) (PE269)

The Convener: The next item on the agenda is current petitions. We have to consider the lack of responses to two petitions. The first is PE269, which was submitted by Mr James Nixon, on the Education (Scotland) Act 1980. Members will remember that he believes that the act gives local authorities a right to discriminate against Scottish primary school teachers on the ground of their religious beliefs and practices, because a Catholic certificate is needed to teach in Catholic schools.

At our meeting on 26 September 2000, we agreed to copy the petition to the then Minister for Children and Education, requesting his comments on the requirement for teachers to hold certificates of approval before they can teach in denominational schools, and the Executive's views on the compliance of that practice and the relevant sections of the Education (Scotland) Act 1980 with the European convention on human rights. A letter was issued to the minister on 10 October 2000, since when the clerks have pursued the Executive for a response. Copies of the latest response from the Executive, dated 24 September, have been distributed to members. The response informs the clerk that the Executive is not yet in a position to respond, due to the need to give careful consideration to the issue, in particular with reference to domestic and European legislation.

Although the issues in the petition are complex and no doubt require careful consideration by the Executive, a response has now been outstanding for more than a year, despite regular formal and informal reminders to the Executive. It is suggested that I write to the Minister for Education, Europe and External Affairs on behalf of the committee, highlighting our concern about the unacceptable delay in the Executive's response and requesting that, if a full response is not available or possible at this stage, the Executive at least provide a full holding response, detailing the issues that it is investigating and the specific reasons for the delay.

Helen Eadie: Last night, in preparation for the visit from members of the European Parliament Petitions Committee, I read a lot about how that committee works and the kinds of cases that it has helped to resolve. I have been a lifelong supporter of the work of the European Community and the European Parliament, and I wonder whether we should write to Mr James Nixon and suggest that he might explore going to the European Parliament Petitions Committee, as the petition raises an issue that pertains to Europe.

The Convener: We could seek information on

that point. If he is eligible to submit a petition to the European Parliament, we can advise him of his rights.

Phil Gallie: I go along with the recommendation, but I add a plea on behalf of the Minister for Education, Europe and External Affairs. We should go gently on him, simply because he was not one of those members of Parliament who voted to incorporate the ECHR or who introduced a host of equal opportunities legislation that, when one analyses it, could well act against the interests of the public. I am sure that the minister, in taking his time to reply to the petition, is tied up in all that well-intentioned legislation, which could turn many of our long-standing commonsense practices on their heads.

The Convener: I fully accept that the implications behind the petition could be momentous for Scottish education as it has been provided throughout the 20th century and is being provided in the 21st century. Nonetheless, although the minister is responsible for responding to the petition, he has not done so in any meaningful way. I should now write on behalf of the committee, insisting that if he cannot give a final response he should at least give a detailed response on the work that has been done on the petition since September 2000. The petitioner has a right to receive a response.

Dr Ewing: Do we know whether the practice to which the petition refers is widespread? I know that my daughter-in-law Margaret Ewing taught in a Catholic school very happily for many years without being a Catholic.

The Convener: I certainly taught in a Catholic school before I became an MSP, but I had a Catholic qualification at the time. Non-Catholics teach in Catholic schools, but there is an argument that their promotion could be frustrated. That is why there may be ECHR implications.

The Executive is in a tough position; I am not pretending that it is not. However, it should respond to petitioners. Tough petitions must be answered, just as easy ones are.

Helen Eadie: I support the recommendation. We should also give the petitioner a copy of the *Official Report* of the discussion on the petition.

The Convener: We can do that. Is the course of action that I suggested agreed to?

Members indicated agreement.

Unborn Children (Recognition in Law) (PE382)

The Convener: The final petition, PE382, is from Mr Thomas Howe, and seeks legal recognition for the rights of the unborn child. We

agreed at our meeting on 2 October that the Executive should be asked to comment on the petition and to provide clarification of the reserved provisions and details of its interest in the application of damages law. We have received a memorandum from the Executive that sets out in detail what it sees as the main points that arise from PE382.

The law that relates to the unborn child is not reserved, but it is closely bound up with other reserved matters, such as abortion. Law governing reserved matters that concern abortion, embryology, surrogacy and genetics could be relevant if provisions were made in relation to unborn children.

Petition PE382 relates only to civil law, but where there is a criminal offence, such as an assault, it is possible for any effect on an unborn child to be regarded as an aggravation of the crime. Consequences would be taken into account in sentencing. No action for damages is possible while a child remains unborn, but a claim can be made when a child is born alive.

The Executive acknowledges the depth of feeling that surrounds the issue but points out the complexity of the law in this area. Any change to legislation would require a thorough review of relevant law. At this stage the Executive has no plans for such a review. Given the complexity of the law that surrounds the petition and the Executive's clarification of its position in relation to the petition, it is suggested that the committee should pass the Executive's response to the petitioner and take no further action.

Dorothy-Grace Elder: The reply that the law is complex could be applied to anything. The issue should not be brushed off like that. Abortion law can be separated from what the petitioner intends. He wants a clear form of retribution or apology for the death of an unborn child, starting with his own case, which involves the loss of his son.

The law is outdated in its definition of a child being born alive. If a newborn child takes just one breath, it is deemed to be born alive and there can be a case. Moreover, the expression "full term" has little meaning nowadays, given that children are being born at 20 or 21 weeks. The law on this issue is outdated. Without getting into the abortion wrangle, I do not see why there should not be proper penalties for the killing of an unborn child in circumstances such as a road crash, to which the petition refers. Sometimes in those circumstances there is only 10 minutes difference between the child being born or dying in the womb. I do not accept the Executive's reply that the matter is too complex and that we should forget it.

The Convener: The situation is difficult because there might be implications for the law on abortion

if an unborn child that is killed in a car crash is allowed legal rights.

Dorothy-Grace Elder: I still think that it is possible to separate the issue of abortion from that to which the petition refers. Abortion is an agreed act. It is not, unless done illicitly, a criminal offence. The petitioner's case is entirely different, because here the unborn child has no rights at all. A mother could be fully nine months pregnant when her unborn child is killed. Is that child worth nothing? I do not think so. The petitioner has raised a major moral and legal point.

Helen Eadie: Should we consider sending the matter to Westminster? I accept that some of it relates to civil law, but it seems to be primarily a reserved matter, given the legal complexities about the unborn child and the issues that relate to abortion, embryology, surrogacy and genetics. It would not be the first time that the committee has sent a petition to Westminster.

The Convener: No, but the clerk has reminded me that the petitioner's main concern is with civil law and obtaining an apology under that law. We could pass the Executive response and the petition to both justice committees—or the one that agrees to take it—and ask whether they are interested in pursuing the points raised in the petition. It is ultimately for them, not us, to handle the petition.

Dorothy-Grace Elder: It is particularly pitiful that the petitioner is having to ask for an apology through the petition. He has not been able to extract an apology from the driver who caused the fatal crash. Many people would ask for an awful lot more than an apology.

The Convener: I agree, but what the petition suggests would require a change in civil law, which is a matter for one of the justice committees. Is it agreed that we refer the Executive's response and the petition to the justice committees, asking whether they are interested in taking up the issues involved?

Members *indicated agreement.*

Asbestos (PE336)

Scotland Against Crooked Lawyers (PE361)

Less Favoured Areas Support Scheme (PE372 and PE384)

The Convener: Our final matter is an update on petitions PE336, PE361, PE372 and PE384. I refer members to the paper on the progress that other committees have made in dealing with those petitions.

As members have no questions on that, let me

thank everyone for attending. I ask members to hang on at the end of the meeting, if they can, to discuss briefly with our visitors some aspects of the work that we have carried out this morning.

Meeting closed at 12:00.

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