

PUBLIC PETITIONS COMMITTEE

Tuesday 15 January 2002
(*Morning*)

Session 1

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PUBLIC PETITIONS COMMITTEE

1st Meeting 2002, 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:

Dave Crichton

Mike Dunbar

Hayley Forrest

Mr Adam Ingram (South of Scotland) (SNP)

George McAulay (UK Men's Movement)

Gillian MacKenzie

Bristow Muldoon (Livingston) (Lab)

Marcia Ramsay

Shona Robison (North-East Scotland) (SNP)

Gordon Ross

Peter Stephen

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Ruth Cooper

LOCATION

Committee Room 1

Scottish Parliament

Public Petitions Committee

Tuesday 15 January 2002

(Morning)

[THE CONVENER *opened the meeting at 10:07*]

The Convener (Mr John McAllion): I welcome everyone to the first meeting of the Public Petitions Committee in 2002. I hope that everyone had a restful break over Christmas and new year and that you have come back refreshed and ready for the fight. We have received apologies from Helen Eadie, who will not be at the next couple of meetings because she has had to go into hospital for a minor operation. We wish her a speedy recovery and look forward to her return.

New Petitions

Green-belt Development (PE435)

The Convener: The first item on the agenda is PE435 from Mr Peter Stephen, on the subject of policy and guidance on green-belt development. I invite Mr Stephen to the table with Gillian MacKenzie and Mike Dunbar, who are accompanying him. Our usual rules are that you have three minutes in which to make an opening statement about the petition and then members of the committee will question you. I hope that you will be able to answer their questions. I invite you to introduce your petition in your opening statement. After two and a half minutes, I will indicate that you have 30 seconds to go.

I am reminded that, although the subject of the petition is policy on green-belt development, the petition refers to the development of the proposed new football stadium in Aberdeen. The committee cannot deal with individual planning applications, but it can consider general policy. Please refer to the situation in Aberdeen as an example, rather than as the substance of the petition, and try to keep to the general issue of the green belt and planning.

Peter Stephen: The proposed football stadium is only an application at present. It has not yet been dealt with, so I will refer to it only as background information.

The Convener: That is smashing. Please go ahead.

Peter Stephen: I am a resident who also speaks on behalf of Kingswells community council. We represent a considerable weight of public opinion against what we perceive to be abuse of

the green belt. On my right is Gillian MacKenzie, who is also a resident, and on my left is Mike Dunbar, who is from the Kingswells Infrastructure First Group.

In my petition, I have given three examples. Example (b) is that of East Middlefield, in which the application was refused by the planning department. Subsequently, that decision was overturned by the councillors and called in by the Scottish Executive. Example (c) is that of the football stadium, but the conflicting statements that were issued by the applicant and the local council fostered confusion and suspicion, resulting in 1,459 letters of material objection from Kingswells and the surrounding area. In a community council survey, 94 per cent of Kingswells residents opposed relocation of the football stadium to Kingswells. Local residents are concerned and tell us that their local councillor is not representing their interests.

Alternative sites were available in Aberdeen at Charleston and Calder park, which hold brownfield and industrial zone status. They appear to meet the criteria and we think that they are being ignored. We presume that massive commercial profit cannot be made from them. Our concern is that commercial profit is being made from greenfield erosion. Aberdeen City Council has failed to dispel concerns about the transparency and integrity of the process, as it would in a dictatorship—not in a democracy.

The noise pollution, lighting and parking levels will be an issue. If the stadium were deposited in Kingswells against the express wishes of the community, it could be a festering sore—particularly if it contributed to the need for a future tartan tax.

I add that 1,500 new houses have been approved as part of Aberdeen's new structure plan.

We would like the committee to take the action that is specified in our petition and to answer the following questions. If the Executive calls in a planning application, will it conduct a full and forthright examination to ensure transparency and integrity? What other relevant parliamentary committee can we approach? As for the abuse of the green belt, how do we set in motion action to protect the human rights of Kingswells residents?

Initially, 389 objections were made to the Scottish Executive. If Scotland's bid for the Euro 2008 football championship is unsuccessful, how will we ensure that the Scottish Executive removes its modification 11 to policy 28 of the finalised draft Aberdeen and Aberdeenshire structure plan, in respect of the football stadium application? Did the Scottish Executive's support for the Euro 2008 bid depend on the provision of the western peripheral

route?

Thank you. I have got through my statement.

The Convener: You made your statement in good time.

This is the first time that petitioners have asked the committee to answer questions, rather than the other way round. We will try to answer those questions before we finish, but first we will have questions from committee members.

Dr Winnie Ewing (Highlands and Islands) (SNP): The relevant papers show that the structure plan has been varied. The circular of which I have a copy gives examples of alterations that can be made to the structure plan for the green belt, but the proper procedure for altering a structure plan does not seem to have been followed in this case. Although the circular talks about flexibility, such flexibility does not seem to cover this kind of case. Surely the people who bought their houses must have been entitled to rely on the structure plan as it then was. That seems to be a serious flaw in principle.

10:15

The Convener: Is that a comment or a question?

Dr Ewing: Do the petitioners share that view?

Mike Dunbar: Yes. We are concerned that the process might have been abused in this case; it has certainly been truncated. We do not feel that it meets the standards of integrity and transparency that are appropriate to a body that is as august as the Scottish Executive. The process is proceeding with undue haste and we have received no explanations about why that might be so.

Dr Ewing: Is it the case that there has been no formal variation of the structure plan that existed when the residents bought their houses?

Mike Dunbar: That is most certainly the case.

Rhoda Grant (Highlands and Islands) (Lab): In your opening remarks, you said that no planning application had been submitted. What stage has been reached in the process, and how much consultation is taking place?

Mike Dunbar: A planning application has been submitted. However, there has been a very perfunctory process of consultation. That process has failed to address the concerns not only of those who will have to live daily with the stadium, but of the whole of Aberdeen. The scale of concern is evident in the fact that Aberdeen City Council has received 1,500 objections to the proposal—not just from Kingswells residents, but from people throughout the city. We are concerned that those people will receive the same

dismissive treatment that the 389 objections to the Scottish Executive's proposal to remove the land from the green belt received.

Rhoda Grant: You say that the planning application has been submitted. Has the council granted planning permission?

Mike Dunbar: Not yet.

Rhoda Grant: So the council is currently consulting residents.

Mike Dunbar: Yes. We are now in the 28-day consultation period.

Rhoda Grant: Are you concerned that not very much weight has been given to objections?

Mike Dunbar: That is one of our concerns. The importance of the objections has been undermined by statements that have been released on behalf of Aberdeen City Council. Furthermore, there has been manipulation of the media to ensure that the objections are buried beneath the release of information that the applicant and council feel is favourable to the proposal.

Rhoda Grant: Are you still waiting for the council to reach its decision?

Mike Dunbar: We are.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): There seems to be a discrepancy between the local plan and the structure plan in the planning application. Will you clarify that point?

Peter Stephen: The new city structure plan received its final input on Friday. As we have been working from the 1998 structure plan, we find ourselves caught somewhere in the middle.

John Farquhar Munro: I was also concerned to find out that any proposed development will be close to the local crematorium. That is a sensitive issue. How close will the development be to that building?

Peter Stephen: It will be immediately next door to the crematorium. Although we have raised the issue in various objections to the city council, we are not happy with the response that we have received. We have even advanced the scenario of grieving people having to listen to the shouts coming over the wall from the stadium; we just cannot relate the two circumstances.

Mike Dunbar: The crematorium and garden of remembrance will share both a boundary fence and the traffic infrastructure with the proposed development.

Gillian MacKenzie: I have lived in the area for nearly 50 years, during which time I have seen the erosion of the green belt. Building at Kingswells started about 17 years ago and is still not finished.

Last week, it was announced that building would be extended to an area south of the proposed stadium, and another 1,500 houses are going up at Bridge of Don, which is to the north. The infrastructure does not seem to us to support that building work, but that seems to be what the council wants to do. A proposal to build a small rescue centre on derelict land was turned down, yet a park-and-ride scheme went up in the green belt after very little consultation, and a proposal for a leisure centre at East Middlefield is in the process of being investigated. All that happens without the local people having much idea about what is going on, which we think is rather unfair.

Dorothy-Grace Elder (Glasgow) (SNP): I presume that the council owns the crematorium.

Mike Dunbar: It is a municipal crematorium.

Dorothy-Grace Elder: I take it that the crematorium authorities, or the relevant committee, have not lodged objections. Have the local clergy who use the crematorium lodged objections?

Mike Dunbar: Kingswells church, which is the closest church to the site, is a formal objector to the proposal.

Dorothy-Grace Elder: Have you approached other local clergy, even informally, to ask them to add their names to your protest?

Mike Dunbar: No. We do not want to manufacture support. We want only to convey genuine support. We do not propose to canvass people who otherwise would not support our position, nor to try to persuade them to throw their hats into our ring. We did not think that it was feasible that Aberdeen City Council, which owns the crematorium, would object to a proposal for which it had already expressed support with unseemly haste.

Dorothy-Grace Elder: As you know, the green belt is being invaded in many parts of Scotland. Councils tend to protect the green belt until an occasion arises on which they find it more convenient not to protect that land, but instead to invade it. I wonder about the other areas of Aberdeen where you said the football stadium development could go to. Do you want to expand on those comments?

Peter Stephen: We have suggested that those areas would like the development. Local people, through their community councils, have expressed a wish for the stadium to be built in their area.

Mike Dunbar: Our planning consultants have identified an alternative site on an area of land that is known locally as Charleston. The site is about four miles south of Aberdeen and is adjacent to the main A90 dual carriageway and the east coast railway line, on which a halt could readily be

provided. It is a brownfield site that is already zoned for industrial use. In any circumstances other than those of commercial gain, we are quite confident that that site would have been selected on its technical merits.

The Convener: We must be absolutely clear. It is understandable that most of our questions have revolved around the planning application for a new football stadium. However, the committee has no remit to get involved in individual planning applications. Do you accept that the elected planning authority—rather than this committee—will deal with that application and that the role of the Scottish Executive ministers is to call in the planning application if they decide to do so?

Mike Dunbar: We take that on board. We appreciate the committee's indulgence in allowing us to expand on the circumstances a little for the sake of providing background information.

The Convener: One of the early questions that you asked was about how the committee could ensure equity. Are you suggesting that the Scottish Executive reporter would not be fair?

Mike Dunbar: It has not been satisfactorily explained why the 389 objections that were lodged to the Scottish Executive's proposed modification of national planning policy guideline 11—which is essentially the green-belt provision—were dismissed as incompetent. That is significant objection and it should have been given far greater credence.

The Convener: Did those objections go directly to the Scottish Executive?

Mike Dunbar: Yes.

The Convener: Why did the Scottish Executive say that the objections were incompetent?

Mike Dunbar: The Executive said that the objections were site specific, but the proposal was generic.

The Convener: Did the Executive say that because no decision had been made on a planning application and it is not for the Executive to intervene at that stage?

Mike Dunbar: That was not the basis of the Executive's dismissal of the objections. They were dismissed on the basis that they referred to the removal of land from the green belt at Kingswells, but the proposed modification of NPPG 11 was a generic, non-site specific provision for removal of land in support of the Scottish football bid for Euro 2008.

The Convener: So, you question whether the Executive reporter would act fairly and impartially.

Mike Dunbar: Yes. We are concerned that the principles of integrity and transparency are not

being fully upheld in the treatment of the objections.

Rhoda Grant: You are saying that the planning guidelines that were issued by the Scottish Executive to councils have been amended to allow companies to use green-belt sites for football stadiums.

Mike Dunbar: That is true—it is the de facto position—but our objection is not to the decision that has been taken. Our objection is that we do not believe that the Scottish Executive has followed its own guidelines in allowing the removal of land from the green belt. A football stadium's structure does not meet green-belt provisions.

The Convener: Green-belt policy has been around for a long time—I think that it first came into existence in 1985. Are you saying that the Scottish Executive should have reviewed green-belt policy long ago?

Mike Dunbar: No, we are not commenting on that. We want to maintain the precious amount of green belt, regardless of how long the policy has been in place. Green belt remains important, regardless of how long it has been described as such.

The Convener: Are you concerned with the application of the current policy guidelines rather than with a review of policy guidelines?

Mike Dunbar: Yes. We are concerned about the implementation of guidelines.

Peter Stephen: Section 7 of NPPG 11 deals with recreational uses of land. We believe that that does not include add-on commercial retail development that takes over a fair part of a whole proposal. We are not talking about just a football field or two.

Gillian MacKenzie: Green-belt legislation states that one must consider noise and light pollution—which is important in this case—when considering how green belt should be used.

Dr Ewing: I want to return to an answer that I received about a new structure plan. When was that plan? How long did it take? Who arranged it?

Peter Stephen: Work has been continuing during the past few months. In early December, there was upset in the council chambers when the plan was not approved. An eleventh-hour, last-minute amendment was added. The plan for an additional 1,500 houses to be built on the green belt was brought back to the council last Friday and approved amid chaotic circumstances.

That is so recent that I do not know how many days it will take for the final structure plan to be published and then go out for the recognised 28-day consultation period. I appreciate that it will go out for the consultation period; however, as of last

Friday that is what has happened to the final version.

The Convener: I want to be clear about what you are saying about the powers of the committee and the Parliament in relation to the Scottish Executive. You are concerned about the application of the green-belt policy guidelines by the Scottish Executive and particularly that exceptions to the policy guidelines are being promoted by the Scottish Executive to facilitate its bid for the Euro 2008 football championship. You see that as leading to a less than fair and reasonable judgment of applications for planning consent for football grounds.

Mike Dunbar: It fails to meet the Scottish Executive's own guidelines on the modifications of the guidelines.

10:30

The Convener: Thank you. You are now free to sit and listen to the discussion.

The suggested action is that we should write to the Executive asking for its comments on the issues raised in the petition, whether it is content with the application of current green-belt policy by planning authorities and whether there are any plans to update the current guidance on green-belt development. However, we should also draw the Executive's attention to this morning's discussion about the bid for Euro 2008 and what impact that may be having on green-belt policy, particularly in the Aberdeen area, but possibly in other areas of Scotland.

Dorothy-Grace Elder: Perhaps we should also refer the petition to the Local Government Committee for its comments.

The Convener: The Transport and the Environment Committee would deal with the petition, and we will send it a copy for its information. However, until we receive the Scottish Executive's response, we should not formally refer the petition. We will write to the Scottish Executive, asking for its comments on this morning's discussion. Once we have had its response, we will consider whether to refer the petition to the Transport and the Environment Committee, which is the relevant committee to deal with planning issues in the Scottish Parliament. Is that course of action agreed?

Members indicated agreement.

Peter Stephen: We do not have to wait, do we?

The Convener: We will keep you fully informed of what is happening.

Peter Stephen: Through me, presumably.

The Convener: Yes, as you are the main

petitioner. Steve Farrell will keep in touch with you and tell you what is happening to the petition.

Peter Stephen: Thank you.

Advocacy (Mental Health) (PE436)

The Convener: The next petition is from Marcia Ramsay on behalf of Advocacy 2000. It calls on the Scottish Parliament to take the necessary steps to ensure that, in the development of the new mental health act, access to independent advocacy by individuals is implemented and a duty is placed on health boards to make provision for collective advocacy in hospitals and communities.

Marcia Ramsay: I thank the members of the Public Petitions Committee for considering the petition and for accepting my request to speak to it. The petition seeks a right for users of mental health services to access individual independent advocacy and a duty on health boards and local authorities to fund and support provision of independent collective advocacy for people who use services and could be subject to the new act. We have not included a duty on health boards to ensure provision of individual independent advocacy, as that is already noted in the policy.

Independent advocacy in Scotland has developed significantly, particularly over the past five years. The benefits of having an advocate for those who have been able to access one have been significant. However, there has been no individual right of access and people who use services and those involved in the advocacy movement believe that there is a right to have an advocate and that that is fundamental to meeting people's needs, wishes and rights.

A duty to provide advocacy, which in practice may or may not be known about or acted on, is very different from a right to have an advocate. It is vital for people who use services to know that they have a right to and can ask for and get independent advocacy support. The right is an individual right and follows the person where they go. The knowledge that a person has a right of access to an advocate carries much more weight for staff who work in services, including health, social care and beyond, than does a duty to provide alone. Staff will often be unaware of such duties and the duties do not always guarantee access to an advocate.

It is of particular significance that this opportunity has arisen because of a new mental health act, which is one of the few pieces of legislation that has the power to deprive people of their liberty by detaining or treating them against their will. Where better to begin to develop the fundamental right to access independent advocacy for all those who may need it, which is Scottish Executive policy, than in the proposed bill?

The imbalance of power and lack of equality among people who use services and among the services themselves continue to be significant. The development of infrastructure is vital and progresses well. However, in several areas, people who will be subject to the legislation will be unable to access an advocate or a collective advocacy organisation. The Scottish Parliament should grasp the opportunity of the proposed mental health bill to enact a right to independent advocacy and resource it appropriately so that it can be developed in time for the implementation of the new act.

People who need advocacy most are often in the least powerful position to be able to voice their needs. They might not be aware that advocacy exists, know what it is or how to access it. At present, they are dependent on someone else to notice their needs for advocacy. They are also dependent on being able to access a project or organisation and on its ability to respond. The proposed bill offers the opportunity for the right for people's voices to be heard and for that to become a reality. It offers people who are not used to being listened to the chance to have someone stand along side them. That would ensure that they are listened to and that their views and rights are taken into account and respected.

Issues, including organisational development, quality and funding, still need to be addressed, but that does not mean that a vital opportunity should be missed. The benefits of advocacy are not simply about people who use services getting what it is that they want, although, where that happens, that is nice; advocacy can also be about services gaining feedback that enables them to offer a higher quality of service. Moreover, advocacy enables people to regain confidence, learn new skills, rejoin their community and become active citizens once more.

We are proposing a vital addition to the forthcoming bill. The bill should reflect the individual's right as well as the duty on boards. The Millan committee supported the right of the individual, as did the advocacy organisations and service professionals who were consulted. The vast majority of MSPs who spoke in the MSP policy debate supported that right. Most important of all, people who use services, and their carers, support it. They consider it to be a fundamental right that would ensure the safe implementation of the new act.

The Convener: Thank you. That was excellent.

Rhoda Grant: What is the difference between the duty to provide advocacy and the right to access advocacy? Is it a matter of emphasis?

Marcia Ramsay: We are asking for a duty to be put on health boards and for a right to be given to

individuals. The difference is that people will be able to take the right with them. They will be aware that it is an individual right. Many people are unaware of the duties that are placed on health boards and local authorities to do things. Health boards, local authorities and other agencies do not always carry out the duties that are placed on them. If people use services, perhaps by being detained, they may ask for an advocate. If there is no advocacy service in that area, they can challenge that at a later date. However, at the time that the person needed the advocate, one was not available.

Rhoda Grant: You do not want a change in the law. You want the Public Petitions Committee or the Executive to ensure that all health boards have an advocacy service that is available there and then for patients when they need it. Is that your view?

Marcia Ramsay: We want an independent advocacy service that would be available for people who need it when they need it. At the moment, there are real issues about the ability to respond to that demand. We also propose a change to the law. The Millan committee said that people should have a right to access independent advocacy on an individual basis. However, that recommendation was dropped when the mental health policy was developed.

Rhoda Grant: Does that mean that, although hospitals have an advocacy service, you want an independent body that provides a service to patients, which they can access in hospital and which would follow them and remain with them in the community?

Marcia Ramsay: Advocacy services are structured differently in different areas of Scotland. There are about 80 small and large projects. Some work in hospitals and the community, but others work only in hospitals. We do not challenge how projects are structured as long as they are independent and have no conflict of interest with the service that they might challenge. We believe that, wherever people use services, they should be able to access some form of independent advocacy.

Dorothy-Grace Elder: That was an important recommendation of the Millan report. Unfortunately, it seemed to get buried under other vital matters that the report tackled.

I assume that you do not want only a duty of provision, but a duty to inform patients and their relatives of their right to such a service. As we know, advocacy services exist outside hospital centres. In fact, I am grateful that, this afternoon, as an MSP, I will meet someone from an advocacy centre on behalf of a patient. Do you also want there to be a duty to inform?

Marcia Ramsay: I suppose the challenge of implementing a policy is in deciding whether it is a duty or a right. Even if it is just a duty, different levels of work require to be done. One level concerns educating people who provide services, as well as those who use services, about what advocacy is and why it is important. I agree that it is vital for people to be informed about the right to access an advocate, if that is what they want. Independent advocacy is also vital in upholding the principles, such as participation, equality and reciprocity, to which the policy statement subscribed.

Dr Ewing: As a lawyer, I find the matter a bit puzzling. Who are the independent advocates?

Marcia Ramsay: There are different approaches to independent advocacy. When I talk about independent advocacy, I do not mean legal advocacy. However, there are relationships between independent advocacy projects and lawyers and legal advocacy. Independent advocacy happens on individual and collective levels. It involves getting ordinary members of the community or paid individuals to stand alongside a person or group to help them to have their views heard and their rights and interests protected.

Dr Ewing: Who pays them?

Marcia Ramsay: That varies. In some places the health board or the local authority funds projects, but in others they are funded by the national lottery or other forms of trust. As I said, I am aware of 80 schemes and organisations in Scotland. They are all structured differently according to what local people need and want.

Dr Ewing: Are the advocates volunteers?

Marcia Ramsay: Some are paid, but the majority are volunteers.

Dr Ewing: What is wrong with informing mental patients that under the legal aid scheme they can access legal advice at any time?

Marcia Ramsay: It is not always for legal advice that people need advocacy support. I have worked as an advocate for the past seven years. Some issues involve helping someone who needs to see their psychiatrist. The psychiatrist might be good and helpful, but the person feels daunted because of the imbalance of power between them as a detained person, perhaps, and the person who can tell them what will happen next. It is vital for a person who feels disempowered to have someone who is on their side and who will help them to stand up for themselves and say clearly what they want.

Dr Ewing: As a lawyer, I often acted for mental patients or their relatives in connection with release or unfair treatment. I think that I did a satisfactory job. The right to an advocate exists

already.

Marcia Ramsay: Not all issues are legal issues. People who want a change of medication will not ask a lawyer to go with them to a meeting to discuss the matter. On many occasions, a lawyer would not think that that is a legal issue. However, people still need support.

The Convener: The present law imposes a duty to provide independent advocacy services. Does that create a situation in which, although there is an advocacy service in every area, those services are not adequate and do not meet the needs of patients because demand outstrips provision? Is that what is behind the petition?

Marcia Ramsay: Not every area has a project or organisation; the coverage is patchy. Last year, an audit of what is available was carried out. Not everyone who uses mental health services and who wants to access an advocate—

The Convener: So there is no legal duty on health boards to provide independent advocacy.

Marcia Ramsay: As far as I am aware, there is no duty.

10:45

The Convener: Is it possible that, by requiring health boards to fund independent advocacy, the independence of the service would be called into question? Sometimes the advocacy service will have to take on the health board.

Marcia Ramsay: The Scottish Executive, the advocacy organisations and the people in health boards who commission advocacy are doing a lot of work on the development of independent advocacy. One reason why we talk constantly about independent advocacy is that, to be able to act, advocates must be as free of and as far away from conflicts of interest as possible. Organisations can achieve that in various ways. Health boards fund some of the schemes and organisations in Scotland, which works well and is one method that we recommend. However, we try to ensure that projects have more than one source of funding so that, if they are in a difficult or compromising position with the health board, they will not disappear overnight when the health board feels challenged.

The awareness of advocacy among health boards and local authorities is increasing. They are gaining an understanding that, although they might be challenged, the advocacy service has a valid role. There is an education process.

The Convener: Is there evidence that when the budgets of health boards that fund independent advocacy services come under pressure, those services are the first to feel the pinch?

Marcia Ramsay: I do not think that advocacy is the first service that is removed. Compared with the funding for service provision, the funding for advocacy is a small piece of the cake. We try to support development and expansion, but the service is still a small piece of the cake. There is no need for huge resources. When the proposed mental health bill is introduced, proper resources will be required for advocacy for people who use mental health services. If proper resources are not provided, the money that has been put into advocacy for mental health and other areas might suffer when advocacy becomes a right in law. It is important that advocacy is properly resourced.

The Convener: Has the Executive said why it did not include in the proposed mental health bill the Millan committee recommendation for an individual right to advocacy?

Marcia Ramsay: We had lengthy discussions with the Executive about that. To some degree, the conversation is continuing. The issues that concern the Executive are the definition of independent advocacy, on which a lot of work has been done, and the ability to obtain advocates to fulfil the role. It is my opinion that resourcing will also be an issue when we consider what might be needed. It is important that the right to advocacy does not get lost for the sake of a worry about resourcing.

The legislation will come about in 2004. We do a lot of work on principles and standards for advocacy so that people know what it is and what they can expect wherever they go. We also work on monitoring and evaluating the quality of advocacy. The safeguards for ensuring that advocacy is of a high quality should be in place by the time the bill is enacted. It would be a pity to miss the opportunity just because we are not quite ready today; we will be ready when the legislation comes about in two years' time.

Dr Ewing: You have not mentioned collective advocacy. What exactly do you mean by that term?

Marcia Ramsay: The Millan committee said that health boards should support collective advocacy; it did not say what it meant by support. As far as I recall, the policy document did not talk about that.

What we mean by collective advocacy in hospitals are things such as patient councils, where groups of people who use services and who may have issues in common can get together and discuss those issues with the providers of the services and so find constructive ways of making services better. That is a constructive approach to finding out what people think, want and need. It is a good way of including people in the development of services. A number of patient councils already exist in Scotland, but some areas have none at all.

There is also an argument for community-based collective advocacy. Sometimes people organise themselves in their local communities. However, where there is disadvantage or disempowerment, there needs to be support.

Dorothy-Grace Elder: It may benefit your case to point out that advocacy—where it works and where it is at its very best—can be a protection against abuse in hospitals. Advocacy can be even more important in relation to mental health than it is in relation to physical health, although advocacy extends to people who have physical illnesses as well. However, the term is not well known to the public because there is so little investment in the service. The service is vital, because few people are able to stand up for themselves. Furthermore, those people's relatives often find it extremely difficult to deal with those in authority or to expose injustice or abuse.

Marcia Ramsay: I could not agree more. People who are disempowered or who feel voiceless are the least likely to make approaches. An advantage of independent advocacy organisations is that they can go out and find the people who need the service. Often, services wait for people to come to them, but it is important that we reach the most vulnerable people.

The Convener: Thank you for your evidence. You are welcome to sit and listen to our discussion of the petition.

It is suggested that we raise these issues with the Scottish Executive and ask for its comments on the petition. In particular, we might ask whether rights of access to independent advocacy for service users will be included in the proposed mental health bill. The evidence that we have heard this morning has made it clear that that is not the intention, so perhaps we should ask the Executive why not.

Dr Ewing: I found the explanation of independent advocacy a bit vague. In the witness's statement, she admitted that the service was "patchy"—better in some places than in others, or non-existent in some places.

Marcia Ramsay: Such advocacy is provided in some places but not in others. When I used the word "patchy", I was not talking about the quality; I was talking about the amount.

The Convener: Strictly speaking, we have finished questioning the petitioner.

Dr Ewing: I still found the explanation a bit vague, and to put something vague into a bill will always lead to difficulties.

The Convener: It is important to get the Executive to explain its position on advocacy.

Dr Ewing: Yes—I agree with your

recommendation, convener.

Rhoda Grant: Could we ask the Executive where advocacy is available and where there are gaps in the service?

The Convener: Yes, we could do that.

Dorothy-Grace Elder: I do not think that the Executive should, at this stage, worry about the cost implications, as Governments often do. It is important to enshrine in legislation the principle that people have the right to access this service. A duty should be placed on health boards. We all know that the service is in a fairly embryonic state in Scotland. We are looking to the future and it will not be good—to put it mildly—if we miss this chance.

The Convener: As well as asking the Executive where independent advocacy is available, we could ask what part cost considerations have played in its decision not to recommend a right for individuals to access the service.

Dorothy-Grace Elder: Yes, but we should not ask those questions in an over-critical way.

The Convener: No—we would simply ask for the Executive's position.

Dorothy-Grace Elder: The Executive may, at this stage, be thinking, "Oh dear—another cost to consider." However, we must think long term and build up the service.

The Convener: Do members agree with the suggested course of action?

Members indicated agreement.

The Convener: We will find out the Executive's position and then consider how to proceed.

I thank the witness again for her attendance. We will keep you in touch with progress.

Parental Alienation Syndrome (Sibling Contact) (PE438)

The Convener: The next petition is PE438, from Mr George McAulay, on resources to allow children to establish a right of contact with alienated siblings. Mr McAulay is here. Do you have someone with you?

George McAulay (UK Men's Movement): Yes. I shall make a brief statement, then Gordon Ross and Hayley Forrest will make some points. We will then be available to answer questions.

The Convener: That is fine as long as you do not take longer than the three minutes that you have been allocated. I draw members' attention to the fact that Mr McAulay has supplied us with additional papers.

George McAulay: Do you mean those that refer

to the European rulings?

The Convener: An extract from the treaty establishing the European Community has been circulated to the committee.

George McAulay: In that case, I shall be even briefer.

Parental alienation syndrome—PAS—as defined by Richard A Gardner, among others, is a cruel but sophisticated form of child abuse. It is recognised in the USA and Canada and by the European Court of Human Rights following the benchmark ruling in the case of *Elsholz v Germany*. When I started the petition, I thought that the issue was about fathers and children. It is not. It is about fathers, mothers and children. We have with us today a mother who is the victim of PAS. The victim parent may be male or female, but children are always the victims and many go on to become perpetrators of the abuse in later life.

When I came into contact with PAS victims, I recognised immediately and chillingly techniques that I first encountered on an army course on which I was made aware of, and then trained to resist, the methods used in interrogating and brainwashing captives. Captives are subjected to physical and psychological abuse, isolation, disorientation, confusion, humiliation and degradation and the withdrawal of basic human comforts for non-co-operation. I resisted, knowing that the course would last only a couple of days and then the end of the exercise would be signalled. Many tough, motivated men failed the course rather than complete interrogation.

I endured the course as a physically, mentally and emotionally prepared 25-year-old tough guy. Robert is not a tough guy: the kid is only nine years old. My wee boy is in his class. My son came home from school and told me that, one day, for no apparent reason, Robert put his head in his arms on his desk and cried his heart out. This is Robert's dad, beside me. I asked Sue Stirling, whose writings on the subject I recommend to anyone who wants to understand PAS, why that had happened. She said that the wee lad had to conceal the pain of losing his parent from the alienator or retribution would surely follow. For the smallest, weakest and most vulnerable among us—those whom we are charged by God's will and the laws of man to protect—no one signals the end of the exercise, yet the methods are the same. They are not returned to a safe, comfortable billet; they are returned to their tormentor by courts that reward contempt of court by excluding their most interested protector—the alienated parent.

Parliament must mainstream the recognition of PAS and must make remedies available for

children, alienated parents and alienating parents. Kids need to be returned to healed, even if separated, parents. It is within members' gift to do that and signal "endex" for these unhappy little conscripts.

Gordon Ross: Two years ago, I separated from my wife. I had no idea what the term alienation meant in relation to children. My child is nine years old and I have not seen him for 18 months. I have exhausted every avenue and agency. I have been through the courts and have exhausted my funds. I can no longer go any further. I turned to social work services and took a witness with me. When I asked the people there whether their institution was sexist, after I had asked many questions about its refusal to deal with the situation, I was told that it was. They had never heard of PAS. It is not on their agenda and they have no training to deal with it. I put pressure on them to do something about it—perhaps even to make a home visit, on which someone with training would recognise the problem—but my request was refused. They phoned the school, as Mr McAulay has told you, which said that everything was fine and that there were no problems at all.

I am at the end of my tether. I know what my son is going through—I did not speak to my parents or family for 17 years.

Hayley Forrest: My name is Hayley Forrest. I am 13 years old and I am in my second year at Hunter High School, in East Kilbride. I am not a disruptive or unruly child: I have a very good record of behaviour and achievement at my school.

I have two younger sisters: Ashleigh who is 12 and Chelsie who is now six. I have not seen them for the past year and a half. On the day before Christmas eve 2000, my mother removed me from my home and tried to put me in a children's home. Instead I was placed with my stepsister, who lives 30 miles away. I spent Christmas with a family that I hardly knew, without my sisters or my dad—it was not somewhere that I was comfortable.

Two months before that, my mum did the same thing to my dad. She had him removed from the house by the police, making allegations of abuse and violence.

My mother did that to me because I refused to be brainwashed by her. I was intimidated, abused, threatened and finally thrown out of my own home. I could not stay with my dad because my mum had had an interim interdict placed on him, preventing me from having contact with him. She also made up allegations of abuse and violence. She said that my dad was an alcoholic and made allegations of sexual abuse involving me. I am now living with my dad and am very happy to be there, but I miss my sisters and my belongings. I

miss my home where I grew up and my friends.

The social work department, the courts, two psychologists, a safeguarder and the children's reporter have all recommended that there should be contact between my sisters and me. My mother has prevented that from happening.

I will never forget the day I left my home. My little sister Chelsie was five and she pleaded with me not to go. She stood there crying—she did not want to let me go. I had to leave. She curled her little fingers round my jacket and would not let go, but I had to leave. All the while my mother was in the background dancing and singing to music. I will never forget little Chelsie standing there, crying.

11:00

The Convener: Thank you, Hayley. This is obviously difficult for you. You have done exceptionally well in giving evidence to the committee this morning.

I invite questions from members of the committee.

Dr Ewing: Is this an attempt to change the law to give a right of access to siblings?

George McAulay: No, there does not necessarily need to be a change in the law—it could be done by parliamentary methods. The petition is supplementary to our initial petition on the mainstream recognition of parental alienation syndrome. Mainstream recognition of PAS would have led to early intervention in Hayley's case and that of young Robert, Gordon Ross's son. Early intervention is the key. PAS can be mild, moderate or severe. If it is arrested in the mild stage, it prevents much harm from being done to the children, the alienated parent and even the alienator, who is often a desperately unhappy individual. Parliament should mainstream recognition of PAS, just as it has advocated recognition of domestic violence, through schools and social work departments.

Gordon and I went to Glasgow City Council social work department to try to get a delivery order for his son as he was in danger. The duty social worker—I can give you her name—admitted that the department was institutionally anti-male. She knew nothing about PAS. If she had been aware of it and recognition of it was mainstreamed, she could have intervened at that point and would have saved young Robert from on-going damage. We have tried to get other agencies, such as health care, social work and educationists, to give PAS the same recognition as domestic violence. If the same provisions were made for PAS—a very cruel form of abuse—as are made for domestic violence, it would prevent

its development and stop it becoming full blown. A stitch in time saves nine.

There is a mother sitting in the public gallery who is dealing with the initial stages of mild alienation. If it is not arrested, the syndrome can go on to become moderate or severe.

The Elsholz v Germany ruling, which refers to PAS, places an obligation on the state—no particular arm—to provide for PAS. If the judiciary is failing to intervene in PAS, other arms of the state—the supreme legislative body; the Parliament—must make provision. The recent White v White ruling tends to help the case somewhat.

The Convener: For the benefit of people who are listening, I state that your earlier petition, PE413, which dealt with mainstreaming recognition of parental alienation syndrome, was referred by this committee to the Executive for comment. We are still awaiting a reply.

George McAulay: We have had support from men and women all over the world on this matter. Within the past week, there has been a whirlwind. I mentioned the European convention on human rights in relation to my previous petition. Since my first petition, a lot of case law has been forwarded to us and I understand the situation better. I am a layperson, but clinical psychologists and consultant psychologists are contributing to our understanding of the problem. We hope that the Public Petitions Committee will create an avenue for us to pass our information to the Executive.

The Convener: That is happening already.

Rhoda Grant: If rights of access were upheld by social workers and so on, would the present system of getting rights of access through the courts be sufficient?

Gordon Ross: I went through the system and followed my lawyer's advice to the letter. I was told to play the white man. When I went to court, I was dealt with by Sheriff Johnston, who is one of the leading family sheriffs in Scotland. I was denied the right to defend myself. I was told that I should sit there and say nothing and that the sheriff would decide what was in the best interests of the child. I would argue that my wife and I knew each other better than anyone else. I knew where we were going: nowhere fast. She had already made up her mind and we went round in circles for months as the process dragged on and on. After every visit to my child, I received a detailed letter from a lawyer. My child had obviously been interrogated when he went home. Some of the allegations were absolutely ridiculous and frivolous. The legal system does not want to deal quickly with cases such as mine.

George McAulay: Talk about your lawyer

thinking that there was something wrong with the letter that your boy wrote to him.

Gordon Ross: My lawyer received a one-line letter from my son, which read: "I do not want to see my dad." My lawyer said that that was unprecedented. I should point out that it took a lot of encouragement to get the child to write five sentences for his spelling homework—I had to sit with him while he did it—yet we were told that he wrote the letter off his own bat.

George McAulay: To answer Miss Grant's question, the point is that the sheriff did nothing.

Gordon Ross: The sheriff did not want to impose sanctions against my wife. At the end of the day, I had to withdraw to a certain extent, partly due to a lack of funds and partly because I could imagine what the process was doing to my son, given the intimidation that I had endured. I could not get that message across in court—at one stage, he turned away from me and would not listen.

Dr Ewing: Did the court grant you access rights?

Gordon Ross: I was told that my son would meet me, but he was not there when I arrived. The sheriff would not impose sanctions against my wife.

George McAulay: I have spoken to many men—and their female relatives—who have had court-ordered access denied by their former partner. It is a fact of life that, in this country and in most western countries, courts will not impose meaningful sanctions on women who are guilty of blatant contempt of court because they have blocked access. Until the nettle is grasped, that situation will continue. I know that the Executive is committed to not putting more women in prison. We do not want such women to go to prison either because we know that, if you hurt one parent, you hurt them both. However, some sanctions must be placed on them. In the United States of America, there are examples of alienation and other hostility ceasing when sanctions have been applied.

I have not the slightest doubt that if a residential father blocked a mother's court-ordered access, he would be put in jail. Perhaps the lady sitting behind me, in the gallery, could clarify that. There is a perverse chivalry among judges.

Rhoda Grant: I am interested to hear what kind of sanctions you would like to be imposed.

George McAulay: I maintain that that is not my job; it is the Parliament's job. The European Court of Human Rights has ruled that, in the case of a breach of the European convention on human rights, the Parliament has to provide for alienated children and alienated parents of either sex. The Parliament must provide the mechanism, although

I could certainly make suggestions.

Let me make myself clear: I do not fit into the category of alienated parents. I am here because I see an injustice that hurts children. A sanction could be financial, initially. That could be followed by an increase in the contact to which the alienated parent is entitled. Such sanctions would indicate clearly that if people do not play by the court's rules, they will be punished. Nowhere else in the history of justice have people been rewarded for contempt of court.

Rhoda Grant: Is not it the case that sanctions such as imprisonment or financial sanctions would have a dire effect on the children involved?

George McAulay: We must bite the bullet, because the effects of parental alienation syndrome are much worse. I will provide a small booklet that Sue Stirling, who suffered alienation, wrote. She was a polio victim and she thanked God that she was sent to a residential school for nine months a year, because it got her away from the alienating parent, who happened to be her mother. Her whole life has been scarred and she has been devastated.

In the most severe form of the syndrome, sufferers become psychotic. It seems a twee notion that we should not imprison someone who is committing a gross act of child abuse, just because they happen to be a mother. I do not want mothers or fathers to go to prison; I want reconciled, or at least, healed parents with whom a child can have a meaningful relationship that is not poisoned by hatred.

Dorothy-Grace Elder: I thank everyone for appearing here today, especially Hayley. You will have noticed that there was a little pause before we began our discussion. I think that was because we were all pretty stunned by your testimony. We were stunned, but not surprised, because the problem is fairly widespread.

We are getting a couple of things confused. The petitioners refer to alienation in relation to parents being unable to access the children. The petition itself refers to children having a right of contact with their alienated siblings.

I would think that there is a better chance of making progress by putting the children's right of access to their siblings first. The other matter is a long-standing issue.

George McAulay: It is fresh in that we have just introduced the issue of alienation. I take your point. What is important about the petition is that the Parliament observes its obligations under the *Elsholz v Germany* ruling, and others, to provide individuals—in this case, Gordon and Hayley—with the right to access to siblings. Hayley is 13 and, as the committee can see, articulate and

composed. What does a five-year-old child do? What does an inarticulate eight-year-old child do?

Dorothy-Grace Elder: Hayley would convince anyone, believe me. I accept your argument.

George McAulay: That is why we must have mainstreaming.

Dorothy-Grace Elder: Are you saying that the siblings have no right to see each other at all at the moment?

George McAulay: In Hayley's case, the mother has blocked those rights. That is my understanding. Is that right, Hayley?

Hayley Forrest: Yes, they have been blocked.

George McAulay: I have encountered that before.

Dorothy-Grace Elder: It is obvious that the issue has been massively neglected—grandparents would say the same. However, progress could be made first and foremost on the rights of the children. Perhaps a member's bill is required. Do members have other suggestions?

The Convener: We will discuss the petition later. At present, we are simply questioning the witnesses in order to elucidate—

George McAulay: Further to Dorothy-Grace Elder's point, the previous petitioner mentioned advocacy, which there is a burden on the state to provide. As I said, the state should be proactive in doing so. We should not have to wait until the Hayleys and Roberts are 10 years down the line, with permanently warped and twisted personalities. As happens with sex abusers, many affected children go on to become—

Dorothy-Grace Elder: I take it that you know that social work departments no longer separate siblings and place them in different homes as they used to do. Indeed, they are encouraged not to separate siblings when they put them into foster care if that is at all avoidable. Unless a problem exists between the siblings, they try to keep the family together.

11:15

George McAulay: Your point being?

Dorothy-Grace Elder: My point is that the opposite happens when separation occurs behind closed doors. Social work departments are not allowed to separate siblings when they decide to send children to homes or to put them into foster care.

George McAulay: Social work departments have singularly failed to intervene. They are institutionally anti-male. You make much of Hayley's pain, but I would say that Gordon's pain

is every bit as potent. Nothing was done by the social worker—Gordon knows her name. Perhaps it would be unfair to name her, but we can certainly tell you her name in private. She admitted to institutional, anti-male bias, but her decision went against Gordon. In my experience, social work departments do nothing. I could also tell the committee about a wealthy businessman who—

Dorothy-Grace Elder: Dr Ewing wants to ask a question.

Dr Ewing: I wanted to ask Hayley a question. You are with your father and you say that you are happy there. Does your father have custody of you?

Hayley Forrest: I think that he has custody of me.

Dr Ewing: You are not sure. Did he go to court to get custody changed?

Hayley Forrest: We went to several children's panels.

Dr Ewing: So you have been to the children's panel.

Hayley Forrest: We have been to lots of them. A supervision order has been put on for a year or so.

Dr Ewing: So you are with your father for a year.

Hayley Forrest: Yes, but I am going to continue living there.

The Convener: Mr McAulay referred to the ECHR and to public health. I want to be absolutely clear about the petition. You talk about establishing procedures, but that would not necessarily change the law. Are you talking about getting social work departments and the national health service—the mainstream, as you put it—to recognise the existence of the condition and to take it into consideration?

George McAulay: Yes.

The Convener: That can be done through Executive policy guidelines and so on.

George McAulay: That is correct. We offered to lecture the Sheriffs Association about the condition, which it said it recognised. Sheriffs may recognise the condition, but they do not act upon it. It is incumbent on that arm of the state—

The Convener: At the beginning of your presentation, you said that the condition is recognised in the United States and Canada. In what sense is it recognised?

Gordon Ross: Through necessity, I have studied the condition a fair bit. Dr Richard Gardner has been detailing it for nearly 30 years and the

courts in the United States have been dealing with it for 20 years. Many of the states impose sanctions because they realise the damage—

The Convener: Are you saying that the condition is legally recognised in the States?

Gordon Ross: Yes. Dr Gardner lectures throughout the world and is very well known. I bought his book, but I could not finish it because so many of the symptoms that are described in it made me feel as if I was reading my own life story. The condition is both recognised and taken on board in the States, but the difficulty here is that people do not want to recognise that the condition exists. In my view, that is like going back 20 years to the time when no one wanted to admit to the existence of sexual abuse of children.

The Convener: That is a matter of interpretation.

As an initial step, would you like the Executive to set out its position in relation to PAS and to indicate whether it intends to have it recognised by the main stream and to allow siblings access rights? Is that the purpose behind your petition?

George McAulay: Not quite—to put it simply, I would like the Executive to take whatever action is necessary to ensure that the problems that I mention in my petition do not arise, in line with the Executive's public health obligations and the decisions in *Elsholz v Germany* and other cases.

The Convener: The first stage is to get the Executive to respond to the petition.

George McAulay: That is fairly obvious. I do not mean that sarcastically—I am simply confirming what you said.

The Convener: I just want to be clear about the intention behind the petition.

Are there any final questions?

Dr Ewing: Obviously, Mr Ross was not satisfied with his appearance before the sheriff. Presumably, the sheriff gave custody to the wife and Mr Ross quarrelled—he went back to court.

Gordon Ross: Custody was never decided. I was told that I would have to go to a proof hearing to get custody. The sheriff refused a proof hearing. I hired one of the best lawyers in Glasgow. We sat there—it was like banging my head against a wall. I had to dig my heels in and demand a proof hearing.

Dr Ewing: You did not get that.

Gordon Ross: I decided to withdraw, because my funds were exhausted. I was warned that if I went to the Court of Session, I should be prepared to lose, as that can always happen. It costs £10,000 a day.

Dr Ewing: You did not manage to get legal aid for your cause.

Gordon Ross: I am in a catch-22 position. I am in the grey area. I am above—

Dr Ewing: You do not qualify. In custody disputes, the sheriff has the power to appoint a reporter. On many occasions, sheriffs have appointed me as a reporter to investigate a dispute. A dispute over custody is never happy. A broken marriage is not happy, but it happens. People try to pick up the pieces. Sometimes the sheriff accepted my recommendation that custody be given to the male—the father. Usually the mother has preference. That is human nature—the mother will rarely leave a child, although it happens.

There needs to be a change in the law on access to siblings. That might be a line—

The Convener: We are moving on to discussion. At this stage, we are just meant to be questioning the petitioner. Are there any other questions to the petitioners?

George McAulay: Dr Ewing's point on legislation has a great bearing on our petition. We have asked for all the mechanisms to be made available to the child. That is much more important for children, because they have no advocacy and no access. I think that what Dr Ewing said is right on the button.

The Convener: That is the end of the questions. We move on to discussion about what to do with the petition. The petitioners are welcome to stay and listen. Thanks very much for your evidence.

George McAulay: Thank you.

The Convener: Mr McAulay referred to the earlier petition, PE413, about parental alienation syndrome. We referred that to the Executive at the end of November and we are still awaiting a response. The suggestion is that we should pass on petition PE438, along with the earlier petition, to the Executive and ask for a joint response. Once we receive that response from the Executive, we can give further consideration to the petitions in tandem. At this stage, we will send petition PE438 to the justice committees for information only. Once we have the Executive's response, we can decide whether to refer the petition formally to the justice committees.

Dorothy-Grace Elder: Many weeks ago, I had decided to introduce a member's bill on access to siblings and grandparents. I might make further inquiries along those lines. Before then, I was unaware that children had no legal rights to see each other. The situation is almost as bad as it was in the 1950s, when they used to ship some kids out to Australia and leave some of them here. It was a scandal.

I take it that family mediation was not used in the case that we were discussing—I forgot to ask that. There was no evidence of it.

The Convener: The important thing is the general principle of parental alienation syndrome and whether the Executive will take a position on it. We will refer the matter to the Executive and wait for its comments on both petitions before we consider them further.

Dorothy-Grace Elder: I just want to mention the term “parental alienation syndrome”, which right away is difficult for the Executive to grasp. Using that term almost confuses the issue. Perhaps Steve Farrell could put in a basic explanation—

The Convener: The Executive gets all the papers that we receive, all the background evidence and the comments of the petitioners, so there will be no confusion about what we are talking about.

Do members agree to the suggested course of action?

Members indicated agreement.

State Hospital (PE440)

The Convener: The next petition, which is from Mr and Mrs Dave Crichton, calls for the Parliament to investigate the problems that are being faced by patients who are ready to be released or transferred from the State hospital at Carstairs.

Good morning, Mr and Mrs Crichton. Shona Robison is also present to speak to the petition, but initially, we will hear from Mr and Mrs Crichton. The normal rules apply. The petitioners have three minutes to make a presentation, then committee members will ask questions.

Dave Crichton: First, I thank the committee for the opportunity to present my petition, as I have exhausted all the other avenues that are open to me. Despite recommendations by all the doctors concerned in 1999 and since, Darren Crichton is still incarcerated in Carstairs. We, along with other interested parties, including the Mental Welfare Commission, find that intolerable.

My son is one of 33 patients who are entrapped in Carstairs. By entrapped, I mean that they are ready to move to local hospitals or communities, but cannot go. By keeping people incarcerated in Carstairs, we breach their human rights. If they had been through the judicial system, they would have finished their sentences and been released, but because they are mentally ill, their incarceration has no time limit.

Carstairs is often misrepresented. People think that patients in Carstairs are maniacs who are really dangerous, but I have found that only a third of patients are sent direct from court. One third of

patients are sent from prison, after becoming mentally ill, and one third have been moved from hospitals. Many of them have never been part of the judicial system.

We fear that Darren will become institutionalised because of the time that he has spent in Carstairs. Murray royal hospital is Tayside's only forensic hospital. If it had been properly resourced, Darren would not have needed to be transferred to Carstairs. There is no sign of the situation improving. A further cut of £502,000 has been made to mental health services in Tayside. That does not augur well for forensic services either. Those services must not be allowed to be cut further.

My wife Lucille, Darren's brother, his sister and I are desperate to have Darren back home, where he can try to pick up the pieces of his lost teenage years. It is important to remember that although he has been well for two and a half years, there is a definite danger of regression while he is in Carstairs. That applies to the other 32 people in the same situation.

We urge the committee to help us and we urge the Scottish Executive to fulfil its pledge to the mentally ill that all treatment should be given as near as possible to their locale and to make mental health the priority that it should be. We also want a radical shake-up in forensic services throughout Scotland, to ensure fair treatment for all.

Shona Robison (North-East Scotland) (SNP):

I back up what Mr Crichton said. When Mr and Mrs Crichton met me, I could hardly believe that, purely because of resources, their son Darren had been trapped in Carstairs for two and a half years when there was no need for him to be there. First, the reason was that no bed was available at Murray royal hospital. Now that a bed is available, Mr and Mrs Crichton have been told that the problem is that there are no staff for that bed.

For two and a half years, a young man's life has been put on hold when he should have been rehabilitated into the community. A Murray royal hospital bed is an important halfway house in allowing that to happen, so that Darren can finally go home. His family want him home as soon as possible.

Mr Crichton does not keep good health. Mr and Mrs Crichton make a regular 200-mile round trip to Carstairs to see their son, and they will go there after this meeting. That also puts a strain on them. They recognise that the situation applies not only to their son Darren, but to other people's sons, daughters and relatives who are also in Carstairs awaiting the resources that will enable them to move.

It cannot be acceptable in Scotland in 2002 for

people to be trapped in an institution that they do not need to be in purely because of a lack of resources. I hope that the committee will start the ball rolling to get the Scottish Executive to consider a system that allows those people to leave Carstairs as soon as possible.

Dr Ewing: It was very interesting to hear about the categories that people who are sent to Carstairs fall under. Which category is your son in?

Dave Crichton: Darren was receiving electroconvulsive shock treatment at Murray royal hospital. However, it went wrong and he was sent to Carstairs to restart the treatment.

Dr Ewing: So your son's case has nothing to do with the courts.

Dave Crichton: The court system was involved initially. My son went to Murray royal hospital under a hospital order because he was mentally ill.

11:30

Dr Ewing: Does he get any treatment at Carstairs? For example, is he visited regularly by a psychiatrist?

Dave Crichton: Yes. He receives constant treatment and is seeing a consultant psychiatrist.

Dr Ewing: Is he seeing him regularly?

Dave Crichton: Well, not as often now that he is more settled.

Dr Ewing: Who said that your son was due for release? Was it the psychiatrist?

Dave Crichton: Darren went to Carstairs in January 1999. In August 1999, a clinical review by a number of psychiatrists deemed that he was fit enough to go back for further treatment at Murray royal with a view to releasing him into the community.

Clinical reviews start the ball rolling. At that point, the consultant psychiatrist from Murray royal assesses the patient and if they agree with the results of the clinical review, that is when the process starts. At the moment, 33 patients have been through that system.

Dr Ewing: Is your son a suitable case for care in the community schemes, in which people who are released from a mental hospital stay with others in houses and are looked after by wardens?

Dave Crichton: Do you mean a halfway house system?

Dr Ewing: Yes.

Dave Crichton: I agree with that totally. Because my son has been in Carstairs for three years, he has become institutionalised. From the

minute he wakes up until he goes back to bed, he has a regime and his time is spoken for. Similarly, when I came out of the army, I had to adjust to civilian life. If my son came straight home, he might wonder what had hit him and might not be able to cope. The halfway house system is ideal; in fact, it is what Murray royal hospital was supposed to provide.

Dr Ewing: Have you asked whether your son could be found a place in that system?

Dave Crichton: We have tried everything.

Rhoda Grant: Given that a number of people in Carstairs are waiting to go into a halfway house, has the hospital considered creating its own halfway house where it could deal with those people instead of being involved in what amounts almost to bedblocking?

Dave Crichton: That is a really good idea.

Rhoda Grant: From what you have said, it appears that no specialist facilities are required. All that is needed is a placement with medical back-up teams that are already in place.

Dave Crichton: Back in 1999, it was thought that my son would need only a few weeks back in Murray royal and some time at the day centre, and then he could come back home.

Rhoda Grant: So the health boards do not have to employ a different specialist to help with the treatment. They already have the staff.

Dave Crichton: He would still be under the care of Murray royal hospital, which would be his first port of call if anything went wrong.

Dorothy-Grace Elder: Mr and Mrs Crichton, would you be kind enough to check the facts that I have written down? You said that your son was admitted to Carstairs in January 1999 and that, in August 1999, he was judged to be much better.

Dave Crichton: He was deemed fit to be moved back to Murray royal hospital.

Dorothy-Grace Elder: He has therefore been in Carstairs for a further two years, which means that he has been well in Carstairs for a lot longer than he has been unwell there. Could you also tell me how long he was at Murray royal hospital before being transferred to Carstairs?

Dave Crichton: He went to Murray royal in August 1998. He was moved to the State hospital in January 1999.

Dorothy-Grace Elder: You said that ECT treatment had not been suitable or had gone wrong.

Dave Crichton: He was receiving medication, but that was not working. We were advised that he would like to try a course of six treatments of ECT.

Unfortunately, that totally blew his mind—if members will excuse my language. He assaulted a chief nurse of whom he had no knowledge. Because Murray royal did not have the necessary staff and facilities, it was decided that it would be better for him to go to Carstairs, where the treatment could be restarted.

Dorothy-Grace Elder: Thank you very much.

The Convener: Mr Crichton, I heard you on the radio this morning; you did very well. I also heard the medical director of Carstairs hospital telling the nation that 33 patients in Carstairs have been assessed as needing to return to local care. Are those cases spread across the country, or are there problems in particular areas?

Dave Crichton: They are spread across the country. There are 46 or 47 patients in Carstairs who are ready to be moved. The hospital has changed the way in which it counts those people. Although a clinical review may have stated that they are fit to move, they are not counted until their local consultant has deemed them fit to move. The figure of 47 refers to the total number of patients who are fit to move. Thirty-three of those patients have been diagnosed by their local consultant as fit to move.

The Convener: So the figure is higher than 33—it is 47.

I accompanied Shona Robison to Murray royal's open day. At a meeting between MSPs and Tayside Health Board, I raised the issue of funding for Murray royal. We were told that a report on the restructuring of forensic psychiatric services in Tayside had been produced in 2000. The health board said that that report had been followed by extensive consultation with what it described as staff and carers, and that a final report would be submitted to the board this month.

Dave Crichton: We are still waiting for that.

The Convener: Were you part of the consultation?

Dave Crichton: I am a member of Tayside Forensic Voices carers support group.

The Convener: Were you consulted about the structure of forensic psychiatric services in Tayside?

Dave Crichton: The report is now two years late and it is still not finished. The consultation probably took place before my time.

The Convener: I am interested to find out whether the consultation involved only staff, patients and carers at Murray royal, or whether it also involved people at Carstairs who would be transferred to Murray royal.

Dave Crichton: I think that only people in Perth

were consulted.

The Convener: We have received the agenda for this week's meeting of the health board, and the restructuring of forensic psychiatric services is not on it, even though we were promised that it would be. You are right to say that there has been delay.

Dave Crichton: Tayside Forensic Voices carers support group was supposed to make a presentation to the board on Thursday. Last week we had a meeting to discuss our strategy for that meeting, but Tayside Health Board has said that it is not yet ready to receive the presentation.

The Convener: Have you been given any indication when the issue will be discussed?

Dave Crichton: Perhaps next month.

The Convener: So it is the usual story—not this month, but next month. Would you like to make any further points that we have not covered?

Dave Crichton: I think that everything has been covered.

The Convener: Thank you for your evidence, which has been very helpful to the committee. You are free to listen to members' discussion of what to do with the petition.

As members can see, the suggested action is that we first write to the Executive, asking it to comment on the issues that the petition raises. It is suggested that at this stage we send a copy of the petition to the clerk to the Health and Community Care Committee for its information, but that we await a response from the Executive before we decide formally to refer the petition to the Health and Community Care Committee.

Dr Ewing: Should we not take up the issue with the health board?

The Convener: We will do that anyway.

Dr Ewing: As you said, the restructuring of forensic psychiatric services is not on the agenda of Tayside Health Board's next meeting.

The Convener: Individual MSPs can take up the issue with the health board.

Dr Ewing: You can put the matter on the agenda.

The Convener: It has been placed on the agenda. We will ask why it was not discussed at the January meeting of Tayside Health Board, as promised to MPs and MSPs. The health board will have to explain itself.

The important thing for the committee is that we deal with the petition properly. That means getting a response from the Executive, so that we can find out what it is saying about this issue. Once we

have considered that, we can decide whether to refer the petition to the Health and Community Care Committee. We must first give the Executive the opportunity to respond.

Dr Ewing: The picture is very gloomy, right enough.

The Convener: It is indeed, particularly when you remember that mental health is one of the three priorities for the NHS in Scotland. The petition gives the lie to that. Something will need to be done.

Dorothy-Grace Elder: Darren was ill for 13 months, during which time he was transferred between the hospital in Dundee and the one in Perth. He was then transferred to Carstairs, but after being cleared in August 1999 as well enough to progress, he has spent another 30 months still incarcerated. That would be enough to give someone a long-term illness.

The Convener: Mr Crichton's evidence this morning, that 47 patients are in a similar situation, is alarming. When we ask the Scottish Executive to respond, we can ask for details about how long those patients at Carstairs have been waiting to be placed locally. That evidence will help the progress of the petition.

Do members agree with the suggested course of action?

Members indicated agreement.

The Convener: I thank the witnesses, who are the last of the petitioners to give testimony this morning.

Gaelic Language (PE437)

The Convener: Petition PE437, which is from Mr John Macleod, calls on the Executive to secure the future of the Gaelic language through the creation of a Gaelic language act. It calls on the Executive to develop a co-ordinated strategy for the language in partnership with local authorities and Gaelic organisations.

The same matter was raised by previous petitions PE82 and PE385, in response to which the Executive set out in detail what action it has taken to encourage Gaelic-medium education. The figures are provided in the Executive's response to PE385. In the current year alone, a total of £2,834,000 is being spent, which is a rise of £200,000 a year over the past four years. The Executive highlighted other problems with the promotion of Gaelic-medium education, such as the shortage of qualified teachers. The petitioners want the Executive to go further. They believe that there should be an act and a co-ordinated strategy between local authorities and the Executive.

Points a) and b) in the petition, which relate to

Gaelic-medium education and Gaelic-medium teachers, appear to have been addressed by the Executive in response to PE385. I suggest that we copy PE437 to the Executive and request that it comment on the other issues that the petition raises, especially the promotion of the language and the delivery of public services and funding. We could ask the Executive whether it wishes to add anything to the information that it provided in its response to PE385 on its policy on Gaelic-medium education.

We could also copy the petition to the Education, Culture and Sport Committee, for information only at this stage.

Dr Ewing: Am I right in thinking that Mike Russell already has a Gaelic language bill?

The Convener: Does anyone know?

Dr Ewing: That was my understanding. Perhaps John Farquhar Munro knows whether that is correct.

John Farquhar Munro: I do not think that a bill has yet been published.

The Convener: Is that the intention?

John Farquhar Munro: Yes, there is an intention to publish a member's bill. What concerns me is why we are not taking evidence on the petition.

The Convener: That is just the decision that was taken. We are allowed to take evidence on only three or four petitions every week. I am told that there was a request to give evidence but, because we had dealt with those previous petitions and had received a lot of information from the Executive, it was felt that other petitioners deserved to be given the opportunity to present evidence.

Dr Ewing: It is strange that the petitioner does not call for the Gaelic language to be given official status, which is what is usually called for. That was in the manifestos of various parties.

The Convener: The petitioner does not call for that.

Dr Ewing: It seems to me that that is the thing that should be called for first of all.

The Convener: In the circumstances, it is important to get the Executive's response to PE437.

Dr Ewing: Absolutely.

John Farquhar Munro: The clerk's note on the petition clearly suggests that the previous petitions have simply been referred. That was admirable in the circumstances, but we have not received a response. That seems to happen with many of the petitions that come to us. When we refer them, we

do not insist on a report from the committees to which we refer them. My fear is that, if we simply refer the petition, as we have done with the others, the result will be the same.

I suggest that we take the matter one step further than referring the petition to the Executive. We should point out that, despite all the initiatives over the past three years for the Gaelic language, little seems to be happening. We are still getting representations on the lack of support for Gaelic, the lack of secure status for Gaelic, the lack of teachers to teach the language and the lack of Gaelic-medium education. We hear about those problems day in, day out. I suggest that we refer the petition to the Equal Opportunities Committee. It is a human right that people be given the opportunity to learn and operate in their preferred language. That would be the most appropriate thing to do with the petition.

I am concerned and disappointed that we have not afforded the petitioners the opportunity to give evidence to the committee.

11:45

The Convener: I take your point on that.

You suggested that we should receive a report from the relevant subject committee. The current system means that, once we refer the petition to the Education, Culture and Sport Committee, it becomes that committee's property and it is for that committee rather than us to report back to the petitioner. The Education, Culture and Sport Committee's responsibility is only to inform us that it has reported back to the petitioner.

We have given evidence to the Procedures Committee and suggested that the Public Petitions Committee could take a more active role in reporting back to petitioners in future. I hope that that will be one of the recommendations in the Procedures Committee's report.

I have no problem with raising with the Executive your concern that little seems to be happening. We are asking for its comments on the petition. We will decide, once we have the Executive's response, whether the petition should go to the Education, Culture and Sport Committee, which has dealt with the matter previously. It is chiefly that committee's responsibility. I do not think that the Equal Opportunities Committee has any real powers to do anything, as equal opportunities are reserved to Westminster. The Equal Opportunities Committee can comment on issues but I do not think that it can act. Is that right?

John Farquhar Munro: I will take your advice on that, convener.

The Convener: Our clerk, Steve Farrell, can

make inquiries about the powers of the Equal Opportunities Committee. When we get the response from the Executive, we can consider further whether we should refer the petition to the Education, Culture and Sport Committee or the Equal Opportunities Committee.

Dr Ewing: The background information in appendix A to the petition says that a

"... **Draft brief for a Gaelic Language Bill**' was prepared at the invitation of the Scottish Office Minister ... and submitted to him in **May 1999**."

Perhaps we could get a copy of that. If the appendix is accurate, I would like a copy of the draft brief. I would like to read it.

The Convener: We could ask for a copy of the brief and the Executive's response to it. We should try to get the Executive's response and decide what to do once we have it.

John Farquhar Munro: I have one other point. The Standards in Scotland's Schools etc Act 2000 contains a section that deals with Gaelic-medium education, which we secured when the act was passed through Parliament. The act makes it clear that local authorities in Scotland are expected to report annually on the provisions that they make for Gaelic and, if they make no provisions for Gaelic, what steps they intend to take to promote Gaelic. Two years have passed since the act was passed. I am not aware of any local authority having reported annually. Could we ask how many local authorities have reported?

The Convener: We can raise that with the Executive and ask for detailed information on how many local authorities have responded to the act and submitted reports. We can ask for detail on what provision the local authorities have made or, if they have not made provision, what they intend to do.

Is that agreed?

Members indicated agreement.

Planning System (PE439)

The Convener: The next new petition is PE439, from Mr W and Mrs A Flanagan. The petition calls on the Parliament to take a range of steps to introduce safeguards to protect the rights of the public in relation to the planning system. The petition arises out of Mr and Mrs Flanagan's experience when a planning authority chose not to defer the granting of further planning permission for a development until an investigation had been carried out into why planning conditions relating to water and sewerage systems for the previous phase of the development had not been adhered to. The petition states that complaints made to the local government ombudsman—about the failure of the council to follow planning policy and to take

into account relevant factual information that had been provided by the local councillor and a legal adviser—were not investigated.

The Flanagans argue that their human rights are being eroded by the planning system in Scotland. They call for a number of reforms, including third-party appeals—an issue that the committee has considered before—and compensation to private interests that have been unreasonably damaged. They say that planning decisions should be monitored by approved bodies.

We dealt with a similar petition—PE414—in November, when we agreed to write to the Scottish Executive to ask for its response to points on third-party appeals and compliance with the European convention on human rights. We are still waiting for a response. It is suggested that we write quickly to the Executive to ask for a response to points raised in both PE414 and the new petition. When we get a response, we can consider both petitions jointly. In the meantime, it is suggested that we pass PE439 to the Transport and the Environment Committee for information.

Members indicated agreement.

Water Boards (Consultation) (PE441)

The Convener: The last of the new petitions is from Mr Dereck A Fowles. It calls on the Parliament to investigate whether the water boards in Scotland should be able to take actions and decisions without consulting interested and concerned bodies. The concern relates to a decision taken by West of Scotland Water to terminate sheep farming on Loch Katrineside. The decision was made known in a press release and the petitioners claim that local interested bodies and individuals were not consulted before the decision was taken.

West of Scotland Water has provided details of why it took the decision, which it claims was to reduce the risk of contamination in the water supply and to reduce the dangers from the disease cryptosporidium.

Although we cannot intervene in this case, it would be in order for us to write to the Executive to request information on whether water authorities are required to consult interested parties before taking decisions such as that referred to in the petition—unless anyone here knows the answer to that. Once we get an answer from the Executive, we can reconsider the petition.

John Farquhar Munro: The water authority has a responsibility to produce clear and uncontaminated water. Therefore, in circumstances where someone was causing pollution and contamination, it would be incumbent on the authority to take steps immediately.

Dr Ewing: The letter from the Scottish Executive to Mr Fowles says:

“West of Scotland Water has given Scottish ministers an undertaking to install treatment at Milngavie”.

That would remove the problem and allow sheep farming to continue.

The Convener: Given that the drift of the petition is about consultation, we should hear the Executive's official position.

Dr Ewing: Absolutely.

Dorothy-Grace Elder: I do not think that there is a requirement to consult. I am dealing with a case that is to do with not only the water supply but the sewers. The authority administers both and, to be fair, it sometimes has to take emergency action.

The Convener: It is important to do this properly and get the official response. Do members agree to the recommended course of action?

Members indicated agreement.

Current Petitions

The Convener: Members will see from their papers that we have seven current petitions to deal with. Adam Ingram is here to speak to the seventh one, PE429. Do members agree to bring that petition to the top of the list so that Adam Ingram can speak?

Members indicated agreement.

Foot-and-mouth Disease (Pyre Ash) (PE429)

The Convener: Members will remember that PE429 is from Councillor Julie Faulds and relates to the dumping of foot-and-mouth pyre ash at Garlaff in East Ayrshire. Members can see that we received a comprehensive reply from the Minister for Environment and Rural Development, detailing all the steps that the Executive has taken. The reply claims that, in all cases, the Executive carried out proper procedures and that dumping has now stopped.

Mr Adam Ingram (South of Scotland) (SNP): Thank you for allowing me to speak on this matter, convener. I read the letter just this morning and I would like to make one or two observations.

In the first paragraph, the minister points out that the disposal issue is not unique to Scotland. Around 100,000 tonnes of pyre ash have been landfilled in England and Wales with little or no comment. I suggest that it was unique to Scotland that the ash was dumped in a non-infected area. It was dumped not in Dumfries and Galloway or the Borders, which had the infection, but in East Ayrshire, which had battled long and hard to keep the disease out. That is the key difference between the situation in Scotland and that in England and Wales.

Interestingly, a lot of the pyre ash from the foot-and-mouth outbreak has been disposed of in Carlisle. The Carlisle people were more than willing to take the pyre ash from Dumfries and Galloway and the Borders. However, the Executive took a political decision not to send the ash to Carlisle but to send it north instead. That is my comment on the first part of the minister's letter.

The minister has gone on at great length about why a landfill site could not be found in Dumfries and Galloway between April, when the cattle were incinerated, and December, when the ash was moved to Garlaff in East Ayrshire. The letter also indicates that Dumfries and Galloway was not a suitable place for the disposal.

I mentioned at the previous meeting that I have a statement from the Scottish Environment Protection Agency that indicates that, at the outset

of the foot-and-mouth outbreak, it identified 11 sites that were suitable for disposal of the waste. However, the implication in the minister's letter is that sites for landfill would have to be sought out. That seems contradictory.

I would like the matter to be referred to the Transport and the Environment Committee for further investigation. I am not sure on what basis we would do that, given that, as the minister has also mentioned, it is not obligatory to consult local people under current legislation. I wonder whether the Transport and the Environment Committee could review that, given the circumstances that have arisen in East Ayrshire.

The Convener: Part of the minister's response is that sites were not chosen in Dumfries and Galloway, which is a protected area, because there were no engineered landfill sites with suitable lining. Do you accept that?

Mr Ingram: Yes. There are no engineered landfill sites in Dumfries and Galloway and the Borders. However, presumably one could have been constructed. As I said, the SEPA statement indicates that there were 11 sites and that the Executive developed a new site at Birkshaw forest for the burial of animal carcasses. Birkshaw forest is in Dumfries and Galloway.

The Convener: However, the minister also claims that it would have been unrealistic to build a site within three months.

Mr Ingram: He claims that but, as I have indicated, he seems to be contradicted by SEPA's statement. The minister is indicating that it was unrealistic to find, survey and construct a site. However, the SEPA statement indicates that 11 sites were identified early on.

The Convener: Where were the 11 sites?

Mr Ingram: I think that some of them were in Dumfries and Galloway. I do not know where the others were. That is one of the reasons why we need to explore the issue further and try to get some more information.

The Convener: In the second-last paragraph of his letter, the minister is perhaps referring to the same 11 sites. A number of sites were identified because, as he wrote,

"At that time, we had no clear idea about how far the disease would spread".

Therefore, precautions were being taken. As I understand it, the Executive's argument is that the nearest site that SEPA regarded as capable of taking the ash was at Garlaff in East Ayrshire. The site was chosen on the principle that it was nearest.

12:00

Mr Ingram: I think that the nearest site was in fact at Carlisle.

The Convener: Is Carlisle nearer?

Mr Ingram: Yes. A political decision was taken to take the ash not to Carlisle, but to Garlaff, which is in an area that was uninfected. Carlisle may be in a different country, but it is in an area that was infected by foot-and-mouth disease.

The Convener: Would it cost more to send the ash to Carlisle?

Mr Ingram: It would possibly cost less. As has been indicated, a special effort was made to get rid of the ash by taking it to the Garlaff site prior to Christmas. Members will recall that, at the last meeting before Christmas, we asked for a moratorium. That seemed to inject a wee bit more urgency into the dumping of the ash. Extra lorries were laid on so that material went to the site before Christmas.

The Convener: Was the alternative site of Carlisle mentioned at the time?

Mr Ingram: The subject was raised within the Executive. Executive officials have indicated to me that the decision not to take the ash to Carlisle was a political one.

The Convener: On what basis?

Mr Ingram: Apparently, the argument was that, as the minister had indicated that he would not take any cattle infected with foot-and-mouth disease from England to be rendered in Scotland, he did not feel in a position to send the ash from Scotland to England. That was not a big issue, however, because Carlisle was in the middle of an infected area and was already taking a lot of the ash from the north of England.

Dr Ewing: I am among the MSPs who think that there should be a full public inquiry on foot-and-mouth. We are not getting that at the moment, but we keep being told about the other inquiries that are being carried out under various headings. There seems to be a question whether it is scientifically safe or wise to take the ash from an infected area and bury it in an uninfected area. That point should be put to the committees concerned. We keep being told how good the inquiries will be, although they are not public inquiries.

The Convener: We had a petition calling for a public inquiry. What has happened to it?

Steve Farrell (Clerk): It went to the Rural Development Committee.

The Convener: Is it still being considered?

Steve Farrell: I think that the committee has

decided not to take the petition any further.

Dr Ewing: My point is that inquiries are on-going. I think that three have been mentioned.

The Convener: Are they UK inquiries?

Rhoda Grant: There is also a Scottish inquiry.

Dr Ewing: Yes, there is a Scottish one. Should not that inquiry be informed that there is a question on which we would like reassurance?

The Convener: You mean about the fact that the infected area was Dumfries and Galloway and that Ayrshire was uninfected.

Dr Ewing: Yes. How was the decision made that the ash was safe? It does not seem very reasonable.

The Convener: The clerk informs me that the minister's argument is that there was no danger because the ash was controlled waste and because the animals were not infected but were on land that was contiguous to infected areas.

Dr Ewing: But we do not yet have the results of an inquiry to tell us about foot-and-mouth in detail. The question of the ash seems to be worth putting to the Scottish inquiry, wherever it is being conducted.

The Convener: My problem with referring the petition to the Transport and the Environment Committee is, first, that the dumping of the ash is finished. Secondly, committees, because of the burdens on them, are reluctant to take on petitions unless there are serious grounds for so doing. They may well say that the minister's reply is comprehensive and that there is no real point in taking things further.

Dr Ewing: That does not answer my question.

The Convener: It may be more worth while to raise such points with the minister and ask him to respond directly before we finally decide what to do with the petition.

Dr Ewing: Yes, we could do that.

Dorothy-Grace Elder: We could also consider Dr Ewing's suggestion of remitting some of the evidence to the three inquiries. The moment that the foot-and-mouth situation was said to be officially over, it fell out of the news. However, it is most definitely not over, nor is the BSE situation, in relation to the disposal of carcasses. The cow burner at Carntyne has been the subject of a previous petition; the ash from incinerated cattle is being taken to an unlined dump in the east end of Glasgow. If ash from suspected BSE cattle can be taken to an unlined dump in Glasgow, why cannot ash from foot-and-mouth animals be taken to a lesser kind of dump in Dumfries and Galloway? I do not trust much that I hear about disposal and I

would hold on a pair of tongs most of what I am told by SEPA and other authorities. The full truth will not come out until much later. However, I would like Adam Ingram to tell me whether a Glasgow dump is one of the 11.

Mr Ingram: The honest answer is that I do not know. I assumed that the 11 sites were in and around the area infected with foot-and-mouth disease.

The Convener: We can usefully write back to the minister asking for clarification on a number of points. We can ask the Executive whether any consideration was given to the fact that the waste was taken from an infected area to an uninfected area. We can ask why the Carlisle option was turned down. Was it on cost grounds? We can ask where the 11 sites are and whether it would be in order for the committee to refer the material that it has on this issue to any of the on-going inquiries into the foot-and-mouth catastrophe in Scotland. Finally, we can ask why there is no obligation on the Executive to consult local authorities in such circumstances. Are there any other points?

Mr Ingram: No, those are the key points.

Dorothy-Grace Elder: The Executive has to take responsibility. SEPA is a particularly secretive quango. Cattle at high risk of having BSE are being burned in the middle of Glasgow, surrounded by thousands of people. We have a terrible situation in Adam Ingram's area. Many things are wrong and at least some of the truth must be told to us openly.

The Convener: It has been pointed out to me that we do not need to ask the minister whether we can refer any of this material to the various inquiries, as we have that power. Perhaps we can ask for information on how we would refer it to the inquires. We will write to the minister then act on his replies. Is that agreed?

Members *indicated agreement.*

Charitable Organisations (Regulation) (PE428)

The Convener: Bristow Muldoon has arrived to talk to PE428, on Binny House, so we will deal with that next. An additional paper came in this morning from Sue Ryder Care, which has been circulated to committee members. I appreciate that members will not have had a chance to read it. It is a response to the letter that we sent to the chief executive of Sue Ryder Care, Iain Henderson. Members will also be aware of the recent tragic reports about a resident at Binny House who has asked to have her treatment discontinued in protest at the closure of the home.

Sue Ryder Care's response expresses the view that a national health service is in operation, that

tax-raising powers are in place to provide revenue for that service and that that should be the Parliament's starting point when investigating regulation. It also makes the point that Sue Ryder Care has provided a substantial building at Binny House, together with continuing maintenance and provision of equipment to enable the care of high-dependency residents. Mr Henderson contends that the health authority and Government agencies have a statutory duty to provide such facilities and that they should have been providing them.

Mr Henderson also asserts that it is for the health authority and Government agencies to provide all health care services and facilities, and that the Government is occasionally fortunate in having assistance in meeting its obligations to the electorate from the voluntary and not-for-profit sector. He states that, for many years, Sue Ryder Care has helped the health service in Lothian to meet its obligations to patients by providing treatment that is worth many millions of pounds.

He also says that Sue Ryder Care is making a multimillion pound investment in building a new care centre in Aberdeen, with realistic revenue funding from Grampian NHS Board and Government agencies. However, he states that dealings with Lothian NHS Board and associated agencies have not been harmonious and that the publicity and reporting of the proposed closure of Binny House have been consistently unbalanced. For example, he says that it was widely reported that the only remaining obstacle to a solution for Binny House was a revenue gap of £18,000, whereas the true figure was in excess of £250,000, year on year.

Mr Henderson also expresses the view that the reporting of Sue Ryder Care's negotiations with the health board has been distorted. He says that Lothian NHS Board was unable to offer sufficient funding to allow the charity to keep Binny House open, having made a final offer of £680 per week per patient, with no further room for manoeuvre. He therefore does not consider that Sue Ryder Care has walked away from negotiations, and states that he has written on two occasions to the chief executive of the health board about the provision of increased funding, which he believes constitutes participation in discussions. Mr Henderson concludes that he has always remained ready to listen to proposals about the Binny House situation, were any proposals to be tabled.

That is a brief summary of the response from Sue Ryder Care. We also have a response from the Deputy Minister for Health and Community Care, Hugh Henry, who reiterates his view that it is a matter for local negotiation between the principal commissioners and Sue Ryder Care and that it is not appropriate for him to intervene. However, he

provides details of steps that have been taken by local authorities and the health board to prevent the closure of the facility. He refers to the fact that the Minister for Health and Community Care, Malcolm Chisholm, wrote to the chief executive of Sue Ryder Care in November, urging the resumption of discussions with the commissioners of care to safeguard Binny House's future. Hugh Henry also restates the Executive's desire that a solution to the situation should be found through such discussions. Finally, Hugh Henry indicates that a full response that will cover the more general points in the petition will be provided in due course.

Bristow Muldoon (Livingston) (Lab): I am grateful to the committee for including the issue on its agenda and accommodating me in this way. I would like to respond briefly to some of the issues that are raised in the response from Sue Ryder Care, before I address what the petition asks for.

One of the points in the Sue Ryder Care letter with which I will not disagree with is the fact that Sue Ryder Care has provided an excellent level of care for many years at Binny House and other facilities. However, that is not the issue. In fact, part of the reason why people are fighting so hard to maintain the service is that they hold the service in such high regard. The problem is the way in which Sue Ryder Care is going about trying to close the service. It is trying to do it within a short time scale and has not been completely open and transparent about its financial dealings.

Mr Henderson's letter points out the fact that there is a dispute about the level of the funding gap. He refers to reports of a revenue gap of £18,000, which I mentioned at a previous meeting. Part of the problem that I and others have had in dealing with the issue is that there has been a lack of transparency from Sue Ryder Care about its true financial position. The figure of £18,000 was quoted to me by Lothian NHS Board.

I have put some questions to Sue Ryder Care to try to get to the bottom of its financial position. For example, its most recent published financial statement showed an increase in costs at Binny House of about 10 per cent. I am absolutely sure that the staff did not receive a wage increase of more than 10 per cent, nor am I aware of there being any substantial difference in the range of people who were being provided for in Binny House during that year. I have tried to get to the bottom of that increase.

At the previous meeting, I highlighted the fact that there have been increases in management costs and publicity costs for the organisation. I am concerned that some of the cost increases might not, in fact, be cost increases that are associated with the care of people at Binny House.

The letter mentions Lothian NHS Board's offer of £680 per week per patient. That is exactly the same as the offer that was made to Marchmont House, which is being kept open. We have not received an explanation for why that is a suitable figure for a broadly comparable range of patients who are being maintained in a location that is only 30 or 40 miles down the road from the home that is to be closed.

12:15

I do not want to comment on the position of the lady who has been mentioned in recent television coverage, because I have not spoken directly to her or to her family. However, I have encouraged Sue Ryder Care to negotiate. Last week, I spoke to the chief executives of Sue Ryder Care and Lothian NHS Board and I still hope that Sue Ryder Care will come back to the table to negotiate. Negotiating by letter from 400 miles away is not appropriate. It is better to get people around a table to find out where divisions lie between organisations and to try to close those divisions.

PE428 calls for a framework that would not allow organisations to close in such a short time scale. The proposal is to put in place a framework in which there would be a minimum period of consultation and in which notice would be required before a closure could take place. That would be appropriate. Many people who are in such residential care accommodation are highly dependent and many have become settled. It cannot be said that there will never be change in such care homes, but if there is to be change, there should be the opportunity to deal with potential funding problems. If, in the end, people are required to move to another location, they should be given a satisfactory period in which a suitable place can be found. The petition calls for that. The committee might agree that it is appropriate for the Health and Community Care Committee to consider whether we need a stronger statutory framework.

The Convener: I ask members to separate the two issues. Bristow Muldoon referred to the need for a regulatory framework for charitable organisations that provide health care. The committee will take that suggestion seriously, but we are still awaiting the final response from the minister on that issue.

There is the immediate problem of Binny House's impending closure. There is not a great deal that the Public Petitions Committee can do about that, other than to appeal to Sue Ryder Care and to Lothian NHS Board to come together for further negotiations around the table, as Bristow Muldoon said. Using the committee as a medium to negotiate with Lothian NHS Board is not the way forward—that would be slow, cumbersome

and would not achieve anything. Does any member want to ask Bristow Muldoon questions on Binny House's impending closure?

Dr Ewing: Is something wrong with the structure of the building? Is there any excuse for Sue Ryder Care to treat it differently from its other homes?

Bristow Muldoon: I am not aware of any excuse. In his letter, Mr Henderson mentioned the Care Standards Act 2000, but that is a bit of a red herring. I understand that that is UK legislation that applies to England and Wales and that Lothian NHS Board has advised Sue Ryder Care that the legislation does not apply to Binny House.

I am not aware of any substantial problem with Binny House. Over the years, there may need to be a change in how service is delivered there. It is an old building, but it is maintained to quite a high level. The standard of accommodation is high and I am not aware of a substantial structural problem that has driven the decision.

Dr Ewing: Regulation on a minimum period of consultation is an excellent idea. A big adjustment is involved in a person's going from their own home to a residential home. People settle down and to ask them to move again is absolutely cruel. That has happened in Nairn. Seeing those old people is heartbreaking.

Rhoda Grant: We also need to consider not so much the time span for consultation, but the time between a decision's being taken and its implementation. That is important because people might not consider alternative provision until a decision is made. It can take a long time to find suitable alternative provision.

The Convener: We will discuss that in the light of the Executive's response on the issue.

The difference between the yearly revenue gap figures—the Lothian NHS Board figure of £18,000 and Sue Ryder Care's figure of £250,000—is enormous. What is the basis for the £250,000-a-year claim by Sue Ryder Care?

Bristow Muldoon: There is disagreement between Sue Ryder Care and Lothian NHS Board over the true cost. There is also disagreement about the underlying costs of the organisation and some additional costs that have been incurred, which might be managed out. In particular, the degree to which agency nursing has been used recently is an issue, and the question is whether some costs could be managed out by employing staff directly instead of using agency staff. There are other costs that Sue Ryder Care regards as base costs, but which Lothian NHS Board believes can be managed out of the system without the quality of care being affected.

In addition to the base-cost offer that Lothian NHS Board made, it offered to underwrite 50 per

cent of any cost overrun during the period when some of the costs were being managed out of the system. An offer was made to contribute towards some of the additional costs on an interim basis.

The Convener: However, Sue Ryder Care claims that it has been running on a deficit of £250,000 a year.

Bristow Muldoon: The deficit that it cited previously was £500,000 a year.

The Convener: At Binny House?

Bristow Muldoon: Yes—at Binny House, prior to the opening of the negotiations. However, Lothian NHS Board advises that it was first made aware of the deficit at Binny House in August 2001.

Dorothy-Grace Elder: Excuse me, convener. I have an urgent advocacy case to attend, to which I referred earlier. I am sorry. Will the committee still be quorate if I leave?

The Convener: Yes. We need only three members.

There are two issues. The only thing that we can do in respect of the immediate problem is to write back to Sue Ryder Care and Lothian NHS Board, asking them to reopen negotiations because of the urgency of the situation at Binny House. There is not much else that the committee can do. We must then wait for the Executive's response on the further question of the regulatory framework for charitable organisations. Is that agreed?

Members indicated agreement.

John Farquhar Munro: I ask for clarification. The figure that is cited in the submission is £680 per patient per week. Surely, that figure is much higher than that which one would normally associate with such establishments. Is that figure the offer from Lothian NHS Board or is that a sum that was demanded by Sue Ryder Care?

Bristow Muldoon: That figure is the sum that has been offered by Lothian NHS Board and the local authorities concerned. Some patients have especially high levels of need and would be funded to a greater amount than that. However, the majority of patients would be funded to the tune of £680 a week. It is a high figure partly because of the high levels of dependency of the people in the home and partly because Lothian NHS Board feels that it is paying a high premium towards the service and has gone further than it normally would to try to maintain it.

The Convener: Thanks, Bristow.

Cancer Rates (East Lothian) (PE349)

The Convener: We will try to get through the remaining petitions as quickly as possible. The

first item is a response from the Health and Community Care Committee to PE349, on cancer cases in East Lothian. We asked various organisations, including the Executive, East Lothian Council, Lothian NHS Board, the local environmental action group and the operators of Torness power station for their responses to the petition. We considered the responses and noted the divergence between those of Lothian NHS Board and the Scottish Executive, on the one hand, and those from the campaigners, on the other hand, regarding the cause of higher cancer rates in Lothian.

We asked the Health and Community Care Committee whether it considered that there should be further investigation of the issues that PE349 raises. We did not formally refer the petition to that committee at that stage. At its meeting on 28 November, the Health and Community Care Committee agreed that it did not want to take action on the petition.

The East Lothian Environment Group submitted additional material—which was circulated to members—that intimated its disappointment at the Health and Community Care Committee's decision.

Given that the Health and Community Care Committee said that it does not want to investigate further the issues that the petition raises, we must now decide whether the Public Petitions Committee should take further action. I understand that the additional material is not new material, but a restatement of the material that was originally passed to the Health and Community Care Committee. That committee decided that it was not going to investigate the matter, so there is not a great deal that we can do about it. I do not see, therefore, any purpose in us taking the matter further. Is that agreed?

Members indicated agreement.

Compulsory Purchase Order Procedures (PE392)

The Convener: The next petition is PE392, from Mr Thomas Buchanan, on the question of the review of compulsory purchase orders. Members will remember that we agreed to write to the Executive to request its views. We have received its response, which provides details of how compulsory purchase orders operate in Scotland and makes clear the circumstances under which they can be used.

The Executive also addresses the issue of whether compulsory purchase provisions are compliant with the European convention on human rights. Following a review of existing planning legislation, the Executive concluded that the current system—which includes compulsory

purchase order provisions—is ECHR compliant without further amendments. The Executive also provided details of the objectives and findings of the compulsory purchase order research that was published in 2001, which found that the majority of such purchases are conducted by agreement and that there is broad acceptance that open-market value is the appropriate basis for compensation for land that is taken.

The Executive also proposes to consult on the matter in due course and to improve the system. Given that, it is suggested that we agree to ask the Executive to ensure that the petitioner is invited to participate in a consultation process and that no additional action should be taken by us, other than to send copies of the Executive response to the petitioner and to the Local Government Committee for their information. Is that agreed?

Members indicated agreement.

Myalgic Encephalomyelitis (PE398)

The Convener: The next petition is PE398, from Helen McDade, on the inadequacy of treatments and of support from social services for ME and chronic fatigue syndrome sufferers.

The English independent working group's report was published on Friday 11 January. Members were provided with a copy of the Department of Health news release that announced that fact. The report concludes that health care professionals should recognise chronic fatigue syndrome or ME as a chronic illness and that early recognition, with an authoritative and positive diagnosis is the key to improving outcomes. The report also states that all ME patients need appropriate clinical evaluation and follow-up, and it highlights the role of general practitioners in co-ordinating referral to specialist care with support and understanding for those who suffer from the condition.

The Health and Community Care Committee was keen to see the report before it commented on PE398. It is suggested that the Public Petitions Committee agree to refer the petition, with a copy of the Executive's response, to the Health and Community Care Committee so that it can consider the issues that are raised in the light of the report's conclusion. Is that agreed?

Members indicated agreement.

Dr Ewing: The English information is interesting and good.

The Convener: It is good, but even better was the suggestion in the Executive's response that strategic needs assessment might take place through a Scottish needs assessment programme for chronic fatigue syndrome and ME. I am sure that the Health and Community Care Committee will be interested in that.

Scottish Prison Service (Age Discrimination) (PE404)

The Convener: We move on to PE404, which is from Mr Walter Limond. Members will remember that Mr Limond, who is 58, is not being allowed to continue until the age of 60 in service as a prison officer. He petitioned us about that and we asked for responses from the Scottish Prison Service and the Prison Officers Association Scotland.

We have a response from the Scottish Prison Service that indicates that staff entitlement to reserve pension rights—referred to as doubling—was contingent on a quid pro quo arrangement whereby the retirement age for those staff was 55 and that Mr Limond falls into that category.

The Prison Officers Association agrees that that is the case but points out also that the quid pro quo about retiring at 55 was meant to be a temporary situation, following a staff structural review. At that time—1994-95—the Scottish Prison Service promised to review that decision, but it has not done so to date.

The suggestion is that in the light of the responses that we have received, in particular the information that the issue went all the way to the House of Lords, whose ruling found in favour of the Scottish Prison Service's policy, we should agree to take no further action on PE404. I feel that it would also perhaps be worth while to write back to the Scottish Prison Service to ask it to respond to the Prison Officers Association's point that the decision about retiring at 55 was meant to be reviewed periodically and to ask whether it has any intention of reviewing that decision.

Do members agree with that suggestion?

Members indicated agreement.

Dr Ewing: It seems odd to argue that rules about retiring and about pension rights should be subject to a quid pro quo. I have not heard previously of that being done.

The Convener: I do not think that the quid pro quo has legal standing. I think that it was a deal between the Scottish Prison Service and the Prison Officers Association.

Dr Ewing: The situation seems to me to be unjust—we should press the Scottish Prison Service to carry out a review.

The Convener: I am reminded that that deal was one of the steps that were taken, following the staffing review, to avoid compulsory redundancies.

Dr Ewing: I see.

The Convener: It was a deal that was done.

Dr Ewing: Did everyone concerned agree? Is it the Scottish Prison Service's argument that Mr

Limond agreed to that deal?

The Convener: The deal was agreed at the time, but it was agreed also that it would be only a temporary measure that would be reviewed. However, that deal has not been reviewed.

Dr Ewing: That is a weakness.

12:30

The Convener: We can clarify the position with the Scottish Prison Service.

Dr Ewing: Indeed.

Health Education (Guidelines) (PE427)

The Convener: The final petition is PE427, from the Rev Iain Murdoch, on the subject of sex and drugs education resources in Scottish schools. Members will remember that the Rev Iain Murdoch was at the most recent meeting of the Public Petitions Committee. He was concerned about some of the questioning at that meeting about whether the petition was backed officially by the Church of Scotland, the Roman Catholic Church and other churches in Scotland.

He has written back and made it clear that PE427 is a grass-roots petition that is not officially endorsed by any of the church organisations in Scotland. We are asked to note that additional correspondence and to take no further action, other than to confirm to the petitioners that the committee noted the points that they raised and that the Education, Culture and Sport Committee was sent a copy of the petitioners' letter. Is that agreed?

Members indicated agreement.

Dr Ewing: I have sympathy for the Rev Iain Murdoch's viewpoint.

The Convener: It is not for us to decide—thank God.

Okay. That is everything. There is no other competent business. I thank you all for your endurance this morning. It has been a long committee meeting, but we got through a lot of work. Thank you very much for your co-operation.

Meeting closed at 12:31.

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