

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 7 May 2002  
*(Morning)*

Session 1

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## PUBLIC PETITIONS COMMITTEE

### 8<sup>th</sup> Meeting 2002, Session 1

#### CONVENER

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

#### DEPUTY CONVENER

\*Helen Eadie (Dunfermline East) (Lab)

#### COMMITTEE MEMBERS

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

\*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 :

Alex Anderson (Scottish Bus Group Pensioners Action Committee)

Dennis Canavan (Falkirk West)

Tom Davison (Dunfermline Press)

Jim Donnelly (Scottish Bus Group Pensioners Action Committee)

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

Marilyn Henderson (Avich and Kilchrenan Community Council)

Chic Hulston (Scottish Bus Group Pensioners Action Committee)

Dr Sylvia Jackson (Stirling) (Lab)

Elaine McNeil

Letitia Murphy (Fife Health Service Action Group)

Derek Scott (Scottish Bus Group Pensioners Action Committee)

Tommy Sheridan (Glasgow) (SSP)

Duncan Shields (Live Beat Dads UK Scotland)

Nicola Sturgeon (Glasgow) (SNP)

#### CLERK TO THE COMMITTEE

Steve Farrell

#### ASSISTANT CLERK

Joanne Clinton

#### LOCATION

Committee Room 2



## Scottish Parliament

### Public Petitions Committee

*Tuesday 7 May 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 10:02*]

**The Convener (Mr John McAllion):** I welcome everyone to the eighth meeting this year of the Public Petitions Committee. This is a landmark meeting in that we will consider our 500<sup>th</sup> petition. The fact that we have received so many petitions so far is a good milestone for the committee and for the public petitioning process.

We have received apologies from Winnie Ewing, who is fogbound at Inverness airport. We have six different sets of speakers this morning, so it will be helpful for getting through our business if members keep their questions brief and to the point. I also ask the petitioners to keep their answers brief and to the point.

### New Petitions

#### Justice 1 Committee (Membership) (PE483)

**The Convener:** The first petition, which is from Duncan Shields, calls on the Scottish Parliament to review the membership of the Justice 1 Committee. The usual procedure is that the petitioner has three minutes in which to address the committee; we then take questions from committee members.

**Duncan Shields (Live Beat Dads UK Scotland):** Thank you for allowing me, on behalf of Live Beat Dads UK Scotland, and the international men's network in Scotland, to speak to the petition. We believe that the petition required considerable evidence, and that has been sent to all MSPs over the past few weeks. That includes supporting evidence on the matter from three eminent professors. We have clearly set out the reasons why the Scottish Executive must reconsider the present membership of the Justice 1 Committee.

When the inquiry into regulation of the legal profession was called, all those who had felt the full weight of persecution and injustice in the Scottish courts had high hopes that the inquiry would take steps to eradicate the problems that were documented and published in the submissions. However, that is not what has happened. Many who provided submissions believe that there has been a substantial

degradation of what was promised on 19 June 2001 in the original remit of the inquiry. We believe that that degradation is because of the influence of Law Society of Scotland members on the investigation of human rights abuses by all parties within the legal process, including lawyers. It does nothing to assure people that the inquiry is impartial when at least four of the seven committee members who are involved in the inquiry have been members of, or are connected to members of, the Law Society.

I quote from a submission to the inquiry that was provided by a group:

"A MAJOR INQUIRY is a very positive first step to ensure that (a) no stone is left unturned ... (b) there are no secret meetings ... (c) there is no conflict of interest by Parliamentary members"

who are also

"members of the Legal Profession ... associated with the Legal fraternity, or ... related to any member of the Legal Profession."

That would have given the necessary balance for proper and unbiased research into the subject to be covered by such a major inquiry but, so far, the inquiry has failed on all three counts. Stones are left unturned because of secret hearings, failure to publish all the evidence and failure to name all those who gave evidence, despite a commitment from the Justice 1 Committee on 25 October 2001 to an open and accessible public forum.

There have been many secret meetings from which evidence has not been made available. Such meetings breach the provisions in the new Freedom of Information (Scotland) Bill that has just been passed. Four of the seven members who are involved in the inquiry have connections with the Law Society. Despite the fact that, since our petition was submitted, that number has fallen from four to three, the inquiry still fails on the third assurance of unbiased research.

In the light of the substantial evidence that we have submitted, we ask the Scottish Executive urgently to take the necessary steps to assure all those who provided evidence of injustice and persecution at the hands of an unjust legal system that the inquiry will have that impartiality. We also ask for the issue of a children's commissioner to be addressed urgently, and for consideration to be given to the establishment of an independent citizens' commissioner to replace the Scottish legal services ombudsman, who has no power to influence the Law Society. The duties of a citizens' commissioner would include investigating the legal system, recommending remedial actions for victims of abuse in the legal system and taking measures to prevent further abuse of citizens by the legal system.

Finally, we ask for due consideration to be given

to an investigation into the circumstances of all suicide victims who, at the time of death, might have been party to litigation. That request forms part of my submission to the inquiry into the regulation of the legal profession. If necessary, inquests should be instigated, because they will show that, for those who do not survive the psychological pressures that come from extended and discriminatory litigation in the Scottish judicial system, persecution and court decisions play a substantial role.

I am sorry for rushing through my submission.

**The Convener:** That is fine. Thank you. I open up the meeting to questions from committee members.

**Phil Gallie (South of Scotland) (Con):** Convener, may I check that we are discussing PE483 only, and that we will discuss PE492, which was also submitted by Duncan Shields, later?

**The Convener:** We are discussing only PE483 at this stage.

**Phil Gallie:** Mr Shields, one of your aims is to change the make-up of the Justice 1 Committee. Through natural processes, or whatever, the membership of that committee has changed considerably. The weight of legal representation and of members who have legal links on that committee has been lessened. Are you happier?

**Duncan Shields:** No, not at all. We are concerned that, on all three counts that we mention in our submission, nothing has assured those who provided submissions that they have been heard properly. We believe that that is because of the heavy influence of Law Society members on the Justice 1 Committee.

**Phil Gallie:** Do you accept that, at present, the Justice 1 Committee has not yet prepared its report on self-regulation in the legal system? Would not it be wiser to wait for the outcome of that report?

**Duncan Shields:** On 29 April, I received a letter from the Justice 1 Committee that shows quite clearly that the original remit, dated 19 June 2001, was changed on 25 October and on 5 February 2002. The committee stated:

"At its meeting on 5 February 2002, the Committee further refined the terms of reference by agreeing not to consider the judiciary as part of its inquiry".

Those changes were made when the Justice 1 Committee was top heavy with Law Society members—four out of seven of its members. We consider that those changes amount to a substantial degradation of the original remit. We are seriously concerned about the human rights abuses that go on in the Scottish judicial system.

**The Convener:** You refer to the failure of the committee to disclose all the evidence that was submitted to the inquiry. On what do you base that statement?

**Duncan Shields:** Some of the previous hearings have been held in private, so a person who submits information to the inquiry is not fully aware of what has been discussed. When Christine Grahame outlined the remit of the inquiry on 25 October 2001, she stated clearly:

"Whilst several members of this Committee have a legal background, including myself, we place on record that this parliamentary inquiry will be conducted with the utmost of integrity and in an open, accessible public forum."

Unfortunately, we do not see that open, accessible public forum when so many meetings are held in private. We have no knowledge of what is being discussed with the legal fraternity on those matters, so we cannot raise opposing arguments. We see that as a major failing in the inquiry.

**The Convener:** Do you accept that it is normal for parliamentary committees to meet in private when they discuss draft reports? With the exception of this committee, which never meets in private, they all do it.

**Duncan Shields:** I believe that Sir David Steel has raised the matter previously. He has expressed concern that far more private meetings are being held in Parliament than was suggested by the openness that was promised when the Parliament was formed.

**The Convener:** Do you accept that it is not unusual for parliamentary committees to discuss draft reports in private and that the Justice 1 Committee is not acting differently from other committees?

**Duncan Shields:** That might be the case, but the Justice 1 Committee stated that the inquiry would be

"an open, accessible public forum."

That statement does not cover private hearings.

**The Convener:** There is no suggestion that evidence is being taken in private from legal representatives.

**Duncan Shields:** We have no knowledge of what has been discussed. We have no access to the hearings; therefore we cannot put forward an alternative argument to what has been discussed.

**The Convener:** It is normal for the private part of a committee meeting in Parliament to involve only the members of the committee and no one else.

**Duncan Shields:** That might be the case, but the inquiry was supposed to be public. People who

have made submissions see it as being a private inquiry. It is the first major inquiry into the legal profession.

**The Convener:** All the evidence that is submitted to the inquiry will be published.

**Duncan Shields:** Unfortunately, while discussions are on-going, alternative arguments to what has been said cannot be put until the committee reaches its conclusions, because the discussions have not been published.

**Phil Gallie:** The convener suggested that the Justice 1 Committee meets in private only when it is putting together a final report. Have you any evidence of other occasions on which it had private discussions?

**Duncan Shields:** From what has been published so far, it seems that there has been a substantial number of private hearings. That is a major concern. I cannot say what has been discussed at those hearings, because we have no knowledge of them—nothing has been published. We hoped that the discussions would be put on the internet, but we have not seen them yet. It is a bit late in the day for information to be published as findings. It should have been done earlier so that issues could be raised and addressed before the committee reaches its final conclusions. The manner in which the inquiry has been carried out might breach human rights. Under the Human Rights Act 1998, the First Minister and the Scottish Executive are responsible for human rights. How is it possible to argue a case for human rights when we are not fully aware of what is being discussed in such hearings?

**The Convener:** Thank you very much. We will now discuss the suggested action in relation to your petition. You are free to stay to listen to that discussion; it will not be held in private.

Technically, the committee could refer the matter to the Parliamentary Bureau for further consideration, on the basis that appointments to committees are a matter for the bureau. However, the bureau cannot remove any member from a committee. A member shall serve on a committee unless he or she resigns, is removed from the committee on a motion of the committee, or ceases to be a member of the Parliament. It is highly unlikely that the bureau would wish to take any action on the basis of the personal views of one member of the public regarding the performance or actions of a committee on one specific issue. It is suggested that, as a courtesy, we should agree to invite the convener of the Justice 1 Committee to respond to the issues that Mr Shields has raised this morning.

We could also ask the convener of that committee to respond to the petitioner's concern that information relating to the inquiry into the

regulation of the legal profession has not been made public.

10:15

**Dorothy-Grace Elder (Glasgow) (Ind):** Could we perhaps also ask the Justice 1 Committee convener to spell out whether there were any other private discussions with representatives of the legal profession at any level either inside or outside the committee?

**The Convener:** We could ask her to explain the nature of the private meetings that were held. We could ask her to explain who was present and what kind of discussions were held.

**Dorothy-Grace Elder:** As the convener rightly said, all committees discuss reports in private so that there can be consensus and agreement, but there might be an issue here if the Justice 1 Committee has gone to the Faculty of Advocates and talked privately to people there about their views.

**The Convener:** We will write to the convener of the Justice 1 Committee and ask her to make clear whether there has been any outside participation in any of the private meetings.

Do members agree with the suggested course of action?

**Members indicated agreement.**

**The Convener:** We will consider the petition further in the context of the convener's reply. I thank Mr Shields for his petition.

### **Triple Assessment Breast Examinations (PE491)**

**The Convener:** PE491, which is from Elaine McNeil, calls on the Parliament to introduce legislation to make triple assessment procedures obligatory for all women who present themselves for breast examinations at the relevant examination clinics throughout the national health service in Scotland.

Elaine McNeil is present, as are Nicola Sturgeon and Tommy Sheridan, to support the petition. We will follow the usual rules. The petitioner has three minutes to address the committee, after which we will ask questions.

**Elaine McNeil:** Good morning. I thank the committee for taking time to consider the petition.

It is with great sadness that I present this petition to the Public Petitions Committee today. I am one of many women who have been misdiagnosed. I am fortunate in that I am living, but many have not been so fortunate—sadly, many have died as a result of misdiagnosis. The petition calls for a public inquiry into the practice of

breast cancer diagnosis and asks the Scottish Parliament to convert current guidelines to law.

We have all heard the Scottish Executive state that women are getting better treatment for cancer. Perhaps some women are, but most women in Scotland face a wait of between five and eight weeks just to see a consultant. In March this year, the Clinical Standards Board for Scotland published a report that highlighted the waiting times for surgery and treatment. Those times are unacceptable.

The current guidelines suggest that women should be given triple assessments at one-stop clinics. The Scottish Executive supports that but—please believe me—it is not happening. Triple assessments must be made compulsory. Not only are women being misdiagnosed with breast cancer and dying, but healthy breasts are being removed.

The standard that has been set is that 80 per cent of women should be diagnosed within two weeks. However, that means that 20 per cent, or 700 a year, are not being diagnosed. That is clearly unacceptable and must be stopped. After so many headlines and promises from the Scottish Executive, and after the Clinical Standards Board's report on cancer care, action must begin now for all health trusts to meet the standards that have been set down.

The committee has the power to do something about it. The Chancellor of the Exchequer got things right in allocating so much money to the NHS. Let us use that money where it is most needed by giving doctors adequate resources to do their job. I am sure that members will all agree that it is an appalling state of affairs that a hospital as large as Glasgow's Southern general should have an ultrasound machine available for the diagnosis of breast cancer at only two clinics a month.

Women need to be sure that waiting times for diagnoses are reduced to a maximum of two weeks. Triple assessment should be standard. Guidelines should be changed to law and adequate resources should be put into hospitals with immediate effect. We believe that the only way that that will come about is if the committee supports a public inquiry. We do not want any more women to die unnecessarily because of the length of time that they have had to wait to be diagnosed. I am sure that if any member of your family were to be diagnosed, you would want all those changes to be put in place for them.

We cannot help the women who have already died, but the committee has the power to do something now. Please do not let those deaths be in vain. Thank you.

**The Convener:** Before we open up to questions

from committee members, I will let Nicola Sturgeon and Tommy Sheridan comment briefly in support of the petition.

**Nicola Sturgeon (Glasgow) (SNP):** Elaine McNeil has been through a traumatic experience as a result of misdiagnosis. She feels that the chances are that she would not have been misdiagnosed if the Clinical Standards Board's recommendation for triple assessments had been carried out.

For me, the key issue is the relationship between recommendations and guidelines in trusts and hospitals and what happens in practice. In this case, as in many others, there appears to be a gulf between theory and practice. The Clinical Standards Board for Scotland recommends one approach, but many hospitals follow another. That opens up a genuine issue, which is humanised by Elaine McNeil and many other women. The matter is extremely important and merits further investigation by a parliamentary committee.

**Tommy Sheridan (Glasgow) (SSP):** I pay tribute to Elaine McNeil. She has been on a long journey. I think that we first discussed the matter about three years ago. Since then, she has campaigned tirelessly for changes in the health service—not for herself, but for other women. That makes what she has done so courageous.

I have had correspondence with the Minister for Health and Community Care and that correspondence has signified a change. Initially, the minister ruled out mandatory triple assessments on the basis that he did not want to interfere with what trusts throughout Scotland do. However, recent correspondence has been more encouraging: he has stated clearly that triple assessments should be seen as good practice throughout the health service. I hope that the Public Petitions Committee will join Elaine McNeil in arguing that such good practice is to be welcomed, but that there should be mandatory triple assessment to prevent women from being misdiagnosed in breast cancer examinations. I hope that the Public Petitions Committee will strongly support the petition and send it to the Health and Community Care Committee.

**Rhoda Grant (Highlands and Islands) (Lab):** Currently, what standard screening treatment—as opposed to triple assessment—takes place?

**Elaine McNeil:** The guidelines say that there should be a triple assessment—that is the only way of detecting breast lumps. The assessment entails a physical examination. Then, there can be a mammogram or an ultrasound, which will tell whether a lump is solid or liquid. It takes only a couple of minutes to put in a needle, take out some cells and put them under a slide to find out whether they are cancer cells. I went through that



procedure at a second hospital after I had been misdiagnosed and was, within an hour, diagnosed as having cancer. At the first hospital, I was given a hand examination only and was told that I was fine. I was told to leave the lump. I am not the only person to whom that has happened—I have many other people's names. Other people have been diagnosed as having cancer and told a week later that they do not have it. It depends on whether hospitals follow the guidelines—I do not know why they do not do so.

I feel strongly that anybody who has a lump should go to hospital and be diagnosed as quickly as possible. More important, the diagnosis should be accurate. We are not talking about measles, chickenpox or some curable illness; breast cancer is a terrible thing. People should get things right from day one. It is bad enough that people must wait 12 weeks for radiotherapy and that cancer is given a chance to spread. Cancer services are under pressure, but people should get things right from the start. There should be proper diagnosis and patients should be put on the road to recovery. If that does not happen, women must walk around with cancer growing in their bodies. They should have the sense to return to hospital. My aunt did not; she returned for a second opinion six months later—which was too late—and died early. Many women have been affected. I do not know whether it is a question of resources. If it is not, I do not know why clinicians make such decisions if they have tools and resources.

**Rhoda Grant:** The triple assessment seems to be a simple and basic procedure.

**Elaine McNeil:** It is—it takes less than an hour.

**Rhoda Grant:** I cannot understand how someone could be diagnosed as having cancer without having gone through that assessment—that seems to be strange.

**Elaine McNeil:** For the life of me, I cannot understand it either. I went to two hospitals under the same trust and they treated me very differently. The way in which some hospitals are run is unbelievable.

**Dorothy-Grace Elder:** I thank you for raising this important issue. You said that your aunt died of breast cancer.

**Elaine McNeil:** She was misdiagnosed. She went for an examination and was told that she was fine and that nothing was wrong with her. She was not given a triple assessment. The lump got bigger and she went for a second opinion six months later. She had cancer, which spread, and she died in her forties.

**Dorothy-Grace Elder:** You said that you went to a second hospital. What was the time gap between your diagnoses? I presume that the first

diagnosis cleared you.

**Elaine McNeil:** I was dismissed from the first hospital and went to my general practitioner right away because I knew that things were not right. I had to wait four weeks to get a second diagnosis, which took an hour.

**Dorothy-Grace Elder:** Four weeks? Despite your family history?

**Elaine McNeil:** Yes.

**Dorothy-Grace Elder:** I have always found such things very hard to understand, because getting women in for the mammogram—which many of us have had—is in some ways the most difficult part. The rest of the process is much simpler.

**Elaine McNeil:** If you are over 55, you will get a mammogram; however, if like me you are 39, they are not interested in giving you a mammogram.

**The Convener:** The guidelines of the Clinical Standards Board for Scotland recommend that there should be triple assessment and the minister says that good practice should include triple assessment, yet you say that different hospitals within the same trust operate different policies.

**Elaine McNeil:** Yes.

**The Convener:** So, it is not that trust policy is not to do triple assessments, but it is haphazard who does and does not do them.

**Elaine McNeil:** I fought long and hard with the first hospital and I had an article published in a newspaper. The hospital made a statement that said, "After what has happened to Elaine McNeil, we will now follow the guidelines." The truth is that the hospital should have followed the guidelines in the first place.

**The Convener:** Was no reason given for the fact that the hospital had not followed the guidelines?

**Elaine McNeil:** None—and my hospital is not a one-off. I know of a few similar cases in other hospitals in Scotland.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** The initial breast screening takes X amount of time. If a triple assessment was agreed to, how much does that extend the time of the examination?

**Elaine McNeil:** It does not extend it at all. The whole process takes less than an hour—being examined, being sent for a mammogram, and coming back to get some cells removed. That is the proper way to run breast clinics and that is the way they should be run nowadays.

**The Convener:** Which trust was it?

**Elaine McNeil:** I went to the Southern general hospital first and the Victoria infirmary second. They are both in south Glasgow.

**The Convener:** Thank you very much for your evidence this morning. You are welcome to stay to listen to our discussion of what to do with your petition.

The suggestion is that we should write to the Executive to seek its formal comments on the issues that are raised by the petition. We should perhaps ask for specific views on the practicalities of providing triple assessment procedures to all women who are screened for breast cancer, and also ask whether there can be medical reasons for its not being appropriate to do so. I imagine that we will want to refer the petition to the Health and Community Care Committee. Should we do that now or wait until we have a response from the Executive?

**Rhoda Grant:** We should copy the petition to the Health and Community Care Committee so that, if its work takes it into that area, it will be aware of the contents of the petition.

**The Convener:** If we refer the petition to the Health and Community Care Committee, it could be some weeks before it would get on to that committee's agenda. In the meantime, we should write to the Executive, but we will copy the petition to the Health and Community Care Committee for its information, together with an indication that further correspondence will follow.

**John Farquhar Munro:** Can the Public Petitions Committee make a recommendation to the Health and Community Care Committee?

**The Convener:** Yes—but it might be as well to wait until we have seen the Executive's response.

**Dorothy-Grace Elder:** We know all about the shortage of radiographers for screening, which is the major part of the examination. However, the rest of the examination process is much simpler and does not necessarily involve radiographers.

**The Convener:** That is why it will be important to get a response from the Executive. We have to know why the Executive is not making the triple assessment mandatory. I cannot understand why it is not mandatory. We should ask the minister to explain his position.

Do members agree with the suggestions that have been made?

**Members indicated agreement.**

**The Convener:** I thank Elaine McNeil for attending. We will keep you informed of the progress with the response from the Executive. I also thank Nicola Sturgeon and Tommy Sheridan for being here.

## Wind Farms (North Argyll) (PE493)

**The Convener:** Our third petition is from Marilyn Henderson on behalf of the Avich and Kilchrenan community council. It calls on the Parliament to take the necessary steps to stop the installation of further wind farms in north Argyll. Ms Henderson is here to speak on behalf of the community council. The normal rules apply. The witness will have three minutes to make a presentation before I open up the meeting for questions.

**Marilyn Henderson (Avich and Kilchrenan Community Council):** Good morning. I am the secretary of the Avich and Kilchrenan community council. At the moment, north Argyll has one wind farm, Beinn Ghlas, which is near Taynuilt and has 14 turbines. At the planning stage, the local people raised 40 objections to the project.

Powergen Renewables now plans to build a 24-turbine wind farm at An Suidhe, which will be near the shores of Loch Awe and will be extremely conspicuous. Argyll and Bute Council passed the planning application, even though its planning department recommended that Powergen's proposals should be refused. Avich and Kilchrenan community council strongly objected to the wind farm, and the proposal is now with the Scottish Executive.

10:30

Not to be outdone, along comes Scottish Power, which is proposing to build a 38-turbine above the shores of Loch Avich and Loch Awe. The wind farm, which will be known as Inverliever, will be the most conspicuous of all.

The Scottish Executive is considering the new Argyll and Bute structure plan. Before the final plan was drawn up, Avich and Kilchrenan community council strongly objected to Loch Awe being a preferred area for wind farms. In response, the council said:

"This objection is noted. The area to the north of Loch Awe continues to be included as a 'preferred area' for Wind Farms, having regard to the planning authorities' judgement that there is capacity to successfully absorb such development in this area as compared to other areas."

I should point out that the planning department's judgment was completely ignored in the case of An Suidhe. The 1995 Strathclyde structure plan says:

"A threshold distance of 3 kilometres has been applied as an exclusion distance from settlements."

However, Inverliever is closer than that to settlements.

It has been widely noted in the community that, although the welfare of birds is rightly considered during the planning stages, the loss of livelihood and amenities for people is glossed over. I should

also add that we are dismayed that the power companies are allowed a public inquiry, while the people who have to live with wind farms are not.

Needless to say, anyone who has visited Loch Awe and Loch Avich would agree that the lochs and environs offer outstanding natural beauty that is almost unparalleled anywhere in Scotland. Tourists are attracted by the serenity of the area, where they go boating, fishing, walking, horse riding and driving. Of course some of the more adventurous like to climb Ben Cruachan, from where they will see these monstrosities for miles. According to Scottish Power's scoping report, the Inverliever wind farm will be seen from Loch Avich, Ardchonell, Portinnisherrich, Ford, Dalavich, Ardforn, Kilmartin, Auchindrain, Luing, Ben Lui, Pass of Brander, Ben Arthur and Mull.

As this part of the country relies very much on tourism, we fear that such business will be adversely affected and leave landlords and hoteliers severely drained. I should also add that Dalavich has 43 holiday cabins for people who like to get away from it all.

Although we appreciate that the Government is looking more towards green energy, surely blotting the landscape in the heart of the remote rural areas of Argyll with these inefficient monstrosities will be detrimental to the community and tourists alike. As responsible people, we have an obligation to protect such wonderful landscapes so that everyone can enjoy them.

To the claim that this is nimbyism, I would say that it is our job as representatives of the local community to protect our backyard and to consider carefully what other people want to put in it. As a result, I ask the committee to consider on our behalf the argument that no more wind farms be constructed in north Argyll.

**The Convener:** I should say for the record that most committee members have received an e-mail from two locals in the area who claim to support the wind farm's construction. They also state that as the community council has not canvassed the opinion of the entire community, it cannot claim to speak for the entire community. There seems to be a modicum of support for the wind farm.

I open up the discussion to members' questions.

**Phil Gallie:** Marilyn Henderson has, to a degree, made a case for the impact on the tourist industry—forgetting about the impact on the local community and on people other than visitors to the area. However, she will agree that the hydroelectric scheme at Ben Cruachan and Loch Awe actually improved tourism. Why will wind farms affect tourism adversely?

**Marilyn Henderson:** A member of the wind farm committee that has been formed carried out a

survey among holidaymakers who come to two of his holiday cottages, 80 per cent of whom said that they would not come to that part of Argyll if there were wind farms. Such holidaymakers go hillwalking and so on, but 80 per cent of them will not come in future.

**Phil Gallie:** That is people who come and live locally. The area is renowned for people passing through on the way to Oban or going up to Fort William. Do you think that such people might decide to take other routes?

**Marilyn Henderson:** Yes, the wind farm would definitely deter people. The route around Loch Avich is very scenic. One ward in Argyll will have three wind farms. Tourists do not come to Argyll for that.

**John Farquhar Munro:** If the application is screened and monitored by the local planning authority, safeguards will be built in to ensure that the wind farm is not intrusive in the community.

**Marilyn Henderson:** That is the thing. The planning department recommended the site at An Suidhe for refusal, but Argyll and Bute Council did not listen and overruled the recommendation.

**Rhoda Grant:** I have a supplementary question. The members of Argyll and Bute Council are elected representatives of the people. If there were a feeling among their constituents, surely they would have rejected the wind farm rather than supporting it.

**Marilyn Henderson:** One would think that Argyll and Bute Council would listen to its planning department.

**Rhoda Grant:** Yes, but it would also listen to constituents who lobbied on the subject. Does that suggest that the constituents support the wind farms?

**Marilyn Henderson:** The majority of the councillors who approved the wind farm come from Campbeltown, where there will be a Vestas Wind Systems turbine factory. The councillors voted for the proposals, thinking that there will be work for locals in Campbeltown, but not thinking about the scenery.

**Phil Gallie:** At present, no wind generators are built in the United Kingdom. Do you have any idea when the Campbeltown facility will come online?

**Marilyn Henderson:** There was an article about the Vestas Wind Systems plant in *The Herald* this morning—I suppose that members have not had time to read it. I do not know when it will open. To begin with, it was said that the plant would employ 600 people, but the figure that was given in today's article was 102.

**Phil Gallie:** If the wind farm were to get the go-ahead, would the company not be obliged to buy

wind turbines from other countries because the facility does not exist in the UK?

**Marilyn Henderson:** I am not sure of the technicalities. I am here only to represent the people who do not want the wind farm.

**The Convener:** Has the local council approved the planning application?

**Marilyn Henderson:** The application for the wind farm at Inverliever has not yet been lodged with the local council.

**The Convener:** Is that the application that you seek to stop?

**Marilyn Henderson:** Yes.

**The Convener:** Why cannot the decision be left for the local council?

**Marilyn Henderson:** The planning application for the wind farm at Inverliever has not yet been lodged. We will have to wait and see.

**The Convener:** The Scottish Executive carried out research on public attitudes towards wind farms, which showed that the most positive attitude was found among those who live closest to the sites.

**Marilyn Henderson:** I have not come across that. We had a meeting with Powergen. Out of about 50 people who were at the meeting, only one person stood up and spoke for the wind farms. The rest were against.

Someone said that I did not go round the householders. It is very difficult to canvass round remote rural areas.

**The Convener:** I thank you for your contribution. You are free to sit and listen to the discussion about what should happen to the petition.

It is evident that the Executive is committed to its policy on renewable energy and the installation of wind farms. Similarly, Argyll and Bute Council, in its approach to wind farms, also appears to recognise the benefits to the environment and economy.

It is suggested that the committee should agree to write to the Executive and the council, seeking their formal comments on the issues raised in the petition but that we make clear that it would not be appropriate for the committee or the Parliament to interfere with or seek to intervene in any planning application.

**Phil Gallie:** That is fine. I will not interfere in the planning application. However, a general principle is involved and was raised in the case that the petitioner put, that is, the effect on tourism. I would like the opinion of VisitScotland, for example, on that aspect. That would mean that the economic aspect has been examined as well as the impact

on the local community. The matter is of national interest rather than just local interest.

**The Convener:** Are you requesting that, as well as asking the Executive for its position on wind farms in general and on the petition in particular, we ask whether any assessment has been made of the impact on tourism?

**Phil Gallie:** I would like something to go to VisitScotland. I think that Scottish Natural Heritage and Historic Scotland have registered protests against the development, but VisitScotland has not commented and I want to hear its view.

**The Convener:** Do we agree that, as well as writing to the Executive and Argyll and Bute Council, we will write to VisitScotland and ask for its comments?

**Members indicated agreement.**

**The Convener:** As soon as any progress is made on the petition, we will inform the petitioner of what is happening.

### **Fife NHS Board (Right for Fife Business Plan) (PE498 and PE499)**

**The Convener:** We are taking two petitions in tandem now: petition PE499 by Mr Tom Davison and petition PE498 by Ms Letitia Murphy. The petitions concern the large number of people in Fife who are opposed to Fife NHS Board's proposal to centralise specialised and high-dependency units at the Victoria hospital.

Mr Davison will make a brief comment on his petition first, then we will hear from Ms Murphy.

**Tom Davison (Dunfermline Press):** I am editor of the *Dunfermline Press and West of Fife Advertiser* and am here to represent the views of the people of Dunfermline and west Fife on the issue. I do not intend to talk about the rights and wrongs of the proposal to downgrade the Queen Margaret hospital. I will leave that to Ms Murphy. Instead, I will take the opportunity to impress on the committee the strength of feeling in west Fife on the issue.

The *Dunfermline Press and West of Fife Advertiser* launched the hands-off petition in January, not because the newspaper had a particular view on the downgrading proposals that are contained in Fife NHS Board's "Right for Fife" paper—although it does—but because it was clear from the scores of letters that we had received that the people of west Fife were outraged at the plans and felt that they were effectively disfranchised on the issue. We wanted to give our readers a voice and they shouted loud and clear.

Fife NHS Board organised a public consultation exercise into its "Right for Fife" plans, but many in west Fife regarded that exercise to be as flawed

as the previous one on much the same issues two years ago. That ended in farce and in the departure of Fife NHS Board's chairman.

Within a month of its launch, the hands-off petition had attracted 36,000 signatures. I believe that, ultimately, we amassed just under 39,000 signatures. The petition was submitted to Fife NHS Board, which nevertheless decided on 26 March to push ahead with the downgrading plans.

I have been a journalist for 30 years and have edited weekly papers in various parts of Scotland. I have never known a subject to so animate and unite a local community. The whole of west Fife is against the plans.

**The Convener:** Thank you. Letitia Murphy will speak to petition PE489, which is wider than petition PE499.

**Letitia Murphy (Fife Health Service Action Group):** I am the chairman of the NHS action group. I worked in the NHS in an acute setting for 38 years. I thank you for giving us the opportunity to speak to the petitions. The people of west Fife have adequately expressed their opposition to the preferred option of the national health service. In total, if we count the hands-off campaign in the press, 67,000 signatures have been collected since the preferred option was announced.

10:45

Three hospitals in west Fife were closed in 1993 and Queen Margaret hospital was intended to replace them. When opened, it was said to be the flagship of the future and to be so high-tech that it was like something out of "Star Trek". The hospital cost £53 million to build and has every amenity. It has eight theatres, in two of which heart transplants could be performed, because they are air-filtered. The hospital has 10 intensive care beds, high-dependency beds and a coronary care unit. All the wards are modern and have en suite facilities, apart from the renal unit, which is a day unit.

The hospital is not situated in a built-up area; it has plenty of surrounding ground. It is easily accessible by public transport and a railway station has been built beside the hospital in the past few years. The hospital also has a park-and-ride area that gives people from east Fife easy access. It is near the A92 and the M90. There is lots of room around the hospital for development, and a new car park has just been completed in that area.

At the meeting when the preferred option was once again stated, even the chairman of Fife Acute Hospitals NHS Trust said that a mistake had been made. The capital expenditure for the board's preferred option is £14 million more than

the cost of developing Queen Margaret hospital, and the revenue cost is £1.3 million over 60 years. The population in Dunfermline is escalating and it is thought that, by 2011, it will have 22,500 more people. That does not take into account windfalls from, for example, the jubilee club and the Ministry of Defence building that have been converted into residential flats.

Dunfermline is expected to have about 9,000 new houses—the overspill from Edinburgh. At our previous meeting with it, the building division did not know whether enough ground would be available for the number of people who want to live in west Fife. The population of west Fife is to increase by 1.8 per cent and the population of east Fife is to decrease by 2 per cent. Three primary schools are to be built in Dunfermline, yet the main hospital is to be downsized and downgraded. People are very concerned.

Folk have been told repeatedly that 14 consultants have left the area and that the service is unsustainable. After further questioning, it was reputedly said that only three had left Queen Margaret hospital but that 11 had left Victoria hospital. We urge the Scottish Parliament to ensure that all services are returned to Queen Margaret hospital.

**The Convener:** I will allow Helen Eadie to speak before committee members ask questions, because she is the local MSP.

**Helen Eadie (Dunfermline East) (Lab):** The petition is symptomatic of an issue that other petitions that the committee has received have raised. We have had petitions on Stracathro hospital and on Stobhill hospital, and now we have one from the Queen Margaret hospital area in Dunfermline. It is important to recognise the bigger picture in the debate.

As a member of the Parliament, I have no difficulty in giving cognisance to decisions that are taken by a locally elected body such as a council. We should give total support to that kind of decision. However, where there are quangos that have a lot of money at their disposal, the Parliament has a legitimate right to intervene when a decision has been taken that does not reflect the views of the wider public. That is what has happened with Fife NHS Board.

I disagree with Tom Davison about the consultation. Fife NHS Board's consultation process has been exemplary—it is the outcome that Tom and I do not like. The health board held in excess of 60 public meetings throughout Fife during the day and at night. We are not happy with the outcome of the consultation. No one understands more than I do about the nationwide shortage of consultants to which Dorothy-Grace Elder referred earlier. We ought to be addressing

that issue nationally and I do not believe that we in the Dunfermline area have our heads round it. Fife NHS Board could be more creative in its thinking.

Another issue that was not mentioned by Tom Davison or Letitia Murphy is that the petition clearly called for an end to the health board quangos and asked for elected representatives on health boards. That was a strong view supported by people in the Dunfermline west area.

The speakers also did not address the issue of fire safety in hospitals. From speaking to consultants in the Dunfermline area I know that Guy's and St Thomas' hospital was refused a fire certificate for those floors above the sixth floor. The Victoria hospital has 13 floors. The issue of safety must be satisfied. Is that massive investment going to be carried out at the Victoria hospital in the knowledge that the building might not qualify for a fire exemption certificate?

Finally, in the past couple of years, the Home Office published a document that points to fire safety in public buildings—I got the information off the web. There is also a Swedish professor at Lund University who highlights concerns about fire safety in hospitals. Despite the fact that I have seen the letter from building control, I do not think that the issue of fire safety is being taken seriously enough. It is not just a big issue for Fife. We should be asking about fire safety in hospitals across Scotland. If you ask a fireman what exercises he has undertaken to rehearse recovering or rescuing patients in acute hospital beds, you will get a surprising variety of answers.

The outcomes of the petitions are clear. People in west Fife are angry and we should listen to their views. I hope that when Malcolm Chisholm considers Fife NHS Board's decisions, he thinks carefully and reverses those decisions.

**Dorothy-Grace Elder:** As Helen Eadie said, there have been two previous petitions involving hospitals under threat—Stracathro and Stobhill hospitals. Those were old hospitals but that is not to say that what was being done to them was right. What is extraordinary is that Queen Margaret hospital was only opened in 1993.

Another major fact that leaps out of your evidence is that the local council is planning to create three new primary schools in the area. Things do not add up. Why, in your opinion, is this being done to you?

**Tom Davison:** I am not here to articulate my opinion, but to express the opinion of my readers. People were flabbergasted that a hospital that was built in 1993, at a cost of £53 million, and that was widely regarded as state of the art, should now effectively be downgraded to cottage hospital status. That is an absolute nonsense, particularly given that west Fife is one of the fastest-growing

areas in Scotland.

**Dorothy-Grace Elder:** I have a particular interest in Queen Margaret hospital, as it provides one of the few pain clinic services in Scotland. I hope that that service will not be affected. What is your opinion of what is being done? What machinations are behind the decision? There seems to be no logic to it.

**Letitia Murphy:** That is what people feel. There is no logic to the decision and people cannot accept it. A recent survey showed that Queen Margaret hospital is the jewel in the crown of Fife NHS Board. The ground alone is valued at £11 million. With the buildings and the space around them, the site would probably bring in between £116 and £120 million. Victoria hospital is valued at £8 million and Forth Park hospital, which is closing, is valued at £6 million. Fife NHS Board has already closed three hospitals in Dunfermline and sold the sites for development. Before 1993, a hospital for geriatric patients in Dunfermline was also sold. Dunfermline has lost four hospitals in less than 10 years. No wonder people are incensed.

**Dorothy-Grace Elder:** Do you seriously think that there is a hidden agenda to sell off the site of Queen Margaret hospital?

**Letitia Murphy:** Victoria hospital was built in the 1960s and is 13 storeys high. A great deal of money is being spent on it. Before approval was given for Queen Margaret hospital to be built, a survey of Victoria hospital was done. A letter was sent to Malcolm Rifkind and Gordon Brown that indicated that the hospital was in an unsatisfactory condition. All of a sudden, Victoria hospital is satisfactory. A great deal of remedial work has been done on the hospital's foundations. It is well known that, when there was heavy rain, the basement used to flood. That problem is supposed to have been taken care of.

There is no comparison between the two hospitals. A great deal of money is being spent in east Fife. For example, the accident and emergency department of the Victoria hospital has just been upgraded, at a cost of £1.5 million. A new stroke unit has been opened in Kirkcaldy, at a cost of £2.5 million. A Maggie's centre has also been established, to which the health board is contributing £500,000. We believe that all that money is being spent in east Fife at the expense of west Fife.

**Dorothy-Grace Elder:** Did you say that the number of public signatures on petitions relating to this issue—not just the petition that you submitted to the committee—has reached about 67,000?

**Letitia Murphy:** Yes.

**Tom Davison:** There are several petitions

relating to this issue. One of those was submitted to the committee.

**Letitia Murphy:** I took up the issue initially because I could not believe what was happening. Before the committee was set up, we presented a petition to Parliament containing 22,000 signatures. Tom Davison's petition has 39,000 signatures. In less than a fortnight, we obtained 6,000 signatures for the petition that we submitted last Thursday. That brings the total number of signatures on petitions opposing the board's decision to 67,000.

**Dorothy-Grace Elder:** That is a remarkable effort.

**Phil Gallie:** One criterion for referring a petition to the Executive is that there has been major change in policy. Letitia Murphy indicated that when Queen Margaret hospital was built, decisions could have been made to move services to Victoria hospital, but were not. That suggests that between then and now there has been a major change in Fife NHS Board's thinking. Why do you think that the board has changed its thinking during that relatively short period?

**Letitia Murphy:** The Queen Margaret hospital opened in June 1993. A letter was issued to staff in March 1993 that set out that the Queen Margaret hospital was to replace the medical and geriatric facilities at Milesmark hospital, the surgical and major designated accident and emergency facilities for west Fife and the maternity hospital. However, when the Queen Margaret hospital opened, it did not include maternity services. The matron of the time did not know that that was to happen.

Fife NHS Board decided that it would centralise maternity services in Kirkcaldy and yet, nine years later, we have again got a midwife-led service in Dunfermline. That proves that centralisation is not always the answer.

11:00

**Phil Gallie:** We have heard comments about fire services. What investigation has been made of fire services at the Victoria hospital? What restrictions are there on the type of patient who can be housed in areas of the hospital including above level 6? I understand that restrictions are in place at Guy's and St Thomas' hospital in London.

**Letitia Murphy:** The hidden agenda is for a new hospital to be built by stealth in Kirkcaldy. When I asked about the mothballing of the eight theatres, I was told that they would be used for day surgeries. That is criminal. One of the consultants told me that, as a result of acute services going to Kirkcaldy, a new theatre complex was to be built. As the new building in Kirkcaldy would

accommodate 562 beds and the bed complement was to be 760, the tower block would have to have around 180 beds. At one meeting, we were told that floors 5 to 7 would be used to accommodate medical patients, which is a category of patient that often includes the elderly.

At Queen Margaret hospital, it is possible to exit from every floor. The first floor of the hospital is the ground floor, the next floor includes a corridor that leads to phase 1 of the district general hospital and it is possible to get out of the third floor by the stores. We do not consider that there is a fire hazard at Queen Margaret hospital.

**Phil Gallie:** I congratulate Mr Davison on his Scottish local newspaper of the year award. I wonder whether petition PE499 had anything to do with that.

We have discussed the finances and facilities of the hospitals. In the survey that you conducted for PE499, what were the responses of the potential patients and their families? Do they consider that any advantages will result from the change?

**Tom Davison:** They see no advantage. Patients and their families have shown nothing short of outrage at the changes. A large percentage of the population of Dunfermline and west Fife lives to the west of Queen Margaret hospital. In the case of accident and emergency services, those people face the possibility of ambulances having to drive past the door of the Queen Margaret hospital on their journey to Kirkcaldy, which is about 20 miles.

The situation is the same for people who live in Kincardine and in villages such as Cairneyhill that are located considerably to the west of the Victoria hospital. It is possible to imagine loved ones having to travel by bus past the Queen Margaret hospital in Dunfermline on their journey to Kirkcaldy. We have calculated that some bus journeys may take as long as six hours.

**Phil Gallie:** In the Scottish Parliament we talk about joined-up policy and we are encouraging people to use public transport and not to use motor cars. The Queen Margaret hospital is very accessible but, because the Victoria hospital site is fairly compact, if the new buildings that are proposed for sites alongside it are built, the space for parking will be reduced. How can people access the Victoria hospital by car if the expansion prevents them from doing so?

**Tom Davison:** We await the answer to that question.

**Letitia Murphy:** The present parking is going to be used for the development. Another field is supposed to have been acquired for parking, but it is yet to be purchased.

**Phil Gallie:** However, it is difficult to gain access to the Victoria hospital.

**Letitia Murphy:** It is in a built-up area.

**The Convener:** Helen Eadie referred to the 60 public meetings that were held throughout Fife. How many meetings were held in west Fife?

**Letitia Murphy:** Very few. We commented on that. I phoned up and asked why most of the meetings were being held in east Fife, in Glenrothes, and was told that that choice of venue was neutral. I attended most of the meetings, the majority of which were held in the east.

**The Convener:** The Executive claims that the health boards are now more representative of the local communities. Who represents west Fife on the health board?

**Letitia Murphy:** There are three representatives: Dr Gallacher, Councillor Theresa Gunn and the chairman, who lives in Dalgety Bay. The majority of board members are from the east, which is why we are raising the issue of quangos. We need a fairer representation of both the east and the west.

**The Convener:** Was the board unanimous in its decision to downgrade the Queen Margaret hospital?

**Letitia Murphy:** Two people at the meeting abstained from that decision. The chairman of acute services, Mr Stobie, felt that the wrong decision was made. There are often no beds free at the Victoria and Queen Margaret hospitals—they are not coping. At 31 March, there was a 5,000-long waiting list for operations, and that is still the case. Mr Stobie felt that the work load existed to keep both hospitals. He proposed the building of a new hospital between the two, as he felt that there was an adequate work load.

**The Convener:** What are the relative sizes of the two hospitals? How many beds do they have?

**Letitia Murphy:** When the Queen Margaret hospital opened, it had 559 beds. At that time we lost about 100 beds. The total complement, with the other three hospitals, was 639 beds.

The leaflet that was published for the Queen Margaret hospital mentioned 559 beds. However, primary care then came along. Phase 1 was called Dunfermline general hospital and took over four wards and a day centre there. Those four wards lead on to the corridor that the theatres are in. If new build was needed at the Queen Margaret hospital to bring psychogeriatric and geriatric services up to the required bed complement, it could be built in the grounds and the whole area could be used for acute services.

**The Convener:** Is a net loss of beds involved in this? Will there be fewer beds in Fife hospitals as a result of the reorganisation?

**Letitia Murphy:** At the moment, there are 344

beds, excluding phase 1. In Kirkcaldy, there are one or two fewer than that.

**Phil Gallie:** Another issue that the Parliament is concerned with is social deprivation. Is it not true that social conditions in areas of west Fife such as Valleyfield, Oakley, Blairhall and Steelend are worse than in other parts of Fife? If that is the case, should that issue not be brought to the minister's attention?

**Letitia Murphy:** The health board said clearly that the decision was made on the ground of accessibility. However, people from the east can access services more easily than people from the west, who have to take three buses—from Valleyfield to Dunfermline, from Dunfermline to Kirkcaldy and from Kirkcaldy to the Victoria hospital. I agree with what you say about deprivation, and we have used that argument. However, the health board says that the Methil area is more deprived than those areas, although that is debatable.

**Helen Eadie:** I believe that the census figures that were used were more than 10 years old when the decision was made. I think that it was the 1991 census figures that were used. Would you like to comment on population growth in the Forth bridgehead area during that time and on the prognosis for growth in the years ahead?

**Letitia Murphy:** It has been estimated that about 9,000 houses will be built in Dunfermline between now and 2011, and that number is increasing. Even the chairman of the acute trust said that he foresaw the population there overtaking that in the east. As I said, there will be 22,500 more people by 2011.

**Helen Eadie:** From 17 May, we will also have the new Zeebrugge-Rosyth ferry. That will bring more people.

**Letitia Murphy:** It will also bring cruise ships into the dockyard.

**Helen Eadie:** Do you think that there will be a growth in population arising from that as well?

**Letitia Murphy:** There will definitely be an increase in the number of visitors to our area.

**Helen Eadie:** Supporting businesses will develop.

**Letitia Murphy:** Yes. Businesses are developing all over the place, as you know.

**Dorothy-Grace Elder:** I am wondering about those who were not consulted at all. Was the Scottish Ambulance Service consulted? You said that an ambulance might have to pass the door of the Queen Margaret hospital to go over to Kirkcaldy. I know that in Glasgow, when a plan was drawn up to move the royal hospital for sick children and the Queen Mother's hospital down to



the Southern general, the ambulance people had not been consulted. Do you know whether the ambulance services in your area were consulted?

**Letitia Murphy:** Yes. There was a representative on some panels at the meetings that were held but they did not envisage any difficulties. However, the other night, somebody in Cairneyhill, which is about five or six miles from Dunfermline, phoned me to say that an ambulance that they had ordered did not arrive for an hour. The health board says that it will make more use of paramedics to give blood-clotting drugs. If someone has a heart attack and it takes an hour to get a blood-clotting drug, I do not know what their chances of survival would be.

**Dorothy-Grace Elder:** The people from the local ambulance service were not too disturbed. Did they give much evidence? Were there many statements from them? Were they fairly mild? What is your recollection?

**Letitia Murphy:** It seems ridiculous, but they did not really see many problems, although that is debatable.

**Dorothy-Grace Elder:** We do not know whether they had done any detailed research themselves, do we?

**Letitia Murphy:** I question how they would be able to supply a service, especially if they were passing a hospital. The Queen Margaret hospital has been the designated major accident hospital—it was previously Dunfermline and West Fife hospital—for 30-odd years.

**The Convener:** Thank you for your contribution. You are free to listen to the discussion about what to do with the petitions.

Both petitions have a common concern and are asking the Minister for Health and Community Care to take into account the large number of people in Fife who are opposed to the health board proposal to centralise specialised and high-dependency units at the Victoria hospital and to downgrade the Queen Margaret hospital.

I ask members to turn to the recommended action on the petitions. We must make it clear that the committee has taken a consistent view that it would be inappropriate for the Parliament to intervene in the executive decisions of individual health boards. However, it is suggested that we should agree to write to the Minister for Health and Community Care seeking confirmation as to whether Scottish ministers are likely to have a role in approving Fife NHS Board's "Right for Fife" business plan. It is understood from informal contact with health department officials that ministers will become involved in the development process of health boards' business plans only if they involve hospital closures or if significant

change is proposed. Clarification of what is meant by significant change could be requested, together with an indication of whether Fife NHS Board's proposals for Queen Margaret hospital would fall into that category. If ministers are to be involved, we could ask them to take into account the considerable local public concern about the board's proposals that has been brought to the committee's attention.

In addition, it is a common theme of many petitions that are submitted to the committee that health boards do not appear to respond adequately to local concerns about proposals for major changes in the delivery of services. We might therefore wish to consider asking the minister for his comments on the effectiveness of the current system and the current means by which health boards are obliged to take into account and respond to local objections. As well as writing to the minister, we could at this stage pass a copy of the petition to the Health and Community Care Committee for its information. Are there any comments on the first part of PE498?

**Phil Gallie:** I have just one comment, convener. We have got out of this morning's contributions the fact that there is significant change. Perhaps the health board has not said that it is going to close the hospital, but the changes are immense and have a terrible effect on many potential patients, particularly in west Fife. I know that the minister is concerned about service to patients and, on that basis, there is more than enough reason why he should take responsibility on the issue.

11:15

**The Convener:** I agree with that, but it is important to get clarification that the minister agrees that the proposals involve significant change and that he will become involved. We will also seek an assurance from him that he will take on board the views of the 67,000 people who have expressed their opinions about the change.

**Helen Eadie:** I am very happy with that. I agree with Phil Gallie that there will be significant change. The minister must investigate many of the issues that were raised this morning. I hope that you will send Malcolm Chisholm a copy of the *Official Report* when you write to him.

**The Convener:** Certainly. Is that course of action agreed to?

**Members indicated agreement.**

**The Convener:** We move on to the second and third parts of PE498, the first part of which dealt with health boards. The petition calls on the Executive to replace the unelected members of health boards in Scotland with directly elected

members. As was pointed out in notes to two members of the committee, the 15 new unified NHS boards came into existence only in September. The minister claims that they will simplify and rationalise existing NHS decision-making structures and create greater accountability and transparency, as the boards meet in public and are built on partnerships between the NHS and communities.

It is unlikely that the Executive will consider reviewing the composition of health boards in this early stage of their development, but it is suggested that we agree to write to the Executive to seek its formal views on the issues that are raised in the petition. We might request comments on the accountability and performance of the new health boards to date.

**Helen Eadie:** The points that are made in the suggested action are accurate, but do not accept the strong underlying argument about accountability. Is accountability only to the minister or are we talking about accountability to the people of Fife? We need to drive that issue home. It is not just about the accountability of health boards to the people of Fife; it is a question of the accountability of health boards to the people of Stracathro and Stobhill.

Health is very important and is the biggest issue for the public. People do not wake up in the morning and ask, "How is my education this morning?" They wake up and ask, "How do I feel this morning?" Health is the most important thing in people's lives.

We need to ensure that there is democratic accountability. We should press for fundamental change to health boards to make them elected rather than appointed bodies. Decisions would then be taken that reflect the priorities of the people. We were sent here to get the priorities of the people served.

**The Convener:** So you are saying that when we write to the minister we should specifically ask him to comment on how health boards can be made democratically accountable to the public they serve, rather than just to the minister or the Parliament.

**Phil Gallie:** I regret that I disagree slightly with Helen Eadie on this. The case that was put for the first part of the petition was so strong with regard to the hospital situation that I would not like to cloud the issue. If we write to the minister about health boards—we have had representation from others on that issue—we could divorce that from the representation on the Queen Margaret hospital and the Victoria hospital. I am concerned that we will diminish our input on the first part of the petition if we go for the second part. We should find a way round that.

**The Convener:** We will be making it clear to the minister that those are distinct elements of the petitions. If it is thought appropriate, he could answer the issues separately.

**Dorothy-Grace Elder:** I back fully what Helen Eadie has said. Perhaps the petitioners might be willing at some stage to amend their suggestion that the board chair should reside in the NHS board area—although I agree that they should be subject to

"a separate and special election".

In the case of Dunfermline, a man or woman who had lived in Dunfermline all their days, and who might be the better person for the post, might now live a short distance outside the board area. Someone who had been in Dunfermline just a year might get the job instead.

**The Convener:** I think that we can have that discussion once the minister has responded. At this stage, we are asking the minister to say how he believes health boards are accountable to the populations that they serve. Once we receive the minister's response, we will consider it and the petition together.

The third element of PE498 relates to the introduction of sprinkler systems in hospitals. It is suggested that we seek the Executive's comments on the possibility of introducing such systems as a matter of policy in all new or refurbished hospital buildings. Is that agreed?

**Phil Gallie:** I am sorry, convener, but I did not pick up the question of sprinkler systems as being a specific—

**The Convener:** It is the third part of PE498.

**Phil Gallie:** I may have picked this up wrongly: I thought that there was a query about the fire situation. Quite honestly, if we are considering places such as the Victoria hospital, I do not think that it matters much about the sprinkler system. The problem lies with the movement of patients to a 13-storey hospital. Perhaps I misread the petition.

**Helen Eadie:** I think that Phil Gallie makes a valid point. We need to consider whether there is someone in the fire service in Scotland—perhaps the chief fire inspector—to whom we should be writing for an opinion about fire safety in hospitals. The Home Office document that was published in 1999, although it deals with the multiple occupancy of all buildings rather than hospitals specifically, highlights a number of case studies in which fire safety was not given the importance that it ought to have been given. We need a report from a fire expert who will be able to tell us what the drill is when a fire breaks out in a hospital and about the fire precautions that are taken in hospitals.

I support the point that the petitioners make about sprinkler systems, which has been included in the recommendations, but there is also a requirement to get advice from experts on fire safety in Scotland.

**The Convener:** It has been suggested to me that we will try to establish which is the appropriate body—perhaps the Chief and Assistant Chief Fire Officers Association—and ask it to respond to the committee on the petition and to comment on fire safety issues in relation to hospitals.

Is that all agreed?

**Members indicated agreement.**

### **Scottish Transport Group Pension Funds (PE500)**

**The Convener:** We come now to the landmark petition, PE500—the 500<sup>th</sup> petition to have been received by the Public Petitions Committee so far. It comes from Mr Alex Anderson, on behalf of former members of Scottish Transport Group pension schemes. It calls on the Parliament to urge the Scottish Executive at the earliest possible date to increase the amount on offer to former members of the Scottish Transport Group pension funds so that they receive maximum benefit from the surplus in those pension funds.

Mr Anderson is here to speak to the petition. He is accompanied by Mr Jim Donnelly, a retired union official; Mr Chic Hulston, a pensioner; and Mr Derek Scott, a professional pension trustee. A number of MSPs are also here in support of the petition. I hand over to Mr Anderson to make a three-minute introduction. We will then invite questions.

**Alex Anderson (Scottish Bus Group Pensioners Action Committee):** I first became aware that there was a considerable surplus in our Scottish Bus Group pension funds in 1993. I read in the daily press that, during the National Audit Office inquiry into the sale of the SBG, the sale of the companies in the group had realised £40 million and the Government stood to benefit by a further £150 million, which was the surplus in the pension funds at the time.

I took up the matter with the trustees of the fund, but was unable to make any progress. In 1998, I learned that the pensioners of the National Bus Company in England had succeeded in having £356 million of the surplus in their pension funds returned to them. The Government had wrongly taken that sum from them when the funds were wound up.

With the assistance of the people accompanying me today, we formed a committee and began a campaign to achieve parity with our colleagues south of the border. We felt that the situation

regarding the surplus in our funds was similar to that faced by the NBC membership. Then we enlisted the help of MSPs, who have greatly helped and supported our campaign. The Office of the Pensions Advisory Service—OPAS—has also been active on our behalf.

In December 2000, the Executive made an offer of £100 million in ex gratia payments. However, at a meeting of the Finance Committee on 26 June 2001, it was revealed that the surplus figure at April 2000 was £250 million. In view of that revelation, the £100 million that was offered was grossly inadequate. In November 2001, another £18 million was offered, made up of a reduction in the pensions surplus tax from 40 per cent to 35 per cent and a proportion of a year's interest on the surplus funds. At present, the surplus stands at more than £268 million; after taxation, the surplus will be £174 million. The pensioners maintain that that is the figure that should be on offer, not £118 million.

In addition, no tax should be levied on the ex gratia payments, but the Inland Revenue seems to seek to tax them. If it does so, the £118 million will be worth less than £100 million. Thus, only a third of the gross surplus of more than £268 million would be available compared with the two thirds that were settled tax free in the case of the National Bus Company.

In mid-December 2000, when the offer of £100 million was made, newspapers predicted that payments would be made in time for Christmas. The Minister for Transport later suggested that payments would be made in autumn 2001. When the offer was increased in November 2001, the timetable was revised to April 2002. It is now May 2002, but the end is still not in sight. The majority of the pensioners are elderly and time is not on their side.

The petitioners call on the Scottish Parliament to urge the Executive to increase the amount on offer and to expedite payments, so that the pensioners are able to receive the maximum benefit—tax free—from the pension surplus at the earliest possible date.

**The Convener:** Before I open up the meeting to questions from members, I will allow the three members who are present to support the petition to make short contributions.

**Dennis Canavan (Falkirk West):** I will update the committee on some recent developments that have taken place since the petition was drafted.

On Thursday of last week, Lewis Macdonald, in a reply to my oral question, confirmed that the pension fund trustees wound up the pension schemes last Tuesday. The Scottish Executive now has full access to the records of the pension schemes.

The minister went on to say that the Scottish Executive hopes in the next few months

“to be able to make payments to the vast majority of pensioners”

and that, that very morning, the Executive had received

“the audited accounts, which show that the pension funds have a surplus of £174 million.”—[*Official Report*, 2 May 2002; c 11565.]

Of course, that figure of £174 million is reached by first deducting tax at 35 per cent. The gross surplus is just over £268 million, which is the figure that is mentioned in the petition. The amount on offer at present is only £118 million, which amounts to only about 44 per cent of the gross surplus. That could be reduced to less than 40 per cent if the ex gratia payments are subject to income tax. As Mr Anderson so eloquently described, that would amount to double taxation. If that goes ahead, the pensioners could end up with only about one third of the gross surplus in their pockets. It is understandable that they feel that the offer of £118 million is inadequate. The offer must be increased to ensure that the pensioners obtain the maximum benefit.

I hope that the Public Petitions Committee will make strong representations to the Scottish Executive and the UK Government, which also has a role to play—particularly the Treasury. There is joint responsibility, first for taxation—the possibility of double taxation is completely unacceptable to the pensioners—and secondly for increasing the £118 million that is on offer.

The pensioners have waited more than 10 years for justice. The campaign has been long and hard for them. Justice must surely be done at last. I hope that the Public Petitions Committee can help to achieve justice by making appropriate representations to the Scottish Executive and to the UK Government.

11:30

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I support everything that Dennis Canavan has said. As the convener knows, fairly lengthy consideration was given to the matter in a plenary debate, which was initiated by the SNP and in which I moved that the proposed level of payment was inadequate and should be increased. My personal view is that a pensions surplus should belong to the members of the pension fund. It is disgraceful that a Labour Chancellor of the Exchequer should cream off around £50 million of the money. In the debate on 29 November last year, which I opened and Dennis Canavan closed, we were not successful in persuading members of any of the other parties to support that notion, but in politics one tries and

tries again. I am delighted that we are dealing with the petition today. It should be successful.

I want to make some specific points. First, in the debate last year, it was announced that £18 million would be added to the £100 million that had been offered on 18 December 2000. It subsequently emerged that all that extra money resulted from a reduction in tax from 40 per cent to 35 per cent and from interest that had accrued on the funds. The question is: what will happen to the additional interest that has accrued on the funds between 1 April 2001 and 31 March 2002 and the interest that will accrue until the eventual date of distribution? If committee members felt it to be appropriate, it would be helpful if the Executive were asked, for a start, whether it should be taken as read that the enhancement will go to the 14,000 pensioners who are involved.

Secondly, I am pleased that, in the opening statement, there was a focus on the tax implications because, as has been pointed out, the taxation liability on the pension fund will be substantial—35 per cent. If members are subject to tax when they receive the payment, that would appear to be double taxation. It would be useful to elucidate whether the members of the English scheme had to pay tax on their payments. Perhaps that could be done when Mr Scott and others are questioned. I see the witnesses shaking their heads. If the offer that is on the table from Lewis Macdonald, which was initially negotiated between Gordon Brown and Jack McConnell, was negotiated on the basis of parity, it must reflect the fact that tax was not paid by the English members but will be paid by the Scottish members. I hope that we can elucidate that point.

Finally, it appears that there are other differences between the Scottish scheme and the National Bus Company scheme. It would be useful to get a response from the Executive on that, because there was no response in the debate on 29 November. There are three particular points. First, is it true that the Scottish workers contributed for an extra four years compared with members of the NBC scheme? If so, surely there should be a proportionate additional payment. If people spend four years longer of their working lives contributing to their pension, is not it outrageous that they do not receive the benefit? Secondly, why should Scottish workers be penalised if the pension fund was more successfully operated than the one in England? Is the Government really saying that successful pension funds in the private sector would be treated in that way? I do not believe that for one moment. Thirdly, is it the case—I do not know whether this is true; perhaps the witnesses can help—that in pay negotiations circa 1983, a low wage increase was accepted by union members in exchange for enhanced pension payments? If that deal was struck, is not it right

that the pensioners should receive the benefit of that now?

I am sorry to have taken so much time, but I hope that members will agree that the points that I have raised are points of substance and that they are not, as Lewis Macdonald described them on 29 November, "repetitive, lengthy and irrelevant".

**Dr Sylvia Jackson (Stirling) (Lab):** I will not go over what has been said. I am here not only as the member of the Scottish Parliament for Stirling—the place, together with Falkirk, where the campaign began—but as a member of the Transport and General Workers Union, which is solidly behind the petition.

Much that was contained in the Transport and General Workers Union motion that was passed at the most recent Labour party conference has been overtaken by events. Last Thursday, in response to a parliamentary question from Dennis Canavan, it was announced that the scheme would be wound up. I hope that a dissolution order will be issued quickly and that the long delay that we have seen will end.

However, as Fergus Ewing indicated, there is also an issue of double taxation. Reference is made to that in the T&G motion, which states:

"Conference also calls for:

A declaration by the Inland Revenue that payments from the surplus of the SBG schemes will be free of Tax".

Certainly, tax was not paid on the equivalent National Bus Company scheme in England, which differs slightly from the Scottish scheme. If special arrangements could be made to ensure that tax was not paid on the handout from that scheme, that should be possible here, too. I would like us to pursue the issue.

**The Convener:** The floor is now open to questions from members of the committee.

**Dennis Canavan:** The other witnesses who are here in support of the petition have come on the understanding that they will be able to make a brief statement.

**The Convener:** Before the meeting, we indicated to them that petitioners have three minutes to speak to a petition. The other witnesses can make their contribution in answer to questions from members of the committee.

Will the witnesses clarify the situation with the National Bus Company pension fund? Was it taxed initially as a lump sum and then not taxed when it was handed out?

**Chic Hulston (Scottish Bus Group Pensioners Action Committee):** Those involved in the equivalent scheme in England began to receive interim payments from 1 August 2000. In

August 2000, they received an increase in payments of 4 per cent. They also received a lump sum payment based on the date of commencement of their pension. In one case, a lump sum payment of £1,680 was made, without tax being subtracted. On 1 April 2001, the beneficiaries of the NBC scheme received a 9 per cent increase in pension payments, which was then multiplied by 15. The gross lump sum payment that one man received on 1 April 2001 was £4,215. That sum was not taxed.

In February 2002, those involved in the scheme were supposed to receive all the money that they were owed. We have a letter detailing the payments that one man received from Standard Life in Edinburgh. On 1 February 2002, he received £10,600. The letter states clearly that no tax was paid personally on that sum. The English paid tax on the lump sum, at a rate of 40 per cent. Forty per cent was paid in tax and 1 per cent was paid to those who administered the fund. We have been offered 43 per cent of the surplus in the fund, but we need around 65 per cent to get anywhere near the amounts that have been paid in England.

Sarah Boyack, when she was Minister for Transport and Planning, and Lewis Macdonald talked about the need for parity with the English system. More than once it has been stated in Parliament that we will get that. However, we will not get that until we get 65 per cent of the surplus. I can provide members with the details of that in writing.

**The Convener:** Do you have evidence that a pensioner in the NBC got an interim payment of £1,680, a further £4,000 and a further £10,000 plus? Was that the figure for one pensioner?

**Chic Hulston:** Yes.

**The Convener:** What is the equivalent figure for Scottish pensioners likely to be?

**Chic Hulston:** It is likely to be £8,000.

**The Convener:** Is that in total?

**Chic Hulston:** We were told that the average figure would be £8,000. Dennis Canavan raised the issue of audited accounts and we asked for details of those accounts. That allowed Derek Scott to go through the accounts on our behalf and tell us what the figures amounted to. We are not mathematicians. We cannot tell the committee how much we should get. We know that we paid into the fund for five years longer than our English colleagues did. We also know that we had better fund managers. That means that we had a healthier fund per man at the end of our time than people in England did.

**Dorothy-Grace Elder:** It is clear that the issue must be taken up with the Treasury. We need to find out how much the chancellor has heisted from

the pensioners' money.

I want to return to the point that Fergus Ewing made about the union deal on enhanced pensions payments. Could someone tell us a bit more about that?

**Jim Donnelly (Scottish Bus Group Pensioners Action Committee):** I will go back to the talks that were held when the pension scheme was set up. At that time, a lot of changes were taking place in the Scottish Bus Group, including the change from double-crewed to single-operated buses, which was done to get rid of conductors. Because of that, many carrots were dangled in front of the trade unionists, drivers and everyone else. One of the carrots was the introduction of a pension fund.

In 1973, we were talking about a deferred pay increase, which we now hope to collect to enhance our quality of life in our retirement. That is not happening.

**Dorothy-Grace Elder:** Do you have written documentation on that?

**Jim Donnelly:** No. We simply went along with the negotiations that took place between the trade unions and management. The pension fund was set up in 1974, following the elimination of platform staff from the bus industry. At that time, carrots, including increased payments, bonuses and the pension fund, were dangled here, there and everywhere.

**The Convener:** I welcome Winnie Ewing to the committee. She has arrived from fogbound Inverness.

**Dr Winnie Ewing (Highlands and Islands) (SNP):** I am sorry. The airport was fogbound, so I had to drive all the way to Edinburgh. I am sorry if my question has been asked—I usually arrive at the committee on time.

I notice that the matter has gone before the pensions ombudsman. Is that correct?

**Alex Anderson:** We have not got as far as that.

**Dr Ewing:** In the note from the clerks, I read that:

"it was also highlighted that the pensioners had failed to convince the Pensions Ombudsman".

**Alex Anderson:** In my case, that is not correct. Several of us went to OPAS. We were advised that things were happening, as the trustees were supposedly winding up the Scottish Bus Group fund. In my case, the ombudsman was not asked to take the case further.

The OPAS adviser suggested that I leave the matter, because the funds were being wound up and a settlement should be made fairly shortly. I imagined that it was possible to go back to OPAS.

**Dr Ewing:** That is not the information that I have.

**Alex Anderson:** Perhaps someone else went to the ombudsman.

**Jim Donnelly:** Early last year, I wrote to the pensions ombudsman about my case. He replied, saying that he could take no action because Scottish Bus Group had not decided what it was going to do with the money. He said that, if we contacted him again once a final decision had been taken, he could investigate the matter.

**Dr Ewing:** The information that I have is different. What I have reads:

"During the debate, it was also highlighted that the pensioners had failed to convince the Pensions Ombudsman that there was a legal basis for a claim on the surplus."

**The Convener:** That was the view of the minister.

**Dr Ewing:** The statement imputes the view to the pensions ombudsman.

**Derek Scott (Scottish Bus Group Pensioners Action Committee):** I suspect that that is the minister's view. I also suspect that it has come from civil servants and the trustees of the Scottish Bus Group pension scheme. If we go back a little, the trustees of the National Bus Company did wrong. They were taken to court, the process took six years and the final decision was taken in 2001. As my colleague said, interim payments started in 2000; the company did not wait for the court to rule on what was a wrong act by the trustees.

We have always been told that the Scottish Bus Group trustees did no wrong. The basis for that is the green book that Alex Anderson has in front of him, which is the UK National Audit Office report of 1993. There is one page in that book about pensions—it is written by accountants—but I do not think that it is a justification, when we consider what happened with the National Bus Company scheme.

Lawyers were involved with the National Bus Company scheme and actuaries were asked to calculate what the fund should have been, because the money had gone back to HM Treasury after privatisation. They came up with a figure of £605 million. Forty per cent tax was paid on that and the rest of it went to the members in what were essentially tax-free payments. That has been done for pensioners, as Chic Hulston described. In the case of those who are still working—who are known as deferred pensioners—Standard Life is writing to them as we speak to offer those who are over 50 tax-free lump sums. That is how the fund has been dealt with south of the border.

11:45

The Scottish Bus Group pensioners did not go to the ombudsman because they took the advice of OPAS and contacted the trustees for clarification. The OPAS adviser described the moves of the trustees as a body swerve—they have been evasive. The pensioners have reserved legal action until they have an offer that they can consider. At the moment, they do not know whether tax is payable, when it might be payable or what the offer is. The pensioners commissioned a legal opinion, copies of which have been sent to the Chancellor of the Exchequer, the Scottish Executive and many others, which shows, contrary to the view that the trustees did no wrong, that there are grounds for legal action.

There has not been legal action because the threat coming back from the minister is that, if the pensioners action committee takes legal action, the settlement process will be put on hold. As we heard, the English case took six years and, as Mr Anderson said, the pensioners are not getting any younger. Pensioners attend funerals fairly regularly, which means that the number of pensioners who are eligible for some of the pension surplus is diminishing all the time. I hope that that corrects what the minister said about the position. Until an offer is on the table, we will reserve the option of going to the ombudsman.

**The Convener:** That clarifies comprehensively the situation for the committee. I ask the witnesses to make available to the clerk copies of any correspondence that they have. That will help us to consider the issue.

**Derek Scott:** We have no problem with that. We have given the legal opinion to the chancellor and others and we are happy to provide the committee with a copy.

**Dr Winnie Ewing:** I would like to read the legal opinion of the situation. Is it the case that the note that we have from the clerk is incorrect on that point?

**Derek Scott:** Yes.

**The Convener:** However, the note gives a correct account of what the minister said.

**Dr Ewing:** The note does not contain what the minister said.

**The Convener:** The note says:

"during the debate, it was also highlighted".

That refers to the minister.

**Dr Ewing:** Yes, but it also says:

"the pensioners had failed to convince the Pensions Ombudsman".

That imputes a view to the ombudsman that is incorrect.

**Derek Scott:** The pensioners have not yet commenced action through the ombudsman.

**Dr Ewing:** I have tried to follow the fairly complicated matter of the English and Scottish settlements. Can anyone explain simply why there are tax differences when tax is a reserved matter?

**Derek Scott:** Although the National Bus Company scheme was wound up and the surplus went back to HM Treasury, the effect of the court decision was to reconstitute the fund as a tax-exempt approved pension scheme and to enable the trustees to pay the money to Standard Life, which stands in the same relationship to the National Bus Company scheme as Royal & SunAlliance does to the Scottish Bus Group scheme. Standard Life distributes the tax-free increases in pensions and, for the people who do not draw a pension but who have reached 50, it offers them a tax-free lump sum. That is what is happening in England.

In Scotland, a completely different route was taken. As Dennis Canavan said, the trustees wound up the pension scheme, which meant that the surpluses went back to the principal employer—that is where the 35 per cent taxation was paid. The proposal is to pay out part of the surplus of £174 million that remains with the principal employer—£118 million is the latest offer—as ex gratia payments. I am an accountant and a pension trustee. When I heard the words "ex gratia" I thought that the trustees and their advisers were trying to ensure parity with the English offer. In most circumstances, ex gratia payments are not contractual or taxable.

However, this is where we seem to be getting into difficulty, because the Inland Revenue's position hinges on two factors. It accepts that typical ex gratia redundancy payments are not taxable as long as they do not exceed £30,000 and there was no contractual expectation that they would be made. Apart from one or two well-off former executives of the Scottish Bus Group, none of the pensioners is looking at a £30,000 pension bonus. The average is £8,000. On that basis, an ex gratia payment should be a tax-efficient method of making the payments.

However, the Inland Revenue sees such payments as coming from an employer to people who are members of the employer's pension scheme and therefore does not accept that the ex gratia tax relief is available. Moreover, it does not accept that such payments are part of a redundancy plan. The situation becomes more complicated with beneficiaries who might be entitled to a share of the surplus. Although they did not work for Scottish Bus Group, they are entitled to payments through membership of the payment schemes; however, that leaves it open for the Inland Revenue to tax them.

We all know that the Inland Revenue makes concessions—it has done so with war widows, for example. Such concessions can be negotiated with the Inland Revenue where payments are made without tax. However, we are not aware that any such moves have been made. When pensioners write for clarification to the Inland Revenue, it simply responds that payments will be taxable.

**Dr Jackson:** When I asked why the ex gratia payments were being taxed—and indeed whether the threshold rule that Derek Scott outlined could not be applied instead—the minister gave me the impression that the main reason was that they were not part of a redundancy package. There is a lot of confusion about the issue and the committee should seek clarification from the minister.

**Fergus Ewing:** I want to go back to the difference between the two Scottish funds and the NBC fund. In general, workers in Scotland contributed to their pension for longer than workers in England, because privatisation took place at different times. I appreciate that complexities have arisen because Caledonian MacBrayne, Highland Omnibuses Ltd and a whole variety of other companies became part of the Scottish Bus Group. However, will Mr Scott or anyone else comment on whether parity of treatment should take account of lengthier periods of contribution? If so, do they feel that that factor has been reflected in the £118 million offer that is on the table?

**Derek Scott:** Clearly we do not feel that. The parity arguments have been advanced in terms of the quantum of the original offer, which was £100 million on the assumption that there were 14,000 Scottish Bus Group pension members or beneficiaries. That makes an average of £7,000 a member. As far as the English case is concerned, we are talking about £605 million of gross surplus—or £356 million after the surplus was paid—and 54,000 beneficiaries, which gives an average of £7,000 in round thousands. That is where the £7,000 figure comes from.

Fergus Ewing is right. The English bus companies were privatised between 1986 and 1987, whereas the Scottish companies were privatised in 1990 and 1991. The buy-out of the English liabilities to Standard Life took place in 1989, whereas the buy-out of the Scottish liabilities to Royal & SunAlliance took place in 1993. As the pension schemes were essentially set up at the same time in the early 1970s, one would assume that the Scottish Bus Group would have earned a slightly higher per capita value because of the later privatisation. The period between 1987 and 1993 was probably a good period in which to invest in pension schemes. One could argue that the English schemes came out

early and that the Scottish schemes would have had the benefit of longer and generally good returns.

However, that raises the issue of the trustees' lack of transparency and disclosure to the pensioners. In correspondence—I do not think that it was mentioned in Parliament—the minister suggested that the pensioners received £33 million of surplus in 1993 through enhanced values at that time. He also said that that figure represented a significant part of the £105 million surplus in 1993, which implies that, after the £33 million was credited to pensioners, only £72 million was left for the trustees to carry forward. If that is the case, I do not know how the trustees have reached the figure of £268 million this year, because one cannot reconcile such investment growth with the investment returns in those years. However, in evidence given at Westminster in December 1993, Peter Mackay of the Scottish Office industry department said that the surplus after any allocation to pensions at that time was more like £150 million. If one takes £150 million from 1993 and invests it sensibly—as trustees should—it would reach £268 million today.

There has been a lot of body swerving, misleading information and a general failure to inform pensioners what they had a share of at the time. They have been offered a last-minute concession, but taxation issues have not been dealt with and there is no consideration of giving parity in terms of the proportion of the total fund. I am sorry, but the offer is not adequate.

**Fergus Ewing:** Mr Scott has given us a devastating critique of the chicanery of the conduct of ministers and trustees throughout. Would I be right to say that, if the rights of the workers in England and Wales were set in 1986 and 1987 but the rights of the workers in Scotland were set some three or four years later, in the intervening period those NBC workers in England and Wales would probably be making contributions to other pensions and would have had an extra three or four years in which to build up another pension from another employer? That is another way in which the Scottish workers have been discriminated against. Is that a fair assessment of the situation?

**Derek Scott:** I accept the point. I do not want to go into too much detail on pensions—I can become a bit of a pensions bore. Many of the workers who continued with the privatised company of the NBC were offered lesser pension schemes after privatisation—so-called money purchase pension schemes in which the contributions were lower. Therefore, I would not want to make too strong an argument about parity in relation to what happened to a typical English or Welsh bus worker in those years. The new



employer might not have given them the same level of pension scheme as was enjoyed by the Scottish Bus Group drivers in those years.

**John Farquhar Munro:** I have a point of clarification on Mr Ewing's question. The Scottish Bus Group members have paid an extra four years of pension dues. Could you explain how that came about and do you consider that you have a justifiable claim on money that is additional to the £7,000 that is currently proposed?

**Derek Scott:** It came about because privatisation in Scotland was later—in England privatisation took place in 1986 to 1987 and in Scotland it took place in 1991. Employees continued to work in Scotland in the interim and continued to pay pension contributions. I should point out that at the time the employer was taking pension holidays—it was not even a case of the employer standing alongside the members and putting in extra contributions. One of the first pieces of information that companies that bought parts of the privatised Scottish Bus Group received was that the pensions holiday was coming to an end and that, if they wished to stay in the Scottish Bus Group pension scheme for an interim measure, they would have to pay a high contribution rate. That was an incentive to those companies to set up successor private sector pension schemes and that is what they did. However, the record of employer contributions in the gap years is not a case of matching or putting in slightly more than the members put in—the employer took pensions holidays during that period.

**John Farquhar Munro:** In your evidence, you pointed out that some individual members have already been given a tax-free lump sum payment.

**Derek Scott:** The court process rumbled on until the end of October 2001 but, as Mr Hulston said, the first interim payments were made in August 2000. That was done through Standard Life in Edinburgh, using the exemptions of a tax-approved pension scheme.

**John Farquhar Munro:** How does that square with the fact that it is now suggested that there is a substantial tax burden on the money that is due to the members?

**Derek Scott:** The Inland Revenue limits the tax-free lump sum that one can get from a pension scheme. It would appear that few, if any, of the National Bus Company members are at the Inland Revenue limits. That has been approached properly.

One of my initial concerns about the National Bus Company settlement was the amount that was being spent on professional fees, which ran to many millions. However, I now think that that money was used wisely, because a solution has

been arrived at that ensures that the money can be paid as soon as possible to pensioners who have the greatest need, using the tax exemptions of an approved pensions scheme.

12:00

**Dr Winnie Ewing:** Whose decision was it that 27 former SBG executives should be granted £700,000 in tax-free payments?

**Chic Hulston:** It was the decision of the 27 directors. No one else could stop them. That was one of the points that Dennis Canavan raised in Parliament. They gave themselves £27,000 each for the loss of their BUPA—British United Provident Association—agreement. We should bear in mind the fact that there is no evidence about how the vote was taken or who voted for the award. They gave themselves the money because they were the trustees and the ex-directors and ex-managers of the company. The same men, incidentally, are back knocking at our doors looking for more money because they were the highest contributors to the staff pension fund.

**Derek Scott:** Mr Hulston is right. I will not name anyone, but I will point out that the trustees of the SBG pension schemes are also the directors of the SBG.

**The Convener:** Are you saying that the trustees awarded themselves tax-free payments?

**Derek Scott:** The Scottish Bus Group was owned by the Scottish Transport Group and, ultimately, the Secretary of State for Scotland, so there would have been a form of public accountability at some point. However, I am sure that the idea of awarding compensation for loss of benefits was arrived at not by the employer but by themselves.

**Dennis Canavan:** I wrote to the minister responsible, asking whether he would meet the representatives of the action committee. He refused to do so, but some of the supporters of the petition attended a meeting with Scottish Executive officials. Could you explain briefly to the committee whether you thought that that meeting was satisfactory? It is important that the Public Petitions Committee understands the frustration that the petitioners have felt when communicating with the Executive and trying to get information out of it.

**Chic Hulston:** The substantial document that I have with me is a file of information bulletins that have been sent out over a period of years by what is known to be the best pension fund. It explains how the scheme was wound up and so on. The rather less substantial document that I have with me is the one that we were given when we met Scottish Executive officials at Victoria Quay on 17 December.

The first statement that the official made at that meeting was that he had been to London and had got us a further £18 million. I put my hand up and asked to make a statement on the factual content of his statement. I then told him that he was telling porky pies and that that £18 million came from the reduction in the tax on the pension fund, which amounted to £13 million, combined with a further £5 million, which came from the interest that had accrued. The official said, "Well, maybe you're right," but he did not give us one piece of information. If you could check the minutes of that meeting, you would find that he left the hall a wiser man than he came in. He did not know a thing about our pension fund and was just talking crap.

**The Convener:** I am not sure whether "porky pies" and your last word qualify as parliamentary language, but they will appear on the record nevertheless.

**Dr Ewing:** Who was the man to whom you spoke?

**The Convener:** I think that it was the minister.

**Chic Hulston:** No, it was a civil servant—it was Kenneth Crawford.

**Dr Ewing:** A civil servant?

**Chic Hulston:** Four civil servants were at the meeting, but none of them knew anything about the pension fund. They told us that we would get £8,000 and that we should go away and be good boys and stop annoying members of Parliament and everybody else. That was the size of it.

**Derek Scott:** We can provide the committee with the names. The lack of knowledge of the taxation issue extends further back. The Finance Committee debated the matter in June 2001. The chancellor had reduced the tax rate on pension surpluses the previous month—that measure was contained in the Finance Act 2001. In meetings of the Scottish Parliament's Finance Committee in June 2001, however, there was still talk of a 40 per cent tax on pension surpluses in spite of the fact that a Scottish chancellor had reduced the rate to 35 per cent. I am sorry, but we do not have confidence that the civil servants with whom we are dealing understand the taxation and pensions implications of what they are offering.

**The Convener:** This is a sorry tale in general, not just on taxation. Do members have any final points to make?

**Fergus Ewing:** Would the petitioners like to have a meeting with the minister to discuss the points that they have raised and to put their case to him?

**Alex Anderson:** We could certainly do that.

**The Convener:** It is not within the power of the Public Petitions Committee to arrange such a

meeting, although we could request it. Do the petitioners want to make any further points of information?

**Alex Anderson:** Since we started our campaign, the figure of 14,000 pensioners has been bandied about, but that number comes from the Scottish Bus Group trustees' October 1993 figures and so are nine years old. Those are the trustees' most recent figures, because affairs were handed over to the Royal & SunAlliance. I am sure that the number of pensioners is no longer 14,000, because some of them will have died off in the intervening years. I hope that the people who make up the payments take cognisance of the fact that fewer than 12,000 pensioners might now be entitled to receive them.

Thank you very much for hearing our petition.

**The Convener:** Thank you. We have had a clear and devastating account of the way in which the Scottish Bus Group pensioners have been treated over the years. I am sure that most members of the committee feel that that treatment is completely unacceptable. You are free to listen to the discussion about what to do with the petition and we will keep you informed of progress.

The Executive must negotiate on the present settlement with UK Government ministers and with the Exchequer. It is suggested that we write to the minister and ask whether the Executive would be willing to approach the Treasury with a view to entering into further negotiations about the settlement for the pensioners.

The evidence that we have heard this morning has given rise to a series of questions on which we must seek clarification. For example, we need an explanation of why Scottish pensioners have been subjected to double taxation, when English pensioners were allowed tax-free pensions under the NBC scheme. Have the four years of extra contributions been taken into account and if not, why not? Under the 1983 wage agreement, a deferred wage increase was put into the pension settlement.

Winnie Ewing asked that the minister explain the comments that he made during the debate in the Parliament in November 2001, when he suggested that the pensioners had failed to convince the pensions ombudsman that there was a legal basis for a claim on the surplus. That is clearly not the case. The minister should not have said what he said and we seek a reply on that. The differences between the English and Scottish systems is another issue that must be considered. Do any other points arise?

**Dennis Canavan:** On negotiations with Treasury ministers, Lewis Macdonald told me at question time last Thursday:

"We will talk to Treasury ministers about the distribution of that money."—[*Official Report*, 2 May 2002; c 11565.]

"That money" is the £174 million net surplus. The Executive has declared its intention to hold discussions with Treasury ministers, but I would like the Public Petitions Committee to ask the Executive to consider extending those discussions so that the terms of the petition are met. In other words, as a result of the negotiations with Treasury ministers, the pensioners will receive maximum benefit from the pension fund surplus.

**The Convener:** We can certainly do that.

**Rhoda Grant:** Could we also ask the minister to meet the petitioners? This has gone on for a long time and it is in everyone's interest to get the surplus wound up and distributed as quickly as possible. If he met the petitioners rather than exchanging letters, they could discuss all the issues and bring them to a conclusion quickly.

**Dorothy-Grace Elder:** We are asking whether the Executive would be willing to approach the Treasury and we have already had some kind of assurance on that. The subject is immensely complicated. As we heard, ministers did not always have a full grasp of the subject. When the minister makes representation to the UK Exchequer, should there be representation from those well-informed members of the Scottish Parliament who have been dealing with the issue?

**The Convener:** I doubt whether ministers would agree to that.

**Dorothy-Grace Elder:** This is a special case.

**The Convener:** As well as writing to the minister to ask for detailed explanations of the points that I have referred to, we will follow Dennis Canavan's suggestion of asking the minister to include the terms of the petition in his discussions with Treasury ministers and of making the settlement along the lines that the petition is calling for. We are also asking ministers to meet representatives of the petitioners. It is up to the petitioners who they bring to that meeting. It is not beyond the realms of possibility that the MSPs who have been at the committee this morning and who take an interest in the issue could be present at that meeting to make their points.

**Dr Winnie Ewing:** Have you just said that the petitioners should be able to have a meeting?

**The Convener:** Yes. We are asking for that.

**Dr Ewing:** We heard about the strange meeting at Victoria Quay. Is it possible for the committee to read the minutes of that meeting?

**Alex Anderson:** I doubt that any minutes were taken at that meeting. Indeed, it was mentioned at the meeting that no minutes were being taken. Someone might have drafted a form of minute

later but, during the meeting, I was not aware of minutes being taken.

**The Convener:** We can still ask for any record of the meeting. We can get details of when the meeting took place and of the officials who were involved. That will enable us to refer to the meeting when we write to the minister.

**Dr Ewing:** We should suggest that someone be held accountable in the middle of this sordid case for the decision that £700,000 was paid. Who decided that, in what circumstances and for what was it paid? The petitioners' supporting documentation says that it was paid for perks, which is vague. If we are meant to have open government, there should be some accountability as to how all that came about. It looks as though a lot of our workers are going to be disadvantaged, but it is clear that the people to whom the money was paid were not disadvantaged. I would like a little accountability.

The suggested action in the cover note says that "the Executive has been directly involved".

If you read it quickly, it suggests that the Executive has been directly involved with the people concerned, but it has not. It has been involved only to the extent that civil servants have met the petitioners. I would like that to be made clear.

**Derek Scott:** The Executive has been involved in meeting the trade unions. I understand the logic of what you are saying, but you will appreciate that most pensioners are no longer members of trade unions and so do not have the link to the trade union that they had when they were employed by the Scottish Bus Group. There has been a lot of emphasis on meetings with trade unions but not on meetings with the pensioners.

**Dr Ewing:** I would like the wording to be reconsidered.

**The Convener:** As I understand it, the wording does not refer to the Executive meeting the pensioners. Obviously, the Executive did not; it was having meetings with Treasury officials or ministers.

**Dr Ewing:** We must make that clear, because the Executive might think that it is off the hook—the impression is given that it has done all that it should have done when it has not.

**The Convener:** No, but your point about the £700,000 that was paid to the trustees is well made and we can ask who took that decision.

**Dr Ewing:** We can also ask what perks they got it for.

**The Convener:** Yes.

**Dr Ewing:** I do not think that many of us will see £700,000 for perks.

**The Convener:** I certainly will not.

**Fergus Ewing:** Not for the first time, and certainly not for the last time, I agree with everything that my mother has just said. I also agree with the robust tone that all members have used to express their feelings about how the matter should be pursued.

I want to make a few specific suggestions, further to those that have already been made. The first is that we should ask the minister to respond to Mr Scott's evidence on the four years' worth of extra contributions.

Secondly, Mr Anderson pointed out that, since the figure of 14,000 was provided, many former members of the pension fund have passed away—one was a constituent of mine, Mr Alex Munro. Because of the age of the people involved, a large number must, sadly, have passed away. That raises a serious question: if there is no surviving spouse, will the money that would have been paid to people who have passed away go to the Government, or will it go towards the money to be divided among the remaining people who are entitled to receive it or their widows or widowers? I hope that no one would suggest for a moment that the Government should cream off that extra money. However, the question has to be asked.

Thirdly, we have to consider the implications of a legal challenge, an issue that was raised by Mr Scott. It seems likely that there will be a legal challenge, going back to changes in pension rules. That topic has not been aired today, but Mr Scott may provide us with details in due course. Unlike the English scheme, the Scottish scheme provided that the surplus did not go to the employees but to the employers. The way in which that is done may well lead to a challenge. What would be the consequences of a challenge? It is very important that the minister confirms that, as with the English scheme, interim payments will be made even if there is a challenge.

Finally, as far as the minister is concerned—

**The Convener:** I can see that your questions are all multi-part questions.

12:15

**Fergus Ewing:** I am afraid that I have never got the hang of asking just one question at a time.

Lewis Macdonald said in answer to Dennis Canavan last week that

"we hope to be able to make payments to the vast majority of pensioners in the next four months."—[*Official Report*, 2 May 2002; c 11565.]

Clearly, if there is to be a rethink on those important issues, it will have to happen swiftly, because "in the next four months" means "by September". Committee members may feel that

the minister should be invited to make detailed comments within a specified and short time. I say that in the certain knowledge that none of the issues is new. The minister has known about most of the issues for years, so it should not take more than seven days to get a reply.

Given that that reply will almost certainly pass the buck to the Inland Revenue, could the committee perhaps write to the Inland Revenue to ask for clarification of its view of the tax position of the recipients of payments? What would the Government have to do to renegotiate the deal, as was done for war widows? Could the committee do that now? If it is not done now, I suspect that we will be back here in another month, asking for it to be done. We would then have a gun to our heads, with people saying, "If we have any more delays now, we won't be able to pay out the money." I am sure that we will hear that argument quite soon.

I have made one or two points, convener, and I hope—

**The Convener:** There were about six actually.

**Fergus Ewing:** Perhaps you are right, but I hope that my points can be pursued.

**The Convener:** If no one has any objections, I do not see why we cannot take up all of those proposed actions.

**Phil Gallie:** I think that today has been the quietest I have ever been. We have heard many things today that give cause for concern. I do not think that the Public Petitions Committee has ever done this, but would it be possible for us to invite the minister to come here to answer our concerns?

**The Convener:** There is nothing to stop us doing that, but there is the question of whether it would be more appropriate for a subject committee to deal with this. We would not want to steal anybody's thunder.

**Phil Gallie:** This issue has been around for a long time. A lot of new points have come up today—new to me, anyway—and we all have questions in our minds. The witnesses at today's committee meeting have been the people most closely involved in the issue, and this committee may be the best forum to which to invite the minister.

**The Convener:** It is suggested that we ask the minister to respond in writing or, if he wishes, to come to the committee to answer questions.

**Phil Gallie:** I would be quite happy with that, as long as we bear in mind Fergus Ewing's point about the time scale.

**The Convener:** I think that we all agree on the time scale.

**Dennis Canavan:** On the point of protocol to do with not wanting to tread on the territory of any other subject committee of the Parliament, the only committee that, to my knowledge, has shown any interest in the matter is the Finance Committee. It is nearly two years since the Finance Committee looked into the matter. The minister did not appear before that committee, but the minister's senior civil servants did. The Finance Committee gave the trustees indemnity without giving them a deadline for handing over the money—its record on the matter is not good. If it has the power to do so, it would be helpful if the Public Petitions Committee invited, or even summoned, the minister to give evidence.

**The Convener:** First, we should invite the minister and hope that he responds positively. We stressed the time scale. It is urgent that we move on the issue. Everyone has said that the issue has been on the go for far too long and needs to be brought to a swift conclusion.

**Dr Winnie Ewing:** Could we give the minister a choice? He could answer the questions quickly or come before the committee.

**The Convener:** Yes, we could invite him to answer in writing and to come before us. Is that agreed?

*Members indicated agreement.*

**The Convener:** I thank the witnesses for attending the meeting. The session has been enlightening to the committee. Those are the final petitioners who will speak, so we should make better progress.

### **Separated Children (National Register) (PE492)**

**The Convener:** PE492, from Mr Duncan Shields, calls on the Parliament to take the necessary steps to set up and monitor a national register of children who are permanently alienated from a parent. The substance of the petition is set out in the paper that is before members.

Members will recall that we recently considered three petitions from Mr George McAulay—PE413, PE438 and PE465—relating to parental alienation syndrome and that we agreed to request the Executive's views on the issues that are raised in the petitions. The petitions specifically seek the development of prevention strategies, the introduction of procedures to allow children to establish right of contact with an alienated parent and the commission of a study to examine the possible link between the condition and increased rates of male suicides. The committee has still to receive one of the three responses from the Executive.

Some issues that the petition raises may be

dealt with in the context of the Executive responses to PE413, PE438 and PE465. It is therefore suggested that the committee should agree to defer consideration of the petition until all three responses have been received. That would allow the committee to consider all four petitions together and ensure that any further issues that are raised in the petition can be identified and dealt with appropriately.

**Dr Ewing:** I agree, but it seems that the wording of the petition makes it almost impossible to deal with it. There is no definition of a permanently alienated child. There has never been such a definition in any court that I know of. As a result of the petitioner's emotional concern, he has invented a phrase.

**The Convener:** We cannot anticipate how the Executive will respond to the petitions, but perhaps it will address that issue. If it does not, we can seek further clarification on the matter. Most members have received a lot of supporting documentation for the petition by e-mail. I draw members' attention to what I think is the most recent e-mail, which was received this weekend and refers to the European convention on human rights. It states:

"It is now coming around to 2 years since the Elsholz Judgement, and the Scottish Parliament is still refusing/failing to act in this very important matter".

That is not the case. The Scottish Parliament is actively pursuing the issues that are raised by that judgment through the petitions, but consideration has not been concluded. It is important that that point should be made for the *Official Report*. Members should not believe that we are ignoring the issue altogether—we are not.

**Phil Gallie:** On the point that Winnie Ewing made, it seems that the term has been used internationally and has some validity. I am not sure whether it is registered in the Scottish courts, but I have read magazines and articles from the United States in particular and from Europe in which "permanently alienated child" is a recognised term.

**The Convener:** The last e-mail that we received from Mr Shields says that the European Court of Human Rights recognises the syndrome, to which it referred in its ruling on the Elsholz case.

Do we agree to defer our decision until we receive full replies from the Executive?

*Members indicated agreement.*

### **Rural Scotland (Suburbanisation) (PE495)**

**The Convener:** The last of the new petitions is from Ian Malcolm, who asks the Parliament to make urgent inquiries to identify and address the issues on the suburbanisation of rural Scotland.

The Executive was asked the parliamentary question

"whether there are any inconsistencies in the operation of planning guidelines by local authorities, in particular with regard to decisions on housing developments in rural villages."

Iain Gray, who was the relevant minister, said:

"When taking a planning decision, it is up to the planning authority to interpret National Planning Policy Guidelines (NPPGs) in the light of local circumstances. The planning authority must assess the weight to be afforded to NPPGs, development plan policies and other relevant considerations".—[*Official Report, Written Answers*, 27 March 2002; p 313.]

It is suggested that we write to the Executive to seek its views formally on the issues that the petition raises. We can ask whether the Executive is likely to conduct a review as proposed by the petition. We could also ask it to clarify its position on the continuing rise in housing developments in rural areas, and on what could be viewed as inconsistencies in approaches by local authorities to the application of policy guidelines. We could send a copy of the petition to the Transport and the Environment Committee for information only.

We have received additional supporting information for the petition, which tells us that the petitioners are aware of two consultative exercises that the Executive is undertaking. The petitioners' view is that although the exercises are relevant to the petition, neither goes far enough to address their concerns, and that a substantive policy review is required. The petitioners are further concerned that the public are not made aware of such consultative exercises. All that will be made clear to the Executive when we ask for its response to the petition. The petitioners also hope that the committee will refer the petition to the Convention of Scottish Local Authorities. We may also wish to seek the comments of the Parliament's cross-party group on architecture and the built environment. Is that agreed?

**Members indicated agreement.**

## Current Petitions

### Higher Education (Exclusion) (PE390)

**The Convener:** PE390, from Ms Deirdre Henderson, asks the Parliament to take necessary action on several issues to ensure that students from non-traditional backgrounds are not excluded from higher education. We considered the petition at our meeting on 11 September 2001 and agreed to write to the Executive for its comments. The Executive has written back with comprehensive details of the action that has been taken with the Cubie committee of inquiry and the Dearing committee of inquiry, and of action that the Executive has taken.

The Executive's response addresses many of the issues that the petition raised, such as flexible learning, widening of access to students from non-traditional backgrounds, improvements in child-care policies and student finance. It is worth noting the Executive's view that it would not be prudent or practical to conduct further substantial review of the new student finance arrangements so soon after their introduction.

In view of that full response and the range of initiatives that is under way to widen access to higher education, it is suggested that we copy the Executive's response to the petitioner and take no further action. Is that agreed?

**Members indicated agreement.**

### Planning and Environmental Regulations (PE395)

**The Convener:** PE395, from Mr C Cotchin, asks the Executive to examine the local authority planning and environmental regulations, with a view to amendment. The petitioner was particularly concerned about protecting people who live next to low-use commercial premises from incoming companies that increase the intensity of use. We agreed to seek the Executive's views, which we have received. The Executive's response makes it clear that while the Executive keeps legislation under general review at all times, it has no plans to examine the issues that the petition raises.

The Executive draws attention to what is and is not regarded as development. If the former use and the new use fall under the same class in the Town and Country Planning (Use Classes) (Scotland) Order 1997, the change of use is not development, as the response explains in detail. The response makes it clear that the Executive also considers that the use classes order, which was last revised in 1997, does not require to be reviewed. It is suggested that the petitioner should write to the Executive, detailing the circumstances

that prompted the petition, and that that evidence will be taken into account in any future review.

The Executive appears to be satisfied with the use classes order. It also seems content that current procedures to deal with noise nuisance are adequate. However, the petitioner is of the contrary view. Although the local circumstances that prompted his petition have been resolved through planning procedures, he feels that those procedures are cumbersome and do not provide sufficient protection to the public. It is therefore suggested that the petitioner should be invited to submit detailed comments to the Executive, as outlined, with a view to informing any future review of the use classes order. If members think that that is not enough, we can refer the petition to the Transport and the Environment Committee for further consideration.

12:30

**Dr Ewing:** If someone has bought a house next to an existing development and then another development has come along—another factory, say—that person would have had access to the local plan when they bought the house, which would have advised them what the area was designated for. Is the petitioner suggesting that there is not enough protection if the local authority fundamentally changes the plan?

**The Convener:** That may well be what he is getting at.

**Phil Gallie:** I recall a case that involved a workshop that was fairly quiet before someone came along and created a joinery operation in the building. The change in the use of the building had a significant effect on the adjacent neighbour, whose house was not new—it had been there for many years. The effects on the individual seemed not to have been taken into account by the local planning department. Perhaps that was a local issue, on which the local planners had to stand up and be counted. However, I understand this chap's unhappiness at being faced with a situation like that. The responsibility lies very much with the planners.

**Dorothy-Grace Elder:** It is a question of what the council zones for. The wording of the petition is rather unfortunate; it should have been more catch-all. The petitioner asks that

"people already living next to low use commercial premises are given protection from incoming companies who cause a subsequent increase in intensity of use."

That increase could be business of the same type, for which the area is zoned, getting better or it could be the situation that exists in the east end of Glasgow, where an area that was zoned for what were formerly called noxious trades had a tannery that was turned into a cattle incinerator—a much

worse thing. It depends a great deal on the zoning requirement, as laid down by the councils. The whole planning law situation needs a shake up. Instances such as this one occur far too regularly.

**The Convener:** The Executive has said that it is prepared to listen to any detailed points that the petitioner has to make. We should recommend that he write to the Executive and, if he is still not satisfied, that he should come back to the Public Petitions Committee. Is that agreed?

*Members indicated agreement.*

### **Predatory Birds (PE449)**

**The Convener:** PE449, from Mr Alex Hogg, on behalf of the Scottish Gamekeepers Association, calls on the Parliament to initiate an independent investigation into the impact of predatory birds on waders, songbirds and private stocks of fish and game birds. We considered responses from various bodies and agreed to contact Alex Neil, who chaired a working group that was recommended by the Transport and the Environment Committee. We have now received a reply from Alex Neil, in which he explains that the research study that was initiated by the Scottish Homing Union and Scottish Natural Heritage is concerned only with the impact of raptors on racing pigeon populations and does not cover the wider issues raised in the petition, concerning waders, songbirds and private stocks of fish and game birds.

Some of the responses that were received in relation to the petition suggested that the moorland forum that will be set up shortly by Scottish Natural Heritage will provide an opportunity for groups such as the Scottish Gamekeepers Association to get involved in discussions relating to conservation and management issues. The Transport and the Environment Committee wrote to Scottish Natural Heritage recently about progress in forming that moorland group.

In view of Alex Neil's comments that additional action needs to be taken to address the issues raised, it is suggested that we refer the petition to the Transport and the Environment Committee for its consideration.

*Members indicated agreement.*

### **West of Scotland Water (PE456)**

**The Convener:** PE456, from Mr Paul Hyles, calls on the Parliament to urgently initiate an inquiry into West of Scotland Water's commitment to continue to provide a high-quality service to its rural customers and to ask the Minister for Environment and Rural Development to implement a moratorium on the current reorganisation of

posts within West of Scotland Water while the inquiry is being conducted.

We have received responses to the petition from the minister, from West of Scotland Water and from the water industry commissioner in Scotland. The details of the responses are all included in the report. Although the petitioner's concerns can be understood, it appears that the closure of the Dumfries laboratory is an operational matter, which was the responsibility of West of Scotland Water and is now the responsibility of Scottish Water.

Parallels can clearly be drawn between the petition and other petitions that have called on the Parliament to intervene in the executive decisions of health boards or local authorities, when it has been clear that it would be inappropriate for the Parliament to intervene. From the information provided in the responses, it appears that there is little to justify an inquiry into the commitment of the water authority to the delivery of quality water services to its rural customers, as requested by the petitioners. It also appears, from the information provided by the water commissioner, that there is nothing to indicate a need to review the more general issue of the centralisation of jobs in relation to the delivery of water and sewerage services.

It is suggested that we agree to copy the responses that have been received to the petitioners and to take no further action other than to advise them to continue to pursue the matter locally with the management of Scottish Water. It is suggested that we agree to pass copies of the responses to the clerk of the Transport and the Environment Committee for information. Are there any comments?

**Dr Ewing:** The remit of the water commissioner is that he can do anything he likes as long as he is looking after the efficiency of the delivery of the water and sewerage services. The social and economic consequences do not matter. It is a bit like SNH's behaviour when it decides that somewhere will be designated as a site of special scientific interest and says that it has no responsibility, unless it is a scientific argument, which means that the social and economic consequences of the designation are of no interest to it. Obviously it is too late in relation to the remit of the water commissioner, but perhaps we should all be aware when we give remits to commissioners with vast powers that we are allowing them to have enormous influence over the social and economic conditions of people's lives.

I thought that the case for the retention of the Dumfries laboratory was well made, economically and socially, but the water commissioner does not agree and he has the remit. Are we sure that the

water commissioner has no responsibility in his remit other than to ensure the efficient delivery of water and sewerage services?

**The Convener:** That is a problem with the remit.

**Dr Ewing:** That is right, but are we sure that we are correct in stating that nothing matters except that the commissioner must ensure the efficient delivery of water and sewerage services?

**Helen Eadie:** The commissioner will be answerable to the minister. We can challenge the minister on any issue that we have concerns about. That goes back to the issue of the accountability of quangos and elected bodies.

**The Convener:** Are you suggesting that we should write back to the commissioner to ask whether it is part of his remit to consider the social and economic implications of delivering value for money?

**Dr Ewing:** I would like a copy of the commissioner's remit. That would be a simple thing to get.

**The Convener:** We could certainly write to him to ask for a copy.

**Dr Ewing:** That lets people know that we are looking at the matter and it may frighten them into behaving better.

**The Convener:** We will certainly make the remit available to members of the committee. Otherwise, is the suggested action agreed?

**Members indicated agreement.**

### **National Library of Scotland (PE466)**

**The Convener:** PE466, from Ms Antonia Bunch, calls on the Parliament to initiate a review of the funding of the National Library of Scotland, particularly in the light of the scientific and business needs of the Scottish economy, and to report. The petition relates to concern about the closure of the Scottish science library and the Scottish business information service in October 2001. We agreed to seek the comments of the Executive, the National Library of Scotland, Scottish Enterprise and the Scottish Chambers of Commerce. We have now received replies from all four.

The National Library of Scotland has made it clear that the Scottish science library and the Scottish business information service reading room were closed because of low usage, and that the library is now providing a service to business and science users through its general reading room. Although the Scottish Chambers of Commerce supported the continued operation of the service, Scottish Enterprise has made it clear that it could not support that, based upon its



objective assessment of the situation.

It appears that the funding of the National Library of Scotland is being addressed as part of the spending review in 2002. As part of that process, the library will make a case for additional money to support certain areas of its service. It does not, therefore, seem appropriate or necessary for the Parliament to conduct an additional funding review, as the petitioners have requested. It is suggested that we agree to copy the responses to the petitioners and take no further action, other than to send copies of the responses to the clerk of the Education, Culture and Sport Committee. Is that agreed?

*Members indicated agreement.*

### **Scottish Borders Council (Budget Cuts) (PE467)**

**The Convener:** PE467, from Beverly Paterson, on behalf of the Borders Action Group, concerns the impact of the Scottish Borders Council's cuts in education spending. Members will remember that, having received responses from the Executive and Scottish Borders Council, we agreed to write to the petitioners, seeking their comments on the responses. The petitioners' comments are on the second page of the cover note. They say:

"the remit of the working group being set up by the Council to look at swimming pools etc has been altered without any public consultation.

although there is no proposal to close any Community Centre, staff numbers will be reduced, leading to a reduction in services.

the public consultation with service users promised by the Council is inadequate, and the Committee is asked to obtain full details of the consultation process."

It should be pointed out that, in a by-election last week, a member of the Borders Action Group was elected to Scottish Borders Council so someone on the council now represents the group's views.

From the responses that we received and considered, it appears that the council has now set a balanced budget, has not failed to meet its statutory responsibilities and is considering methods of funding voluntary organisations and preventing swimming pool closures. The council was also investigated by the Accounts Commission and was instructed to take remedial action to resolve its financial difficulties.

The petitioners have asked the committee to obtain further details of the council's proposed consultation process, as they claim that it has been inadequate to date. There is a risk that if we accede to their request and continue dialogue on issues that relate to the council's provision of specific services we could be accused of interfering in matters for which the council has

executive responsibility. That would also move away from the action that the petition calls for.

To avoid that, and to take positive action to assist the petitioners, it is suggested that we agree to write to the council asking it to contact the petitioners directly to address the points that they raised and ensure that the Borders Action Group and others who have concerns are given the opportunity to participate fully in the consultation about the future of swimming pools and community centres.

**Phil Gallie:** Never wishing to miss an opportunity, I point out that a Conservative member was elected to Scottish Borders Council the other day and he will certainly ensure the sound management of the council's financial affairs.

**The Convener:** It is always good to hear that the Conservatives are reviving.

In relation to the petition, is it recommended that the committee agree to take no further action, on the basis that procedures have been put in place to address the council's financial affairs and that it would not be appropriate for the Parliament to be involved in the process. Is that course of action agreed?

*Members indicated agreement.*

### **Adoption Procedures (Black and Ethnic Minority Children) (PE472)**

**The Convener:** PE472, from Mr Narinder Singh Sahota, concerns adoption procedures for minorities. Members will remember that we agreed to seek the Executive's views and ask it to comment on the issues that the petition raised. We have now received a response from the Executive, which points out that the adoption policy review will not address the issues that the petition raises, because the Adoption (Scotland) Act 1978 already requires that when reaching a decision relating to the adoption of a child

"a court or adoption agency shall have regard so far as is practicable to the child's religious persuasion, racial origin, and cultural and linguistic background".

The Executive's response also explains:

"following the Regulation of Care Act 2001, all local authorities and adoption agencies will be required to register their adoption services with the Scottish Commission for the Regulation of Care and are subject to assessment and approval in accordance with the National Care Standards for Scotland ...

Under the standards, adoption agencies must ensure that the family chosen reflects as closely as possible the child's ethnic and cultural background and faith. The agency must also take into account the birth family's views on the religious and cultural upbringing of the child and prepare adoptive parents for the ethnic, cultural, faith and language needs of the child."

It appears that the national care standards in relation to adoption might address the concerns of the petitioners, although they might not assist them in the case that prompted their petition. It is therefore suggested that we agree to copy the Executive's response to the petitioners, together with a copy of the relevant extracts from the standards document, and ask whether in their view, the measures would assist in preventing the specific situation that prompted the petition in the first place. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** I thank members for their attendance. This has been another very long meeting, but it has been worth while.

*Meeting closed at 12:44.*

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