

PUBLIC PETITIONS COMMITTEE

Tuesday 21 May 2002
(*Morning*)

Session 1

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PUBLIC PETITIONS COMMITTEE

9th 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)

COMMITTEE SUBSTITUTES

Irene McGugan (North-East Scotland) (SNP)

Mrs Lyndsay McIntosh (Central Scotland) (Con)

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

George McAulay (UK Men's Movement)

James McDougall (Scothedge)

Pamala McDougall (Scothedge)

Robbie the Pict (Scottish Peoples Mission)

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Joanne Clinton

LOCATION

Committee Room 1

Scottish Parliament

Public Petitions Committee

Tuesday 21 May 2002

(Morning)

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

New Petitions

Nuisance Hedges (PE497)

The Convener (Mr John McAllion): I welcome everyone to the ninth meeting this year of the Public Petitions Committee. We have received no apologies, so we will move straight to item 1 on the agenda, which is new petitions. The first petition, PE497, is from James and Pamala McDougall, on the subject of nuisance caused by hedges. Mr and Mrs McDougall are here to make a presentation to the committee. Good morning. You have three minutes in which to make an opening statement, after which it will be open to members to ask questions.

James McDougall (Scothedge): The Scottish Executive is aware that nuisance hedges are a problem that blights the lives of many people. Following a survey that took place in January 2001, Jim Wallace stated that there was a need for legislation but that time could not be found for that. We are here, 16 months later, to ask the Public Petitions Committee's assistance in expediting the matter. We represent the Scottish section of Hedgeline, a UK-wide organisation that was set up to highlight the problem and to press for a change in the law. Some committee members will be aware of the problem, through letters from their constituents or through being lobbied by Scothedge members in February.

Leylandii trees, in particular, can be a menace when they are planted by uncaring neighbours. Such trees can grow by between 6ft and 8ft a year and to a height of 100ft. It seems odd to us that, if one wants to erect a fence or a wall more than 2m high, local authority planning permission is required, but that such permission is not required for a hedge of 10 times that height. Scothedge feels that high hedges should be treated in a similar manner and hopes that it will be consulted on the detail of any proposed legislation.

Pamala MacDougall (Scothedge): We do not exaggerate the results of high hedges on the victims. Our experiences and those of other people are testimony. Those results include depression and anxiety due to a lack of light in homes and gardens and to the stress that is

caused by rows with neighbours or through their not speaking to us at all. Believe me, if mediation worked, we would not be here today. Taking the sunshine from people's lives can damage their health. It causes disharmony and distress in families as they try to deal with the problems. With another hat on, I am a relationship counsellor.

Attempts to trim hedges have resulted in accidents and violent incidents have been reported in the media and on television. For example, it is a favourite topic on "Neighbours from Hell". In July 2000, a neighbour in England was shot dead as a result of a hedge dispute. Please do not delay the legislation. We do not want that to happen in Scotland.

The effects of nuisance hedges on victims' gardens are dire. Plants do not grow and pleasure in the garden goes. Tree roots damage nearby buildings and paths crack. The victim has to bear the cost, as the law stands. All that happens and no account is taken of the loss of view. For example, we see nothing of our beautiful Angus countryside from our house. Only last week, one of our members—Dr Colin Watson of Balerno—highlighted in the press the long-standing problems that hedge victims have to suffer because there is no redress in law. His was a high-profile case because the neighbour happens to be a well-known football manager. However, many victims are vulnerable and elderly.

The Scottish Parliament must prioritise time to deal with this issue. We understand that the Parliament has many pressing items to deal with, but we cannot wait any longer. We have waited long enough. More time will inevitably elapse before the legislation is drawn up and legal issues are considered. We hope that you will help us lead the way in the UK. Why wait for Westminster, which is already dragging its heels on the matter? Too much misery is caused by high hedges in Scotland, and we urge the committee to use its powers and influence to proceed with much-needed legislation. Thank you very much for receiving us and listening to us.

The Convener: Thank you very much for keeping to time, which makes my job much easier.

Rhoda Grant (Highlands and Islands) (Lab): What is the solution to the problem? Do you think that legislation should insist on planning permission for leylandii hedges, or do you think that it should allow for hedges to be only 2m high? What would be the better result?

James McDougall: We would like the growing of hedges to be treated in a similar way to the putting up of a wall or a fence. A hedge that was more than 2m high would have to be discussed by the local authority's planning committee. That committee might agree to have the hedge 8ft or

10ft high because of its distance from someone's home. If the trees were treated in a similar manner, that would be okay.

Rhoda Grant: So the planning permission would stipulate the maximum height of the hedge.

James McDougall: Yes. It would stipulate a reasonable height.

Rhoda Grant: What solution would you propose if someone had planning permission for a 6ft hedge, planted it and became unable to look after it? I am thinking in particular of elderly people who may have planted the hedge but are subsequently unable to keep it to a certain height.

James McDougall: I would hope that the neighbours, if they are good neighbours, would help them maintain it. This is what local government is for—to help elderly people who have such difficulties, through citizens advice bureaux, social work departments and so on.

Phil Gallie (South of Scotland) (Con): I congratulate you on bringing forward a case about something that I know affects many people. I am aware of a number of people who live in quite distressing situations. In the instance that I have in mind, the trees are located across a roadway but, standing 30ft to 40ft in height, block off all the light. Do you feel that such trees create not only a depressive but an intimidatory atmosphere?

Pamala McDougall: Scothedge, which is the branch—if you will forgive the pun—of Hedgeline UK, has more than 100 paid-up members. We receive telephone calls from people in quite distressed states every day, asking for our advice following years of problems. Sadly, the only advice that we can give is that people lop the trees standing over their boundaries and offer the branches back to the neighbours. That is about it. It causes a lot of distress.

Phil Gallie: Do local authorities implement the controls that exist? In many cases where leylandii trees form a boundary and grow over a footpath, for example, local authorities fail to address the problem.

James McDougall: In Dundee—I am not sure whether it is in your constituency, convener—there is such a pathway which people are unable to enjoy. There is an argument about who owns the trees and the local authority says that it has nothing to do with the issue. The owner of the trees cannot be found, but the whole area is ruined for the householders nearby.

Phil Gallie: You will be aware that Scott Barrie MSP is considering introducing a member's bill on the matter. Have you approached any MSPs about amending the Land Reform (Scotland) Bill and putting something of use into it? Has anyone considered that option?

Pamala McDougall: We have a pile of letters to and from various MSPs that would go up to my shoulder. There are also replies from Mr Jim Wallace's office. The Executive has apparently considered the route of legislation without going ahead, but that is the route that we have chosen. As James says, we hope that we will be consulted if legislation is proposed.

Phil Gallie: There is a bill that is being introduced right now, and Jim Wallace said that he would consider the matter at the earliest possible time. Has anybody looked at the Land Reform (Scotland) Bill to ascertain whether there is any possibility of covering the issue in that bill?

James McDougall: The answer is no. I hope that, as a benefit of our appearing in front of you today, the committee might point the matter in the proper direction.

Dorothy-Grace Elder (Glasgow) (Ind): Thank you for providing on paper in advance your well-argued case. Most people would regard blockage of light as especially serious in our hemisphere, given that there is not much light for long periods of the year. Some of us might leap to the conclusion that the height of these hedges should be a planning matter, but it is not at the moment. Will you clarify whether you wish to go ahead entirely on nuisance hedges, or whether it would be acceptable to include the height of nuisance trees? We know that something can be done about a protruding branch. Do you think that it is logical that nuisance trees should be included in your argument or in any future legislative move?

10:15

James McDougall: I am sure that we would include nuisance trees, because there is an argument about what is a hedge and what is not a hedge. A hedge might not have been a hedge five years ago, but it is now. Hedges are all made up of nuisance trees. We would be happy to include an individual nuisance tree or three individual nuisance trees.

Dorothy-Grace Elder: The question is height rather than spread, which current legislation can cope with. Is it the case that the type of hedge in question has outgrown past rules and that you are mainly talking about leylandii, because privet is a slow-growing hedging material? Is not leylandii the main nuisance?

James McDougall: Yes. That perhaps reflects on the type of people who plant leylandii. The sorts of people who plant privet hedges are quite happy to tend them for a period of time. Leylandii just shoot up. They are here today and up there tomorrow.

Dorothy-Grace Elder: Leylandii was not

common in Britain until 20 or 30 years ago.

James McDougall: On "Gardeners' Question Time" on the radio a few months ago the guy from Northern Ireland said that the worst thing that has happened in gardening in the past 30 years is the introduction of leylandii hedges.

Dorothy-Grace Elder: People sought them for privacy at the time and knew that they were fast growing, but now they are taking over much of the country.

Pamala McDougall: They get out of hand.

Dr Winnie Ewing: (Highlands and Islands) (SNP): The background note that I have says that the UK Government's leylandii working group agreed a voluntary code of practice to be provided on hedges and plants at the point of sale. Do you have any information on whether that happens?

James McDougall: We have been informed that a working group has been set up in London. It is extremely complicated and there is a lot of disagreement. It would appear that the Hedgeline people down south do not want anything to do with it, because there are a lot of vested interests.

Dr Ewing: As far as you know the working group is not helping. Does the group go to big firms such as Dobbies Garden Centres and tell them not to sell the stuff?

James McDougall: It would be great if the group told Dobbies not to sell leylandii, but it would be better if Dobbies told people that they have to trim the hedges twice a year.

Dr Ewing: Does Dobbies do that?

James McDougall: No. I am sure that it does not.

Dr Ewing: Have you tried to find that out? I do not mean just Dobbies but other garden centres.

James McDougall: I get dragged around many garden centres and I have never heard them tell people to trim the hedges.

Pamala McDougall: We love trees and bushes. I am a keen gardener.

James McDougall: Leylandii is not even a Scottish tree.

Dr Ewing: The note says that the UK Government has published guidelines. Have you seen a copy of them?

Pamala McDougall: Yes, but the guidelines are voluntary and do not work. We are talking about selfish neighbours who do not read guidelines and are not interested at all.

Dr Ewing: Are you aware that in common law you have a remedy against anyone who excludes your light, but that involves court action? Does

anyone ever go to court?

James McDougall: One of our members went to court a couple of years ago and it cost him over £5,000. People cannot afford to do that.

Dr Ewing: Did he win?

James McDougall: No, he lost. The cost of the chairman of Hedgeline's case down south ran into £30,000. Ordinary people do not have that sort of money.

Dr Ewing: That is true.

If Mr Barrie's member's bill gets through, do you see the solution as being to allow the planning departments of local authorities the discretion to make orders on hedges or nuisance trees that cut out light?

James McDougall: I think that that would be the solution. People who allow trees to grow that high are usually unreasonable people. Most mediation would fail and the situation could be resolved only by arbitration.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Everyone understands that a hedge is something that is cultivated and tended from time to time. However, the pictures that are attached to the petition seem to show a forest of trees overhanging someone's garden fence, which is quite a different issue. If there were legislation to restrict the height of a hedge to 2ft, how would it apply to the sort of situation that the photographs depict, which is more of a tree culture than a hedge culture?

James McDougall: We hope that, if there were a change in the law, people would recognise that and come to an arrangement with their neighbours about trimming the hedges back voluntarily. If the law came into effect and people still did not trim their hedges, the local authority could try to mediate, but that period of mediation should be limited to three months or so. If that mediation fails, the hedges should be trimmed to help improve the quality of life of people who deserve a decent quality of life and are not harming anyone else.

The Convener: There is no dispute about the fact that some sort of action is required. You mentioned that you had a big file that contained correspondence from Jim Wallace. Does the minister accept that some legal action of last resort should be introduced in law?

Pamala McDougall: Yes.

The Convener: Is the problem simply one of a shortage of parliamentary time?

James McDougall: Yes. He stated that in January last year.

The Convener: I know that Scott Barrie is lodging his member's bill today, but I lodged one about six months ago and have been told that the chances of mine being dealt with before the end of this session of the Scottish Parliament are minimal. It is therefore unlikely that Scott Barrie's bill will be successful. I do not think that the member's bill route will be helpful to the cause of the petition. Would you urge this committee to try to impress on the Executive the need for it to act in this respect?

Pamala McDougall: That is definitely why we are here today.

James McDougall: The Executive has made a statement that legislation is required to deal with the unfair situation. Since then, we have waited 16 months and we suspect that we might have to wait many more months, each of which might be a month of misery for some people. The Executive should find the time.

The Convener: I thank you for your helpful presentation this morning. We will now discuss what to do with the petition and keep you informed of the petition's progress.

The Executive has indicated its intention to bring forward legislation to deal with the problem of nuisance hedges, albeit at some time in the future when there is space in the legislative programme. As we have heard, however, no one knows when that might be. It is not clear what action, if any, the Parliament can take to change that situation.

It is suggested that the committee could agree to write to the Executive to request details of the options open to those who experience problems associated with so-called nuisance hedges, impress on the Executive the importance of legislating on the matter as soon as possible and ask the Executive what its plans are in that respect. The more pressure that is applied on the Executive by our committee and other committees the better.

Dr Ewing: I had better have a look at Mr Barrie's bill once he has lodged it. However, my solution to the problem would be to give the planning departments power to make orders in relation to hedges that cut out the light. The bill could be quite short, unless Mr Barrie wants to go further. Do we have a copy of it?

The Convener: No, it will be lodged today.

Dr Ewing: I would like a copy of the guidelines that the Government published, as I would quite like to read them.

The Convener: We can arrange for that.

Dr Ewing: In the light of what the petitioner said, it seems that it would not be worth while asking the leylandii working group for information.

The Convener: As well as asking the Executive to set out people's present options, we could ask it to be specific about what legislative changes it intends to introduce.

Dr Ewing: It would be a two-line act.

Phil Gallie: The Executive must have a fair idea of its intentions. I well recall, in the early days of the Scottish Parliament, the Executive putting out a consultation paper to which it received a considerable number of responses, so it must have some idea of how to overcome the problem of high hedges.

I spoke earlier about the Land Reform (Scotland) Bill and the convener spoke about the time that it would take for a member's bill to go through. As Winifred suggested, the necessary bill might be very short, so it may be possible to insert a section into the Land Reform (Scotland) Bill instead. Could we ask the Executive whether that would be possible?

The Convener: Yes, we could do that, to bring in the kind of change that everybody agrees is necessary. Matters may arise to do with the short title and the long title—we have to be very careful.

Phil Gallie: I appreciate that. It will depend on what comes up during the committee stages of the Land Reform (Scotland) Bill—I cannot recall what stage we are at.

The Convener: We should ask the Executive to confirm whether it would be possible to amend the Land Reform (Scotland) Bill.

Phil Gallie: I would appreciate that. There is another possibility. Statutory instruments are always a questionable means of bringing about change but, if the Executive were to consider local government legislation, there might be a way of introducing a statutory instrument on the matter. From the views that have been expressed by members from different parties, I think that any change is unlikely to be controversial. In fact, it would be welcomed.

The Convener: We can certainly ask the Executive whether it would be possible to introduce a statutory instrument that would give legal effect to such a change.

As well as taking all this action, we should copy the petition to the cross-party group on agriculture and horticulture and to the clerk of the Transport and the Environment Committee for information. We should also copy the petition to Scott Barrie MSP and ask him whether he has any comments.

Dr Ewing: I have been looking at some of the photographs that came with the petition and I would like to make a point about what John Farquhar Munro said. If someone buys or builds a house adjacent to a forest, they know what they

are doing; that is not the same as being adjacent to someone who deliberately plants a very tall hedge.

The Convener: That is the kind of point that any legislation would have to consider.

Dorothy-Grace Elder: Could we also stress to the Executive that the public would like word as soon as possible. We are coming into the worst period of the problem—the summer—and people will still be suffering. Like a good number of people, I know once-sunny streets in Glasgow that are now dim or quite dark. There is also physical danger because of the amount of leaves falling on to pavements—even when it is not autumn.

The expense of cutting down trees is a problem for many people. However, there should be a public information scheme to urge people to be better neighbours. I know of one family who cut down all their leylandii because they thought that it was a shame that their neighbours should suffer. Some people are willing to take action. People who have come to my surgery in the east end have said that they wanted to cut them down, but they were pensioners and were physically unable to do it. A public information scheme could be used to help people who are willing to do so to go in the right direction.

The Convener: We will certainly impress on the Executive the need for early action.

Phil Gallie: I will make one point, which does not contradict the points that Dorothy-Grace Elder made, but lays down a warning. If we start talking about trees, we will get into all kinds of difficulty. It would be much better if we concentrate on the high hedge, to which the petition refers.

Dorothy-Grace Elder: It might be logical to put the two together, but if we can get through on leylandii and the high hedge problem, we could move on to the trees afterwards.

The Convener: We cannot solve all the problems at one time. I am sure that the petitioners will be very pleased if we can deal with leylandii.

Is it agreed that we take all the action that we described and that we keep the petitioners informed of the progress of the petition?

Members indicated agreement.

Stone of Scone (PE505)

The Convener: The second petition is PE505, from Robbie the Pict, on behalf of the Scottish Peoples Mission, on the return and restoration of the stone of Scone to the community of Scone. Robbie the Pict has been to the committee before, so he knows the routine. Good morning.

10:30

Robbie the Pict (Scottish Peoples Mission): Good morning. I will try for double time as it has been a round trip of more than 500 miles to get here. It is a difficult exercise to meet the time limit of three minutes.

The Convener: That is an interesting amendment, which we will consider.

Robbie the Pict: The petition aims to return the tethering stone of Scone to Scone. Previously, the Scottish offices of the UK Executive stated that the preference of the Secretary of State for Scotland was to house what they call the stone of destiny in Edinburgh Castle. The 29 people who replied to a consultation exercise in agreement with that supposedly outnumbered an unstated number of signatories to the petition organised by Perth and Kinross Council, which is surely more reflective of the wishes of the local owners. The statement adds:

“It is unlikely that it is a fake brought out to fool Edward I's officials in 1296, but an older, possibly Pictish stone”.

It is indeed a Pictish tethering stone. It is a substitute not a fake and before it was used for securing cuddies it was a cludgie stane, which capped an old dungeon used as a defecatory. It is not the Scots coronation palladium, known as lia fail. That would be *infra dignitatem*.

While I was preparing a private prosecution of the Queen of England for resetting the tethering stone from the door of Scone Palace, I received a letter from the Scottish Office. It stated:

“the Stone is owned by the Crown, being monarch and Government for the time being of Great Britain”

and as the Queen had decided that it should be returned to Scotland, any question concerning Crown property would be decided under Scots law. In Scots common law, it would be fair to suggest that the first claim of ownership would be that of the people of Scotland, as Moot hill—or boot hill—is traditionally independent ground. Since the very public theft by the English king in 1296, no lawful deed has been generated that indicates transfer of ownership to the English Crown, as the Crown until 1707, and probably beyond, must be described. On the contrary, the treaty of Edinburgh of 1328 consents to the return of the stone removed from Scone. The petition therefore must also call on the Queen of England to honour the terms of that treaty.

Any other claim depends on the misconceived insistence that the tethering stone from Scone is somehow Crown property or was originally Scottish Crown property. It is not. It is the property of the people of Scone in former Pictland, now called Scotland. The petition therefore accuses the Crown of continuing to reset stolen property and, if

it fails to return the stone, demands that the Crown produce proof of ownership. The Scottish Parliament must stand as an impartial broker in this contest of ownership, lest it be seen as an agent of the English Crown interest and oppressive towards Scone.

Some constitutional points are important in this affair. In international terms, the tethering stone is the traditional property of the north British Picts. It is a native artefact of unknown antiquity that predates the arrival both of the Scots from Ireland and of the English from Germany in the 5th century AD.

While the native British are denied self-determination we will tend to favour any kingdom that acts under law, as was our tradition and the original tradition of the Scots.

The Scottish Parliament is thus requested to serve the interests of the Scot-ish people in this matter and, acting under law, to order the UK Executive in Scotland to return the tethering stone immediately to its lawful owners, the community of Scone. We are sorry to tell the English monarchs that our tethering stone is more from Bridgend than Bethel.

Dr Ewing: What do you want the final result to be? If the stone were returned to Scone—and Scone accepted it—would that be the end of the matter as far as you are concerned?

Robbie the Pict: I would support the wish of Perth museum to house the stone.

Dr Ewing: On behalf of Scone?

Robbie the Pict: Yes. The museum has wonderful facilities. The stone would stimulate visitor numbers to Perth. It is expensive to see the stone in Edinburgh and it is also difficult to access, from the point of view of parking and so on. If the stone helped to take visitors from Edinburgh to Perth that would be all the better, as Edinburgh is saturated with visitors.

Dr Ewing: My second question relates to security at Perth museum. Is the museum happy to accept the security problem involved in looking after such a precious thing?

Robbie the Pict: I have had discussions with Mike Taylor and he is perfectly happy with that. Indeed, he was almost insulted when I suggested that his 10 guards could not take care of the tethering stone of Scone.

On a more serious note, the museum is perfectly happy that it can handle security and does not see it as a problem. I am sure that the museum could enter into dialogue about that. However, the museum would like the whole question downgraded to being about the tethering stone of Scone, an interesting artefact, rather than a supposed palladium of regal status. It is taking a

long time for people to realise that the abbot of Scone played a wee joke by substituting the stone. That sticks in the gullet of certain people in the Executive.

Dr Ewing: If the stone were returned to Perth museum for some reason and everyone was satisfied about its security, would you consider that to be the end of your petition?

Robbie the Pict: Yes. That is the proper place for it. It is not the stone of Edinburgh—it is the stone of Scone.

The Convener: The petition is very like the earlier petition that you submitted to the committee. At that time, you thought that the Public Petitions Committee had misinterpreted the petition as being about returning the stone to Scone, whereas your main concern was to establish ownership of the stone.

Robbie the Pict: I consider this a matter of justice and law and order. That aspect was not taken on in the consideration of the previous petition. I mean no disrespect to the committee, but there is a significant point of law relating to ownership, proprietorship, deed and title and what is proper. I admit that that puts the committee in a slightly embarrassing situation because it must decide which master it should best serve. The Scottish Parliament is an extension and an agency of the Westminster Parliament, but it is also hoping to get on its feet as a persona in law that reflects the interests of the Scottish people.

The stone is a litmus test. I understand why that might have been glossed over previously—perhaps because of the novelty of asking for the return of the supposed stone of destiny. However, there is a serious point underlying the petition. If we are to be a community under law, if not a kingdom under law, the law of the land is important to the people. The System 3 poll that was done at the time far outweighed the 29 people whom Michael Forsyth phoned up. The poll organised by *The Herald* showed that 68 per cent of people were in favour of returning the stone to Scone.

The Convener: Is the litmus test to which you refer the fact that ownership of the stone should be decided under Scots law?

Robbie the Pict: Yes. However, the police have clearly refused to act, as they consider this to be a political matter. The letter from the chief superintendent states:

“I refer to your letter of 6 November 1993 and I have to advise you that there is no intention of conducting any inquiry of this nature.”

The investigation is not getting off the ground via the usual channels—that is to say, by reporting the theft to the police.

The Convener: Is there not a distinction between the police conducting a criminal inquiry and the constitutional issue of where ownership of the stone lies?

Robbie the Pict: This does not need to be a constitutional matter—it has been made a constitutional matter by the thieves. They have made this into a special case, when in fact we are talking about the theft of a stone from the front of the palace at Scone. This is an ordinary criminal inquiry that the police have decided is of a political nature. The people do not agree.

Phil Gallie: Will you confirm that, ultimately, you want the stone to be in Scone?

Robbie the Pict: Yes. The stone of Scone should be returned to Scone.

Phil Gallie: In that case, why are you clouding the issues with legal argument? We all know how frustrating the justice system can be and the high costs that are involved in it. The Scottish Executive has the power to place the stone in Scone. The arguments that you make about visitors and the attractions that exist in Edinburgh are very well made. The Executive wishes to spread throughout Scotland the benefits brought by the Scottish Parliament. Rather than emphasising a legal technicality, it might be far better for you to plead directly with the Scottish Executive for the return of the stone to Scone.

Robbie the Pict: The technicality to which Phil Gallie refers is a very radical technicality—it is called the law of the land. The previous submissions that were made concerning the location of the stone in Edinburgh Castle were repelled on the basis that the authorities were very happy with the increase in the number of visitors to the castle. Why should Edinburgh be able to exploit that? Perth should enjoy the benefit of the increased number of visitors, because it is the stone's home town.

There is another agenda that steers people into providing a false justification for keeping the stone in Edinburgh. Frankly, I think that this is a red-face issue, which boils down to law and order. That is the basis on which the authorities must be called to account, because they are not playing a decent game and are not giving the stone back to the people to whom it belongs.

Dorothy-Grace Elder: I am inclined to agree with Phil Gallie that, if we continue to emphasise the issue of ownership, we will end up being told that the stone belongs to the people of Scotland, rather than the Crown, but that it should stay in Edinburgh.

Robbie the Pict: The stone belongs to the people of Scone.

Dorothy-Grace Elder: The strongest point that

you make relates to the presence of the stone in Edinburgh. This could be regarded as a case of war theft. After wars, it is normal for stolen goods to be returned to precisely the town or village from which they came—although such goods are not always returned. The source of the stone was Scone. If we regard this as a war theft, logically the stone should return to Scone. Is that not a better line of argument than the one that you are taking? Is it not more important for the stone to go to Scone than for us to continue making a legalistic argument, perhaps for many years?

Robbie the Pict: The legalistic argument relates to a straight case of theft. The treaty of Edinburgh of 1328 is also important. In that treaty, Edward III asserts that the stone that was taken from Scone should be returned. Let the treaty be honoured. I am very suspicious of having the issue made subject to economic surveys and to consideration of the merits of tourism traffic movement. If we take that route, the stone could stay in Edinburgh Castle for the next 100 years. The authorities have shown their hand on previous occasions, when they did not take seriously factors such as those that I have just mentioned. There is an overwhelming argument for stimulating interest in Perth museum, which is an efficient, well-run museum that should receive support. If that support could be provided by returning the stone, why is the Executive resisting the measure?

Dorothy-Grace Elder: Edinburgh Castle is rather overloaded with treasures.

Robbie the Pict: Where would the stone be moved from? Edinburgh Castle is a British army station—it looks as though there is oppressive retention of that imagined palladium. The truth is that that is absurd. Let Perth and Kinross enjoy its wee chuckle. Let it have the stone on view locally—it will still be an attraction for everyone in Scotland. If a person can get to Edinburgh, they can get to Perth. That is where the stone properly and justly belongs. It is a matter of law and order.

10:45

John Farquhar Munro: I am inclined to agree with other members. We could debate the ownership of the stone for many years. Nobody knows better than you do the difficulties in trying to convince the law courts that they have made an error or a misjudgment in interpreting legislation. One need only look at what happened in respect of the Skye bridge.

Robbie the Pict: With respect, I do not want to send the petition to the law courts. An order should come from the Parliament.

John Farquhar Munro: The argument is protracted and on-going. I fear that we would be frustrated at the end of such a discussion.

You suggest that the stone is probably not situated in the most appropriate place. There is support for the argument that it should have gone to another location and that the most appropriate location is Scone. We could present that argument and find out the Executive's thinking on that issue. You said to Phil Gallie that you would be happy if it were agreed that the stone could be moved from Edinburgh Castle to the new location in Scone.

Robbie the Pict: Basically, I do not care what shenanigans and manoeuvring need to happen in the world of politics or of law to get it there. If the stone is properly returned to the community to which it belongs, I and the people who support the petition would be satisfied.

Dr Ewing: What does it cost to get into Perth museum, if anything? What does it cost to see the stone in Edinburgh Castle?

Robbie the Pict: Admission to the former is free, but it is £4.50 to see the stone, as far as I know.

Dr Ewing: And there will be a queue.

Robbie the Pict: There will be a queue and car parking costs. It is a couple of hundred pounds to get a car back if a ticket has expired by the time a person gets back from the queue.

The Convener: You referred to a straightforward theft. Matters of theft are for the Procurator Fiscal Service and the Crown Office. Edward I has long gone from the scene and the prosecution service has said that it is unlikely to pursue the matter as a straightforward theft. Is that not a realistic point of view? It is not for the Scottish Parliament to interfere with decisions about prosecutions.

Robbie the Pict: That is why I have emphasised to the committee that it can act in a transcendent manner. It is clear that the police did not act without fear or favour. I was told privately that the issue is a political red-hot potato. If that is the case, it will take an organisation such as the Parliament to take an Alexandrine sword through this Gordian knot and say, "If the issue is political and involves law and order, we should defend the people's interests and take a decision over the heads of Chief Superintendent MacKay and the procurator fiscal." The procurator fiscal, to whom I wrote, also said that and referred me to the Scottish Office. That is how a private prosecution started that lasted for three years. We began to get action only the night before John Major announced that he was returning the stone. I sent a list of 13 legal challenges to the constitutional unit of the Home Office the night before. They recognise that there is a question of theft and are trying to deal with it without losing face.

The Convener: You acknowledge that

interfering in individual decisions by the Crown Office, the Lord Advocate or the procurators fiscal is a problem for any parliamentary committee and, indeed, for the Parliament as a whole.

Robbie the Pict: Do not be scared of those people.

The Convener: I am not a lawyer, but my understanding is that under Scots law we are not allowed to interfere in such decisions—they are completely independent of any political pressure.

Robbie the Pict: You need not ask them to act at this point.

The Convener: It is a matter of moving the stone.

Robbie the Pict: It is a matter of public record in common law that the king of England ordered the stone to be removed. The treaty of Edinburgh and Northampton, another matter of public record, promises it back.

The Convener: What would you say to people such as Phil Gallie who would argue that, as we operate under a devolved Administration within the United Kingdom, it is up to the Westminster Parliament, which is sovereign, to decide on whether the best place for the stone is Edinburgh Castle?

Robbie the Pict: I would say that the United Kingdom is a notional treaty between the kingdom of Scotland and the kingdom of England. No document to that effect has been signed and there has been no visible consent by the sovereign people of Scotland. The basis for the use of the term United Kingdom is quite shaky and the basis for calling the country Great Britain was shaky up until 1800. The terms of the Act of Union 1707 still contain reference to the rights of the kingdom of Scotland, so the arrangement, which has been in existence for only 300 years, is temporal. Sumaria was in existence for 3,000 years.

The Convener: That is a nice reminder.

Dorothy-Grace Elder: Some of us do not agree that the Westminster Parliament should be sovereign. On a practical level, do you not think that the reluctance of the constabulary and the legal authorities to get involved in the question of whose property the stone is might be based on the fact that, if they went down the road of determining specific ownership, they would need to investigate the Koh-i-noor diamond and much of the royal collection?

Robbie the Pict: In Scotland, we are not obliged simply to follow established practice. It is a particularly English concept that if one gets off with something for long enough, it becomes an imperialistic right. The example of child abuse counters that argument: the fact that a case of

child abuse has been going on for 18 years, say, does not make it right. That is the short answer.

Dorothy-Grace Elder: Do you accept that if the stolen stone of Scone were investigated in such a way, quite a large proportion of the goods that have been seized for kings over many centuries would have to be gone through?

Robbie the Pict: That is a problem for guilty imperialists, not for the present petitioner. I will not press them on where the Koh-i-noor diamond came from. Perhaps a Robbie the Pict in India might want to take that up. That is an issue for the guilty imperialists and whomever they robbed in the course of their imperialism.

The Convener: Are there any other questions? It seems that there are not. You are free to stay to listen to the discussion about what to do with the petition.

Robbie the Pict: I am very much obliged.

The Convener: Sorry, I have a final question, which I forgot to ask you. The Scottish Peoples Mission obviously supports the return of the stone to Scone, as does Perth and Kinross Council. Is there any indication of wider support for that position?

Robbie the Pict: The System 3 survey in *The Herald*, which was carried out when the stone was about to be returned in 1997, is indicative of the will of the people on that; it is much more indicative than the phone-round that was organised by Michael Forsyth. It is worth remembering that only 29 people in the country voted to put the stone in Edinburgh Castle. That view was considered to outweigh a petition that Perth and Kinross Council raised, the number of signatories to which the Scottish Office would not admit. The jemmying in of the stone to Edinburgh Castle needs to be re-examined. The people should have more say on that.

The Convener: Thank you very much.

Dr Ewing: Some time has passed since the stone went to Edinburgh Castle and it would be reasonable for the committee to say that the time has come to review whether that is the best place for it. We should bear in mind the enormous access restrictions that apply to the castle, especially for visitors who have a car. The fact that one has to pay must also be taken into account.

Surely in some way the stone belongs to all of us who live here, so we should not have to pay to see it. Also, Edinburgh has so many attractions that it does not need to compete in VisitScotland terms, but Perth, like anywhere else in Scotland, has to compete with Edinburgh for tourists. It would be a wonderful thing for Perth, for tourism and for the people to get the stone of Scone back. In view of the time that has passed and in light of the stated view of decentralising assets such as

the stone of Scone, I totally support asking the Executive to return the stone. We could even refer to the treaty of 1328, in which there was a promise to return the stone to Scone. We should ask for the matter to be examined again, taking into account tourism, social and cultural considerations and elementary justice.

The Convener: I remind members that, when we dealt with the matter before, we agreed to take no further action on the basis of the response that we got from the Executive at the time.

Dr Ewing: Now that we have VisitScotland in place of the Scottish Tourist Board, is the time not right to consider the matter again? VisitScotland has shown that it wants to be active in all kinds of ways and to do things that the Scottish Tourist Board was not good enough at doing. I think that we should say that enough time has passed and that the matter should now be reconsidered.

The Convener: Before we discuss that, I would like to deal with the action suggested in the papers before us. The paper says that the petitioners have tried every avenue to establish the legal ownership of the stone and to try to secure its return to Scone. So far, however, they have been unable to persuade anyone of their case, including the Crown Office and Procurator Fiscal Service and the Scottish Office, which confirmed that ownership of the stone lies with the Crown. The question of ownership appears to be a constitutional issue. It is not for the Parliament to interpret constitutional law, and it is the courts that must decide on such constitutional matters. Given that the majority of respondents—although that was only 29 people—said that they wanted the stone to be in Edinburgh Castle, it is suggested that we should respond to the petitioners by saying that we cannot take any further action, and advise them to pursue the matter through the courts.

From the discussion this morning, I sense that members would prefer us not to pursue the question of ownership and stick clearly to whether we can persuade the Executive to move the stone from Edinburgh to Scone. We could do that in the terms that Winnie Ewing suggested. Does anyone think otherwise?

Phil Gallie: Robbie the Pict's evidence was very positive on one particular issue—he wanted the stone to go back to Scone. We would do him a disservice to consider any other aspect above that main objective. On that issue, there is unity in the committee, as you suggest.

The Convener: Is it agreed that we should write to the Scottish Executive in the terms suggested by Winnie Ewing?

Dr Ewing: Could we write to VisitScotland as well?

The Convener: We could do that.

Dorothy-Grace Elder: Dr Ewing mentioned that there is a £4.50 charge for Edinburgh Castle but that the Perth museum is free. That could perhaps be incorporated in our letter.

The Convener: Yes, that is what Winnie Ewing suggested.

Dorothy-Grace Elder: Thank you for confirming that. Perhaps reference should also be made to the severe problems of agricultural areas in the past year or so, as Perth is in the centre of an agricultural area, and to the justice of the case, in modern terms. It is pretty obvious that the stone belongs to Scone and that, for all the reasons that we have listed, it should be returned. I do not accept the security reason that has been quoted several times. My goodness—the stone has had only one theft in hundreds of years and one recovery, on Christmas eve 1950, when it split in half outside Harrods through the unfortunate accident of dropping out of the back of a car.

Dr Ewing: It was already split.

Dorothy-Grace Elder: Anyway, it does not have too chequered a history in security terms over hundreds of years.

Phil Gallie: We said that we would go for unity and I do not want to cloud the issue. If we concentrate on getting the stone back to Scone—never mind all the historical details—I will be quite happy.

The Convener: We could quite easily make the case that, since we last considered the petition, we have reconsidered the matter in the light of a successor petition and that we are now of the view that it is time to review the decision to keep the stone in Edinburgh. We will write stating all the reasons that Winnie Ewing gave and hope that that will have an effect. Is that agreed?

Members *indicated agreement.*

Domestic Abuse (Advertising Strategy) (PE496)

The Convener: The next petition is PE496, from Mr George McAulay, on the Scottish Executive's recent domestic abuse advertising strategy. Mr McAulay, the usual rules will apply.

11:00

George McAulay (UK Men's Movement): Yes—break when you say break, and no hitting in the clinches.

The Convener: You have three minutes to address the committee, then the meeting will be opened to questions.

George McAulay: Before I start, a number of correspondents have asked what action the Executive is taking on our previous petitions on parental alienation, which committee members will remember.

The Convener: We are still waiting for responses from the Scottish Executive. We will bring them together when we receive them and deal with them as a package.

George McAulay: So they are still in abeyance.

The Convener: Yes. We are waiting for the Scottish Executive to respond, but you will be told as soon as we get a response.

George McAulay: I thought that I was going to have the most contentious petition today, but after hearing the Queen being accused of reset, I see that I do not. Unfortunately, and with considerable regret, I have to accuse the Executive and, I am afraid, the Parliament of profound hypocrisy and double standards, and of having acted illegally under the Sex Discrimination Act 1975, with respect to the provisions that they made for domestic abuse advertising campaigns, and also because of the manner in which they address the entire subject of domestic abuse.

I sent every member of the committee an e-mail about Mo Mowlam MP, who made a public statement about serious domestic violence that she had committed. No one, bar Phil Gallie, has bothered to respond to that. I said to the late Donald Dewar that if a male politician had committed that domestic violence, there would have been calls for his blood and immediate resignation. That indicates profound double standards and hypocrisy in a Parliament and an Executive that are supposed to be committed to inclusion and equality.

Today, I received "Preventing Violence Against Women: Action across the Scottish Executive". The definition of violence includes violence in the street. Young men are infinitely more liable to be victims of street violence than are young women. It is unbelievable that only one section of society should be targeted for protection from violence.

The advertising that the petition refers to uses the usual technique of feminist advocacy, which is to commission research with an all-embracing definition of what they want to focus on, so that practically everyone must respond that they have been a victim at some point, according to an ever-wider definition of domestic abuse. However, the advertising completely ignored the 50 per cent of men who replied that they had been victims of domestic violence. If an ethnic minority group were to suffer violence at half the rates of the predominant ethnic group in this country, that would be rightly seen and condemned as racism, as not being inclusive and as being discriminatory.

If the Parliament is committed to inclusion and equality, it will take action along the lines that we suggest.

The Convener: I open the meeting to questions.

Dr Ewing: You talked about violence in the street, but that is irrelevant, because we are talking about domestic abuse. What happens to young men on the streets is totally irrelevant, is it not?

George McAulay: No. I was discussing the hypocrisy of the Executive.

Dr Ewing: I am sorry, but it is irrelevant to this petition. Am I right?

George McAulay: No. The petition asks for the situation to be monitored and for all future advertising campaigns—

Dr Ewing: You talk about domestic abuse in the petition, so there is no point bringing in what happens out on the street. Your particular complaint is about an advert that stated:

“1 in 5 women live with the constant threat”

of domestic violence. You complain about the whole phrase—not just the number, but the phrase “constant threat”. You say that it has been accepted that that is false, and that the phrase has been changed to

“As many as 1 in 5”.

Is that your main complaint?

George McAulay: No, that is not my main complaint. If you read the petition, you will see that I would like

“all future advertising campaigns to be screened to ensure honesty, integrity, sexual equality and lack of malice.”

As you can see from the rest of the petition, I want the Executive to

“honour its *professed* commitment to equality and inclusion”.

Those things are of almost equal importance.

Dr Ewing: The Executive would claim that it already screens in the way that you suggest.

George McAulay: It is blatantly obvious that it does not. The advertisement has been condemned. I have with me a reply from Audit Scotland in which the Executive accepts the fact that its advertisement was untrue.

Dr Ewing: We do not have a copy of that letter. We might do well to get a copy of it.

George McAulay: It does not have a reference number, but it is dated 2 May 2002.

The Convener: I understand that the Executive has made a public admission that it got it wrong.

George McAulay: Would you like to see the letter, Mrs Ewing?

Dr Ewing: I would rather that it went through the clerk.

The Convener: We can distribute copies at the end of the meeting.

Dr Ewing: I worked in a poor legal practice that I owned for more than 20 years and regularly met people who were subjected to domestic abuse. In all those years, I was never approached by a man telling me that he had been assaulted by a woman. I was also a criminal practitioner in the courts for the same amount of time, and I never handled a case—

George McAulay: Does that mean that you disbelieve the “2000 Scottish Crime Survey”?

Dr Ewing: I am speaking. When I have finished, you can ask me a question about what I have said.

When I was a member of Parliament, I also served on the House of Commons Select Committee on Violence in Marriage—that was the proper name of the committee, although it was unfairly known as the battered wives select committee. Over two years, we appealed for male victims of domestic abuse to come forward. We were willing to hold evidence sessions in private, out of concern for their feelings. In those two years, only one male came forward. To be fair, his was a sad case. He was a very small man and he seemed to have suffered gravely.

From my experience, I have formed the opinion that domestic abuse is normally carried out by the male on the female. I have not formed that opinion out of emotion or because of prejudice; I have formed it following 25 years of practice in the courts and membership of a select committee that investigated the subject. I do not want inaccuracy; therefore I am prepared to support you all the way concerning inaccuracy. I take your point about the use of the word “constant”. However, I ridicule the view that domestic abuse happens as much to males as to females.

George McAulay: I have not expressed that view. I am saying that the research is incomplete and is tainted. You say that you have met only one victim of domestic abuse.

Dr Ewing: I did not say that. I said that only one man came before the select committee.

George McAulay: You met a 6ft 4in victim of domestic abuse at the previous committee meeting, which I attended. Physical size has very little to do with it. Men tend to under-report. That has been well documented—

Dr Ewing: I accept that. So do women.

George McAulay: Of course they do. Is it in the

rules that Mrs Ewing can interrupt me?

The Convener: We are trying our best to deal with the petition. If people can be reasonable to each other we will get on with that better. We should lower the temperature, as members are genuinely trying to treat the petition with the seriousness that it deserves.

George McAulay: I am well aware of the feminist bias that exists in the Parliament and of the refusal to admit reality. I can provide study after study for Dr Ewing, some of which are mentioned in the petition, including the "2000 Scottish Crime Survey". If we bear in mind the fact that men under-report far more than women do, for obvious reasons, it is quite clear that there is a significant number of male victims.

It is sheer hypocrisy to concentrate on only one section of society. That is what Nazi Germany did; it had special privileged groups and special groups that it deemed worthy of vilification. The feminists' target is men, and fathers in particular. The Executive's campaign was meant specifically to demonise men, and fathers in particular. There was no other reason for it. Dr Ewing is probably well aware of that. I would like to ask Dr Ewing how she can square the circle of ignoring half the respondents to the Scottish crime survey, who are male victims of domestic violence.

The Convener: Give me a minute, Mr McAulay; I am convening the meeting. This is not a dispute between you and Dr Ewing. We are taking evidence on your petition, which is a matter for the Parliament. You have very strong views about individual members of the Parliament, but those are not up for discussion here. We are trying to get behind what the petition is calling for and to deal with it seriously.

It is not the case that the Parliament does not take seriously the issue of men being abused; it does. During the debate on domestic abuse, the then minister made it clear that it was her intention to carry out research and that she was commissioning research.

George McAulay: Are we talking about Jackie Baillie?

The Convener: We are talking about the minister's having said that research was being commissioned into the extent of abuse. I know men who have suffered abuse. I know that it is a real issue and most members of the Parliament acknowledge that and will treat it seriously. Raising the temperature and becoming personal does not help the matter. We are trying to deal with the issue cogently and coherently.

George McAulay: I apologise to Dr Ewing and I will attempt to focus.

The Convener: The Executive has undertaken

research into the extent of abuse against men. What is your response to that?

George McAulay: With respect, that research is flawed. It revisits the responses of the male respondents to the Scottish crime survey. I have been in contact with Dr Gadd of Keele University, who is charged with the research. It is merely a reprise of the responses of the male respondents to the crime survey; it does not reprise the responses of the female respondents. It revisits the responses of the males who said that they had been victims, but all that that will do is winnow some of them out. It is, from a scientific point of view, totally flawed to reprise only one half of a study.

The Convener: If the study is into the extent of abuse against men—

George McAulay: No, it is not. It is a reprise of the "2000 Scottish Crime Survey". The other point that I make on all the studies is that there is a tendency for people to imagine that the studies are gospel, that people respond honestly and that the sample groups are representative of society. That is very often not the case.

The Convener: The research has been commissioned, but it has not been published.

George McAulay: We exerted pressure, through the Audit Committee and the Equal Opportunities Committee—

The Convener: The research cannot be condemned until it has been published and we know what it says. Let us wait to see what it says before we condemn it out of hand.

George McAulay: I have a pretty strong—

The Convener: That is your view, but it is not a fact. We must wait for the research to be published.

George McAulay: I am saying that the research is flawed in its concept, because it approaches only one half of the matter.

The Convener: We can certainly pursue that with the Executive.

Phil Gallie: I want to come back to the precise terms of the petition, which are about the reform of the domestic abuse advertising strategy. You lodged your petition because you were concerned about a false statement that was contained in a Scottish Executive advertising programme, which must have cost a considerable amount of money. Is that really what you want to get to the bottom of? Do you want to find out how the Executive made that mistake, how much it cost, and what it is doing to rectify it?

George McAulay: We want those matters to be examined. I am concerned about the social effects

of the campaign. As you can see from the evidence, I made a complaint about a teacher in my son's school, who repeated and exaggerated the lie that was put out. That was done in all innocence. The teacher is a nice woman who has the interests of the children at heart; however, in front of a class of youngsters that included my son, she said that one in four women lives in constant fear of domestic abuse. What sort of terror does that induce in children?

Phil Gallie: That is at the back of your mind. It brings us to your feeling that the advertising campaign could have an adverse effect on society. You have covered two points of the petition. We must consider wider issues of domestic abuse and start to go into elements of discrimination. I think that you referred to a paper that you have just received. Perhaps that came after the petition was submitted.

11:15

George McAulay: I went to the mail box today and picked up a number of papers.

Phil Gallie: That paper came after the petition and we should not cloud the issues; we should concentrate on the first two points in the petition. All members of the committee should be concerned when misinformation is spread in the names of the Scottish Parliament and the Scottish Executive. Would you be satisfied if we took the petition forward on that basis?

George McAulay: I would be satisfied if the committee specifically addressed those points. My big concern is the effect that the campaign has on the minds of the young, particularly the girls in my son's class. How do they view the boys who will grow into men? Do they think that one in four of them will be an abuser?

Phil Gallie: You have made that point and to go back over it is pointless. That is all that I want to pick up on.

Dorothy-Grace Elder: Might not Mr McAulay angle his complaint against the Executive more positively? He could ask the Executive to appeal at some stage for men who feel that they are being severely abused to come forward and to state that those men will have equal rights to be helped. That would increase the tiny number of help groups for men that exist.

In a lifetime in journalism, the vast majority of abused people whom I have encountered are women. It is hard enough to get them to come forward. We know about the closed-door syndrome. I have encountered a small number of men who have come forward with what I thought were genuine cases. I assure Mr McAulay that the Parliament is strongly against abuse of any kind,

whether it be abuse of children, women, men or any group. Would not it be better to appeal to the Executive more positively to help to bring abused men forward and to help to create groups to assist them?

George McAulay: I take that point, but we have tried the reasonable approach over the years. Unfortunately, only the Rottweiler approach tends to be successful—everything else is ignored. We have presented facts and statistics and we have presented witnesses. I emphasise that I have no interest in taking up any position with any groups that might be set up to assist men; I am not looking for a paid salary.

Dorothy-Grace Elder: Of the very few such posts that exist, most are not paid and they are mainly in England.

George McAulay: I have no desire to follow the example of the women's refuge movement, which has a considerable body of well-paid advocates. However, I would like there to be facilities for men who are victims of abuse, such as those you suggest.

Dorothy-Grace Elder: Those who work in women's groups are not well paid, I assure you.

George McAulay: In comparison to most of the work that I have done, I think that they are quite well paid.

The Convener: That is outside the scope of the petition.

George McAulay: It would be helpful if the Executive were to encourage to come forward men who are victims of abuse. I mean serious abuse; something such as a shove should not be included. However, I have encountered a fair number of men who are victims. Abuse of men is mostly psychological abuse that develops into physical abuse. I am willing to provide the committee, for its information, with men who will talk to it about abuse.

On men reporting assaults to the police, I would ask that the next Scottish crime survey include the question: "Were you afraid that you would be arrested if you reported this to the police?"

Dr Ewing: I wonder whether Mo Mowlam has been correctly quoted—politicians are often misquoted.

George McAulay: I have been misquoted myself.

Dr Ewing: I am worried about the fact that we have brought Mo Mowlam into this.

George McAulay: I wrote to Dr Mowlam and she did not reply. I spoke to Donald Dewar, who gave one of his harrumphs and moved on to other things. I can supply the committee with my

correspondence with Donald Dewar and Mr Blair.

Dr Ewing: I do not like to bring Mo Mowlam into this. She did not have to reply to your letter.

The Convener: There is a reference to the *Daily Mail* of Saturday 19 July 1998 that can be checked.

George McAulay: Mo Mowlam did not reply to my letter.

Dr Ewing: It is very common for politicians to be misquoted.

George McAulay: The *Daily Mail* contained a huge interview and Dr Mowlam did not see fit to make any complaints to the newspaper about it.

Dr Ewing: If we were to make complaints to newspapers every time we were misquoted, we would have no time to come to the Public Petitions Committee.

The Convener: I can vouch for that. Thank you, Mr McAulay. You are free to listen to our discussion on how we will deal with the petition.

It is suggested that we write to the Executive to seek its views on the issues that are raised in the petition, and that we specifically seek details of the Executive's handling of the recent advertising campaign. We should also ask the Executive to provide details of the nature and current status of the proposed research into the scale and nature of domestic abuse of males. We need to know what the Executive is doing and to hear its response to the allegation that the research is flawed.

John Farquhar Munro: That covers the terms of the petition.

The Convener: We have to give the Executive a chance to respond.

Phil Gallie: Point 4 of the petition is the relevant bit.

The Convener: We will keep you informed of the progress of the petition, Mr McAulay.

George McAulay: Perhaps you could inform all petitioners in a letter what the committee has agreed.

The Convener: That is what we do.

George McAulay: I have had trouble with my mail box, so it might be that some letters have gone astray.

The Convener: We will inform you of the outcome of your petition—we will not inform other people of the outcome of your petition.

George McAulay: Oh—right; that is what I meant. You should inform every petitioner what the committee has decided after the meeting.

The Convener: The clerk tells me that that

happens without fail in every case. Does the committee agree to deal with the petition as I suggested?

Members indicated agreement.

Bankruptcy Procedures (PE501)

The Convener: The final new petition, PE501, comes from Mr James Duff. Mr Duff calls on the Parliament to investigate and propose changes to current bankruptcy procedures, based on problems that he experienced in relation to bankruptcy and sequestration. He argues that had the sheriff who was involved in Mr Duff's case been more exact in his examination of the specific details of the case, he would have been unable to grant sequestration under the Bankruptcy (Scotland) Act 1913.

Members will be aware that part 10 of the Enterprise Bill introduced in the House of Commons in March 2002 was debated in the Scottish Parliament on 17 April. Part 10 deals with the reserved matters of corporate insolvency reform and intends to provide more protection to companies that are in financial difficulties, while reducing bureaucracy and enhancing accessibility. The bill will remove the need for a court hearing in most cases, and will restrict the control of proceedings by a single creditor. It will allow greater opportunities for companies that become bankrupt through no fault of their own. Part 10 deals only with incorporated companies—about 25 per cent of Scottish businesses—but the Executive plans to review the current personal insolvency laws and procedures in Scotland, although that is a reserved matter. However, the Deputy Minister for Justice has been unable to provide a time scale for such a review.

The petition appears to be prompted by the petitioner's own case; he has not provided evidence of any other instances of failure by judges to take into account statutory requirements in bankruptcy cases that would give weight to his request for an investigation into the current procedures.

It is suggested that we agree to write to the Executive requesting its views on the issues that the petitioner raises, with a specific request for details and time scales of the future consultation on personal insolvency laws and procedures. We may also want to seek details of, and an update on, the progress of the Enterprise Bill. Is that agreed?

Members indicated agreement.

Current Petitions

Bus Services (Regulation) (PE420)

The Convener: The first current petition, from Councillor Sam Campbell, calls on the Parliament to take the necessary steps to reregulate the bus service in Scotland, to enable rural communities that depend on it to have an adequate bus service.

Members will recall that we requested a response to the petition from various bodies, including Midlothian Council. We have now received the council's comments, which express clearly the view that bus services should be regulated as a matter of urgency and argue that the deregulation of bus services has led to a concentration on main corridors and main towns, to the detriment of more rural villages. The council is not satisfied that the Transport (Scotland) Act 2001, which makes provision for quality partnerships and quality contracts, is sufficient to deal with the problem and asks the Scottish Parliament to reregulate bus services.

We have already received responses to the petition from the Executive and City of Edinburgh Council. Unlike Midlothian Council, they indicate that much is being done to address the issues that the petition raises. Midlothian Council regards the provisions of the Transport (Scotland) Act 2001 as helpful, but does not believe that they go far enough to allow it to provide an adequate public transport network. However, both City of Edinburgh Council and the Scottish Executive regard those provisions as sufficient.

Previously we accepted points made by the Scottish Executive and City of Edinburgh Council on a related petition. It is suggested that the petitioners be told to contact Kenny MacAskill MSP, should they wish to support his proposed member's bill on the regulation of bus services, and that no further action be taken on the petition.

I am not entirely satisfied with that recommendation. Midlothian Council is a rural authority with direct experience of the impact of deregulation on rural bus services, and it has taken a strong line on the petition. Before we consider the petition further, it may be helpful for us to ask the Executive to comment on what Midlothian Council has said.

Dr Ewing: Do we know what stage Kenny MacAskill's bill has reached? Does it have any chance of being passed?

The Convener: The bill has been lodged, but it has not made much progress.

City of Edinburgh Council's response gave us a steer, but it is an urban authority in a unique situation. Midlothian Council has taken a completely different line on the petition. I would

like to hear what the Executive has to say in response to what Midlothian Council has said.

Dr Ewing: It looks like wee rural places are suffering.

The Convener: It looks like they are suffering very badly. Midlothian Council says that quality partnerships and quality contracts do not work in a rural environment.

Dr Ewing: European law enshrines the right to public transport.

The Convener: Do we agree to write to the Executive, enclosing Midlothian Council's response to the petition and asking it to respond to the points that the council makes?

Members indicated agreement.

Dorothy-Grace Elder: The petition raises an important issue for Scotland as a whole.

Tolls (Trunk Roads) (PE445)

The Convener: The next current petition relates to Skye bridge. Members will recall that the petition calls on the Parliament to examine the discrepancies between the terms of a toll order and those of the assignation statement that relates to the scheme for the Skye road bridge. The petitioners argue that the Government of the day did not follow the proper procedures before the Skye bridge opened in 1995. We considered the petition and agreed to seek the views of the Executive and the Lord Advocate, whose responses we have now received. Those responses are far too lengthy for me to go through them in detail. We will deal first with the question of the validity of the documents.

The Executive argues that the empowering statute that was used to validate those did not require either the road scheme or the toll order to be laid before Parliament or published, and indicates that that did not happen in either case. However, the Executive claims that the orders were made available for public inspection, as required by statute. Strictly speaking, in terms of the law, nothing wrong has been done but, in terms of politics, there was a complete lack of transparency, openness and accountability in the way in which the order was pushed through the parliamentary process. Shall we deal with that issue first?

Dr Ewing: My recollection, based on my two sojourns in the House of Commons, is that statutory instruments had to be laid, however unsatisfactory the method of laying them was. They might be laid on a Friday when no one was there or laid in terms that were meaningless—for example, when 5,000 miles of Scotland's fishing waters were stolen, no one who read the

instrument would have known that that is what it was going to do. I doubt that the requirement for them to be laid has changed.

The statutory instruments also had to be published in a printed form. Perhaps, for once, the House of Commons is showing us a better way of doing things.

11:30

The Convener: That issue is key, as this matter is hugely complicated. The Statutory Instruments Reference Committee ruled that the instruments did not need to be laid before Parliament or printed and published as they were correctly classified as local instruments. The Government of the day was required only to make them available for public inspection. I would like to know how many people asked to see the orders.

Dr Ewing: Hardly anybody. Is the Statutory Instruments Reference Committee above the law?

The Convener: It classifies instruments and decides which have to go before Parliament and which do not. The reason that the instrument did not go before the Joint Committee on Statutory Instruments is because the Statutory Instruments Reference Committee said that it was a local statutory instrument.

The situation is that, although the process by which the orders were dealt with was strictly legal, it was completely lacking in transparency, openness and accountability. The courts have decided that the process was legal, but whether it is politically acceptable is a different matter.

Dr Ewing: It was legal but immoral and untransparent.

The Convener: Well, it was certainly untransparent.

John Farquhar Munro: Each of the arguments that has been presented on this issue has fallen on stony ground. However, it is interesting to note that subsequent orders for similar schemes in the country were printed and published before the schemes were approved. If the legislation applies to certain contracts, why does it not apply to the Skye bridge contract?

The Convener: That is the question that needs to be asked. Why was a different legal method used in relation to the Skye bridge?

Dr Ewing: Could John Farquhar Munro give us an example of a similar contract?

John Farquhar Munro: You will recall that, recently, tolls on the Erskine bridge were suspended because the documentation had not been signed.

Dr Ewing: So the Executive has learned from

the mistake in relation to the Skye bridge.

The Convener: Are we agreed to seek further information from the Executive as to why the Skye bridge instrument was handled differently from all other orders and was not printed, published and laid before Parliament?

Dr Ewing: We do not know that all other orders have been printed, published and laid before Parliament.

The Convener: We will ask whether its treatment was unique. It was certainly dealt with differently to other similar orders. We can also ask the Executive to explain in detail why, given the controversial nature of the project, the instrument was not printed, published and laid before Parliament.

Dorothy-Grace Elder: Could we ask whether any subsequent instruments have been dealt with in the way that the Skye bridge instrument was?

The Convener: Yes. I should point out that Robbie the Pict has made available further briefing material on this question. It came in far too late—the clerks have not even had a chance to read it—but it will be circulated to members for information.

Are we agreed to write to the Executive to ask the questions that we have raised?

Members indicated agreement.

The Convener: The next issue that the Executive responded to relates to the argument about whether the assignation statement was invalid because it was not signed or dated. That matter has been ruled on by the courts and the Executive is of the view that

“the Assignation Statement is valid although it is not a probative or self-evidencing document”.

I do not know what that means—a lawyer might. Winnie?

Dr Ewing: Before you leave the previous issue, I want to raise a point about the quote that is at the foot of the second page—there are no page numbers—of the Scottish Executive’s response. The response quotes Lord Sutherland as saying:

“I find it difficult to see how the printing of these instruments ... would have brought anything more to the attention of interested parties than had already been achieved by the massive publicity”.

In other words, he allowed the press interest to substitute legal transparent agreements. In other words, if there is massive press publicity you can forget any obligation to tell the good old public officially. We should question that because it is surely an extraordinary statement—if it was made by Lord Sutherland.

The Convener: We can challenge that by asking for the basis of his argument.

To return to the assignation statement, I do not know what the Executive means by saying that

"the Assignment Statement is valid although it is not a probative or self-evidencing document."

We can perhaps simply accept what the Executive has said, but I do not know what it means. We could ask the Executive to explain that further.

Dr Ewing: It means that the judge has made up a new law.

The Convener: Is that what it means?

Dr Ewing: It is not the law. In our law, a probative document is needed for any serious matter. The judge has simply ruled that a probative document is no longer necessary in the case of the Skye bridge. It is quite incredible. For the simplest of ordinary dealings in trade and commerce, the documents must be probative for any serious matter.

The Convener: In our letter to the Executive, shall we ask it to clarify whether its reference to the assignation statement being

"valid although it is not a probative or self-evidencing document"

simply means that the judge was making new law in that respect?

Members indicated agreement.

The Convener: We shall ask the Executive to confirm that.

Let us move on to the Executive's response to the point about the contracts being issued prior to the public inquiry. Members will see that the Executive's response states that that was normal practice.

Dr Ewing: That is quite incredible. I have the correspondence dating back to that time, when I was involved because, as MEP for the Highlands and Islands, I had wanted the bridge to be financed in a different way in the first place—possibly with European help. I have the file, which shows that the project had already been awarded to Miller while the public inquiry was being conducted in Kyle of Lochalsh.

John Farquhar Munro: The project had already started at that time.

Dr Ewing: Yes. The project had already started. Now, the Executive has given an interesting legal argument that I have never heard put before. The Executive does not dispute—it cannot because I have the file—that the project had already been started prior to the public inquiry. That fact has been admitted by the Executive.

The Convener: That is not disputed.

Dr Ewing: No, but it would have been if I had not kept the file.

The Executive response continues:

"Following a competitive tendering process, the joint venture company Miller-Dywidag was selected as the preferred bidder ... Thereafter"—

as John Farquhar Munro has mentioned—

"work proceeded on the design phases ... The main contract documents were agreed".

The Executive goes on to say that, if the public inquiry had objected, the secretary of state would have had to pay up and compensate Miller for cancelling the contract. That is quite an extraordinary attitude. It makes you wonder what public inquiries are for.

The Convener: The response refers to the fact that if the public inquiry had opposed the project, the contract would not have been completed. The element of conditionality in the contract would have meant that the project would have stopped and that the Government would have paid full compensation.

Dr Ewing: That would have been our taxpayers' money.

The Convener: However, it is not clear from the reply what is meant by full compensation.

Dr Ewing: Exactly. It is a most amazing puzzle. It means that public inquiries about any such matter are valueless because the Government can go ahead on the basis that if the public inquiry dares to oppose the scheme, the company will be paid by the taxpayers' money.

The Convener: It is worth our while asking the Executive for an explanation of what was meant by full compensation in those circumstances. Would the company have been compensated with the actual cost of physically building the bridge or with the profits that they might reasonably have garnered over the 14 to 18 years if the bridge had gone ahead? We need that to be clarified.

Phil Gallie: Full compensation might simply have been the refunding of expenditure that the company had incurred in preparing plans.

Dr Ewing: As you know, such expenditure could be dolled up to any amount.

Phil Gallie: Not if a contract is properly specified—and we can see the consequences of that in the disaster down the road from here.

The Convener: We could ask the Executive to clarify what is meant by full compensation. Is that agreed?

Members indicated agreement.

The Convener: Let us move to the other points, starting with the financial arrangements. There is a question whether excessive profits were made from the contract by the Bank of America.

Members will note that a formula in the concession agreement determines the length of the concession period for the company. That formula was based on the fact that the company was able to recover the costs of building the bridge, which are put at £23.64 million, based on 1990 prices. The concession period was estimated at 14 to 18 years, which allowed an agreed margin of profit to be made.

The Executive dismisses as “entirely speculative” the sum that has been mentioned by the petitioners—which I think is £170 million—and does not give any information as to what an agreed margin of profit is under the circumstances.

Dr Ewing: Towards the end of the letter from Mark Rae, there is a reference to the toll revenues. They are not given, but they are in the public domain and we can apparently find them out from Companies House. The letter says:

“details of toll revenues to date ... are set out ... and are available from Companies House.”

Do the petitioners have that information or have they tried to get it? Perhaps we should try to get it.

The Convener: If it is publicly available, it can easily be had.

Dr Ewing: But the amount of that revenue is relevant to the argument.

The Convener: Absolutely. We should still ask the Executive what the agreed margin of profit over the 14-to-18-year period of the contract will be. Although we can find out from Companies House what revenue the company has taken so far, we do not know what it is due to get in future.

John Farquhar Munro: You will find it very difficult to get any response from the Executive. I have asked the question, and the figure has not been made available. The ironic thing is that the cost of the bridge was originally about £23.6 million. I understand that almost £10 million was allocated to the contract by the then Scottish Office, which made the fiscal cost of the bridge something in the region of £15 million—which we might call the shore-to-shore cost.

If we consider the various figures that have been presented, which have been well researched by many people in Skye and Lochalsh and by the protesters, we find that substantial sums of money are being extorted from the travelling public. Some estimates suggest that the final sum, if the tolls extend for the duration of the contract—which I think is about 27 years—would amount to something like £170 million, for a £15 million span. The most conservative estimate that I have seen is for about £125 million. That is a huge amount of money. I do not know how much profit the Bank of America is making, but, based on those figures, it

must be pretty substantial.

The Convener: I still think that it is worth the committee asking for that information. I realise that you have done that as an individual, John, but there is no reason why the committee cannot ask for it.

Dorothy-Grace Elder: I find the tone of the long and detailed letter from Mark Rae objectionable in parts. It obscures facts that could easily have been released, especially the situation with the Bank of America. It says, for example, that

“these figures are entirely speculative and it would not be appropriate for the Executive to comment on these in detail.”

We are dealing with taxpayers’ money. It is highly appropriate that the Executive comments on the matter.

Furthermore, there is more than a lack of transparency when it is pointed out

“that details of toll revenues to date, and other financial details are set out in the Annual Accounts of Concessionaire, Skye Bridge Ltd, and are available from Companies House.”

Mark Rae could have provided that information to us. It would have been helpful and transparent for us to have had that before us today. The Executive has chosen not to provide it; it has chosen to give us the bare minimum. The letter is filled with fudge.

The Convener: We are agreeing that we will seek all that information now. So is it agreed—

Dorothy-Grace Elder: But time is going by while people are giving us these fudgy answers. We are all sick of them, convener.

Dr Ewing: John Farquhar Munro mentioned a period of 27 years. I thought that the concession period was between 14 and 18 years.

The Convener: I understand that the concession period is 14 to 18 years. The Executive referred to that period of time.

John Farquhar Munro: That is the minimum.

The Convener: It is an estimate.

John Farquhar Munro: The maximum is 27 years.

The Convener: Do members want clarification on that point?

Members indicated agreement.

The Convener: We move on to consider the response from the Lord Advocate. Members will note the Lord Advocate’s ruling that the decisions of judges are not for him to question; he uses the phrase:

“the Opinion is set out comprehensively and is binding”.

The Lord Advocate deals with the question of Robbie the Pict being denied the opportunity to petition the nobile officium. His response is that the Lord Justice General gave full reasons as to why there was no proper basis for such an application. I understand that Robbie the Pict is currently challenging the Lord Advocate's refusal of a hearing on the grounds that it is a violation of human rights. I understand that the matter is therefore sub judice. We should be careful what we say about the case.

Dr Ewing: One thing strikes me about the point that the Lord Advocate makes. If we look at the end of the Executive's letter, which Dorothy-Grace Elder called a fudge, the section that deals with the court's scrutiny of the assignation statement states that:

"these are correctly matters to be addressed in detail by the Lord Advocate".

When we turn to the Lord Advocate's response, we find that he states that the matters are not for him, but for the judges. Which is it? Is Mr Mark Rae wrong to suggest that we look to the Lord Advocate for guidance? The Lord Advocate has not given us guidance; he has said that the judges are independent people.

11:45

The Convener: I am advised that the Lord Advocate's ruling is the one that matters. The Executive was wrong, as the decision is for the Lord Advocate and not for the Executive.

Dr Ewing: The Executive was wrong to state that the Lord Advocate would address the matters.

The Convener: I have been told that the matters have been addressed, in the sense that the Lord Advocate has said that he will not address them.

Dr Ewing: Come on—that is adding insult to injury.

The Convener: It is civil service speak—by the Lord Advocate not addressing something, it has been addressed.

Dr Ewing: The letter is insulting. It insults the intelligence of the committee and everybody.

The Convener: Okay. We have gone through PE445 in detail. We have sought responses from the Executive and the Lord Advocate. I sense that the committee is not of the opinion that all avenues have been exhausted and that no further action could be taken. That is the action that was suggested to us. I sense that the committee wants to write to the Executive again to put the detailed questions that have been raised this morning. We want to seek further clarification on all those questions.

Phil Gallie: When does the Freedom of Information (Scotland) Bill come into effect?

The Convener: We do not know. We will have to check that.

Phil Gallie: Perhaps there is a need for such an act after all.

The Convener: Phil Gallie is changing his mind.

Are we agreed that we should respond in the ways that we have detailed?

Members indicated agreement.

Phil Gallie: I have another point to make in respect of PE445. I suspect that the argument with the Executive will go on for a long time. However, it is clear that the Scottish Executive could do something about the matter tomorrow, if it so desired, although the solution would be expensive. The issue is political. Perhaps all the parties who will fight the next election in 2003 should consider the matter; that would ensure that the matter would be in—or out of—their manifestos. People will be asked to vote on such issues. We should remind the petitioners of that fact.

The Convener: You can remind the petitioners of that. Although the matter is not one for the Public Petitions Committee to rule on, the point is well worth making.

Community Volunteers (PE447)

The Convener: PE447 was lodged by Mr Gregor McIntyre. Members may remember that the petition concerns local community volunteers. The petition calls on the Scottish Parliament to take the necessary steps to put in place across Scotland all necessary structures and regulations to ensure that local community volunteers are able to develop or pursue local health and social inclusion projects in parallel with, or independently of, the strategic objectives of statutory agencies.

The petition was prompted by the petitioners' concern that successful projects that were being run by the West Dunbartonshire community health alliance broke down as a result of the strategic policies of the statutory agencies, including West Dunbartonshire health strategy group.

It is suggested that the committee send a copy of the Executive's response to the petitioners and to Des McNulty, asking them for their views. We should ask specifically whether they consider that the Executive's suggested joint health improvement plan will prevent the situation that prompted the petition from occurring in future.

Dr Ewing: Why, on the letter from the health department's business management unit, dated 9 May, is there an indecipherable heading in some foreign language?

The Convener: I am told that it is a fault with the e-mail.

Dr Ewing: It looks like Russian or Greek.

The Convener: I am told that it is just the way it comes through the computer systems.

Dr Ewing: Are we saying that it is not Greek?

The Convener: It is just the headed paper that is sent out all the time.

Dr Ewing: Well, I am sorry, but I am not happy with it. It is a letter; it is not an e-mail. Why on earth does part of our Scottish Executive use a heading in a foreign language? If it was Gaelic, I would not object.

The Convener: I am told that, had a hard copy been sent, the legend would not be there. It has come out in such a fashion because it has been sent by e-mail. The hard copy does not have the legend. It is a glitch in the computer system.

Rhoda Grant: It is because the Executive's computer system is set up differently from the Scottish Parliament's computer system. Our computer system reads the Scottish Executive's logo in the way that has appeared.

Dr Ewing: I am sorry, but I would like to know why the heading of the health department's business management unit is indecipherable. I hope that I am not being unreasonable.

The Convener: You could ask the Executive, but the explanation will be that it is to do with the computer systems.

Dr Ewing: I am sorry, but that is not an answer to me.

Dorothy-Grace Elder: I do not know how this could happen. How can the computer change the heading into a different alphabet?

The Convener: I am not a computer expert, but I am informed that our computer system is different from the Executive's computer system. The legend on the actual—

Dr Ewing: I will write to the Executive myself, convener—I do not want to put you to any trouble. I am just irritated by this.

The Convener: Okay—but apart from that, do members agree with the suggested actions?

Members indicated agreement.

Sites of Special Scientific Interest and Special Protection Areas (Arran, Barra and Yell) (PE462, PE463 and PE464)

The Convener: We now have a series of petitions, which members will remember are on Scottish Natural Heritage. PE462, from Mrs Margie Currie, calls into question the science on

which SNH bases its decisions in relation to sites of special scientific interest; PE463, from Councillor Donald Manford, calls into question the consultation that SNH carried out on the Sound of Barra; and PE464, from Mr Robert Cunyngham Brown, calls into question the scientific justification for SNH's list of rain goose special protection areas.

Members will remember that we agreed to seek the views of the Scottish Executive, Scottish Natural Heritage and the Advisory Committee on Sites of Special Scientific Interest on the issues that were raised in the petitions. We have received detailed responses from all three bodies. The Scottish Executive's response deals with the difference between sites of special scientific interest, special areas of conservation and special protection areas. It also explains the consultation that is done on behalf of the Executive. The SNH response refutes in detail the allegations that were made by the different petitioners on the way in which SNH conducts its business. The advisory committee sets out its role in respect of all these matters.

It is important to point out to members that the clerks and I have received several e-mails from councillors and individuals who represent community groups on Barra. They say that, although they object to the proposed SAC designation for the Sound of Barra, they do not support PE463, which questions SNH's handling of the consultation process and the actions of local SNH staff. They say that their support for the petition was included without their permission and they have asked that it be removed. It has been suggested that that is also true of other groups of individuals on Barra.

We have received a letter from Councillor David Buckland who was, I think, referred to by one of the petitioners. Councillor Buckland says that PE463

"concerns a press release issued after the consultation meetings. The verbal submission given on 26th February 2002, supposedly on behalf of all the petitioners goes a significant step further than the written petition with the accusations: '...our representations which it [SNH] undertook to pass to the Parliament and the Executive, were totally misrepresented'.. and...'SNH undoubtedly lied about the results of the consultation—that is clear'. I am concerned that these serious accusations call into question the integrity of those local SNH employees whose job it was to draw up the Local Consultation Report for the Scottish Executive. These SNH employees are highly respected in the local community and no one that I have talked to here (which includes the majority of the named petitioners) feels that accusations of lying are justifiable. The fact that these accusations are unjustified can be established if the members of the Public Petitions Committee -and if possible the public- are given access by the Scottish Executive to the Local Consultation Report so that they can see that the objections raised at each of the consultation meetings are detailed therein."

We have received an e-mail from David C Houston, who is the professor of zoology in the division of environmental and evolutionary biology at the institute of biomedical and life sciences in the University of Glasgow. Members may remember that he was referred to in the evidence that was given to us. It was said:

"In the consultation on the white paper 'The Nature of Scotland', Professor David Houston of the University of Glasgow said that there is an anti-science culture in SNH. He is very worried about that. He said that there should be more contact with the universities. His evidence is probably the best evidence that I can produce to support the argument that there is an anti-science culture in SNH."—[*Official Report, Public Petitions Committee*, 26 February 2002; c 1679.]

Professor Houston has written to say:

"I would like to make it clear that this statement is completely untrue. I have never said this, they are definitely not my views, and I have never commented on the consultation paper 'The Nature of Scotland'. I have absolutely no idea where"

the petitioner

"Mr. Mitchell obtained this quote. I have never, to my knowledge, met Mr. Mitchell or corresponded with him, and he did not consult me on this matter. I would be very grateful if you could please report to the Committee that the statements attributed to me by Mr. Mitchell are totally incorrect."

Dr Ewing: It is a pity, in a way, that we must consider all the separate issues together—rain geese, seals and everything—because each merits special attention. Paragraph 6 of SNH's response says:

"Case law in Europe and the UK has established that the selection of sites, and the setting of their boundaries, must be done on scientific criteria".

How can I get hold of justification for that statement? I am prepared to read through case law from Europe and the UK. I have a willing partner in Professor Neil MacCormick, who is an expert on European law.

The whole situation has been unpopular in many quarters from the beginning. It is always said that only scientific evidence is used and that no socioeconomic factors are involved. It has now been conceded that socioeconomic factors will be considered after a designation order is made, but I question the validity of excluding normal considerations. However, SNH's response says that case law in Europe and the UK has established that scientific criteria must be used. Please could I have a note, even just for my legal satisfaction? I would like to know the basis for that statement, even if the paper is long.

The Convener: I understand that Scottish Natural Heritage is prepared to give the committee further information, so we can obtain that information.

Dr Ewing: In paragraph 8 of its response, SNH pats itself on the back for extending consultation to community councils. You would think that that was obvious. Community councils are elected. Although SNH is happy to list all the unelected bodies that it will consult, it pats itself on the back for extending consultation to community councils. Of course community councils should be consulted. It is rather sinister that SNH did not consult them before, when many such orders were made.

I give a considerable pat on the back to the Advisory Committee on Sites of Special Scientific Interest, whose membership is impressive. Its document amounts to a critique of the way in which SNH and the SSSIs have failed to deal adequately with public perceptions, opposition, distaste and demand for information, and the public's feeling that they are not consulted.

I do not know whether members have time to go into it, but the document from the advisory committee is magnificent. It tries not to be too severe in its criticism of SNH—it is very polite—but that is what it is all about. It is as if the advisory committee is saying, "We know that democracy is dangerous and that SNH recognises that, but nevertheless, should not SNH try a different approach." The document is very impressive. It suggests total dissatisfaction with the way that SNH has been—and is—behaving.

12:00

The advisory committee suggests that perhaps it should be regarded as an appeal body and that that might reinforce its independence. It also suggests that perhaps it should operate from a different address from SNH. The advisory committee is aware that it is being sucked into the general disapproval that is meted out to SNH for the way in which it has behaved on SSSIs over many years.

As far as the birds are concerned, there is no doubt in the minds of the people of Yell that there was more protection for the birds before the SSSI designation, and people kept going to look for them. That has happened in other places, too. It has happened elsewhere in Shetland and in other places. The SSSI designations do not always protect what they seek to protect. The number of the birds that the order was trying to protect has diminished considerably in Yell. Local people are concerned about that. We should seek a meeting with the excellent people from the advisory committee. We should ask them to come before us so that we can have a general discussion on their paper, because it is magnificent.

Phil Gallie: Following on from Winnie Ewing's point on paragraph 6 in SNH's response, on the

background to the designation process, there is a political question to be asked. What could the Scottish Parliament do, if it wished, about that? I presume that that is why Winnie Ewing asked for an explanation of the case law in Europe and the UK.

Dr Ewing: That is SNH's justification.

Phil Gallie: This matter seems to be relevant, particularly as rural communities are hard pressed. Winnie Ewing perhaps answered my question about paragraph 11 of SNH's response. I could not understand why SNH could not take account of social and economic aspects, but at the same time was talking with local enterprise companies and tourist boards about identifying possible economic opportunities. I presume from Winifred Ewing's comments that that discussion comes after the sites have been designated. I stand to be corrected on that.

The Scottish Executive response states that there have been 227 proposed special areas of conservation sites around Scotland. How does that compare with the number of sites that have been designated in other countries in Europe and the United Kingdom? How many designated SAC sites are there in England, Wales, Northern Ireland and all the other countries in the European Union? Is this again a case where somebody has got the bit between their teeth and is pressing ahead?

With respect to the comments that are coming in on the Barra petition, I despair. Many of us were fairly hard on SNH, based on the face value of comments that were made at the meeting. Given the comments that others are now making, it seems that some of our comments might have been unjustified. I do not know what could be done about that with respect to the petitioner. I presume that we will draw his attention to the fact that, if the complainants are to be believed, he misled the committee. We must lay down the line that that cannot be accepted.

The Convener: I am informed that SNH has already offered to brief the committee on the petitions. It may well be that we should ask SNH and the advisory committee to give us a briefing. This is a difficult area. Several issues need to be clarified and it may be better to take evidence from both bodies.

Phil Gallie: Can we ask them specifically again—

The Convener: We can ask them anything when they come here.

Phil Gallie: Could we ask them to come prepared with figures for the EU and the UK?

The Convener: We will send them a copy of the *Official Report* of our discussion.

Rhoda Grant: We could ask them what support is available to members of a community that faces designation. Any changes must be implemented on a scientific basis. The fact that ordinary people do not have access to scientific information is one of the things that most frustrates them. They do not have access to anyone who could help them to obtain that information. They know that a designation might not be totally correct, but they cannot prove it. Some sort of mechanism for getting assistance would be useful. Perhaps the advisory committee would be willing to look at the setting up of such a mechanism, which would allow people to obtain help and scientific back-up. Ordinary people cannot afford to employ a scientist to conduct a study.

The Convener: That is a fair point. We will ask what access is available to people to enable them to make a scientific challenge to a designation.

Dorothy-Grace Elder: SNH's view that decisions are made on a purely scientific basis is challenged in particular by the advisory committee on SSSIs, which states:

"nature conservation is surely an endeavour undertaken for more than scientific purposes."

From what the petitioners told us, the situation is shaping into one in which people definitely do not come first, even in limited areas. Some members will recall the case of the Arran farmer who just wanted a few extra hectares for a few extra cows, which would have made the difference between survival and failing to survive.

Although quite severe criticism has been made of some of the evidence, that does not invalidate the whole case. Too many areas and too many islands have complained about SNH. We should take the matter as far as we can. We should also refer it to the Transport and the Environment Committee, or have we done that already?

The Convener: That is the problem. Either we try to obtain a briefing from SNH and the advisory committee on the issue, or we deal with the petition now. There is no point in asking for a briefing if we deal with the issue straight away.

Dorothy-Grace Elder: I did not mean that we should deal with it right away. I hope that our material will be given to the Transport and the Environment Committee later.

The Convener: I am instructed that there is a problem with seeking a briefing, in the sense that only one regular meeting of the committee remains before the recess, because of the shift to Aberdeen. In fact, two meetings are left. There is the regular meeting, as well as the meeting with the minister that we have agreed for Thursday 18 June. Both those meetings have full agendas. It might be better to hold an informal briefing session

with SNH. We could perhaps fit that in.

Dr Ewing: I would no longer be satisfied with written briefings.

The Convener: I meant an informal briefing, at which we would be present.

Dr Ewing: Could we not postpone dealing with the issue until September?

The Convener: We could do that.

Dr Ewing: That would give us a proper chance to really get a grip of what SNH and the advisory committee are about.

The Convener: If members would like the issue to be dealt with before the recess, we would need to hold an informal meeting to receive a private briefing from SNH and the advisory committee. To deal with the issue in a formal meeting of the committee, we would have to wait until September.

Dr Ewing: We have already got the advisory committee's briefing—it is excellent.

The Convener: You want to question the advisory committee, with SNH present.

Phil Gallie: Why cannot we fit in another official meeting? Other committees do that—there is not a problem.

The Convener: We could do that. Members should remember that that would mean having three meetings between now and the recess. Are members agreeable to that?

Members indicated agreement.

The Convener: Before coming to a conclusion on the petitions, we will fit in a separate meeting at which we will take evidence from Scottish Natural Heritage and the advisory committee.

Dr Ewing: Perhaps the advisory committee should not be in the room when we are questioning SNH and vice versa.

The Convener: We can deal with the witnesses separately. It is entirely up to us how we handle them. It will be a public meeting.

Miscarriages of Justice (Aftercare) (PE477)

The Convener: Petition PE477, from John McManus, is on behalf of the Miscarriages of Justice Organisation. It calls for an aftercare programme, in the form of a halfway home, to help people who have been wrongly imprisoned and have served long terms of imprisonment, or people whose convictions have been annulled in the appeal court. We have received the Executive's response to the petition, which details the role and remit of the Scottish Criminal Cases Review Commission, which does not have

anything to do with the petition as such.

The response makes it clear that, aside from the statutory supervision that is required for long-term prisoners after their release—which would not apply to those who are found innocent—in practice there is no distinction between the aftercare that is provided for prisoners who are released on completion of their sentences and that provided for those who are released after being wrongly incarcerated.

The response also states that aftercare services are currently provided by local authorities to any ex-prisoner who requests them within 12 months of release. The Executive provides 100 per cent funding for those aftercare services. The response offers no comment other than to give details of how an application can be made for Executive funding provided under section 10 of the Social Work (Scotland) Act 1968.

The suggested action is that we agree to write to the petitioners suggesting that they apply for funding for an aftercare programme. If we think that the Executive response is insufficient, we can refer the petition to the relevant justice committee for further consideration. It might be helpful to ask the petitioners for their response to the Executive response, because I do not know enough about the matter.

Rhoda Grant: That would be helpful because when the petitioners gave evidence to us they were concerned not so much about the aftercare but about the preparation for release that goes on within the prison. Their particular concern was that people who are released pending an appeal are given no information about where to seek help. The petitioners might want to raise that issue. I agree that we should ask them for their comments because I think that we have missed the point a little.

Dr Ewing: There is a most incredible statement in the briefing paper:

"Details of the aftercare services currently provided by local authorities to any ex-prisoner who requests them within 12 months of release are supplied."

How does someone who is suddenly told that there was a miscarriage of justice in their case apply within 12 months? Does he say, "In the hope that I will be acquitted of what I did, I will apply within 12 months on the off-chance"? The statement is ridiculous when one reads it carefully.

It seems to me inhuman that prisoners who serve their time and are duly released are treated the same as someone who has been found to be the victim of a miscarriage of justice. The ex-prisoners who gave evidence to the committee regarded their treatment as inhuman.

What is the time scale for applying for

compensation and ex-gratia sums of money? How long do the ex-prisoners wait? They have no money when they come out.

The Convener: That is why it is important to get the petitioners' response to the Executive response.

Dr Ewing: We must do that.

The Convener: That is the first stage. Are we agreed that we will get the petitioners' response to the Executive's letter?

Members indicated agreement.

Cairngorms National Park (PE481)

The Convener: Petition PE481 is from Mr Bill Wright. The petition concerns the powers of the Cairngorms national park authority. Members will remember that Mr Wright was concerned that the authority would not get the same planning authority status as other national parks such as the Loch Lomond and Trossachs National Park. We now have the Scottish Executive's response, which says that the Executive has not yet completed its consideration of the Scottish Natural Heritage report on the proposal to establish a national park in the Cairngorms. The Executive hopes to complete that process shortly and move to the publication of a draft designation order in the near future. The order will include ministers' proposals on planning powers and will be subject to extensive consultation, allowing interested parties to comment on issues of concern.

We also asked for clarification of the balance of elected and non-elected board members. The response indicates that that issue will also be dealt with in the draft designation order, but the primary legislation sets an upper limit of 25 on the total number of members of a national park authority, with at least one fifth of the total number of members to be elected in a poll.

In view of the Executive's response, it is suggested that we agree to reply to the Executive asking it to ensure that the petitioners are sent a copy of the consultation document so that they can, if necessary, restate the concerns expressed in the petition and raise any additional points. It is also suggested that we agree to refer the petition to the Transport and the Environment Committee with the recommendation that the petition be taken into account as part of the committee's consideration of the draft designation order.

Dr Ewing: Does the petitioner get a copy of what we are doing?

The Convener: Yes, of course.

Rhoda Grant: The Rural Development Committee considered the designation order for the Loch Lomond and the Trossachs national

park.

The Convener: We will establish whether we should send our recommendation to the Rural Development Committee or the Transport and the Environment Committee and the appropriate committee will get the recommendation. Are we agreed?

Members indicated agreement.

Justice 1 Committee (Membership) (PE483)

The Convener: Petition PE483 is from Mr Duncan Shields and we dealt with it at our previous meeting. The petition concerns a review of the membership of the Justice 1 Committee. Members will remember that Mr Shields considered that some members of that committee were not impartial during the committee's inquiry into the regulation of the legal profession.

We agreed to raise the matter with the convener of the Justice 1 Committee. In her response, she makes it clear that the majority of the large number of responses to its inquiry have been published on the Parliament's website and the public can view them at the public information desk. Following legal advice, the remainder of the responses are being edited to ensure that they do not raise concerns about defamation and data protection. The intention is that the majority of them will be put on the website in due course.

The response also makes it clear that all evidence-taking sessions for the inquiry have been held in public and any private sessions have been to discuss the draft remit of the inquiry prior to the publication of the report, lines of questioning for witnesses or how the committee should proceed with the inquiry. The response also states that the private sessions were attended only by Justice 1 Committee members and, on occasion, by an adviser to the inquiry.

The convener has stated quite clearly that there has been no attempt to restrict publication of material that was submitted in relation to the inquiry, although publication of some material has been delayed because of the need to consider legal advice on defamation and data protection issues. She has also made it clear that all evidence-taking sessions were held in public. The information that she has provided appears to address the issues that the petitioner raised. On that basis, it is suggested that the committee agrees to copy the response to the petitioner for information and take no further action.

12:15

Phil Gallie: It is obvious, but interesting to note, that the people who give the legal advice on

whether statements are defamatory or are complicated by data protection issues are members of the legal profession. That is one of the ironies of the argument.

Christine Grahame said that a majority of submissions have been published. Given that a majority can be 51 per cent, I would like to know just how big the majority is.

If individuals make statements and submit them to a body such as the Justice 1 Committee, I would have thought that we should advise against publishing them, because the submissions might make defamatory statements. However, if the individual wants to make the statement in the belief that it is true, I do not see why that should not be published.

The Convener: The Parliament's legal advisers, rather than the legal profession, will give advice to the Justice 1 Committee.

Phil Gallie: But they will be solicitors.

The Convener: They are solicitors.

Individuals can publish anything that they want to publish, but they must suffer the consequences. If the Parliament publishes the statements, it takes on responsibility for them, so the committee must take legal advice before it takes the risk, because the statements will be published in its name. The petitioners can publish what they like, but they will suffer the legal consequences of publication. The Parliament cannot do that without taking legal advice, because it becomes responsible for publishing them.

Phil Gallie: Even if the Parliament has disclaimers?

The Convener: I think that that is why the Parliament is going through the process, to see whether there is any way that the submissions can be put on the website.

We can certainly find out what proportion of the submissions has been published and what proportion has not. That is easily done.

Phil Gallie: Thanks, but I have a query about disclaimers. I know that it would be irresponsible for the Parliament to publish something that could lead to its being held to account, but if disclaimers could be used, publication would be up to individuals.

The Convener: We would have to check that out, as we do not know the answer.

Phil Gallie: I would be obliged if we could check that out.

The Convener: So the two matters that you want checked out are the majority and the question of disclaimers. You do not want

consideration of the petition to continue. Can we close consideration of the petition, as is recommended?

Phil Gallie: I would like to wait for an answer to those two questions and then close consideration. If the answers are satisfactory, consideration can be closed.

Rhoda Grant: I am a wee bit concerned about what Phil Gallie has said. Any committee could publish defamatory information with a disclaimer attached. We must realise that we are dealing with individuals and that we cannot just be a sounding board for anybody to say what they want about anybody else. We must be careful. I would not be keen for things to be published with disclaimers attached if they were going to cause somebody damage and there was no basis for the allegation.

The Convener: I have been reminded that if we consider the issues in each petition that we have dealt with this morning, we see that a series of disclaimers came in subsequent to the committee hearing the evidence, to say that the evidence was not accurate or true. We and the Parliament must be careful.

I do not have any problem with seeking legal advice on the matter and passing on that advice to the committee—I am happy to do that. We can conclude the petition once we receive that advice.

Rhoda Grant: We must be firm. Anybody who submits information to a parliamentary committee should do so in the knowledge that the information is correct. They cannot simply say what they like about people—the earlier petition shows that—otherwise we will end up as a sounding board, which folk will use to say what they like about people. They will be cleared of any responsibility because the information will be published in the Parliament's name.

The Convener: That is a fair point. The advice that we seek will address that point and make the position clear to the committee for the future. Do members agree with the suggested course of action?

Members indicated agreement.

Convener's Report

The Convener: I remind members of the special meeting on 18 June to follow up the petition on the Scottish Bus Group pension scheme. On Thursday 6 June at 2.45 pm, there is an ordinary meeting of the Public Petitions Committee, which will be covered on television by "Holyrood Live", as the Parliament will not meet that week.

I also draw members' attention to a letter that we have received from the action group for Chalmers hospital. Members may remember that the group petitioned us some time ago about the future of Chalmers hospital. It says:

"On behalf of the Action Group for Chalmers Hospital in Banff I would like to thank you and the other members of the Petitions Committee for contacting both the Scottish Executive and Grampian Health Board. I am personally convinced that this has had a beneficial effect."

The letter says that the response that the group is now getting from the authorities is different from the response that it received before the petition was submitted to the committee. That is a pat on the back for everyone.

Members may be aware that an older petition is related to the petitions that we discussed in connection with SNH this morning. PE246 was from Kildalton and Oa, Kilarrow and Kilmeny, and Kilcoman and Partnahaven community councils, and related to the proposed SAC designation of the south-east Islay skerries.

Following the committee's consideration of PE246 and subsequent responses to it, we agreed to ask the European Committee for its views on the more general issues raised by the petition about the designation of SACs and the adequacy of the consultation processes. The European Committee has responded. It has said that it had decided to consider consultation in respect of the skerries but the Executive decided to designate the area before it had the opportunity to do so. The European Committee also noted that although it would not have been possible for it to recommend that the designation should not go ahead, clearer and more effective communication of the Executive's plans while the committee was still considering the petition would have been helpful.

Consideration of the petition has not been formally concluded. Therefore, it is suggested that, given the clear relationship between the issues raised in petition PE246 and the petitions that we have just discussed, we should agree to link our consideration of it to the petitions in connection with SNH. Once we have had our briefing, we will be able to return to the issue. Is that agreed?

Members indicated agreement.

Dorothy-Grace Elder: Will you refresh our memories? Is it correct that the Public Petitions Committee will not meet in Aberdeen?

The Convener: The next meeting will be on Thursday 6 June at 2.45 pm and will be televised live. There is also a meeting on 18 June, which is the Scottish Bus Group meeting. The Deputy Minister for Enterprise, Transport and Lifelong Learning, Lewis Macdonald, will give evidence. As we agreed this morning, another meeting has still to be arranged concerning SNH.

Rhoda Grant: I give my apologies—the Rural Development Committee will be in Huntly on 6 June. I think that John Farquhar Munro will be in the same position.

The Convener: You will miss your chance to appear live on television.

I thank members for attending.

Meeting closed at 12:23.

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