

PUBLIC PETITIONS COMMITTEE

Tuesday 18 June 2002
(Morning)

Session 1

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PUBLIC PETITIONS COMMITTEE

11th 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:

David Alison (Scottish Executive Enterprise and Lifelong Learning Department)

Dennis Canavan (Falkirk West)

Sara Craig

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

Philip Graves (Strathblane Community Council)

Dr Sylvia Jackson (Stirling) (Lab)

Rob Kirkwood (Leith Links Residents Association)

Lewis Macdonald (Deputy Minister for Enterprise, Transport and Lifelong Learning)

Joseph Owens

Jamie Ross (Scottish Executive Enterprise and Lifelong Learning Department)

Stewart Stevenson (Banff and Buchan) (SNP)

Lynn Toti

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Joanne Clinton

LOCATION

The Chamber

Scottish Parliament

Public Petitions Committee

Tuesday 18 June 2002

(Morning)

[THE CONVENER *opened the meeting at 11:02*]

The Convener (Mr John McAllion): I welcome everyone to the 11th meeting this year of the Public Petitions Committee. We have received no apologies. As the Deputy Minister for Enterprise, Transport and Lifelong Learning will attend the meeting to respond to petition PE500, I ask members to agree to an adjustment to the timetable that will allow us to deal with current petitions before we deal with new petitions. Given the pressure on the minister's time, I ask members to agree that, when he arrives, we move straight to consideration of PE500. Are we agreed?

Members *indicated agreement.*

The Convener: In addition to the minister, three petitioners and our own Phil Gallie wish to address the committee later in the meeting. I ask members to be as succinct as possible today when they are asking questions. Our agenda is heavy and we have a lot of work to get through. I thank members in advance for their co-operation.

Current Petitions

Clydesdale Horses (Couping) (PE347)

The Convener: PE347 is on the couping of Clydesdale horses. We dealt with the petition at a meeting in June last year, when we considered responses from the Executive, Dr Sylvia Jackson MSP, the British Equine Veterinary Association and the Clydesdale Horse Society. We agreed to seek the comments of the Scottish Society for the Prevention of Cruelty to Animals working group that was set up to examine couping.

The clerks were advised in July that the SSPCA intended to monitor the implementation of the Clydesdale Horse Society's guidelines for correct shoeing before responding to us and that that would take some time. At last, we have received a response from the SSPCA, which supports further research into the long-term health and welfare implications of couping. In principle, the SSPCA discourages that practice on the ground that it is purely cosmetic in nature. The SSPCA explains that, following meetings of interested parties at its headquarters in 2001, the Clydesdale Horse Society produced basic guidelines for shoeing Clydesdales, and the SSPCA gives details of its assessment of the implementation of those guidelines. The SSPCA also suggests that a way of addressing the problem would be for the Clydesdale Horse Society to encourage judges at shows to disqualify horses that are improperly shod, as happened recently at a show in England. It expresses the view that there now appears to be a greater awareness among horse owners of the need to observe guidelines.

Dr Sylvia Jackson was sent a copy of the SSPCA's response and she has submitted an e-mail to the clerks, urging the committee to seek qualified veterinary advice on the matter to establish exactly what the health and welfare implications of couping are. Regrettably, the petitioner, Mr Kenneth Mitchell, has died since submitting the petition. However, we have received a list of individuals who want to support his petition. The list includes Sylvia Jackson, John F Robins, who is an Animal Concern campaign consultant, Mr James W Sharp, Mrs Myrna Forrester, Mr M Tindall, Mr and Mrs Stuart Cameron, Mr Roy McKeag, Ms Julia K Butler, Ms Wilma Fielding, Mr Alan Mair, Ms Lynne Mitchell, Ms Irene Boyne, Beryl and Don Cook, Shelagh Graham, Advocates for Animals, Iona Henderson and Iona Macdonald.

In addition, several letters and e-mails in support of the petition have been received in recent days. They have expressed the following views: that the Clydesdale Horse Society guidelines are not sufficient to prevent unnecessary suffering by the horses; that further advice should be sought from

veterinary experts and equestrian societies; that many areas of Scotland are excluded from the Farriers (Registration) (Amendment) Act 1977; that the Shire Horse Society in England has banned the practice of coup shoeing; and that more detailed consideration should be given to the introduction of legislation as a tribute to the efforts of the late petitioner to have the practice banned.

From the response of the SSPCA, it appears that, although the guidelines that have been introduced by the Clydesdale Horse Society for the shoeing of show horses are having some effect, not all owners and farriers are complying with them. The SSPCA is of the view that the practice should be discouraged and supports further investigation of the issue. Sylvia Jackson has suggested that the committee should seek qualified veterinary advice on the matter. However, the committee has received a response from the British Equine Veterinary Association, which is of the view that the process of coup shoeing is unethical on welfare grounds as the practice leads inevitably to the likelihood of orthopaedic problems developing at a later stage in a horse's life.

The efforts that are being made to deal with the issue centre round the guidelines that have been prepared by the Clydesdale Horse Society. However, the guidelines are in effect a self-regulatory measure and there is no formal control mechanism. It is therefore suggested that the committee should agree to pass the petition and associated correspondence to the relevant justice committee for further consideration, with the recommendation that it consider whether such self-regulation is appropriate and whether legislation might be required to deal with the matter. Do members have any views on the matter?

Phil Gallie (South of Scotland) (Con): The Clydesdale Horse Society seems to be at odds with the British Equine Veterinary Association on the long-term effect of coupling on horses. It would be worth while for the committee to write to the Clydesdale Horse Society, suggesting that, given that its view is contrary to that of the veterinary experts, it could change its show rules—as it has done in England—and move from the three-degree coupling that it allows to a zero coupling policy.

The Convener: In addition to our referring the petition to one of the justice committees?

Phil Gallie: Yes.

The Convener: Is that agreed?

Dorothy-Grace Elder (Glasgow) (Ind): In view of the death of the petitioner, we might consider writing to his family. The gentleman has really achieved something and is an example of the kind

sort of person who approaches the committee.

The submissions that we have received show the greater alertness of the SSPCA and others to the problem at shows in Scotland and England. However, the petitioner originally asked for coupling to be made illegal. Our priority must therefore be to refer the petition to one of the justice committees. Nonetheless, I fully agree to Phil Gallie's suggestion.

Dr Sylvia Jackson (Stirling) (Lab): I am happy with the action that has been suggested, but I have a query. As Phil Gallie pointed out, there are two views to take into account. If I understand it correctly, the Clydesdale Horse Society believes that because the horses are born in a certain way—which accounts for the way they stand and so on—how they are shod has no detrimental effect on them. However, the other view, which is supported by the petition, is that coupling harms the horse. I do not think that the committee has been given information on that. I wonder whether the Rural Development Committee or some other committee should consider that aspect; I just do not know whether the relevant justice committee will be able to cover everything. Perhaps it could.

The Convener: As I understand it, we have to refer the petition to one of the justice committees because they have responsibility for criminal sanctions for the protection of domestic and captive wild animals. Legally, that committee is the only one that can consider the matter and suggest changes in the law.

Dr Winnie Ewing (Highlands and Islands) (SNP): The list of places where Clydesdale horses are viewed is not complete. I know for a fact that the Granton show and the Nairn show have Clydesdales every year.

The Convener: Well, the SSPCA gave us that information.

I seek members' agreement that we refer the petition to the relevant justice committee, write to the Clydesdale Horse Society in the terms that Phil Gallie suggested and keep the petitioner's family informed. Indeed, I will write personally to the family. Are members agreed?

Members indicated agreement.

Commissioner for Bullying (PE412)

The Convener: We move on to PE412, from Elizabeth and Jane Allison Edmund, which calls for the establishment of a commissioner for bullying. We considered the petition at a meeting back in November and agreed to seek the comments of the Executive and the anti-bullying network. However, although the Executive has responded, the anti-bullying network has not.

The Executive has provided a comprehensive response that provides details of current arrangements to address bullying in schools. However, the petitioners were more concerned about bullying in the community by and against young people. Of more relevance to the petitioners is the part of the Executive response that outlines the details of its current initiatives to tackle youth crime in response to the recommendations of the advisory group report on youth crime review. The second page of our briefing on this petition lists 10 separate initiatives that the Executive claims that it has introduced.

The Executive has also responded briefly to the petitioners' points about the ineffectiveness of and intimidation by local authorities in dealing with public concerns about youth crime. It points out that the Scottish public sector ombudsman will consider public complaints about injustice or hardship arising from the activities of public authorities.

The Executive has made it clear that much is being done to address youth crime. It obviously does not support the petitioners' suggestion that a commissioner for bullying should be introduced and provides the reasons for its view. It is therefore suggested that, in view of the wide range of initiatives that have already been introduced and the high profile that the Parliament is giving to the issue, there would be little merit in giving further consideration to the petitioners' proposal. It is recommended that we agree to copy the Executive's response to the petitioners and take no further action. We could also send the petitioners a copy of the *Official Report* of last week's Scottish Conservative and Unionist Party debate on youth justice in the Parliament.

Dorothy-Grace Elder: We could ask the Executive whether some of the funding that it has detailed should be spent on investigating this issue. After all, it comes up at MSPs' surgeries. Moreover, it is not just a matter of elderly people being targeted by gangs of children, never mind more advanced teenagers; adults, including those who suffer from mental health problems, are also targeted. That is an appalling form of bullying. The children involved might not have been convicted of anything in the past, so even though the Executive refers to "persistent young offenders", there might be nothing on those children's records. A large number of gentle and harmless people in our communities are suffering misery from children who bully adults. The petitioner is quite right. As a result, we should ask the Executive whether it will kindly consider allocating some funding to investigate and crack down on this problem.

The Convener: As I understand it, the range of initiatives against youth disorder and youth crime is specifically designed to tackle such activity by

children in communities. That is what the money has been directed at. We could write back to the petitioners in those terms. However, I do not think that there is any point in pursuing the proposal to create a commissioner for bullying, because we cannot place such a commissioner above elected local councillors.

Dorothy-Grace Elder: I see that.

Rhoda Grant (Highlands and Islands) (Lab): I agree with Dorothy-Grace Elder that bullying is an horrendous problem and that a lot of people suffer from it. We are right to say that a commissioner is not the correct approach to take to the problem and that a number of approaches are required. Each case is individual and we need to ensure that there are people on the ground and that they deal with people as individuals and not as a batch. The problem is not one that we can put in a pigeonhole.

I am pleased that the Executive is taking action. However, as bullying causes so much misery, we should write back to the Executive to suggest that it keeps the process under review to ensure that measures to tackle bullying stay at the forefront of people's minds.

11:15

Phil Gallie: Once again, I go along with the comments that were made by Dorothy-Grace Elder and Rhoda Grant. However, when we examine the Executive's position, as set out in its response, we see that it missed the point on the petitioners' major concern. The petitioners suggested that guidelines should be produced. I wonder what the guidelines for education authorities are, as that is an area of contact that could produce some results.

In certain circumstances, it is illegal for people to undertake surveillance to obtain proof of the torment that they are in—for example, by using video cameras. An examination by the Scottish Executive of that situation would not go amiss.

The Convener: I take it from those contributions that no member disagrees with the action that is suggested in respect of PE412. It is proposed that, in addition to writing to the petitioner as outlined, we write to the Executive seeking clarification of the initiatives that it is taking to address bullying that is directed against adults by youngsters in the community.

Phil Gallie: We should also ask the Executive to examine the means of ensuring that individuals can protect themselves by methods such as surveillance, and better links between the police and the education authorities.

The Convener: I am advised that we can do that, but if we do so, we should keep the petition

open until we receive a further response from the Executive.

Dr Ewing: Long ago, it would have been the churches of various denominations that would have tried to do something about the problem. It is interesting to note that we are not bringing the churches into our discussions. Should we not send a copy of PE412 to the main churches in Scotland?

The Convener: I am not sure. What are the main churches?

Dr Ewing: There are quite a lot of them, but it would not be too difficult to draw up a list.

Helen Eadie (Dunfermline East) (Lab): One of the ways round that would be to send a copy of the petition to Reverend Graham Blount, the Scottish churches parliamentary officer.

The Convener: We will copy the petition to Graham Blount, for the interest of the churches. In the meantime, we will write to the Executive in the terms that have been suggested and keep the petition open until the Executive's further response is received.

Parental Alienation Syndrome (PE413 and PE438)

The Convener: We move on to consideration of PE413 and PE438, which were lodged by Mr George McAuley on behalf of the UK Men's Movement. PE413 called on the Parliament to recognise parental alienation syndrome and PE438 called for resources to allow children to obtain the right of contact with alienated siblings. We considered the petitions at separate meetings, but asked the Executive to provide its comments in a joint response.

The Executive's response is that parental alienation syndrome is not a medically recognised condition nor is it a term that is used in legislation in Scotland. The response mentions that the term is not used in the definition of child abuse or domestic abuse. The Executive has provided details of the circumstances in which the term is used by parties in a legal context and the types of parental activity that the term is used to define. The Executive does not agree that parental alienation syndrome is a medical term that is sufficiently well defined to make its diagnosis certain. The Executive also does not agree that the use of the term would be appropriate in legislation. It takes the view that Scots law already deals with the issues that may arise and which may be attributed to parental alienation syndrome.

The Executive makes the point that, when a court is making a decision about a child, the paramount concern of the court must be the best interests of the child concerned. It provides details

of the Children (Scotland) Act 1995, which allows the views of children to be taken into account, and of the right of siblings to establish contact with a child through the court system.

On 2 June, an article in the *Sunday Herald* reported that Dorothy-Grace Elder is to propose an amendment to the proposed family law bill. The report indicated that her amendment would address the issue of sibling access.

Dorothy-Grace Elder: I will be brief. I have inquired into the matter and the draft bill is not ready as yet. However, when it is introduced, I propose to lodge an amendment on the right of sibling to sibling access. My amendment will not address parental alienation syndrome. I think that the petitioner has confused two issues and has therefore not done himself justice. However, the evidence that was given by the child who appeared before us, about being unable to see her younger siblings again, was powerful. We must try to end that sort of predicament.

The Convener: To be fair to the petitioner, he submitted two separate petitions—the one on parental alienation syndrome was separate from the one about resources to pursue through the courts the right to meet siblings.

The article in the *Sunday Herald* refers to Dr Richard Gardner, whose research was cited by the petitioners as evidence of the existence of parental alienation syndrome and the bias against fathers. In the article, Dr Gardner expresses his concern that PAS can be used by abusive partners to trick courts into believing that they are victims of PAS. He therefore urges legal and medical establishments to become more knowledgeable about the condition.

The Executive's view is that PAS is not a recognised condition and that, therefore, it would not be appropriate for it to be cited in legislation. It is also satisfied that the judiciary is well aware of and takes account of behavioural issues that may be attributable to PAS in reaching decisions involving children. Members may want to take a view on whether the PAS issue that is raised in PE413 should be given further consideration by the Parliament.

On the issue of contact with alienated siblings, which is raised in the other petition, the Executive points out that the Children (Scotland) Act 1995 already provides for siblings or any other person with an interest to gain access to a child through the courts. Members may want to consider whether further consideration should be given to the issue by the Parliament, perhaps with a view to establishing whether the existing provisions are adequate or require strengthening.

It is suggested that we take no further action on PE413, but that we refer PE438 to the relevant

justice committee for further consideration.

Dr Ewing: I have two suggestions. For most people, courts are fearsome and expensive. First, could we ask the Law Society of Scotland to inquire whether such a child seeking access to a sibling would get legal aid? We should encourage that, as cost is the big barrier for many people. Secondly, as sheriffs have a lot of flexibility and discretion in awarding custody and considering access rights, could we write to the Sheriff Principals Association, asking it to read these papers and comment on whether sheriffs would at least look sympathetically at the case of a child who was seeking such access?

The Convener: Arguably, it is for the relevant justice committee to pursue the matter. However, we could recommend that that committee should write to the Sheriff Principals Association.

Dr Ewing: Yes. That would suit me fine.

The Convener: Is that agreed?

Members indicated agreement.

Phil Gallie: I did not hear everything that Winifred Ewing said. Under the Children (Scotland) Act 1995, the opinions of children from the age of 12 upwards must be taken account of, but those of under-12s are not taken account of, as children of that age are not thought to be responsible enough. We could suggest that one of the justice committees should re-examine that and consider lowering the required age. In my view, children aged seven or eight would be more than capable of giving their opinions, and that fact should be taken account of.

The Convener: Okay. On PE438, in addition to making the two suggestions from Winnie Ewing, we will make the point that Phil Gallie has raised to the relevant justice committee. Is that agreed?

Members indicated agreement.

The Convener: Is it agreed that we will take no further action on PE413?

Members indicated agreement.

Suicides (PE465)

The Convener: PE465 comes from George McAuley, on behalf of the UK Men's Movement, and calls for a study on the incidence of parents' suicide when the loss of contact with their children is thought to have been a contributing factor to, or the sole factor in, their suicide. The petitioner claims that the significant increase in the number of suicides among adult men in recent years can be attributed, at least in part, to the increase in the number of marital breakdowns and the subsequent separation of parents from their children.

Again, we asked the Executive for its comments, particularly for an update on the national framework for the prevention of suicide and deliberate self-harm in Scotland. The Executive acknowledges that divorce and separation can be risk factors for suicide, but it is not aware of any research that examines the link between suicide and the quality of contact between parents and children. The Executive argues that it would be extremely difficult to obtain meaningful and reliable data on the issue and explains why it thinks that to be the case.

The Executive also provides information about its current project to develop a framework for the prevention of suicide. As part of that, the Executive is analysing responses to its consultation document, including comments from the UK Men's Movement. The Executive is working on two other linked projects and hopes to launch a final version of the framework later this year.

The Executive has given an undertaking that the views of the UK Men's Movement will be made known to the team that is collating the information that is available on suicide in Scotland. The Executive also has a new initiative called "breathing space". The Executive's major project that aims to tackle the issue of suicide and self-harm does not directly address the specific issue raised in the petition, but the petitioners' comments will be taken into account by the Executive as part of the project's consultation exercise. The petitioner's views are also being taken into account as part of other strands of that work.

In view of that on-going work, it is suggested that we agree to take no further action on the petition. However, it could be suggested to the petitioners that, following the publication of the framework for the prevention of suicide later this year, if they are still concerned that certain groups are excluded from the Executive's proposals, they could consider submitting a further petition at that time.

Is that agreed?

Members indicated agreement.

Planning Legislation (PE484)

The Convener: The next petition is from Mr and Mrs Shields and concerns the planning system and the lack of clarity in the planning legislation. The petition is prompted by their experience—they allege that Highland Council demonstrated maladministration and non-compliance with set procedures and breached various sections of the national code of conduct for local government in handling a planning application with which they were concerned.

We agreed to write to the Executive about the petitioners' complaints to seek clarification on whether the remit of the new public sector ombudsman would be different in relation to the planning process and whether he would confirm that court action remains the only option for those who wish to raise such matters.

The Executive response reaffirms that the ombudsman cannot question the merits of discretionary decisions and that it is for the courts ultimately to decide on those matters. The Executive confirmed that the role of the local government ombudsman in dealing with complaints will continue under the new Scottish public service ombudsman.

The petitioners are clearly frustrated by what they consider to be the failure of either the council, the ombudsman or the Executive to deal with their allegations of maladministration in a planning matter. Of course, when the ombudsman decides not to investigate a complaint, it is open to the complainant to seek redress through the courts. As many petitioners have pointed out, court action is expensive and beyond the means of the average member of the public. Given the Executive's clear opposition to third-party appeals, however, that would appear to be the only route open at present to those who are aggrieved by planning decisions.

To date, the responsible subject committee—the Transport and the Environment Committee—has been unwilling to consider the issue of third-party planning appeals. In those circumstances, it is suggested that we agree to copy the Executive response to the petitioners—pointing out that court action seems to be the only way in which to deal with such complaints—and that we take no further action.

The only problem that I have with that suggested action is that, as I understand their complaint, the petitioners are challenging not the merits of the discretionary decision that was taken by the relevant authorities, but the means by which that decision was arrived at—in other words, maladministration. However, the ombudsman says that he cannot investigate maladministration if an appeals process exists. I find that strange. I do not see why the ombudsman should not be able to investigate a complaint of maladministration that is separate from an appeal about a discretionary decision. I wonder whether we should write to the ombudsman asking for clarification of that before we close the petition.

Helen Eadie: I agree with that. I have recently been doing quite a bit of work on the issue, which comes up time and again, not just at this committee but regularly within my constituency. I am aware that the Executive is considering the issue of third-party rights of appeal and that that is

out to consultation. However, I share the convener's concern and believe that we should write to the ombudsman. We ought to monitor closely the Executive's current consultation—I think that the Executive is now considering the responses to the consultation paper. I have set up a meeting with the Town and Country Planning Association to consider the wider issues; the meeting will take place in the next two or three weeks.

11:30

The Convener: That is good. The issue is important because, although a developer who was refused planning permission and made a complaint of maladministration could rightly use that complaint as part of an appeal, that is not the case with anyone who objects to a developer's planning application. They have no opportunity to appeal against a decision. For them to be denied the right of a complaint of maladministration is unfair. That is something to which the ombudsman should respond. Do we agree to write to the ombudsman about that?

Members indicated agreement.

Triple Assessment Breast Examinations (PE491)

The Convener: The next petition is PE491 from Ms Elaine McNeil on obligatory access to breast examinations. The committee will remember that the petition asked us to introduce legislation to make triple assessment procedures obligatory for all women who present themselves for a breast examination.

We have sought the views of the Executive and have received a reply, which details the various investigative procedures that are used when breast cancer is suspected and explains that triple assessment is a combination of mammography, ultrasound and fine needle aspiration or core biopsy. The last two are invasive procedures. Mammography involves a form of X-ray, which can expose patients to a small risk of radiation-induced cancers. The Executive states that mandatory mammography examination in all women with breast problems would unnecessarily expose thousands of women to an increased risk of radiation-induced cancer.

The Executive also claims that, if triple assessment were to be made mandatory, it would involve unnecessarily subjecting the majority of women to invasive procedures and would require the reporting of thousands of unnecessary mammography and ultrasound images and approximately 19,000 additional and unnecessary fluid specimens.

In its response to the alleged inconsistencies in

conducting triple assessments between hospitals throughout Scotland, the Executive states that all breast clinics must comply with the Clinical Standards Board for Scotland standards for breast cancer services. Those include a requirement for triple assessment where a localised abnormality has been detected.

The Executive's view is clearly different from the petitioner's. Although the Executive's response appears reasonable, the petitioner clearly has contrary opinions. We must decide whether to refer the petition straight to the Health and Community Care Committee or write back to the petitioner asking for her response to what the Executive has said.

Helen Eadie: It would be helpful to write back to the petitioner. I remember her presentation. It was very emotive. We owe it to her to write and get her response. The issue is difficult. Someone who is among the one in seven or eight women who have a confirmed diagnosis of breast cancer would want to be certain that everything that can be done is done.

Dorothy-Grace Elder: The committee might recall that the petitioner had an aunt—a blood relative—who died of breast cancer and yet the petitioner was not put through the triple examination and was misdiagnosed. It is astonishing that the Executive makes no reference to the hereditary factor and that type of patient. I am not satisfied with the reply. It should be referred to the Health and Community Care Committee.

Rhoda Grant: I agree with Dorothy-Grace Elder. If we write to the petitioner again, we will just end up with an exchange of letters on a complex subject that needs to be considered by a committee. I suggest that we copy the Executive's response to the petitioner but that, rather than asking her to respond to us, we tell her that we have referred the petition to the Health and Community Care Committee, which, I hope, will be able to deal with it and spend more time on it.

The Convener: Are all committee members of that view?

Helen Eadie: I add a request that we copy the petition to the cross-party group on cancer.

The Convener: We can do that. Is that agreed?

Members indicated agreement.

Scottish Transport Group Pension Funds (PE500)

The Convener: I welcome the Deputy Minister for Enterprise, Transport and Lifelong Learning to the committee and thank him for coming along. We move directly to consideration of PE500. We

will come back to PE496 after we have had a chance to talk to the minister.

A large number of members are in attendance—much in excess of the committee's membership—to hear what the minister has to say. If the minister would like to say a few introductory words, he can go ahead.

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): I am glad to have the opportunity to address any further issues that arise from my letter of 12 June, which was written in response to the convener's letter of 8 May, and to clarify the key issues, which on occasion have been misunderstood or have caused some confusion. I hope to address that today.

The petitioners called for the Executive to increase the amount that is on offer and to expedite payment so that pensioners receive the maximum benefit from the pension fund surplus at the earliest date. The first point that must be clarified is that neither the former pension scheme members nor the Scottish Executive had a claim on the Scottish Transport Group pension scheme surplus on the wind-up of the schemes. The petitioners are aware that, without the intervention of Scottish ministers, the surplus would have gone to the UK Exchequer, in line with the requirements of section 14 of the Transport (Scotland) Act 1989.

As I explained in my letter, when we consider the basis and the mode of distribution north and south of the border, it is crucial to acknowledge the difference in the rules of the National Bus Company and the STG schemes on the final destination of surplus funds in the schemes. The rules for the NBC scheme stipulate that any remaining surplus should go to employees, whereas the rules for the STG pension schemes stipulate that any remaining surplus should go to employers, which means the UK Exchequer.

Following a breach of the NBC scheme rules, the actions of the NBC trustees were referred to the pensions ombudsman, who found that the company had acted improperly. The ombudsman ordered the wind-up of the NBC to be reversed and the NBC pension schemes to be restored to the position in which they would have been if they had continued to operate in the intervening years. The petitioners are aware that an out-of-court settlement was agreed with the Deputy Prime Minister, John Prescott. It became clear at that time that members of the NBC schemes would receive an average payment of about £7,000 each.

Although we could identify no legal basis for treating the Scottish schemes in the same way, Scottish ministers were keen to address the perceived detriment to Scottish pensioners and to

ensure that they received an outcome that was comparable with the one for their English counterparts, despite the difference in the rules. For that reason, Scottish ministers intervened directly with the UK Government to secure for Scottish pensioners an outcome that was in line with what had been achieved on a different basis south of the border. In December 2000, Henry McLeish, the then First Minister, announced that we had secured £100 million from the pension scheme surplus for disbursement through ex gratia payments, which would provide an average payment of £7,000 for each Scottish pensioner. I stress the word “average”, because the numbers vary greatly in Scotland and England.

As members will recall, in November last year I announced that, in addition to the £100 million that had been secured, we had agreed with the Treasury to an increase of a further £18 million, to take account of investment return that had occurred after the initial agreement was made and of a decrease from 40 per cent to 35 per cent in the rate of tax that was payable on the surplus.

We await the final audit, but we expect the final accounts for the STG to reveal that the surplus, net of tax, will be approximately £176 million. Apart from the £118 million that has been set aside for distribution and the £50 million that will go to the Treasury, according to the agreement of December 2000, an additional balance of £8 million remains, which, under statutory requirements, should be remitted to HM Treasury. However, as I said in my letter, we will make further representations to the Treasury on that, with a view to retaining that additional surplus for disbursement to the former STG pension scheme members.

The most important matter—and the one in which most pensioners are interested—is when payments will be made. I confirm that the Scottish Public Pensions Agency will write to individuals around the end of July to indicate their payment, based on their pension scheme record. Individuals will be asked to confirm the data that have been used to calculate those payments. For those who are able to reply to the SPPA with confirmation that the data are correct, payment will be authorised quickly. Cases where there are disputes about the data will clearly take longer. I expect payments to the great majority of pensioners, when the pensioners agree with the figures that are used in calculating their entitlement, to begin by mid-August 2002.

The SPPA will run a media advertising campaign, which will be timed to coincide with letters being sent to individuals. The purpose of the campaign is to cast the net widely for those who think that they may be eligible but have not received a letter from the agency by a specified

date. The advertisements will include a contact address and telephone number, in order to assist us in tracking down any potential beneficiaries for whom we do not have complete or accurate records. I hope that that brief summary clarifies the principles involved in the making of the ex gratia payments and that the committee will agree that what the Executive has done goes some way towards meeting the demands of the petitioners. It goes as far as we have been able to go in maximising the sums available for distribution to them. I will be happy to answer any questions.

The Convener: Thank you. This is a complex matter. I take it that all members, including those who are not members of the Public Petitions Committee, have the papers. I intend to go through the eight questions that the committee asked the Executive and deal with each in turn. I will ask members whether they want to raise any additional questions on those points. At the end, we will deal with any matters that have not been covered.

The first question asked whether the Executive intended to reopen negotiations with the Treasury. As members have heard, the minister said that the Executive intends to make further representations to the Treasury about an additional £8 million. Are there any questions on that point?

Dennis Canavan (Falkirk West): The minister told me in reply to an oral question on 2 May that the pension funds at that time had a surplus of £174 million. He stated:

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

The minister has told us this morning that the net surplus is likely to be £176 million rather than £174 million. In his letter to the committee, he states:

“Scottish Ministers will make further representations to HM Treasury to retain the additional surplus”.

However, in the most recent bulletin sent out to members, or former members, of the pension funds, he indicates that the negotiations with the Treasury are only about a sum of £6 million. There is some ambiguity. I understood that the negotiations with the Treasury would be about the total net surplus of £174 million—now £176 million—yet it seems that only the possibility of an additional £6 million is now being negotiated on. How was the figure of £6 million reached? Can the minister clarify what is going on in the negotiations with the Treasury?

Lewis Macdonald: I will attempt to do that. Dennis Canavan has correctly identified two points of ambiguity, which I want to clear up. First, the net surplus that we were aware of at the time of our exchange in Parliament—the net surplus until the end of the last financial year, which was 31 March 2002—included £118 million that we had

already secured, £50 million that we had agreed with the Treasury in 2000 would go to the Treasury and, at that stage, an additional £6 million, which had been accrued over the financial year that had just finished.

Since then, we have gone through the necessary stages. The pension schemes were wound up, the Scottish Bus Group was put into liquidation and, on 7 June, Scottish ministers dissolved the Scottish Transport Group. Following that process, there is a period between the end of March and 7 June when there has been a further accumulation of surplus. Although we do not yet have a final audited account to confirm a precise figure, our estimate is that it will be in the region of an additional £2 million. At the end of March there was £174 million, which consisted of £118 secured, £50 million agreed to go to the Treasury and a further £6 million. That last figure is now £8 million, so there is a surplus that is not accounted for under the headings of money that has been secured or money that it has been agreed will go to the Treasury.

That is the first point of clarification. If members are happy with that, I will deal with the second point of clarification.

Dennis Canavan: I am not entirely happy that the total net surplus is £176 million, yet the negotiations with the Treasury seem to have been for an additional amount that falls far short of that. Even if the additional £6 million or so is successfully negotiated, the Treasury would pocket about £50 million.

11:45

Lewis Macdonald: That is the second point that I was about to make, but I wanted to clarify the first point, which is that the sum of £6 million, which Dennis Canavan quoted, is now nearer £8 million. That is because of the accumulation of surplus between the end of March and the beginning of June.

As I mentioned in my introductory remarks, the agreement that was reached with the Treasury in 2000 was that the Treasury would get £50 million and that we would secure £100 million for distribution to pensioners. That agreement remains in place. When we open discussions with the Treasury, we will want to talk in particular about the £8 million of additional surplus that has been accrued since the £18 million was secured last November. We are not closing the door to further discussions, but our primary objective at this stage is to address the issue of the £8 million. We will seek to persuade the Treasury that that additional accrual in the surplus should be made available through us for distribution to pensioners.

Dennis Canavan: In the negotiations, is there a

possibility of the Executive being successful in persuading the Treasury to give more than £8 million or is that the maximum amount on which negotiations will take place?

Lewis Macdonald: The £8 million represents the sum that is not subject to any existing agreement between the Treasury and Scottish ministers. That is why the £8 million is the primary focus of our concern in speaking further to the Treasury.

Dennis Canavan: Will we have a guarantee that the Executive will point out to the Treasury during the negotiations that, under the existing proposals, the Treasury will pocket more than 60 per cent of the total gross surplus, whereas the pensioners will get less than 40 per cent? We should also bear in mind the fact that the Treasury will receive tax on the surplus. If the objective is, as the minister said, to achieve parity or comparability with what happened with the NBC scheme south of the border, why cannot the Executive convince the Treasury that the existing proposals are inadequate? The negotiations must leave scope for a much improved offer rather than just aim for a mere £8 million.

Lewis Macdonald: I am sure that Mr Canavan does not expect me to lay out in advance the detail of the negotiations that we will enter into. That would not be appropriate. However, he can assume that we will continue to make the case that we made in securing the sums that have already been secured to achieve the best possible distribution to Scottish pensioners. Our priority in the negotiations will be to focus on the unallocated sum but, yes, he can assume that, in our discussions with Treasury, we will advance similar arguments to those that were used in previous discussions.

The Convener: After Fergus Ewing's question, we need to move on to deal with the next point.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Does the minister accept that, since the original proposed package of £100 million for distribution among the pensioners was announced in December 2000, the enhancement of £18 million has arisen purely through growth in the pension fund and a reduction in the tax rate from 40 per cent to 35 per cent? Does he accept that the further £8 million is due purely to the growth in the fund and that, accordingly, there has been no additional contribution from the Treasury since the original proposal?

Lewis Macdonald: I accept the first part of what Fergus Ewing said. The £18 million that we secured last year was the result of a reduction in the tax rate from 40 per cent to 35 per cent and from the accumulation of funds in the surplus during that period. Likewise, the £6 million to £8

million figure—it is nearer to £8 million—is a result of an accumulation in the funds.

I do not accept as a logical consequence that there is no further contribution from the Treasury. The Treasury's view would be that the £18 million and the £8 million that has been accumulated legally belongs to them. However, the agreement it has reached with us is that the money should be available to us for distribution to pensioners, even though it has a claim on that money. We have secured the £18 million and we also seek to secure the £8 million.

Fergus Ewing: I understand that that is how the Treasury views matters, but it is certainly not how the SNP views matters. We believe that the negotiations should not merely open the door to the £50 million, but should involve you strongly urging the Treasury that the £50 million is needed to do justice to the pensioners and to tackle all the other points that will no doubt emerge during the debate.

Lewis Macdonald: As I said in response to Mr Canavan, we will conduct our negotiations in the most effective way that we can.

The Convener: Let us move on to the second part of the answer to the first question, which was about the expected time scale of the payments. We have heard from the minister that the Scottish Public Pensions Agency will write to pensioners at the end of July, asking them to confirm the payments to be made to them and informing them that those payments will be made by mid-August.

Dr Ewing: It seems that one cannot isolate the answer without considering question 7.

The Convener: We will come to that eventually.

Dr Ewing: I know, but my point is that the disbursement will not happen if someone makes a legal challenge. Is that the position, minister?

Lewis Macdonald: I am sorry, Dr Ewing. Was your question that the payment would not happen in the event of a legal challenge?

Dr Ewing: Is that the position?

Lewis Macdonald: We hope to make payments as quickly as we can. That position would be put in jeopardy if there were a legal challenge that questioned the basis for any payments that we made. I suspect that officials would advise me that we should cease payments until any such legal ambiguity was resolved. I hope that any legal issues that individuals might wish to raise would not be raised during the payment process and cause delay to the distribution to pensioners.

The Convener: We are dealing with question 7.

Dr Ewing: The two questions are inextricably linked, convener. If one person makes a legal

challenge, nothing will happen in August 2002. Is that the position?

Lewis Macdonald: I sincerely hope that that position will not arise. If there is a legal challenge, I will receive advice from officials, but the responsibility for a decision will lie with ministers. Judging by precedent, the advice of civil servants in the circumstances that you describe would be that we should make no payments that might be called into question in a court of law or that might call into question our proper stewardship of public funds.

Dr Ewing: Does the minister accept my view that there is an element of blackmail? A pensioner has the right to make a legal challenge but, if they do, they might harm their payment and the payments of all the people who do not make a legal challenge.

Lewis Macdonald: The position is that anyone who considers making a legal challenge would wish to seek legal advice and to consider it carefully. They should also consider carefully whether there is a realistic basis for pursuing such a challenge. If the rules are as clear as we believe them to be, any surplus belongs to the employer and not to the employee. I would expect any responsible legal adviser to point that out to anyone who is considering taking legal action. The quality of legal advice is always critical.

Dr Ewing: What a disgraceful mess.

The Convener: I remind members that we are considering questions 1 and 7 together.

Rhoda Grant: I welcome the fact that payments will start being made in August. I am concerned that many of the people who are eligible to receive payments are elderly. What steps will the Executive take to ensure that eligible people can claim their payments? Elderly people are notorious for not claiming what is due to them, as they might be frail, unwell and unable to make those claims for themselves. Will local authorities help people to make claims? I am thinking particularly of people in nursing homes who would not be able to make their claims without help.

Lewis Macdonald: Our intention is to advertise as widely as we can to seek to reach those people who might not be aware of their entitlement. That will be an important aspect of what we do. Likewise, we will seek to ensure that widows, children and widowers of pensioners are aware of their rights and are encouraged to make appropriate claims. Jamie Ross will respond briefly to the question about how local government might assist with that.

Jamie Ross (Scottish Executive Enterprise and Lifelong Learning Department): The key point is that we are keen for anyone who is eligible

for an ex gratia payment to receive it. The minister referred to the extensive advertising campaign that we will conduct throughout Scotland. We are well aware that not everyone will see that, but we will write to people who are on our records and whom we feel will be eligible for ex gratia payments. If we receive no response to that first letter, we will not drop the matter—we will follow it up. We have also had some discussion with other groups such as trade unions and local authorities. We urge anyone who has a role to play it, because we are keen for everyone who should receive an ex gratia payment to receive it. We will make every effort.

Lewis Macdonald: The trade unions—particularly the Transport and General Workers Union, which is the largest relevant union—have been closely involved in the process and will, we hope, continue to assist in identifying members.

Fergus Ewing: With regard to double taxation—

The Convener: We have not reached that subject yet.

Fergus Ewing: I am sorry. I thought that we were on question 2.

The Convener: We are still dealing with question 1.

Dr Jackson: What is happening with T&G Scotland? I am here as the T&G representative. What is happening with the formula? Has that been decided? What is the time scale for doing that? The formula must be decided before the letters can be sent.

Lewis Macdonald: The criteria for distribution have been decided and discussed with the T&G among others. Members will be aware of the broad criteria. The precise formula for distribution is being worked on, but it will not hold up the process or the timetable that I described. One or two details of the formula will need to be clarified, but its essential shape is clear. The T&G has talked to us about that from an early stage and I think that it is broadly content with our proposal.

The Convener: Question 2 deals with double taxation and the distinction that has been drawn between NBC members, who it is claimed were paid a lump sum from the pension scheme, and STG beneficiaries, who will receive ex gratia payments from surplus funds, which, on wind-up of the pension schemes, should go to the UK Exchequer.

Dr Jackson: I will start on the issue because I raised it when the Public Petitions Committee last discussed the petition. Much hinges on whether the settlement up here is comparable with what is happening down south with the National Bus Company. Much information was given at the meeting when the committee last discussed the petition. That showed fairly convincingly that the

positions of the two settlements were not comparable. I would like your views on that information.

The question that follows from that concerns unlocking the £50 million for the Treasury, which is essentially tax on the ex gratia payments. As the minister said in his introduction, the NBC scheme rules said that any surplus would go to employees rather than employers, which is why settlements could be made without tax, whereas the Scottish scheme requires tax to be paid. I understand that the Inland Revenue has been consulted and has said that it can see no special case for changing its decision. Was the information that was provided to the committee put before the Inland Revenue? It strikes me that a special case could be made for making the ex gratia payments tax free.

Lewis Macdonald: Two points are involved and are worth distinguishing. First, as I said at the outset, the schemes have different rules on the treatment of a remaining surplus or deficit. The second point concerns what the trustees of the different schemes have chosen to do. The trustees of the STG pension scheme did not choose to make pensions payments in the way that happened south of the border. Whereas the NBC pensioners in effect received enhanced pension payments or a lump sum paid out within the terms of that pension scheme, the Scottish pensioners received ex gratia payments outwith the terms of their pension scheme. I suspect that that is the key distinction, as individuals are liable to personal taxation upon receipt of ex gratia payments.

12:00

The decision to proceed in that way lay with the trustees of the respective schemes. Scottish ministers had no say or role in that decision. However, I understand that the STG trustees made the decision on the basis that payments had already been made to their pensioners. A distinction must be drawn between the legal ownership of the remaining surplus, which I have already touched on, and the way in which the trustees chose to make payments. That was the second point.

On the arguments that were put to the Inland Revenue, I may need to call on one of my officials, who was involved in the technical side of the discussions, to respond to that question. In essence, we made a case from a number of different angles and sought to identify a basis for special consideration. However, at the end of the day, the judgment is for the Inland Revenue, which decided that the Scottish pensioners have no basis for claiming tax-free payments because the money is being paid outwith the terms of the pension scheme. That is the fundamental issue.

Perhaps Jamie Ross can speak more about the particulars of that discussion.

Jamie Ross: I will reinforce that point. One approach is to look at the wider issue and try to secure parity so that Scottish pensioners can feel that they are being treated equally and in the same way as those down south. However, the Inland Revenue views the situation as a taxation issue. Obviously, we gave the Inland Revenue the background on why we were keen to make a case for the payments to be tax free but, as the minister has explained, the fact is that the payments are not being made under a pension scheme nor are they redundancy payments. The payments are very much ex gratia by their nature because the legal position was that the money could have passed to the Exchequer. In our representations to the Inland Revenue, we reinforced the point that obtaining tax-free payments would help us secure parity.

Returning to the earlier point that was raised, I want to mention the wider context. Obviously, although the NBC scheme has a finite amount of money with a finite number of pensioners, our research has shown that there is a huge range in the value of payments that can be made. We have always talked about trying to obtain parity on an average basis, so I think that no one will dispute the fact that some individuals may get huge amounts while some may get low amounts. All that links into the principle of fairness, which is that the payment is linked to service and to the individual's contribution history in the pension scheme.

To summarise, in our representations to the Inland Revenue, we explained why we were trying to make the case and we explained the need for parity. However, the Inland Revenue's position was that it saw no special reasons why it should agree to our proposal.

Dr Jackson: I have one follow-up question.

The Convener: You must ask it quickly. We are not making progress and I have three groups of petitioners waiting to speak to subsequent petitions.

Dr Jackson: What special circumstances will the Inland Revenue take into account so that people need not pay tax? Can Jamie Ross provide some examples?

Jamie Ross: To be honest, I am not sure that any of the officials could quote them.

Lewis Macdonald: Special circumstances can exist, but if Sylvia Jackson wants to pursue the question, perhaps she would be best to address it to the Inland Revenue.

Dr Ewing: We all want an answer to Sylvia Jackson's question.

Fergus Ewing: However complicated the vagaries of pension law and tax law may be, I think that the minister and Mr Ross have in effect admitted that the Executive has asked the Inland Revenue for a deal that would allow the Scottish pensioners to be treated in broadly the same way as their counterparts south of the border, but that the Inland Revenue has said no. That means that Scottish pensioners will receive a worse deal than those in England. That is true, is it not? If it is, surely the way to resolve that is to get the £50 million to set matters right.

Lewis Macdonald: I do not agree. It is certainly our intention that the assertion that you made will not be the case. The deal that Scottish pensioners receive should be comparable with that south of the border. We secured £100 million in the first negotiation. That would have provided, on average, a sum before tax of £7,000, comparable with the average sum received by an English pensioner of £7,000. The additional £18 million that we have secured means that the average receipt for a Scottish pensioner will be more like £8,000. That goes a significant way towards dealing with the taxation issue.

The position of individuals will depend on their other income and on whether their existing pension income renders them liable to tax. Sadly, as we know, in many cases transport company operatives have in the past not received generous pension payments, so I suspect that a significant number will not be liable for tax in any case. By securing additional funds, we have sought as far as possible to meet the difference in the tax position. It has not been a matter for political negotiation. As Fergus Ewing said, it is a matter of pension law and tax law. We have sought to maximise the arguments where that will lead to benefit for Scottish pensioners.

Fergus Ewing: You state in your letter, that you have met representatives of the pensioners action committee. Could you tell us when that was and who you met? None of the representatives of that committee to whom I have spoken have met you. Will you meet Derek Scott? He gave evidence to the committee at a previous meeting and has subsequently made specific recommendations of a technical nature as to how the payments could be made. His recommendations would have the effect of avoiding the situation in which tax was due to be paid by the pensioners. When did your meeting with representatives of the action committee take place? Will you meet Derek Scott, who is an expert accountant on those issues, to see if there is a way to get out of this morass?

The Convener: Those points refer to question 8, which we intended to come to later, but the minister could answer the point now and get it out of the way.

Lewis Macdonald: I met a group of four representatives of the pensioners action committee, one of whom was Jim Donnelly. The meeting took place in Perth on 23 February. It allowed us to address a number of the issues that were of concern to the pensioners action committee. As I indicated in my reply to the convener, we have responded to a significant number of the points that have been raised since then either by correspondence or in Parliament. We will consider on its merits any request for a further meeting that follows the meeting today.

The Convener: I want to be clear about this point. It relates to the question that Sylvia Jackson asked. Has the evidence that Mr Derek Scott gave to the committee formed any part of the Executive's considerations or the negotiations with the Inland Revenue?

Lewis Macdonald: That evidence is certainly something of which we have been aware. Do either of my officials wish to comment on that point?

The Convener: Have the points that Mr Scott made to the committee been raised with the Inland Revenue?

David Alison (Scottish Executive Enterprise and Lifelong Learning Department): We have the points that were raised at a previous meeting of the Public Petitions Committee. The discussions with the Inland Revenue had taken place prior to that point.

The Convener: So they have not been raised with the Inland Revenue. That is clear. We will move on.

Dennis Canavan: As well as giving evidence to the committee, Derek Scott sent an e-mail to the Scottish Executive on 9 June. The e-mail outlined in detail some options whereby payments could possibly be made to the pensioners without them incurring double taxation. He has not to my knowledge received a reply to his e-mail. When is he likely to receive a reply? Does it not reinforce the case for another meeting with the pensioners action committee and Mr Scott to discuss the contents of the e-mail?

Those matters are complex. We appreciate that the minister is not responsible for the Inland Revenue, but we feel strongly that the SPPA may not have considered all the possible options and may not have put all possible options to the Inland Revenue. Bearing in mind the time constraints on this meeting, a future meeting between the minister and the action committee to try to find solutions to the outstanding matters would be helpful.

Lewis Macdonald: As you say, we received an e-mail from Mr Scott just over a week ago. We will

consider carefully the points in it and respond to it. If there is additional information or interpretation in the e-mail that we feel might be useful, we will certainly consider how best to act upon it. On that basis, we will consider carefully whether there would be advantage in a meeting. I do not close the door to that possibility, but we must consider it. I will take advice on that in the next few days.

The Convener: The next set of questions deals with the fact that the STG pensioners made four years of additional contributions because of the late privatisation of their organisation. They also had an agreement in 1983 that promised enhanced pension payments in return for a wage settlement. As no one wishes to ask questions about the minister's answers on those points, we will move on to the decision of the 27 pension trustees to award themselves payments that totalled almost £700,000 to compensate for the loss of privileges such as private medical cover.

Dr Ewing: The STG board made a bad contract. Few people are guaranteed payment for life. In few situations in our society are we told, "We will pay you for life." The promise of BUPA—British United Provident Association—cover until death was extraordinary and the result of that was payments totalling £500,000. We are talking about poor old pensioners, yet those people helped themselves to £500,000. The contract seems extraordinarily bad. Does the minister have any comment on that?

Lewis Macdonald: I do not disagree. It surprised me to discover that a publicly owned industry had put such a generous contract in place for private health care. The legal advice that the Government received was that, on the wind-up of the Scottish Transport Group, a liability existed that had to be met by the STG or by the Government. It is important that the liability was met by the STG and not from the pension schemes.

The Convener: Would the relevant minister at the time have agreed to the contract?

Lewis Macdonald: I assume so. That was significantly before my time, not to mention the fact that I am a member of entirely the wrong party to be asked about that. I assume that ministers were aware of the contract.

The Convener: We will move on to seek to clarify whether the sums for pensioners who have passed away will be paid to pensioners' widows and widowers, added to the surplus for the benefit of the remaining pensioners or retained by the Treasury.

Fergus Ewing: After a meeting of STG pensioners in Inverness, a lady told me that she had been the common-law wife and was now the widow of a scheme member—if one regarded

them as husband and wife—who sadly passed away. As happens sometimes in Scotland, no legal ceremony took place. Will that lady and others who are in the same situation qualify?

Lewis Macdonald: Yes. The intention is that such people will qualify.

Fergus Ewing: I am pleased to hear that. Will the share that a widow or widower receives be equivalent to the share that the deceased spouse would have received, or will it be 50 per cent or some other proportion?

Lewis Macdonald: It will be 50 per cent.

Fergus Ewing: Should it not be 100 per cent? Although the amount is a facet of pension law, we are dealing not with pension law but with ex gratia payments. The people who are involved have lost a loved one and will be penalised for the delay. We are talking about the situation since 1993. If their partners had survived, the full payment would be received. Not only have those people lost a loved one, but they will receive only 50 per cent. In many cases—such as that of my constituent, the widow of Alex Munro—that is because the pensioner passed away in the time since the Parliament was established. Could that decision be reconsidered?

Lewis Macdonald: Although the payments are ex gratia, they are within the scheme's rules. What we can pay will accord with the scheme's rules. For widowers whose wives were pensioners, we have gone beyond the rules of the scheme. We have found a way to include widowers in the scheme.

Fergus Ewing: Will you reconsider the matter? I urge you to do that. The penalty seems extraordinarily unfair. We are not dealing with pensions law. You have the power to make the full payment if you wish.

Lewis Macdonald: I can certainly investigate the issue. I cannot today offer an assurance as to the outcome of that investigation, but I am prepared to examine whether there is anything that we can do.

Fergus Ewing: I am grateful for that undertaking.

12:15

The Convener: I would be grateful if the Public Petitions Committee could be kept informed of developments.

Lewis Macdonald: I am sure that that will happen.

The Convener: Question 6 concerns a statement made in a parliamentary debate in November 2001 about the failure of individual pensioners to convince the pensions ombudsman

that there is any legal basis for them to make a claim on the surplus. We thought that the minister had made the statement, but in fact it was made by Nora Radcliffe MSP.

Dennis Canavan: In his response, the minister states:

“the Rules for the STG schemes stipulated that any remaining surplus should go to the employers”.

However, that was the case only after a rule change that was made in 1989. Believe it or not, fewer than 100 members out of more than 9,000 active members took part in the vote that produced that rule change. The Executive should take into account the fact that the rules were changed in a very undemocratic manner. The trustees did not try very hard to encourage participation by the members of the scheme.

Lewis Macdonald: I note that point. The position is as I described, although I am grateful to Mr Canavan for the further information that he provides on the circumstances in which the rules were changed. The situation may be a matter for regret, but the rules are as they stand. The pension schemes have been wound up and the trustees are trustees no longer. The trustees took a number of decisions that might have been taken differently. Unfortunately, those decisions cannot be remedied, because they were taken by trustees who were acting within the rules of the schemes.

Dr Ewing: Sylvia Jackson made a point about this being a special case. Some 100 out of 9,000 members were responsible for a bad rule change. Should the Inland Revenue not have highlighted that point? This situation reminds me of the signing of the Treaty of Union, in which only 0.001 per cent of the folk of Scotland had a say. That treaty has been in place for hundreds of years. Dennis Canavan has provided us with an incredible piece of information. What was the STG board doing letting down people in that way? It is absolutely dreadful. Surely the Inland Revenue should take the point into account.

Lewis Macdonald: I understand Dr Ewing's long-standing antipathy to the Act of Union, but in 300 years no challenge to the legal standing of the act has been sustained. I fear that the same may be true in this case. However, we will take the point into account when considering whether there are additional grounds for discussion.

The Convener: We dealt with question 7 when dealing with question 1. Question 8 has also been dealt with.

Fergus Ewing: I would like to make a brief point about the minister's answer to question 7.

The Convener: The question was about the implications of any legal challenge mounted by the pensioners.

Fergus Ewing: The issue was referred to at the committee's last meeting. The minister is aware of the legal opinion that Mr Trotter of MacRoberts provided for the Scottish Bus Group pensioners action committee. That opinion was circulated to the minister, the Chancellor of the Exchequer and just about everyone else—I have a copy of it in front of me—and it raises a number of technical issues.

Does the minister agree that grounds—some of which Mr Canavan has suggested—may well exist for a challenge to the conduct of the trustees? Has the minister taken advice and does he accept that there may be a *prima facie* case? If so, will he comment on the fact that a gun has been put to the head of any pensioner who wishes to pursue his or her legal rights on the basis of what appears to be the solid opinion of an expert in the field?

Lewis Macdonald: I would not wish to assert a legal view, but we have acted on the best advice on the legal entitlement to ownership of the pension surpluses. On that basis, we have proceeded in the way that I have described. We have secured as much as possible of the surplus by agreement with the Treasury. We believe that that was the right course to follow.

As is the way of these things, the legal advice from our advisers was full and frank, and so was received in confidence. We listened to that advice before coming to a view. We feel that we have received the best possible deal for pensioners. Clearly, others have the right to take a different view. As I have stressed, having finally secured the funds at the beginning of this month, following the wind-up of the pension schemes, our priority now is to distribute them as quickly as we can. If people feel that there is a *prima facie* case, as described by Mr Ewing, we would encourage them to consider carefully not only the substance of that case but the timing.

The Convener: We have covered most of the issues and I thank the minister for his open and honest answers. He has been very co-operative and I thank him on behalf of the committee.

We must now consider our response to what we have heard. The matter is complex and detailed. The committee's only power is to refer the petition to another subject committee. We are not really sure which committee would be appropriate. The Finance Committee has looked into the matter but complaints arose over the way in which it dealt with it. The Enterprise and Lifelong Learning Committee may also have a view on the petition as it concerns a commercial enterprise.

It is suggested that we take time to consider the matter and put the issue on the agenda of our next meeting, which will be the committee's final meeting before the recess. In the meantime, the

clerks will liaise with other committees to decide which committee would be the appropriate one to deal with the petition. We should not rush things.

Dennis Canavan: I am not a member of the committee but I would like to make a suggestion. When they questioned the minister, several members proposed that he should meet members of the pensioners committee and their adviser, Mr Derek Scott. It would be helpful if the committee could formally endorse that proposal and put it to the minister.

The Convener: I do not have a problem with that. Is that agreed?

Members indicated agreement.

Helen Eadie: We will have to consider how to deal with the taxation question, which was not answered this morning.

The Convener: I would like to read the *Official Report* of the meeting so that, at the next meeting, we are better placed to discuss what can and cannot be done.

Dr Ewing: When is the next meeting?

The Convener: A week today. It will be the last meeting before the recess, so we will decide then.

Dr Ewing: I agree with your proposal that the matter should go on the agenda for that meeting. I also propose that we ask Derek Scott to put to us his suggestions to the minister about ways of resolving the matter without double taxation. I was not satisfied with the way in which the minister brushed aside questions about whom he had met and when. We need to know whether the points in the vital e-mail have been put to the Inland Revenue. We got the admission that they had not. As far as I am concerned, the matter is still open.

The Convener: We could invite Mr Scott to the next meeting to discuss the petition.

Dr Jackson: I want to pick up on what Helen Eadie said. There is the unresolved issue of special cases in which the Inland Revenue changes its mind and there is also the issue of what the minister will do. Now that he has the information that was available at the previous meeting of the Public Petitions Committee, which he and his staff admitted they did not have when they went to the Inland Revenue, will he put the case to the Inland Revenue again?

The Convener: It has been suggested that, as well as asking Derek Scott to be present, we could ask for an urgent response from the Inland Revenue in respect of special cases so that that will be available for the next committee meeting.

Fergus Ewing: I appreciate that I am not a member of the committee, so I welcome the opportunity to participate in the discussion. It is

obvious that if payments are to be made over the summer—I think that we all want payments to be made—our only opportunity to progress matters as perhaps all of us would like will be next week. Will the convener confirm that Mr Scott and the Inland Revenue should provide a response next week, now that we have the benefit of the minister's comments? That would enable us successfully to put further pressure on the minister before the recess, safe in the knowledge that the statutory instrument will probably be laid shortly thereafter.

The Convener: As far as the Public Petitions Committee is concerned, the intention is to resolve the issue at the next meeting. We realise the urgency of the matter and want the Inland Revenue to respond by next week. We will ask it to do so in order that the committee can reach a decision. That is why we want Derek Scott to be present, too. If he cannot be present, we cannot do anything about that, but we can consider the points that he made at the previous meeting.

Fergus Ewing: Is the intention to invite the Inland Revenue to give evidence to the committee?

The Convener: We can invite the Inland Revenue, but it is under no compulsion to attend any meeting of a committee of the Parliament. At this stage, we simply want to obtain the information that Sylvia Jackson wants. We are trying to pressurise the Scottish ministers in their negotiations with the Inland Revenue. I do not think that we can take the place of the Scottish ministers in negotiations at this stage. We should apply the maximum pressure to get ministers to reopen the issues.

Fergus Ewing: I fully accept what you say. However, would not it be useful if Mr Scott and the Inland Revenue attended the meeting? Mr Scott could then make his points, safe in the knowledge that there will be the opportunity to get a direct response from the Inland Revenue. Despite everybody's good intentions, I fear that we will not otherwise get the necessary response. I propose that the Inland Revenue should be invited to give evidence next week.

The Convener: There is no guarantee that an Inland Revenue representative will come and I am concerned that ministers would see that approach as gross interference in negotiations that they are conducting on behalf of the Scottish Executive. At this stage, it would be better simply to obtain the information and try to process it.

Dr Ewing: If we invite the Inland Revenue, at least it will have to turn the invitation down.

The Convener: It would be very short notice for Inland Revenue civil servants to come up from London.

Dr Ewing: What about the poor old people who are not getting any money? I suggest that we invite the Inland Revenue—at least, it can then turn us down. Our final meeting is next week and there are constraints on our time. That is not our fault.

The Convener: We can invite the Inland Revenue. Does any member oppose that?

Rhoda Grant: I am a wee bit concerned about Winnie Ewing's tone. She wants to invite the Inland Revenue simply so that it can turn us down. It is not fair to invite representatives at such short notice so that we can use their turning us down against them. Sending an invitation is no problem, but in doing so, we should take cognisance of the short notice and the fact that representatives might not be able to come.

Dr Ewing: I am sorry if my tone offends Rhoda Grant, but we do not need to give warning to Inland Revenue representatives. They know the law. We are not asking them to carry out sudden preparation. They have all the required knowledge at their fingertips.

The Convener: We intend to seek information from the Inland Revenue about special cases that it allows to be tax exempt. We could ask the Inland Revenue either to write to us or send a representative to explain what the exemptions are so that we can reach a conclusion about the petition. However, we should not invite the Inland Revenue up here to conduct negotiations that should be carried out by ministers. The committee's role does not include getting involved in negotiations—its role is to obtain as much information as we can to help us to resolve the petition.

Are members agreed on the suggested course of action?

Members indicated agreement.

12:30

The Convener: I thank members. The issue will be on the agenda for the next meeting.

Domestic Abuse (Advertising Strategy) (PE496)

The Convener: We move to the final current petition, PE496 from Mr George McAulay, which deals with the handling of the Scottish Executive's recent domestic abuse advisory strategy. Members will remember that Mr McAulay believed that the Executive had deliberately manipulated the Scottish crime survey 2000 statistics as part of the domestic abuse campaign that was launched last December, and that that had a bad social impact and created a negative and partial portrayal of men.

We sought the Executive's formal views. The Executive has replied to say that the Advertising Standards Authority ruled that the words "constant fear" should be removed from the statement:

"a recent survey suggested that 1 in 5 women live in constant fear of domestic abuse".

The statement has since been changed to:

"as many as 1 in 5 women in Scotland will experience domestic abuse in their lifetime",

which is substantiated by the Scottish crime survey 2000 statistics.

The response also indicated that research conducted by the Executive confirms that the ratio of male to female victims of domestic abuse is 7 per cent to 93 per cent, and that equal funding to promote awareness of male victims would not be appropriate. It considers that resources for advertising are best used to address the problem of women being abused by male partners. However, the problem of male victims is being addressed through the national strategy on domestic abuse.

The responsible body, the Advertising Standards Authority, has ruled that some of the wording used in the Executive's campaign should be changed and it has agreed the revised wording. Members will wish to consider whether there is any requirement for further investigation to be carried out of the petitioner's claims about the handling of the Executive's campaign. The Executive has addressed those claims and there appears to be little doubt that it is justified in conducting such a campaign in view of the findings of the Scottish crime survey and other research. There also appears to be no justification for providing equal funding to promote awareness of male victims of abuse, given the relatively small numbers involved. It is suggested that we agree to send a copy of the Executive's response to the petitioner and to take no further action.

Helen Eadie: I agree with the recommendations.

Phil Gallie: One point that concerns me is that information is still around that contains the wording that was criticised by the Advertising Standards Authority. Schools and various other organisations have copies of the video containing the old wording. Those videos should be withdrawn or, at the very least, edited in some way.

The Convener: Are you saying that the videos still contain the phrase "constant fear"?

Phil Gallie: I understand that the videos that were put out at the time remain in circulation.

The Convener: We will check that out.

Phil Gallie: I would go further. Guidelines from the Scottish Executive may suggest that teachers

should point out the change in wording, but suggesting that it should be pointed out does not necessarily guarantee that it will be. We must find a means of guaranteeing it.

The Convener: It is suggested that we write back to the Executive asking it to ensure that material that is in the public domain is consistent with the Advertising Standards Authority's ruling. Is that okay?

Phil Gallie: That is fine.

Dorothy-Grace Elder: I do not think that anyone here believes that the Executive's advertising was ill intentioned. When you write to the Executive, could you press it a bit more on the research that it is bringing out in July? So far, the ratio of male to female victims of domestic abuse is quoted as 7 per cent to 93 per cent, and we all accept that the male abuser does a great deal more damage. However, that figure of 7 per cent is questionable. We know that it has taken a couple of generations to get women to speak about being abused domestically. It is much harder to get men to speak.

I have had encounters with males who have come to me to report abuse. For instance, I met a man who said that his wife tried to electrocute him by the simple process of chucking a bucket of water over him while he was fast asleep in bed on top of an electric blanket. Another male reported that his dearly beloved slashed him with a knife every so often. He was too ashamed to tell the police or anyone else so he went round to his old mum and got her to patch him up every time. A small percentage of men do live in fear of violence. We must accept that there is a minority of horrible women as well as a minority of horrible men and that the male sex overall certainly does not deserve to be demonised. I would like you to inquire of the Executive about that figure of 7 per cent, because I think that the true figure might be higher. Nevertheless, we all know that the vast majority of domestic abuse is inflicted upon females and that our first priority must be to protect them.

The Convener: Do you suggest that we should ask the Executive those questions before we close the petition?

Dorothy-Grace Elder: Yes. We should query the 7 per cent figure and the Executive's sources. It appears that money has not been allocated to investigate the level of abuse of men—I might be mistaken, but I see no reference to such an allocation.

The Convener: Do members agree to keep our consideration of the petition open until we receive further responses from the Scottish Executive?

Members indicated agreement.

New Petitions

The Convener: We move on to consider new petitions. Time is running out. Unfortunately, we have to be out of the room by 1.15 pm, because another committee will be using it at 1.30 pm. We have three groups of petitioners to hear from, and we will try to get through them in the time that is available to us. Any other petitions will have to be passed over to our next meeting, apart from the petition on Peterhead prison. We will try to deal with that petition today, because our discussion of it was scheduled for today's meeting and quite a large number of people in the public gallery have attended the meeting to listen to the discussion.

Planning Process (PE508)

The Convener: The first new petition is PE508 from Mr Philip Graves on behalf of Strathblane community council. Mr Graves wishes to make a brief presentation, but I did not see him coming in. Is he here?

Philip Graves (Strathblane Community Council): I am here.

The Convener: You are welcome. You have three minutes in which to make a presentation, following which I will open up the meeting to questions from members.

Philip Graves: Thank you for giving me the opportunity to question the implementation of the Environmental Impact Assessment (Scotland) Regulations 1999.

I intend to deal only with the main points in the petition. I will speak about how the EIA regulations are supposed to work, and how that process has failed in practice, and then I will offer a few tentative solutions. I make no apologies for using the West of Scotland Water application for a water treatment plant in Milngavie as my example, because I know the application well. The project is of a national scale—it will cost about £100 million—and has spawned a raft of independent reports and much criticism that the environmental issues have had to play second fiddle to engineering issues and cost.

The EIA regulations and planning advice note 58, which supports them, clearly state that environmental issues should be considered at the earliest stage of any project and should influence the alternatives that are considered. Local people and other interest groups should be brought into the discussions as soon as possible—certainly as soon as the scoping exercise is established. That crucial stage is when the terms of reference and the identification of significant issues for the EIA are agreed.

I believe that WSW has failed in many respects.

The application has been bogged down in East Dunbartonshire Council planning department all year, with much to-ing and fro-ing between the two organisations. That suggests to me that the scoping exercise was not tight enough and that East Dunbartonshire Council, at great expense of time and money, has had to commission three or more independent reports to fill in all the gaps.

Local consultation has been poor. The first that Strathblane community council knew about the application was in August last year, when it appeared in the local papers. We believe that, by that time, WSW had already completed the selection process and had decided on its chosen site. Since then, many local concerns have emerged, including concerns about traffic and the loss of recreational amenities around the reservoir. Those concerns have forced WSW rather belatedly to complete a traffic impact survey, in February of this year, and a leisure use survey, which was completed in August of last year.

With that in mind, we suggest that a full review of the EIA regulations is required. To be specific, we feel that the local planning authority should set the final terms of reference in the scoping exercise. A statutory requirement to consult local communities should be introduced, akin to the consultation code that has just been introduced in the Water Industry (Scotland) Act 2002. We should consider introducing an independent EIA-qualified consultant, or consultancy group, to head up EIAs. They would be appointed by the local authority but paid by the developer. Finally, we should consider appointing a commissioner to scrutinise the entire process followed in each application. That might avoid the inconsistencies and lack of transparency that all the independent reports claim bedevil West of Scotland Water's environmental statement.

I finish by quoting from the independent report of Scottish Natural Heritage, which has produced an excellent report on the process:

"We do not consider the site selection process and the landscape assessment under taken as part of the EA process adequately demonstrates the best practical environmental option has been selected."

The Convener: I now open the meeting to questions from committee members.

Helen Eadie: I was interested in Philip Graves's point about the independence of the local authority when it appoints the environmental impact assessors. Will he explain the rationale behind giving developers the responsibility for appointing the environmental impact assessment consultants? I share his concern about the lack of independence. We all know that when we appoint a consultant, we usually appoint the one that we know will give us the answer that we want.

Philip Graves: I cannot answer that. Common sense suggests that you are right. Why should the developer be allowed to appoint the consultant? As we all know, the person who pays the piper calls the tune. It is difficult to answer the question. It is a question I am asking the committee.

Dorothy-Grace Elder: You refer to European directives. Have you considered taking your case to Europe? Winnie Ewing will be the expert, but it is my understanding that the environmental impact assessment regulations date well back, to the 1980s, and were improved and updated in the late 1990s. I also understand that certain countries are interpreting the directives too widely. Next month, I have to take to Europe a case that brings in environmental impact assessment. Have you considered going to the European Parliament's Committee on Petitions as well as to the Rural Development Committee?

Philip Graves: I have certainly considered it. It would mean a big sacrifice of my time and effort. I have a 9-to-5 job and I am not a legal mind. I would be happy to assist anyone else that has the resources to do that. Scotland has accepted the regulations and the quality standards were encompassed in the Water Supply (Water Quality) (Scotland) Regulations 1990. However, anyone who has been to Loch Katrine, for example, where the water for the treatment project comes from, will see that the water is as clean as it gets. I would not hesitate to drink straight from the loch, yet here we are about to spend £100 million in a bid to make it even cleaner. That strikes me as absurd.

Dorothy-Grace Elder: Has a scientific assessment been done?

Philip Graves: Within the environmental statement, there is very little about why the water needs to be cleaned, how dirty it is and how thorough the filtration process that has been chosen is. The Arup Scotland report, commissioned by East Dunbartonshire Council, questions whether the plant will work—whether it is 100 per cent certain that it will rid the water supply of cryptosporidium. I wonder how they can go ahead with the project when there is no scientific evidence that the plant will work.

Dr Ewing: I was listening to what Dorothy-Grace had to say about Europe. Taking the case to the European Committee on Petitions, on which I used to serve, is a possibility. It would only mean a day trip to Brussels and you do not have to have legal representation, so it might not be that expensive. However, we should follow the suggested action first.

The Convener: You referred to the consultation code in the Water Industry (Scotland) Act 2002. Has the code not been published yet?

Philip Graves: It has not been published, but

there is plenty information available about what it will and should include. Des McNulty, one of our local MSPs, has done a lot of work on ensuring that plenty local consultation is included in the code.

The Convener: Do you believe that the project would have gone ahead if the consultation code had been in place?

Philip Graves: There would have been far more discussion early on and some of the issues would have come to the fore much earlier, which would have saved a lot of time. I like to think that the proposal would not have gone through; in any case, it would not have become bogged down for months in the planning department.

The Convener: Were members of the public consulted before the decision on the preferred site was reached?

Philip Graves: That issue is somewhat controversial. One or two suggested areas for the site, one of which is called Baldernock, had been consulted well before Strathblane community council was consulted. I represent a little village outside Strathblane called Mugdock, which overlooks the reservoir. Although two or three of the residents will be most affected by the development, none of them was consulted. Indeed, we were not officially informed before we saw the application in the local paper. Baldernock community council was consulted perhaps a year before.

12:45

The Convener: Thanks very much. You are free to listen to the discussion about what should happen to your petition.

I should stress that we cannot become involved in the individual planning decisions that prompted the petition. However, it is suggested that we agree to write to the Executive, to seek its comments on the general issues that the petition raises and, in particular, to ask whether it has any plans to review the Environmental Impact Assessment (Scotland) Regulations 1999 and the guidelines, along the terms that the petitioner has suggested. Moreover, it is suggested that we seek clarification about which body is ultimately responsible for overseeing the scrutiny of the environmental impact assessment process in circumstances in which Scottish ministers can become involved. We might also want to write to Scottish Water, seeking its comments on the petition, with a specific request for details and an update on its new consultation code.

Helen Eadie: I support the suggested action. I underline the importance of Mr Graves's proposal that independent consultants should be appointed

to carry out EIAs, even though they might be paid to do so by the developers. The Parliament should take forward that issue. I hope that the Executive will respond positively to it, because it is vital to so many developments in Scotland.

The Convener: We will certainly make that clear when we write to the Executive. Do members agree the suggested action?

Members *indicated agreement.*

Educational Provision (Children with Special Needs) (PE516)

The Convener: PE516, from Ms Sara Craig, is on educational provision for deaf children. I welcome Ms Craig, who will make a presentation to the committee. I am sorry about the rush, but we have had a very busy agenda this morning.

Sara Craig: We are very grateful for the opportunity to speak to the committee. I am accompanied by Lynn Toti, who is also a parent of a deaf child; Joseph Owens, who is the chairman of the West of Scotland Deaf Children's Society; and Andrew Strachan, who is a past pupil of Gateside School and is profoundly deaf. We speak for ourselves and our children, two of whom are deaf. These are our words. We are here neither to discuss petty conflicts, nor to create division.

In the past two weeks, we and other parents have attended meetings held by Renfrewshire Council, based on a discussion paper on the inclusion in mainstream schools of children who have special needs. It is clear that options are open to parents and that they will be listened to. We welcome that, but we would have welcomed it even more a year ago. We are also aware that we speak in the context of the national debate on education.

We are humbled by the difficulties that some families face and we recognise that there are degrees of impairment far beyond those of our own children. We are also lucky to live in Renfrewshire, which has an outstanding record in providing for children who have special needs, and their families.

The Standards in Scotland's Schools etc Act 2000 makes the presumption that, other than in exceptional circumstances, children with special needs will be educated in mainstream schools. We believe that it may be in the interests of children with special educational needs in Scotland, and their families, for the Scottish Parliament to examine what "school" means and, in particular, to ensure that the interpretation that can be put on laws does not confine the idea of a school to buildings.

We also believe that the retention of specialisms and specialist teachers for some special needs is

vital to the interests of the children who have such needs. We feel that that is true of deafness, a view which is supported by the paper that has been submitted to the committee by Ms Grimes who, at the University of Edinburgh, is a researcher into the education of deaf children. Even the most highly trained generalist who does not understand deafness finds it difficult to see past the condition to the child. However, a specialist in deaf education sees through the deafness to the child. Such a person enables and supports that child and expects them to reach their full potential.

Although we are focused firmly on the future, we feel that we should acknowledge what is good about the past and take it with us into the future. We all need to work together collaboratively and creatively to ensure that what is good for children is made possible. We need to do all that we can to ensure that the future is better than the past. The effect on the children cannot be the only check.

If you were to look into the future what might you see?

Lynn Toti: In your dream, you might imagine that, on diagnosis, the child and the family would be embraced by a support network of professionals who would listen to what they had to say and advise them gently, while being aware of the family's shock.

In your dream, you might imagine that the child and their family would be welcomed into a nursery in which other children who faced the same challenges would play and learn with children from the community—making friends and accepting each other as separate and different, but the same.

In your dream, you might imagine that teachers who are highly trained in dealing with deaf children's difficulties work with all the children in a specially adapted nursery environment day in, day out with highly motivated, trained and experienced nursery nurses working alongside them.

In your dream, you might imagine that support continues seamlessly into the primary and secondary stages, where the child is supported at the educational location of the parents' choice. In your dream, you might see teachers who are qualified to deal with the child's difficulty working alongside mainstream teachers at the parents' chosen location. You might see head teachers of mainstream and specialist provision managing an integrated system that can adapt so quickly and effectively to support the child and the family that they almost do not realise that it is there.

In your dream, you might imagine that such a system has evolved organically and flexibly to meet the complete and particular needs of each child. In your dream, you might not think that we are talking about a special school.

Sara Craig: That is reality. Today, as we speak, our children are experiencing inclusion in its fullest sense. That is what our children and all the children of Renfrewshire have in Gateside School. The people of Renfrewshire include deaf children in the heart of their community alongside their own children. Through Gateside School, they have encouraged and educated deaf children alongside their own children. Gateside School is not just a nursery, but a school that serves the needs of more than 100 deaf and visually impaired children in Renfrewshire, with a head teacher who is paid on a banding for 61 to 100 pupils. Gateside School did not grow overnight; it grew slowly within the community that it serves, encouraged by generations of education officers, teachers, healthcare providers and parents as a good thing and as an inclusive system of education for deaf children that works.

It seems to us to be self-evident that a school is not a building.

Lynn Toti: We feel that special schools are not just buildings in which to accommodate the exceptional children who cannot be included at a mainstream educational location. That could be so divisive. We feel that the description of a school as a fixed location and where children with special needs are educated in one location called a special school and so-called normal children are educated in another location called a mainstream school needs to be laid to one side. The inclusive nature of the environment is what matters.

The approach that is taken to education provision should be flexible and adaptable and should wrap itself around the needs of the child in their community, not the management needs of the local authority. We feel that to make inclusion work, seamless specialist provision for children with special needs should follow the child from pre-school and nursery provision throughout their education.

There should be a personal element of familiar continuity and trust in the delivery of specialist provision to meet the child's additional needs, as represented by the role of a specialist head teacher and a community of other families who share the same experiences, in order to provide support and hope. Teachers who are motivated and who have undergone years of training to work directly with our children should be treasured and encouraged because they are all too rare. They should have their own workspace and they should work with a head teacher who shares their specialism and understands the demands and requirements of their chosen specialist vocation. Steps should be taken to ensure that sufficient qualified teachers of the deaf are being recruited and trained to meet the needs of deaf children.

Sara Craig: What we have said has broad implications, but we have specific concerns. We wish to retain the idea of Gateside School, which we believe is fundamental to that school's success and provides a model of inclusion and integration. We wish to retain the post of specialist head teacher and the specialist nature of the provision that is made for our children in mainstream education. We also wish to ensure that any change can be shown to have quantifiable benefits for our children and that the success or otherwise of any new system can be measured against the outstanding success of the present system.

We want to build a future for all our children. We need to work together and to be sensitive to each other's needs and priorities. Our children are small, and have their lives ahead of them. We believe that we can make a difference to those lives here today.

The Convener: We have received apologies from Sandra White MSP. She was here earlier, but has had to leave to deal with urgent business. She has said that she supports the proposal to send the petition to the Education, Culture and Sport Committee. Annabel Goldie is also unable to attend, but she has passed her briefing notes to Phil Gallie, who will speak on her behalf.

Phil Gallie: Annabel Goldie pushes the wider argument that the implications of the closure of Gateside School could stretch throughout Scotland. However, she makes no apologies for concentrating her remarks on Gateside itself, which she believes provides a standard of excellence for the teaching of deaf children. Her first point therefore concerns the future standard of educational provision for the children who are currently at Gateside.

Annabel Goldie also expresses concerns that Renfrewshire Council's consultation process seems to consider Gateside to be a nursery rather than a school. Such a move could affect other schools in Scotland, because the council did not need to consult people about the proposed closure, as would have been required of it had Gateside been a school. That issue is of concern to Annabel Goldie and is her principal reason for giving her total support to the petition.

Annabel Goldie points out that Gateside is professionally equipped because of the fact that its head teacher is a qualified teacher of the deaf. She feels that, unless schools such as Gateside have that level of expertise, deaf children will suffer. Those are Annabel's words, not mine and I thank the committee for giving me the opportunity to present them.

Rhoda Grant: I want to clarify whether Gateside is a school or nursery. What age are the pupils when they leave Gateside?

Sara Craig: The building that houses Gateside houses the head teacher, the peripatetic teachers and the nursery class. The current situation is that the nursery class children leave the building whenever they are ready to go into the main stream, which is at the age of five or six. The children used to be educated within the Gateside School building for much longer, but they are so successfully integrated into the main stream that they are now all supported by the peripatetic teachers of the deaf in the mainstream locations that their parents have chosen.

Rhoda Grant: What support is available to the children when they go into mainstream schools? What is provided to help them integrate?

Joseph Owens: As chair of the West of Scotland Deaf Children's Society and, more important, as a parent of a profoundly deaf young man who has gone through Gateside, I am probably better placed to answer that question.

The support depends on the needs of the individual child. As Gateside has such a flexible system, it is able to meet the needs of profoundly deaf children. Generally, in primary school the children will receive between seven and a half and eight hours support in class each week. In other words, a visiting teacher will go to the local school that the child attends to give in-class support to ensure that the child is totally included. The academic needs of such children become greater in secondary school and so, at least in the initial stages, their support also gets greater. One or two teachers may support them through the secondary school.

On the age at which children leave Gateside, the parents argue that the children leave Gateside when they leave secondary education, but the council argues that they leave Gateside when they leave the nursery. That is the situation.

Dr Ewing: The achievements of deaf pupils in Scotland project was established in 2000. Is it an on-going project and to whom does it report?

Our committee papers inform us that you believe that the specialist visiting services for deaf children should not be merged with generic special needs services because of the particular problems related to deafness. Do you hold that view strongly?

When you talk about mainstream education for deaf children, are you talking about only hard-of-hearing children who are aiming to learn English or about profoundly deaf children as well?

13:00

Joseph Owens: We are talking about children right across the scale, from children with mild hearing loss, who might receive a visit from a

Gateside teacher once a year, to profoundly deaf children who might, in the past, have been described as deaf and dumb. Some of the children require high-power hearing aids and technical aids in the school and conditions that are suitable to allow the hearing aids to work.

Dr Ewing: Could a profoundly deaf child fit into mainstream education without more than a few hours' assistance a week?

Joseph Owens: No, no. The point is the level of specialism of the teachers. It is proposed that the specialised service be replaced by a generic system. Whether you are talking about a school as a building with specialist teachers in it, or as an institution with an ethos of specialist teachers providing access to education for deaf children in mainstream locations, the important thing is retention of the specialism. It must also be ensured that the specialist qualified teachers of the deaf report to a head teacher who is a qualified teacher of the deaf. The danger of the generic system is that, over time, the specialist provision could be watered down. In a team of 46.6 teachers—which I believe is the figure that Renfrewshire Council is considering—a proportion will have a specialism in English as a second language and so on. Over time, to deal with absenteeism or whatever, the danger is that non-qualified teachers of the deaf would be put in to support those children in mainstream schools. We have already seen that in East Renfrewshire, which—following disaggregation in 1995—decided to have a generic team of teachers, only two of whom are teachers of the deaf. Some parents who have children in that system have found that their children are being supported by non-qualified teachers of the deaf. When you have been used to an excellent service, it is hard to accept anything less than that.

On consultation, the fact that Gateside has been regarded as a nursery school has excluded more than 100 families from being fully consulted on the change. If the change is for the good or will make no difference to the level of provision, what would be the problem with talking to and consulting those 100 families?

Six questions have been put to the Minister for Education and Young People about the school's history. I do not know whether that information is pertinent to the committee, but the letter that I sent to Cathy Jamieson is the 13th attachment to the letter of support that I have given to the committee. I would like to read the questions out, if you will allow me.

The Convener: You will have to be quick as we have at least two more petitions that we must deal with before quarter past one.

Joseph Owens: The six questions, which

remain unanswered, are:

"A. If Gateside is a nursery school, why did the education officers agree status of the school and head teacher in a tribunal of 1999?

B. Why does the education department continue to award a head teacher's salary on a banding of 61/100 pupils to the head of a nursery school by their definition?

C. If Gateside is indeed now registered as a nursery school, when was that status agreed?

D. Was Gateside previously registered as a special school?

E. If status was changed, did a formal consultation take place to do so?

F. If the status had been changed without due legal process will the plans be stopped and the Education Department enter into discussions with the parents over future provision?"

Phil Gallie: Are there other schools like Gateside in the west of Scotland? How do other local authorities provide cover?

Joseph Owens: There is a mixture of provision, including some good practices and some practices that could be better. There are units in schools and there are special schools that are dedicated to total communication, which is right for some children. I am sure that we would all love provision for children to be uniformly good throughout Scotland; however, provision is patchy.

Dorothy-Grace Elder: In your opinion, what is the real reason behind the council's decision? Is it money?

Joseph Owens: It may be—I do not know. The questions remain unanswered. All my letters to the council, including those to the convener of the lifelong work policy board, remain unanswered. On every occasion, they were sent on behalf of children and parents at Gateside School. It may be that the council is pursuing a policy of inclusion and integration. Whatever, it is a pity that those parents have been treated abysmally.

The Convener: Thank you. I am sorry that this morning's business has been so rushed, but other petitioners are present who must be given a chance to speak before we are thrown out of here. You are free to listen to the discussion about what we will do with the petition.

I stress again the point that the committee cannot get involved in decisions that are made by elected local authorities. Nonetheless, we should write to the Executive, asking for its comments on the issues that are raised in the petition, regarding the provision of education for deaf children by local authorities. We should also write to Renfrewshire Council, asking for its comments. We should make it clear that we are not questioning the council's right to decide how it provides education services for the deaf, but that

we want to get a general view of the way in which those services are being provided in the area, in relation to the general issues that are raised in the petition. We should also send a copy of the petition to the Education, Culture and Sport Committee. When we have received the responses from the Executive and Renfrewshire Council, we can make a final decision on whether to refer the petition formally.

Dr Ewing: What about the cross-party group in the Scottish Parliament on deafness?

The Convener: We will also copy the petition to that group.

Dr Ewing: A new cross-party group has been set up by Jackie Baillie to address learning disabilities. That group is trying to embrace such issues.

The Convener: We can also copy the petition to that group.

Dr Ewing: Can we also ask about the ADPS project that was established in 2000? I presume that it still exists. Could we get some information about it?

The Convener: Yes. We can ask for that information in our letter.

Dr Ewing: It seems that provision of education for deaf children is patchy throughout Scotland—that is what we should be dealing with.

The Convener: Yes. We will keep members informed of responses as they are received. Are all those actions agreed?

Members indicated agreement.

Water Treatment Plants (PE517)

The Convener: The final petitioner who will speak today is Mr Rob Kirkwood, who has submitted petition PE517, on water treatment plants. I would also like to deal with the Peterhead petition before the end of the meeting. We have to be out of here because another committee is meeting here at half past 1.

Mr Kirkwood, I apologise for the rushed nature of today's business. We have a strict time limit. Would you like to make a brief introduction?

Rob Kirkwood (Leith Links Residents Association): Yes. I shall try to be quick.

The smell that is made by the water treatment plants in Edinburgh has been made internationally famous by Irvine Welsh, in his book "Filth". He describes it as the "Dame Judy" at Seafield. Down in Leith, we have more colourful ways of describing it, which I will not go into now. I will use Leith's experience to illustrate the wider issues of odour problems that are caused by water

treatment plants.

The problems of odour occur when key items of equipment fail at water treatment plants. On such occasions, there is a build up of raw sewage in the primary tanks. Because that raw sewage has nowhere to go, it is allowed to lie in the tanks for weeks or months on end and to grow septic and create odours. That problem could be prevented in the following ways. First, there could be early intervention when equipment goes wrong, to prevent the build-up of sludge in the tanks. That is not happening at Seafeld. Since the introduction of the private finance initiative at that plant, there have been cutbacks in staffing, training and equipment. For that reason, the odours have grown steadily worse in spite of promises that the situation would improve.

Secondly, the primary tanks should be conical in shape. When key items of equipment break down, sludge builds up in the tanks. If they are conical, the sludge continues to slide down the sides towards an exit pipe.

At Seafeld there are 40-year-old flat-base tanks that have long been rejected by the water treatment industry. Those tanks allow sludge to form a carpet on the base of the tanks. The carpets of sludge grow steadily thicker, become septic and float to the top. That is why Seafeld is associated with a stench. Furthermore, the sludge can be removed only by draining the tanks and digging it out. When draining takes place, the community is exposed for months on end to the most obnoxious odours.

If possible, the primary tanks should be positioned far away from community areas. At Seafeld, the six primary tanks are less than 200m from the nearest houses, shops and a new McDonald's outlet. The community lives regularly in clouds of obnoxious odours.

If tanks cannot be moved away from community areas they should be covered. At Seafeld, the problem has existed for more than 40 years. It is unacceptable that members of the community have been regularly driven from their streets, gardens and, on occasion, from their homes. It is also unacceptable that we have had cases of children and adults vomiting in their own homes when forced to live in the clouds of hydrogen sulphide.

There is a need for extra investment. Unfortunately, most of the investment—£1.8 billion—is already legally allocated to upgrading water treatment. Therefore there is a clear need for extra investment to be focused solely on the problem of odour. There are good reasons why the investment programme should begin in Edinburgh. There has been massive underinvestment in Seafeld for more than 40

years, which is why it is one of the few water treatment plants that still operate using flat-base tanks. At a recent community meeting, Gerry Winterbourne, the general manager of Thames Water, conceded that the 40-year-old primary tanks are the prime reason why he is unable to control the odours at Seafeld. The communities surrounding those tanks suffer more regularly from noxious odours than other communities. Most recently, the community was forced to live inside a cloud of hydrogen sulphide for the whole month of May.

It is unacceptable that Edinburgh, one of the most prestigious cities in Europe, should be associated with that smell. The problem needs a prestigious solution. Edinburgh is one of the fastest-growing cities in Europe, which suggests that the problem of sewage odour could be equally fast growing.

The Convener: Thank you. I am very sorry that we have only a short time to discuss the matter. Susan Deacon, who is off on maternity leave, has written to the committee. I will quote one section from her letter, which says:

"While my primary and immediate concern is to rectify the problem which my constituents face, I am bound to say that the case highlights a number of issues of wider concern. It seems to me there are serious questions to be asked about where responsibility and accountability on such matter lie. Indeed, the very fact that it has proved so difficult for a community's concerns to be listened to and acted upon would seem to me to be proof positive of inadequacies on the current arrangements."

We do not have time to ask many questions. Does anyone have a burning question on the petition?

Dr Ewing: I agree with the suggested action.

The Convener: There is tremendous sympathy throughout the Public Petitions Committee for the petitioners. It is suggested that we agree to write to Scottish Water, asking it to detail the measures that are currently being used to tackle the problem of noxious odours and bacteria from Seafeld and other similar sites in Scotland, and to indicate whether it has any plans to introduce the new conical primary tanks and other measures that are suggested by the petitioner. It is also suggested that we write to Edinburgh City Council asking for its comments on the petition and to the Scottish Executive asking why it thinks that environmental protection and planning enforcement legislation seem insufficient to resolve situations such as that at the Seafeld plant. If members agree to that action, we will keep the petitioners informed of any responses that we receive and thereafter take a formal decision to refer the petition onwards.

Phil Gallie: Mr Kirkwood referred to the PFI. I do not know what the PFI contract covers. It might be operations and maintenance. Ultimately,

Scottish Water is responsible. Could we also ask for comments on the conditions of the contract?

Dr Ewing: We should ask those questions in addition to Susan Deacon's questions.

The Convener: Yes. We will ask for comments on the contract and we will ensure that Susan Deacon's questions are asked.

Rob Kirkwood: I had a meeting recently with Dr Hargreaves, the chief executive of Scottish Water. His view was that he has a duty to keep water rates as low as possible. He is unwilling at this point in time to concede that conical tanks are required and that covering of the tanks is required. He maintains, as the company has for three years, that he can solve the odour problem with the old tanks. I am sure that the committee will get the same response. I ask the committee to disregard it and to point out to him that for three years those promises have been made, but they have not been met.

13:15

The Convener: Certainly. I suggest that we write to Scottish Water and make it clear that the view of the committee is that Scottish Water should actively consider conical tanks.

Rob Kirkwood: Could I also add that they should be covered? It is not enough just to have conical tanks.

The Convener: They should be covered conical tanks.

I am sorry about the rushed nature of the business. We are trying to get on to the Peterhead petition, before we are thrown out of the committee room.

Do I have members' agreement that all the other petitions be held over until our next meeting, and that we move now to the Peterhead petition? It is urgent that we move forward on that today.

Members indicated agreement.

Peterhead Prison (PE514)

The Convener: Stewart Stevenson is here to speak briefly to the petition.

Stewart Stevenson (Banff and Buchan) (SNP): Thank you. I am sure that members of the committee will know that the Justice 1 Committee has been considering with considerable energy the Scottish Prison Service estates review. It has had to date some 13 evidence sessions on the matter and, in about 30 minutes' time, it will sit down to consider further its draft report on the Scottish Prison Service estates review. It will be useful if the convener of the Justice 1 Committee knows, however informally, that the Public

Petitions Committee has passed the petition to it formally for consideration.

What the petition says is well understood and reflects the widespread concern in the Peterhead area and throughout Scotland about the proposed closure by the SPS of Peterhead prison. The petition reflects the very unusual substantial support that exists in the north-east community for a specialist prison that treats sex offenders. That support is unlikely to be replicated elsewhere.

In view of the time constraints, I will make three very quick points. In the past week, I received a letter from one of the prisoners at Peterhead prison. That letter reflects what a number of people who work in the prison have said to me, which is that as a result of the uncertainty that has hung over the prison for about 30 months, there has been a diminution in the number of people who are employed there; it is about 30 under establishment. That is beginning to impact on the quality of service that is provided. Just as the convener's remarks indicated a sense of urgency, I say to the committee that the matter is urgent from the point of view of ensuring a safer Scotland and in order to protect the work that is done at Peterhead. The problem will be exacerbated during the summer, because many employees will quite properly be taking summer breaks.

I close by thanking the committee for considering the petition. Almost all members will be familiar with the arguments surrounding Peterhead prison. I understand that the First Minister has indicated that he will visit Peterhead prison over the summer. I do not know yet on what date he will visit, but everyone in Peterhead will welcome that visit and the opportunity to show what Peterhead prison can do. They look forward to the First Minister's probable support for a way forward for the prison.

The Convener: The clerks have been in touch with the Justice 1 Committee, which has indicated its willingness to consider the petition as part of the report that it is about to publish. Can we agree formally to refer the petition to the Justice 1 Committee?

Phil Gallie: Yes—with one addition, because Stewart Stevenson made an important point about a premature rundown of prison staff. That point will not currently be included in the petition, but we should add it and ask the Justice 1 Committee specifically to address it.

The Convener: Is that agreed?

Members indicated agreement.

Dorothy-Grace Elder: Could we act even faster than that and write directly to the Scottish Prison Service about staff numbers as well as referring the matter to the Justice 1 Committee. Such

problems are developing by the day and the hour. I am alarmed to hear of the rundown.

The Convener: That must be a matter for the Justice 1 Committee. Once we have formally referred a petition to a committee it, rather than the Public Petitions Committee, must pursue the matter.

Dorothy-Grace Elder: Could we write?

The Convener: No.

Dorothy-Grace Elder: Could not we write in the intervening week to ask the SPS what its view is?

The Convener: You could write as an MSP, but the petition will have left the committee.

Stewart Stevenson: It might be helpful for the committee to know that I will pursue the matter as the constituency member.

Rhoda Grant: For the sake of speed, we should not write to the SPS. We should refer the petition immediately to the Justice 1 Committee, so that it receives the petition as soon as possible and can deal with it.

The Convener: Is it agreed that we refer the petition straight to the Justice 1 Committee? We will draw its attention to the rundown of staff.

Members *indicated agreement.*

The Convener: I apologise for the rushed nature of the meeting this morning.

Meeting closed at 13:20.

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