

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 25 June 2002  
(*Morning*)

Session 1

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# CONTENTS

Tuesday 25 June 2002

	Col.
<b>NEW PETITIONS</b> .....	2101
Scottish Judiciary (Public Register of Interests) (PE519) .....	2101
Land (Equestrian Access) (PE521).....	2110
Postal Delivery Service (PE513) .....	2118
Bankruptcy Procedures (PE511) .....	2120
Police (Complaints) (PE520) .....	2122
Saltire (PE512) .....	2123
MMR Vaccination (PE515).....	2126
Museum Hall (Bridge of Allan) (PE518) .....	2126
<b>CURRENT PETITIONS</b> .....	2128
Water and Sewerage Services (PE423).....	2128
Telecommunications Developments (Planning) (PE425) .....	2128
Civic Government (Scotland) Act 1982 (Obscene Material) (PE476).....	2129
Justice 1 Committee (Membership) (PE483) .....	2130
Political Process (Young People) (PE487) .....	2131
Scottish Transport Group Pension Funds (PE500) .....	2134
<b>INADMISSIBLE PETITIONS</b> .....	2149
Royal Cornhill Hospital (Patient Council) (IP25).....	2149
School Closures (Rayne) (IP26) .....	2149
<b>ANNUAL REPORT</b> .....	2150

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## PUBLIC PETITIONS COMMITTEE

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

#### CONVENER

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

#### DEPUTY CONVENER

Helen Eadie (Dunfermline East) (Lab)

#### COMMITTEE MEMBERS

Dorothy-Grace Elder (Glasgow) (Ind)

\*Dr Winnie Ewing (Highlands and Islands) (SNP)

\*Phil Gallie (South of Scotland) (Con)

\*Rhoda Grant (Highlands and Islands) (Lab)

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

#### COMMITTEE SUBSTITUTES

Irene McGugan (North-East Scotland) (SNP)

Mrs Lyndsay McIntosh (Central Scotland) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Dennis Canavan (Falkirk West)

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

Dr Sylvia Jackson (Stirling) (Lab)

Duncan Shields (Fathers Fighting Injustice)

Derek Scott

Zoe Woods

#### CLERK TO THE COMMITTEE

Steve Farrell

#### ASSISTANT CLERK

Joanne Clinton

#### LOCATION

Committee Room 2



# Scottish Parliament

## Public Petitions Committee

*Tuesday 25 June 2002*

*(Morning)*

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

### New Petitions

#### Scottish Judiciary (Public Register of Interests) (PE519)

**The Convener (Mr John McAllion):** I welcome everyone to the 12<sup>th</sup> meeting of the Public Petitions Committee in 2002, which is the final meeting before the recess. We have apologies from Helen Eadie.

The first petition, PE519, is from Duncan Shields, who is petitioning on behalf of Fathers Fighting Injustice. His petition calls on the Parliament to give consideration to the creation of a register of interests for the Scottish judiciary. I welcome Duncan Shields to the committee. You have three minutes to make a brief introduction.

**Duncan Shields (Fathers Fighting Injustice):** Before I start, I would like to congratulate you on your speech during last week's debate on the School Meals (Scotland) Bill. I thought it was excellent and I loved the uproar after the debate. It is a pity that more people were not there to listen.

The petition on behalf of Fathers Fighting Injustice addresses the fact that, on 5 February, the Justice 1 Committee changed the remit of its inquiry into the regulation of the legal profession by agreeing not to consider the judiciary. That decision was made at a time when the committee was top-heavy with lawyers. The petition also seeks to raise on a public platform the issue that many people, in particular separated fathers, are being forced into bankruptcy by the Scottish court process. That has long-term repercussions for their relationships with their children and is in breach of the European convention on human rights as it imposes massive burdens on fathers.

Fathers Fighting Injustice has information that, in many cases, land and properties owned by those forced into bankruptcy by the actions of lawyers and the decisions of sheriffs end up in the hands of those who forced those fathers into bankruptcy. That is utterly barbaric. It is a form of tyranny in the courts process that has gone on unabated in the courts system. It was hoped that a public inquiry would resolve such serious issues, but that has not been the case.

The ever-changing remit of the Justice 1 Committee allows those decision makers to be dropped from the very inquiry that was supposed to investigate the massive persecutive actions of Scottish courts. In some cases, those actions are killing men who face enormous pressures and who are burdened with debts when publicly funded legal aid is used to drag out court actions for many years. The Scottish Legal Aid Board, which has lawyers who are assigned solely to the decision-making process, ensures that the appalling system is fed public funds to allow asset stripping to continue unabated.

If it is right and fitting that the First Minister of Scotland requires to have a public record of interests, individuals who make grave decisions, which in many cases destroy lives and family relationships, should be open to rigorous scrutiny. That would ensure that judgments never reward financially those who make the decisions and that there are no conflicts of interest.

From the massive amount of evidence from the inquiry and elsewhere there is clearly serious concern about how judicial decisions are ensuring justice for all Scottish citizens.

**The Convener:** Thanks very much. Before I open up the meeting to questions from members, will you give us some information about Fathers Fighting Injustice? I believe that the group has been formed from groups that have petitioned us previously.

**Duncan Shields:** That is correct. There has been a change of name.

**The Convener:** What were the other groups that amalgamated?

**Duncan Shields:** Our previous name was Live Beat Dads Scotland.

**The Convener:** Did the group merge with another group?

**Duncan Shields:** Yes, it merged with the International Men's Network.

**The Convener:** Is that anything to do with the UK Men's Movement under George McAulay, or is it different?

**Duncan Shields:** Fathers Fighting Injustice is part and parcel of a number of groups that work with each other, but it is not related directly to the UK Men's Movement. It is an international group.

**Dr Winnie Ewing (Highlands and Islands) (SNP):** I was not clear from your introduction just what you want, apart from the creation of a register of interests for the Scottish judiciary. Am I right that that is the subject of the petition?

**Duncan Shields:** Yes.

**Dr Ewing:** So all the other things are nothing to do with your petition.

**Duncan Shields:** Do you mean what I spoke about this morning?

**Dr Ewing:** Yes.

**Duncan Shields:** They are all connected with the fact that the evidence shows that there is a need for some sort of public record of interests for the judiciary that is similar to that for the First Minister.

**Dr Ewing:** That is what you are looking for.

**Duncan Shields:** That is what the group is asking for.

**Dr Ewing:** What evidence do you have that judges are involved in asset stripping? Give us some examples.

**Duncan Shields:** I am not prepared to give individual examples.

**Dr Ewing:** So you do not have any evidence.

**Duncan Shields:** There is plenty of evidence on the Scottish Parliament's website.

**Dr Ewing:** I am not prepared to leave the meeting to look at the website. I am listening to you.

**Duncan Shields:** Sufficient evidence has been produced in the Justice 1 Committee's inquiry into the legal profession to warrant—

**Dr Ewing:** That is another question. The inquiry into the legal profession is separate from your asking for a register of interests for Scottish judges, which is a clear request.

**Duncan Shields:** Regardless of whether there is evidence, what argument is there for not having a register of interests for the judiciary if the First Minister needs to have one?

**Dr Ewing:** That is one point—

**Duncan Shields:** If the leader of the Scottish Parliament needs a register of interests, what argument is there that anybody of a lesser position should not have a register of interests, if they are making serious decisions in the court process?

**Dr Ewing:** I am not saying—

**Duncan Shields:** What is the reason for the First Minister of Scotland needing such a register of interests? If we go into detail and if you want to discuss Mr McLeish's affair—

**Dr Ewing:** I do not want to discuss Mr McLeish's affair, because that is not the subject of your petition.

**Duncan Shields:** The First Minister of Scotland lost his position because of sinister goings-on

within the legal process.

**Dr Ewing:** You are not petitioning us about the First Minister; you are petitioning us about the Scottish judiciary.

**Duncan Shields:** You are asking me to give you evidence. I have just given you it and now you do not want it.

**Dr Ewing:** I want evidence, but you are not giving me any evidence of asset stripping.

**Duncan Shields:** You are a lawyer, are you not, Mrs Ewing?

**Dr Ewing:** I am.

**Duncan Shields:** Yes, you are a lawyer. The normal process with lawyers is that when anybody makes a decent argument, they interrupt them and that is exactly what you are doing now. Either you are asking for evidence, which I am trying to provide—

**The Convener:** It would be helpful if tempers were lowered a degree.

**Dr Ewing:** I will leave it at that, because there is no evidence.

**Duncan Shields:** I am sorry, there is evidence within the Justice 1 Committee inquiry for anybody—

**The Convener:** Mr Shields. The petition calls for a register of the interests of the Scottish judiciary, which, with respect, has got nothing to do with Henry McLeish or anyone else.

**Duncan Shields:** I know the background to the McLeish affair. I was part of a group that was responsible for—

**The Convener:** That is a separate issue.

**Dr Ewing:** We must call the meeting to order.

**The Convener:** We are dealing with a petition that asks for a register of interests of members of the Scottish judiciary. Let us stick to the subject of the petition.

**Duncan Shields:** I am sticking to it. The interests of the judiciary and the lawyers involved could be responsible for a situation where the First Minister's position could be put at risk. I have background evidence, which I will not provide today.

**The Convener:** We are dealing with the courts system. You are suggesting that there should be a public register of interests of members of the judiciary.

**Duncan Shields:** It is very important that you hear this. In the same week as Mr McLeish lost his position a number of things were, under that cloud, put on the Parliament website, including the final

conclusion of the legal aid inquiry.

**The Convener:** We must refrain from making comments of that nature.

**Duncan Shields:** It is important.

**The Convener:** You cannot use this petition to make allegations about members who have nothing to do with the petition.

**Duncan Shields:** I am not making allegations.

**The Convener:** Please listen to me.

**Duncan Shields:** You are stopping me putting forward my case.

**The Convener:** We are not stopping you doing that. We are trying to consider your petition seriously. You are here to speak to the petition.

**Duncan Shields:** That is what I am doing.

**The Convener:** You are not here to talk about anybody else or anything else.

**Duncan Shields:** It is important.

**The Convener:** It is not important. It is important that you understand the basis on which you are before the committee.

**Duncan Shields:** The Justice 1 Committee published the submissions to its inquiry on the regulation of the legal profession in the very week that Mr McLeish resigned.

**The Convener:** That is a matter for the Justice 1 Committee; it has nothing to do with this petition.

I am moving on, because we have had enough of this.

**Phil Gallie (South of Scotland) (Con):** Mr Shields, could we concentrate on the central issue? I think that you have a point. Perhaps anybody who has been appointed to a public position should always declare specific interests. In your comments, and I thought that this related to the issue, you mentioned the European convention on human rights. Do you feel that the failure of people in the judicial process to declare interests creates a prejudice and, as a result, a situation where their position might be challenged under the ECHR?

**Duncan Shields:** Yes. Their position could be compromised. That is the point.

**Phil Gallie:** Do you think that in your own mind you could clear away all the peripheral issues and concentrate on that one special issue? I recognise that you have many reasons for thinking in a parallel way, but that issue is the crux of your petition. Would you put your case again to the Public Petitions Committee to ask it to consider that point specifically?

**Duncan Shields:** That is the main issue that

has been raised. Anything else is, to be honest with you, a web of deceit.

**Phil Gallie:** You are right. Anything else is a bit of a red herring. I am very happy with that response. Thanks very much.

**The Convener:** Are there any other questions?

**Rhoda Grant (Highlands and Islands) (Lab):** You mentioned the register of interests for MSPs. We register matters such as trade union membership and gifts. I am not sure what you want a member of the judiciary to register that would influence the judgments that they make in a court case. I would have thought that if, for instance, they were a member of a trade union and it was involved in a court case, they would not take part in the case. I cannot understand what else you hope to get from the register. They could register an interest and they could even say that they had an interest, but where are you going with this?

**Duncan Shields:** We have been investigating the situation in relation to title deeds in Scotland. I raised in a previous submission the fact that in a number of court cases predatory title deed submissions have gone on to the register without the title deed holder being informed. There is serious concern about the manner in which the title deeds register works. Anyone who wants to find out about properties and land in Scotland will find it difficult to pin down such information on title deeds.

I see that Dr Ewing is not happy with that comment.

**Dr Ewing:** I do not see how title deed information is relevant.

**The Convener:** Mr Shields, if you do not mind, you should try to answer the question.

**Duncan Shields:** We are trying to establish a public platform that makes land and property information available. We already know of several cases in which property and assets have returned to the very people who have bankrupted individuals. We are concerned about lawyers who are executors of wills placing a predatory name on a title deed and sitting on it for 10 years while they fail to wind up a person's estate. After 10 years, they can take over that person's property and assets.

10:15

**Rhoda Grant:** You are talking about lawyers, but your petition is about the judiciary.

**Duncan Shields:** The simple fact is that, even if some lawyers are acting in that manner, sheriffs' decisions are still allowing those actions to continue. As my petition points out, I am quite sure

that the Justice 1 Committee's inquiry report contains sufficient evidence that such situations can arise not only through lawyers' actions but through decisions that are ultimately made by sheriffs and judges.

**Rhoda Grant:** Even if I accept your claims, I do not understand how establishing a register of interests would change the situation.

**Duncan Shields:** The fact that the First Minister has to register his interests should act as a starting point for establishing a public register, or some other form of input, that would—as Mr Gallie pointed out—allow those who hold public office to demonstrate that there is no conflict of interest in the decisions that they make. The potential for such conflicts of interest form the current focus of concern about the judicial process, but the matter cannot be fully investigated without some form of public register.

Through searching the title deeds at the Registers of Scotland, we have discovered that people have entered predatory title deeds. Because lawyers' actions and sheriffs' decisions have created that situation, we should consider creating a public profile that enables individuals to find out information. Although the Registers of Scotland website has a search facility, it is not open to enough public scrutiny.

**Rhoda Grant:** I just do not understand how a register of interests would help. You have not explained how it would work. You are actually alleging that the judiciary are rubber stamping bad practice by lawyers. However, unless you are claiming that the judiciary is making an income from such activity that would have to appear in a register of interests, I cannot see—

**Duncan Shields:** No, you are twisting my words. Each member of the judiciary has assets, by which I mean land and property, and we want to ensure that such assets are not obtained by bankrupting individuals. The situation is similar to that of warrant sales, where televisions worth £300 are sold for £1. For example, we have evidence through the court process that land worth £10 million that was lost by a bankrupted individual was purchased for £5,000 by a member of the judiciary.

**Dr Ewing:** I think that that is called murmuring a judge.

**Duncan Shields:** I am not mentioning anyone's name; I am just saying that we have certain evidence. Just now, many people are going bankrupt in Scotland and their assets are returning to the individuals who bankrupted them. We need some public recognition of that fact to ensure that individuals and groups can make thorough investigations and find out whether those individuals are gaining from those decisions. If the

committee is so certain that that is not the case, what is wrong with making the system open and honest?

**The Convener:** That is not for us to decide.

**Duncan Shields:** I know.

**The Convener:** I am glad that you did not mention names, because the allegations that you made were very serious.

**Duncan Shields:** I know. If we return to the affair of Mr McLeish—

**The Convener:** I do not want to return to that.

**Duncan Shields:** Lawyers, sheriffs' decisions and property worth £1.5 million were involved in that case.

**Dr Ewing:** We are back to Mr McLeish.

**The Convener:** I see the point that the witness is making. If there are allegations that lawyers have acted corruptly to gain very cheaply title deeds to which they are not entitled, that is a matter of great concern, particularly if the judiciary is involved. However, PE519 calls for members of the judiciary to declare any interest in land and other assets.

**Duncan Shields:** They should declare any interest that is related to decisions that they make.

**The Convener:** That is clear. Thank you for your colourful contribution. You are free to stay to listen to the committee's discussion of what to do with your petition.

It is suggested that we write to the Lord Advocate to seek his comments on the issues raised in the petition. In particular, we should request an indication of whether there are any plans to consider creating a register of interests of the Scottish judiciary, along the lines proposed by the petitioner.

**Phil Gallie:** That seems reasonable. The petition asks a question that should be answered. The suggested action addresses that issue to some extent. Perhaps we should draw David Steel's attention to the ECHR issues that the petition raises with respect not only to the judiciary but to all people in public positions. I am not sure whether the judiciary includes sheriffs or temporary sheriffs.

**Dr Ewing:** The term judiciary probably covers everyone on the bench.

**Phil Gallie:** We may want to clarify that.

**The Convener:** What point are you making about the ECHR?

**Phil Gallie:** I am happy to listen to other members' comments on this issue. I wonder whether there is truth in the suggestion that there



has been a breach in the ECHR. We may want to clarify the position not just for judges, but for sheriffs and temporary sheriffs. Initially I thought that we should address our query to David Steel, but on reflection I think that it might be best for us to seek an answer to the question from the Lord Advocate.

**The Convener:** Are you suggesting that the creation of a register of interests for the judiciary might contravene the ECHR?

**Phil Gallie:** No, I am saying the opposite. The fact that such a register does not exist may contravene the convention.

**The Convener:** Should the register cover all positions?

**Phil Gallie:** It should cover sheriffs, temporary sheriffs and judges.

**The Convener:** It has been suggested that, rather than write to the Presiding Officer—because it is not his responsibility—we should write to the Minister for Justice along the lines suggested. We could ask him to comment on the proposition that, under the European convention on human rights, there should be a register of the type suggested.

**Phil Gallie:** That would make more sense than our writing to the Presiding Officer.

**Dr Ewing:** We have a land registry system that is open and that allows people to determine who owns what land and when they acquired it. That is a matter of public record. The land registry system in Scotland is very efficient. It has long been ahead of the system in England. The suggested action is one thing, but the petition refers to the ownership of land by the judiciary. That information is contained in the land register. I would rather we followed the suggested action than did what the petition suggests.

**The Convener:** The suggestion is that we write to the Lord Advocate to ask him to comment on the issue that the petition raises.

**Dr Ewing:** I support that.

**The Convener:** We could ask the Lord Advocate to respond to the point that Dr Ewing makes about the role of the land registry system.

**Dr Ewing:** The register is meant to be open to all on payment of an inspection fee.

**The Convener:** We will write to the Lord Advocate along the lines suggested and ask the Minister for Justice to comment on whether the lack of a register of interests for justices, sheriffs and temporary sheriffs has ECHR implications. Is that agreed?

**Members indicated agreement.**

## Land (Equestrian Access) (PE521)

**The Convener:** PE521 is from Zoe Woods, on the subject of equestrian access to land. I invite Zoe Woods to take a seat at the table. The usual rules apply. The petitioner will have three minutes to make an opening statement. After that, members will ask questions.

**Zoe Woods:** I must take off my glasses. I cannot see you without them but I cannot read with them.

**The Convener:** I am in the same position.

**Zoe Woods:** This is the first time that I have made such a presentation.

I live on the edge of what will be Loch Lomond and the Trossachs national park. I have lived there for five years, and for 10 years before I moved to Scotland, I was a tourist in that area with my family. Before I moved to Scotland, I was the manager of an M4 casualty unit.

I have two interests: access and road safety for horse riders. The two must go hand in hand. In the UK, 45 per cent of horse owners do not own horse transport. Narrow, winding, rural roads are the most dangerous for the ridden horse, because blind bends and blind summits reduce sight lines and traffic can travel at 60mph.

Five years ago, the British Horse Society was motivated to produce a road safety video, following the appalling death of a horse on a rural road. A motorist piled into the back of the horse and rider. The horse and rider were carried 20yd on the roof of the car. The horse's back legs and back were broken, and it lay on the road for 45 minutes before slaughtermen could be found to put it out of its misery.

Scotland has the highest rate of horse ownership per head of population outside south-east England. I have recently conducted an audit of our area and counted 400 riding horses between Drymen and Balquhitter. The national cycle path provides safe off-road access into and out of Loch Lomond and the Trossachs national park. Great chunks of that are inaccessible to us, even though, once upon a time, parts of that path were used by local horse riders. That is curious when we consider that the big three equestrian organisations have two and a half times the number of supporters of Sustrans.

Equestrian recreation is important for Scotland's tourism economy. Of people who seek an activity holiday in Scotland, 54 per cent would like to ride a horse and 59 per cent would like to play golf. Imagine the Trossachs without a golf course. Six million Britons would like to ride when they are on holiday. That equates to the number who want to walk.

We are weeks away from opening Loch Lomond and the Trossachs national park and there is no pony trekking in the Queen Elizabeth or Achray forests. No network of rides and accommodation offers bed-and-breakfast holidays for horses and riders and not a single metre of path has been laid with horse riders' interests at heart. The petitioners whom I have met have two frequent requests: safe off-road access into the park for us and our horses and soft paths on which we can canter.

That last request is consistently opposed by Forest Enterprise and all those people who will manage the path, on the basis that if we canter, we will trample pedestrians. Ninety per cent of the members of the British Horse Society are female and 60 per cent of us are over 45, so I ask people to disperse from their minds any vision of a Thelwell cartoon.

If members have ever seen the film "Gandhi", they may remember that moving scene in which Gandhi and his Hindu followers are charged by a British cavalry regiment. Gandhi tells his people to lie on the road. They lie on the road in front of galloping horses, and the horses refuse to go forward—they throw their riders. Horses are reluctant to step on people and we are a responsible group of people.

We ask for safe access to the forest. When we are there, we girls just want to have fun with our horses. Thank you for listening.

**Dr Ewing:** There are two problems. One is inside the park. You just told us that Forest Enterprise objects to soft paths for cantering. However, the main problem is entering the park.

**Zoe Woods:** Forest Enterprise recently received £1.4 million from the European Commission for access. For horse riders, it is increasing car parking areas for lorries and horse transport. I speak to the organisation regularly and say that 45 per cent of horse owners do not own horse transport. Many of the access points to rides in the forest are quite a long way from where the horse population is located, which is why I undertook the audit, to show where the horses are.

Sometimes, we want simple things. Some tree felling and cutting of low branches would give us all that we need. We do not have special requirements. We do not need tarmac or hard-core. We just need some trees to be clipped.

I will tell the committee about two other problem areas, if it has time to listen.

**Phil Gallie:** Over recent times, we have created a national cycle track system. Can people on horseback use cycle tracks?

**Zoe Woods:** Yes, although tarmac is not ideal for trotting on. As horses get older, they get arthritis and tarmac is not good for them.

Nonetheless, we take them on the roads and it is safer to be on a cycle path than on the roads.

10:30

**Phil Gallie:** In some circumstances, a cycle path could be an additional means of access to a place for you to take your horses.

**Zoe Woods:** Yes.

**Phil Gallie:** So, there is a use there.

**Zoe Woods:** One of the young ladies who signed my petition is 20 years old. When she started work, she saved up and bought her first horse. She keeps it in a field in Callander that is crossed by the national cycle network. There is a gate there, but it is locked to her and she is not allowed to go on the cycle path, so her parents have bought her a horse box. That is sheer insanity. There are 7 miles of cycle path between Strathyre and Callander, and there are barriers at both ends that can be accessed by cyclists—they can wiggle round them—and pedestrians, but not horses. That is forcing the people in Strathyre back on to the A84(T).

**Phil Gallie:** We may have some difficulty with the specific instance of the national park, as there is now another authority to deal with that. However, the issue that you raise goes much further. Other national parks could be created in future, and it would be a shame if your experiences and information were lost to those who set them up. An order is proceeding through Parliament to establish a national park. Is your aim to underline the continuing implications of that?

**Zoe Woods:** Yes. I also submitted the petition to raise awareness. An awful lot of folk think that horse riding is a minority interest or the preserve of the affluent. However, one of the big growth areas in equestrian recreation is among ladies of my age who return to the sport when our children are grown up. We are the people who want to access the countryside. We are not into show jumping, dressage or eventing; we just want to enjoy the countryside with our horses.

**Phil Gallie:** I am slightly surprised that people in the tourism industry have not made more of the issue. Pony trekking must be an important feature of the tourism industry.

**Zoe Woods:** It should be. Pony trekking in the UK started in Aberfoyle. In the 1950s, a film called "Rob Roy" was made, for which a local Highland pony breeder provided the ponies. When the crew had finished filming, he did not know what to do with the ponies, so he set up pony trekking. That was the first pony trekking centre in the whole of the United Kingdom. In the 1950s, 70 to 100 riders might have been seen out each day. It was a very popular sport then and we are seeing a

resurgence of it now.

**Phil Gallie:** The Land Reform (Scotland) Bill is currently proceeding through the Parliament. What contact have you and your group had with your local MSPs in reference to achieving your objectives through that bill?

**Zoe Woods:** I have talked to Sylvia Jackson, who recently supported a tramp the Trossachs campaign. When I rang the organisers of that campaign and said, "You have addressed boating, walking and cycling. What about horse riding?" they said, "Pass." That is why I contacted Sylvia Jackson. I am assured by the British Horse Society that when the Land Reform (Scotland) Bill is passed, paths will be for all—that is, barriers will be removed. However, I am not altogether convinced. Nobody in my area realised that there were 400 horses around the edge of the park. There are 150 in Drymen alone. If no one knows how many of us there are, the importance of the issue could be underestimated.

**Phil Gallie:** Finally, do you occasionally find that people who access the land by foot take exception to horses and cyclists using the same facilities?

**Zoe Woods:** They do in Scotland, but that is exceptional. In England, we have bridleways. When I rode on bridleways, I used to see walkers, dog walkers and cyclists and thought nothing of it. The ridgeway is a perfect example. It is a long-distance walking path that runs from Wiltshire up into Buckinghamshire. On that path, someone can take a toddler in a baby buggy, ride a bicycle, walk, ride a horse, ride a motorbike or take a four-wheel drive vehicle. I have taken part in a sponsored ride on the ridgeway path and people were engaged in such activities there. People were used to each other, so there was no problem. There is more of a problem when there are separate paths and people come together, as they do not know how to behave towards each other. Does that answer your question?

**Phil Gallie:** Yes. Thank you.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** What has changed with the establishment of the national parks, particularly in Loch Lomond and the Trossachs? Has access for equestrian pursuits changed?

**Zoe Woods:** No. More parking is being introduced and about six or eight particular areas where horse riders can ride are being publicised. Surfaces have not been introduced for us—they already existed for cyclists or walkers or were originally built for logging lorries. There are problems relating to access and how gates are planned, although those are outwith the scope of this meeting. One gate has a spring, which is fine for pedestrians, but a horse cannot get through unless somebody holds the gate open—the gate

would spring back on to the horse's flanks. There are many small, local issues that I think I can resolve—I have already discussed practicalities with Forest Enterprise. However, we do not think that more facilities will be made available with us in mind. There are already grace-and-favour paths that we can go on. Have I answered your question?

**John Farquhar Munro:** Yes. However, your petition suggests that the problem relates to pony trekking rather than the other equestrian pursuits.

**Zoe Woods:** No. Two aspects of the matter need to be considered. First, there is the local community. There are 400 riding horses in our local community that do not have appropriate access or are being denied access. Secondly, there is tourism. To date, I do not believe that people have appreciated the importance of tourism or have looked at the numbers. Our figures came from VisitScotland's website.

**John Farquhar Munro:** How should the issue be addressed in the local communities that you are concerned about?

**Zoe Woods:** The local community would like three projects to be advanced. One is Coihullan woods outside Callander. In 1997, it was minuted at the community council meeting with Forest Enterprise that Forest Enterprise would bring in a landscape architect to consider putting a circular path as an equestrian trail into the Coihullan woods, but nothing has happened about that. Callander community council is discussing with the Scottish Land Fund whether it will fund the path. People in Callander have nowhere to ride. There are 50 horses in Callander and if someone wants to ride, they must put their horse on a lorry and take it somewhere else. That is one project.

The second project relates to the pony trekking centre that there used to be at Easterhill farm, which is south of Aberfoyle. The centre used an old railway line that had a perfect riding surface—clinker covered with grass. Two years ago, Forest Enterprise decided that it would develop the forest, so it moved in and dumped hard core on the path. The pony trekking centre paid £500 a year to Forest Enterprise for a permit and knew nothing about the matter until the lorries moved in. There is no pony trekking there now. The riders from that farm still have livery, but they must ride for 45 minutes to get to the forest and must cross the A81. That is unsuitable for novice riders. The riders want the path to be reinstated. It was also used by about 20 riders in Buchlyvie, which is at the other end of the path.

Thirdly, in the early 1990s, when I was a tourist here, there were plans to bridge the upper reaches of the River Forth above that railway line so that horse riders could ride up from Buchlyvie into what

will be the national park. However, the landowner would not give permission for the bridge. When permission was granted, the funding was gone, so there was no development. That was a perfect off-road route for riders into the park and it does not now exist.

**Rhoda Grant:** I have a question that relates to national rather than local issues. One of the biggest barriers to horse riding is gates, as you explained. Erecting stiles, for example, is easy. They ensure that livestock cannot escape and people can cross over them and carry bikes over them. Moreover, there is no problem with gates being left open. Many landowners would be afraid that, if they had unlocked gates without a spring, people would come and leave the gates open and stock would disappear. How do you get over that problem? Is there a way that that could be dealt with?

**Zoe Woods:** There is the very expensive solution to the problem that is used by Windsor great park, where there are buttons that one presses to automatically open and close the gates. However, there are also special horse gates that have a less powerful spring and a long handle. The gate can be opened easily from the saddle; one does not have to lean down. The horse can spin around, the rider lets the gate go and the spring is strong enough to close the gate. Those gates are not a problem.

Bear in mind the fact that horse riders are the least likely to leave gates open because we have stock too. We are putting our horses in a field, closing the gate and making sure that they are secure.

**Rhoda Grant:** I am not suggesting that you would leave gates open. However, I think that many farmers would say that if there is a gate, other people will use it and might leave it open.

**Zoe Woods:** I understand that. Horse gates would be one solution; their design is slightly different.

**The Convener:** You have concentrated on the Loch Lomond and the Trossachs national park today. However, your petition is concerned with the national situation and not just that local situation. The focus of the petition is on access to the countryside as a whole.

**Zoe Woods:** We are particularly concerned about old railway lines being incorporated into the national cycle network. Barriers are being put in to stop vehicles going on to the network. However, those barriers cannot be used by horses.

I have one other area of access to mention. Members will have heard of riding for the disabled, but they might not know that there is also driving for the disabled. I am an able-bodied whip for that.

A cart is specially adapted to take a wheelchair. The pony has two sets of reins so it works in the same way as dual control. The able-bodied whip has one set of reins and the disabled client has the other set and drives unless there is a problem, when the able-bodied whip takes over. We can take a wheelchair for miles in the countryside with a pony and trap and take it to places that it could not go to if the chair were being pushed. In the south of England, special concrete bollards are being put in on the by-ways because the width of the horse trap is different from that of a vehicle. There is enough of a gap for the wheels of the cart to go through the bollards but cars cannot use it. It is a fantastic experience for disabled people.

**The Convener:** Thank you for that information. I had certainly not heard about that before.

As members have no further questions, I thank you for your very able presentation. You are free to sit and listen to our discussion about what to do with the petition.

Members will see that it is suggested that it is not appropriate for the Parliament to intervene in the specific points raised about horse trails in the Loch Lomond and the Trossachs national park. However, as we heard from the petitioner, her main concern is about access to the whole countryside. With regard to the more general issues of equestrian access, it is suggested that we refer the petition to the Justice 2 Committee for further examination within the context of its consideration of stage 2 of the Land Reform (Scotland) Bill.

**Dr Ewing:** I suggest that we pass the evidence that we have heard today to VisitScotland. Clearly, the issue has huge potential for the tourism industry all over Scotland, not just in the Trossachs. We do not need to add to the evidence but there is the point about Forest Enterprise not wanting horses to canter, which is rather an inhibition to horse riding. VisitScotland should be interested in the evidence.

**The Convener:** If we do that, would we then be expecting VisitScotland to reply to us?

**Dr Ewing:** Yes.

**The Convener:** If that was the case, we could not refer the petition to the Justice 2 Committee, unless we sent the evidence to VisitScotland for information only.

**Dr Ewing:** It is a big tourism question for everyone.

**The Convener:** It would hold up referring the petition to the Justice 2 Committee.

**Rhoda Grant:** I suggest that we send the evidence to VisitScotland for information only because the Land Reform (Scotland) Bill is coming

up to stage 2 and it is important that the committee gets the evidence immediately.

**The Convener:** We will formally refer the petition to the Justice 2 Committee and send the evidence to VisitScotland for information.

**Dr Ewing:** VisitScotland might like to reply with some comments.

**The Convener:** It would be for the interest of the Public Petitions Committee and for no other reason.

**Rhoda Grant:** I suggest that we also send it to the board of the Loch Lomond and the Trossachs national park for information. It would be discourteous of us not to do that.

**Phil Gallie:** I agree with that. Perhaps the board will do something off the cuff. I query the value of sending the petition to the Justice 2 Committee at the moment. Before I came to the Public Petitions Committee this morning, I dropped into the Justice 2 Committee meeting. That committee has just begun the stage 2 process and has a raft of amendments to consider. Without examining the bill in detail, I think it is hard to see where it could be modified to accommodate the objectives of the petitioner. It might be that, as we speak, the Justice 2 Committee is agreeing to those sections of the bill where amendments could be made.

I am concerned about the timetable. The petitioner mentioned Sylvia Jackson. I do not know whether Sylvia has attempted to introduce appropriate amendments. If she has, that would be fine—the petition could provide additional information for the Justice 2 Committee. However, to be honest, I feel that we have missed the boat in relation to action by the Justice 2 Committee.

10:45

**The Convener:** The first thing to say is that the timing is not in our control—we can deal with the petition only when it arrives and we do not control the agenda of the Justice 2 Committee. In any case, such issues can be raised at stage 3 consideration of the bill by the whole Parliament. If we send the petition to the Justice 2 Committee, it will have to send some response even before it completes stage 2.

**Rhoda Grant:** We could also copy it to the Scottish Executive for information. The Executive might consider lodging an amendment at stage 3.

**The Convener:** That is a good idea. We have four points. We are going to refer the petition to the Justice 2 Committee and send it for information to VisitScotland, the board of the Loch Lomond and the Trossachs national park and the Scottish Executive. Is that agreed?

**Members indicated agreement.**

## Postal Delivery Service (PE513)

**The Convener:** The third new petition comes from Phil Gallie MSP and is on the future of rural sub-post offices. I will hand over to Phil to make a presentation.

**Phil Gallie:** It is somewhat unusual for a member of the committee to submit a petition—I do not know whether another MSP has submitted a petition in their own right.

**The Convener:** George Lyon has done so.

**Phil Gallie:** I am not claiming to have submitted this in my own right. I was persuaded to do so by a rural sub-postmaster who challenged me to identify the feelings in the community about the issue. The fact that I did that in Ayrshire does not mean that the feelings are not shared around Scotland. I suspect that other members from the north of Scotland would have received an even greater response.

I sent the petition to all rural post offices in the areas of East Ayrshire, North Ayrshire and South Ayrshire that are in the South of Scotland region. The response staggered me. Every post office returned the petition sheets that I sent out, some asked for more and every sheet contained a raft of names—totalling more than 5,000 signatures. That took just over a fortnight—I put a time limit on the petition. It brought it home to me that the sub-postmaster who had challenged me was not exaggerating the concerns in rural communities about the future of sub-post offices.

The issue is seen as a Westminster one, but Scotland's geography means that there is a particular need for rural post offices. We are different to the great mass of land south of the border and have more significant problems in that respect. Sub-post offices are not only post offices—in many areas they are the heart of the communities that they serve.

There is a move towards uniformity in postal services in the European Union. Other countries do not have the same level of postal service and post office structures that we have in the UK. If we are going to look across Europe, we should look at the best examples rather than the worst ones. The service in the UK and Scotland has probably been the best until now.

The petition, the comments that have been made in support of it and the response from the public speak for themselves. I ask my colleagues on the Public Petitions Committee to take the actions that are suggested in the covering note. I hope that Scottish ministers will be prepared to represent Scotland's special circumstances to their colleagues south of the border.

**The Convener:** I draw members' attention to the

fact that a further petition is to be lodged asking the Parliament to urge the Executive to put in place policies that actively promote the use of the post office network in Scotland. That petition is in the pipeline and will be before us shortly. Do members have any questions for Phil?

**Dr Ewing:** I have one point about exemptions. Is there room in the suggested actions for the consideration of exemptions. The Postal Services Commission—Postcomm—has said that it will tell us what the exemptions from the universal service obligation will be. I have written to ask for a list of the exemptions in my area, but they are not available. Postcomm says that it is open, but when I tried to find out about the exemptions, it did not know, or would not say—I do not know which.

**Phil Gallie:** That is a concern. At present, the situation with exemptions is not clear. Postcomm has remits; it has put a deadline on reaching uniformity by 2007. If issues such as exemptions are not sorted out in detail and if ministers are not fully acquainted or have not made representation to seek clarification on those issues, by 2007, it will be too late. That is five years away, but five years is a short time in politics. It is important that we get to grips with the issues now. I believe that Scottish ministers will have to examine the exemptions and sort out the details with their colleagues south of the border.

**Dr Ewing:** It appears that most of the exemptions will apply to remote and faraway places, which is a big worry for many people. It is clear that the petitioners are concerned.

**John Farquhar Munro:** I congratulate Mr Gallie on lodging the petition. As he said, the sentiments in the petition are repeated throughout the country. In the north and west of Scotland, similar cross-party petitions have been circulated and have received much the same response. Mr Gallie's petition is worthy of support.

One main point that Mr Gallie makes is about the uniform standard. Given the excellence of the postal service in Scotland over the years, Mr Gallie's point that there should be no diminution of that service is a good one. Other countries suggest that they wish to reduce the service, but we should insist that they match what is available in Scotland. I am delighted to support the petition.

**The Convener:** Members will know from the cover note on the petition that Postcomm announced last month that it intends to delay full deregulation until April 2007 and that Consignia's Scottish spokesperson has put on record his concern that the competition might affect its ability to maintain the universal service, as Phil has described. More recently, Consignia announced that it is committed to keeping rural post offices open with Government help. The Executive has

announced a £1.5 million funding package to help post offices in deprived urban areas.

The suggested action is that we agree to write to the Scottish Executive to seek its formal views on the issues that are raised in the petition and that we request comments on the likely impact of deregulation of postal services in Scotland. Given the Executive's interest in ensuring adequate service provision in rural areas, we should ask for comments on the Executive's proposed measures to protect the universal postal delivery service and rural sub-post offices from the potential impact of deregulation. Also, given Consignia's recent announcement, we should ask about details of any support package—such as that recently introduced for urban sub-post offices—that the Executive and Consignia plan to introduce for rural post offices that are struggling financially. Finally, we should ask whether the Executive intends to make representations to the Westminster Government on the way forward for rural sub-post offices and universal mail delivery.

**Phil Gallie:** I would like to make one marginal point. In the post office service it is accepted that there will be some reduction in the number of urban post offices. The financial packages for those post offices offer reasonable remuneration to those that give up their post office status. The situation in rural areas is totally different. There post offices provide a wider service and are at the heart of communities. In urban areas, there may be another post office a mile away from the one that has been closed. It is stipulated that there must be a post office every two miles. In rural areas, post offices may be 30, 40 or 50 miles apart from one another.

**The Convener:** I accept the point that Phil Gallie makes. Do we agree the suggested action?

**Members indicated agreement.**

**The Convener:** I welcome Sylvia Jackson to the committee. We have not yet reached the item in which she is interested and will not reach it for some time. She is welcome to sit in and listen to our discussions.

**Dr Sylvia Jackson (Stirling) (Lab):** I may go away and come back.

### **Bankruptcy Procedures (PE511)**

**The Convener:** The next new petition for consideration is PE511, from Mr James Duff, which calls on the Parliament to investigate the alleged failure of the current bankruptcy statute. The petition was submitted following a lengthy dispute over the handling of the sequestration of Mr Duff's firm and estate. Mr Duff has submitted a number of petitions to the committee in connection with that sequestration. The most recent was

PE501, which drew attention to the failure of judges and sheriffs to adhere to current bankruptcy procedures. We are awaiting a response from the Executive to that petition.

PE511 focuses on the responsibilities of the accountant in bankruptcy—in particular, the entitlement of bankrupted individuals to an investigation in cases where the bankruptcy statute has not been complied with. The petitioner claims that the accountant in bankruptcy refused to investigate his case because a trustee had previously been exonerated. The petitioner seeks changes to the bankruptcy law to allow the accountant in bankruptcy to investigate the conduct of trustees and commissioners even following exoneration, where there is documentary evidence to support allegations that statutory requirements were not met throughout the administration of an estate.

The petition appears to be prompted solely by the petitioner's individual case. No evidence of any other instances in which the accountant in bankruptcy failed to supervise properly trustees and commissioners has been supplied. The petitioner seems to have exhausted every avenue open to him in pursuit of his key aim, which is to prove that the legal profession at all levels was at fault in the handling of his sequestration.

The committee may want to write to the accountant in bankruptcy seeking comments on the issues raised in the petition. In particular, the committee may want to request clarification of the accountant in bankruptcy's role in supervising the sequestration process and the options open to them when taking appropriate action against people involved in the process who fail to carry out their responsibilities properly.

The committee may also agree to consider the accountant in bankruptcy's response to this petition alongside the response to PE501, which should provide full details of the future consultation on personal insolvency laws and procedures and an update on progress of the enterprise bill. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** We must be conscious of the fact that people continually petition the committee on the same theme under different guises. At some point, we must devise a way of handling those who petition us repeatedly on one issue—in this case, a sequestration that happened a long time ago.

**Dr Ewing:** I intended to raise this issue under any other competent business, but as the convener has raised it now I will indicate that I support limiting the number of petitions that one person can submit to, say, two a year. Thousands of people are looking to submit justifiable petitions,

so there must be a restriction on the quantity of petitions that one individual can submit.

**Phil Gallie:** I am not sure that that would be fair, particularly with regard to the point that the convener raised about what could be called the repeatability of petitions. Our clerk does so well in so many areas of our work. Would it be possible for him to highlight to new petitioners solutions that have been given in response to other petitions? In some instances, all that might be needed in response to a petition is for the clerk to send a copy of the findings of a previous petition to the petitioner. Would that be a way forward?

**The Convener:** As Phil Gallie was speaking in my right ear, the clerk was speaking in my left ear. He suggests that a paper could be brought forward to a future meeting to allow us to consider the ways in which we might be able to respond to Phil's suggestion.

**Dr Ewing:** It would not be possible to do what Phil Gallie proposed unless the petitions were written in the same terms.

**The Convener:** It would be better to deal with the issue.

**Dr Ewing:** I agree. Come the autumn—

**The Convener:** If petitioners are not successful with their first petition, they can come back to us with six or seven different petitions on one issue. We have to consider that situation and a paper would enable us to do that.

**Phil Gallie:** I agree.

11:00

**The Convener:** In the meantime, we have agreed to write to the Office of the Accountant in Bankruptcy in response to PE511.

### **Police (Complaints) (PE520)**

**The Convener:** We move on to PE520, which was also lodged by Mr James Duff. The petition calls for the Scottish Parliament to introduce legislation to allow a police force from another area to be brought in to deal with cases of alleged failure by the chief constable or his deputy to carry out investigations into complaints made by members of the public.

PE520 is based on Mr Duff's experience of the Dumfries and Galloway constabulary in relation to complaints that were made following the collapse of his building firm and sequestration of his estates. The petitioner claims that the police force in question failed to either initiate or conclude all of the investigations into his allegations of fraud and conspiracy against the solicitors involved in his sequestration. Furthermore, the petitioner argues that his complaints were not fully investigated by

the police force, as the individual solicitors and police involved in this case were members of the freemasons.

Members will be aware that the police complaints system in Scotland is under review. In 2001, the Executive launched a consultation paper containing proposals for strengthening the independence of the system and taking forward a number of recommendations on the handling of police complaints. Notably, the consultation, which was concluded in October 2001, proposed the establishment of a new independent police complaints body.

Two options are available to us: we can write to the Scottish Executive seeking its views on the issues raised in the petition and make a request for an update on progress of the review of the police complaints system in Scotland or, as the reforms are already under way, we can take no further action.

**Dr Ewing:** In the third paragraph of the paper I note that at present a police force can be brought into another area at the request of the chief constable. Is there a need for improvement on that situation?

**Phil Gallie:** That is a good question.

**The Convener:** I did not quite catch what was said, as I was speaking to the clerk, but we are talking about the question of additional manpower.

**Dr Ewing:** It is also a question of jurisdiction. Chief constables are pretty responsible people and, if a chief constable thought that it was necessary to pass over a case, he would be happy to do so. At the moment, it is up to him. The question is whether that is enough. I think that that is the case.

**The Convener:** I am sure that it is but, at the same time, the Executive is suggesting a change to the situation, which meets with what the petitioner is calling on the Parliament to do.

**Rhoda Grant:** I suggest that we send a copy of PE520 to the Executive so that it can consider it as part of its review. That would allow the Executive to take account of the concerns of the petitioner.

**The Convener:** Okay, we will do so. Apart from that, are we agreed to take no further action other than to inform the petitioner?

**Members indicated agreement.**

### **Saltire (PE512)**

**The Convener:** We move on to consideration of PE512, which was submitted by Mr George Reid on the subject of the saltire flag. The petitioner calls for the Scottish Parliament to endorse the

1989 guidance published by the Ministry of Defence, which defines the blue of the saltire as azure blue. Mr Reid also urges the Executive to publish guidance on the matter.

Members may recall that PE224 urged the Parliament to prescribe the exact colours and proportion of the saltire. In June 2000, we referred that petition to the Education, Culture and Sport Committee and it agreed to take no further action on the basis that the issue raised was a reserved matter.

The petition has been submitted in the light of recent correspondence to the Saltire Society, in which the Lord Lyon King of Arms indicates that, in his view, the colour of the saltire is not a reserved matter. In his letter, Lord Lyon, the arbiter of all heraldic matters in Scotland, states that

"if anyone is to define a colour for the national flag, this would need to be the Scottish Parliament ... and any decision to do so would not cause a conflict with the Lord Lyon's jurisdiction".

The petitioner argues that this assertion by the Lord Lyon provides an opportunity for the Scottish Parliament to make a ruling on the shade of blue for the Scottish flag and for the Executive to issue guidance on the issue to remove confusion. However, the Lord Lyon suggested that, as there could be difficulties in enforcing a ruling on colour, not least because attempts at standardisation might be thwarted by the unpredictable Scottish weather, guidance may be the most appropriate way forward.

The petitioner believes that the saltire is the only national flag that is not governed by rules guaranteeing its design and presentation. He supports the MOD's requirement that the saltire be azure blue for military uses and claims that the use of darker shades of blue began only in the previous century, when dark blue dye was cheaper than azure or sky blue.

Responding to a parliamentary question, Jim Wallace, the Deputy First Minister and Minister for Justice, suggested that statutory regulation and enforcement in relation to displaying the correct background colour and proportion of the flag is impracticable as the colour and condition of flags is inevitably affected by exposure to weather and sunlight. He also reaffirmed the Executive's position that the dignity of the saltire is best maintained by continuing to ensure high standards of production on the part of flag makers.

The Presiding Officer has been in correspondence with Mr Reid and with MSPs on the issue and has said that the question of legislation or guidance on the matter of the colour or proportions of the saltire is a matter for the Public Petitions Committee to pursue rather than the Presiding Officer.



It is suggested that, in view of recent statements by the Lord Lyon and Jim Wallace, which highlight the difficulties in enforcing legislation specifying the colour, it would be inadvisable for the Parliament to make such a ruling. It is also suggested, however, that it would be appropriate for the committee to agree to write to the Executive seeking its comments on the recent views that have been expressed by the Lord Lyon. We could also ask the Executive whether it has any plans to issue guidance on the background colour to be used on a saltire, perhaps using the MOD guidelines as a starting point.

**Dr Ewing:** I do not know whether any of you have come up against the Lord Lyon when he has been exercising his jurisdiction, but he has always struck me as being extremely proud of his jurisdiction and has issued great threats to anyone flying the wrong flag and has commanded immediate execution of his order. It is quite impressive. The previous Lord Lyon had a squeaky voice and announced his edict by saying "Lyon calling".

I do not think that the question of the colour of the saltire is a reserved matter and I do not believe that the colour of a good flag changes. I have flown a flag in Morayshire in all weathers for many years and the blue has not changed. I am not sure if the flag is the correct colour of blue, mind you, but I bought it in good faith. I do not want flag producers who have stocks of saltires to suffer but I do not accept the arguments. It would be appropriate for there to be one colour of blue for the saltire. It is very irritating to see our national flag in every sort of blue under the sun.

I go along with the suggested action. I do not think that the petitioner is being facetious as most countries know exactly what their flag should look like.

**The Convener:** I failed to read out the fact that, in the correspondence between Jim Wallace and the Presiding Officer, the Executive made clear that there are no plans to introduce legislation or guidance on the matter. However, that is no reason why we cannot raise the matter with the Executive again.

**Phil Gallie:** The petitioner points out that the colours of all other national flags are prescribed. That is interesting.

It might be rather difficult to control the colours of all the saltires that are for sale in shops across the country, but that would not stop us having a prescribed colour that could be used for flags on national buildings and so on. I have some sympathy with that aspect. It is interesting to note that the MOD prescribes a certain colour.

Without wishing to be controversial, the fact that the petitioner talks about national flags makes me

wonder whether the blue in the union jack—which, of course, is the blue of the saltire—is prescribed somewhere.

**Dr Ewing:** It varies too, which you can see if you look at various flags.

**The Convener:** Do we agree to write to the Executive along the lines suggested and try to find out whether it is prepared to issue guidance on the matter, as the Ministry of Defence does?

*Members indicated agreement.*

### **MMR Vaccination (PE515)**

**The Convener:** PE515 is from Dorothy Wright, on behalf of Brae parent and toddler playgroup. The petition calls on the Scottish Parliament to take the necessary steps to make individual measles, mumps and rubella injections available without delay. The petition is prompted by the petitioners' concerns that a measles epidemic may be imminent in Shetland, as parents there remain unconvinced about the safety of MMR injections.

Members will be aware that we have already passed a petition on this subject, PE145, to the Health and Community Care Committee, which has not yet completed its consideration of the petition. It is therefore suggested that we agree to refer the petition to the Health and Community Care Committee with the recommendation that it consider the petition further within the context of its examination of the MMR expert group's report.

*Members indicated agreement.*

### **Museum Hall (Bridge of Allan) (PE518)**

**The Convener:** The next new petition is PE518 from Mr David Wilson. He calls on the Parliament to ask the Scottish Executive to take responsibility for the failure of Historic Scotland to protect Museum Hall in Bridge of Allan from unlawful neglect and to set in motion an action plan to restore it.

The detail of Mr Wilson's complaint against Historic Scotland and Stirling Council, which is now responsible for the building, is listed. He alleges that they have neglected the building over the years, which has caused the potential repair bill to jump from £380,000 in 1985 to £2.5 million in 1991. He also claims that that contrasts with the work that Historic Scotland and Stirling Council have carried out on Lanrick Castle, which the same authorities look after much better.

Members are reminded that it would be inappropriate for the Parliament to comment on the actions of Historic Scotland regarding the specific issues surrounding the protection of Museum Hall. However, we may wish to write to Historic Scotland seeking general comments in

relation to the issues that are raised in the petition and requesting details of how the Executive holds Historic Scotland to account on such issues, clarification of Historic Scotland's role and responsibilities in the protection of private and public listed buildings and further information on the eligibility criteria for Historic Scotland conservation area grants. We might also wish to pass a copy of the petition to the cross-party group on architecture and the built environment for information.

**Phil Gallie:** With the greatest of respect, I correct one aspect of what you have said: Historic Scotland and Stirling Council did not look after Lanrick Castle better—Lanrick Castle was demolished. Historic Scotland and Stirling Council could be said to have allowed that to happen, although the owners of the property carried out the demolition.

An element of hypocrisy is involved. Historic Scotland and Stirling Council have it in their power to do something about Museum Hall, but although they are prepared to prosecute someone who demolished an historic building, they are allowing Museum Hall to fall into a similar state. Those bodies must answer that charge of hypocrisy.

**The Convener:** It has been drawn to my attention that we must be careful that we do not get involved in decisions about individual listed buildings in various parts of Scotland. If we do, the committee will become a court of appeal for every dispute that an individual has with their local authority or Historic Scotland. The suggested action is couched in general terms—that we ask for clarification of Historic Scotland's role, how it is accountable to the Executive and how its grant system works—so that we can brief ourselves about whether the policy is being applied successfully throughout Scotland.

**Phil Gallie:** I realise that that is the case. However, the fact is that the two sides of the argument are in opposition. I suggest not that we interfere, but that it would be right for the committee to ask for an explanation of how Historic Scotland and Stirling Council can move one way on one occasion and a different way on another.

**The Convener:** We can include that in the letter that we send to Historic Scotland. Is that agreed?

*Members indicated agreement.*

## Current Petitions

### Water and Sewerage Services (PE423)

**The Convener:** That brings us on to current petitions and responses to them. PE423 is from Mr Terry O'Donnell, who called on the Parliament to take the necessary steps to return water and sewerage services to unitary authority control throughout Scotland, to continue the water rates relief for churches and voluntary organisations in Scotland and to reject any proposals for fluoride to be added to the Scottish water supply.

We have had a reply from the Scottish Executive, although it has taken more than six months. The reply addresses all three points raised in the petition. It gives details of the new structure of the water industry in Scotland—which, as the committee knows, is a single Scottish water authority—and explains that the Parliament agreed to continue phased withdrawal of relief on water and sewerage charges for charitable organisations.

The Executive also acknowledges that water fluoridation is one of a number of options for improving oral health. It states that it is committed to a formal consultation process about how best to tackle the improvement of children's oral health in Scotland and is considering how best to proceed. It is suggested that the committee should agree to ask the Executive to ensure that the petitioner is sent a copy of the consultation document on the oral health issue in due course, so that he has the opportunity to have his views on fluoridation taken into account.

11:15

Given the other two responses to the petition, it is suggested that we take no further action since the Executive has already moved on both of those points. Is that agreed?

*Members indicated agreement.*

### Telecommunications Developments (Planning) (PE425)

**The Convener:** We move on to PE425, from Anne-Marie Glashan. The petition calls on the Parliament to adopt the precautionary principle that the Transport and the Environment Committee recommended in its report on the planning procedures for telecommunications developments and which was also recommended by the Stewart report.

We agreed to seek the views of the Scottish Executive, which were given to us some time ago. We were then awaiting the response of the Transport and the Environment Committee to the views of the Scottish Executive. Members have

received the views of the Scottish Executive, which are set out clearly, and the response from the Transport and the Environment Committee. It lists several points on which it seeks clarification. For example, it seeks clarification of the scientific research on the potential health effects of mobile phone technology and wants to find out whether the Executive has established a hierarchy of preferred locations for telecommunications equipment. It also seeks clarification on what progress the Executive has made on planning guidance and towards achieving a co-ordinated approach to the roll-out of masts.

It is suggested that we agree to seek the comments of the Executive on the additional points raised by the Transport and the Environment Committee, with the exception of the point on planning guidance, which was covered in the Executive's response. In the meantime, we should agree to copy the Executive's response to the Transport and the Environment Committee for its information. Is that agreed?

*Members indicated agreement.*

### **Civic Government (Scotland) Act 1982 (Obscene Material) (PE476)**

**The Convener:** PE476 is from Ms Catherine Harper and is on indecent displays in corner shops. It calls on the Parliament to take immediate steps to ensure that the provisions of the Civic Government (Scotland) Act 1982 in relation to the display of obscene material are fully and effectively enforced and to review the legislation to determine whether it is adequate or requires to be amended. We agreed to seek the views of several bodies, including the Scottish Executive, the Association of Chief Police Officers in Scotland, and the parliamentary cross-party groups on men's violence against women and survivors of sexual abuse. All those responses have come in. The Executive has set out in detail its response, as has the Association of Chief Police Officers in Scotland. We have also received the views of the two cross-party groups.

The Executive is of the view that the current legislation controlling the display of indecent material is adequate to allow prosecution where sufficient evidence exists. Although ACPOS is of a similar view, it makes the point that a definition of what constitutes obscene material would be helpful. Both the cross-party groups are of the view that stronger controls of the display of indecent material are required. Taking those responses into account, together with the points raised by the petitioners, it appears that a major review of current legislation may not be necessary, but there may be merit in considering further the introduction of a definition of obscene material.

It is suggested that we may want to agree to refer the petition to the relevant justice committee, with the recommendation that it further considers the issues raised, particularly those relating to the lack of a definition of obscene material within the context of the Civic Government (Scotland) Act 1982.

**Dr Ewing:** The danger of a definition is highlighted in the Executive's response. It states that, unless there is the flexibility of the current description of what is meant by pornography, the Crown could end up failing to have the right to prosecute. In other words, the present situation may be more flexible than it would be if a specific definition were produced.

**The Convener:** On the other hand, the other three bodies that we consulted thought that there may be merit in considering a definition.

**Rhoda Grant:** I do not think that it is beyond the wit of man to come up with a definition that is broad enough to take in material that someone would find offensive. There need to be guidelines, because it is obvious that the law as it stands is not working. That is because there is no definition. People are walking away from the matter because it is difficult. Guidance on the definition would be helpful.

**Phil Gallie:** I go along with Rhoda Grant's comments. The Executive's comment is that prosecutions can be brought when sufficient evidence exists. I go along with the suggested course of action of asking the relevant justice committee to examine the matter, but I would like the Executive to expand slightly by indicating how it defines the phrase "sufficient evidence".

**The Convener:** It is hard to follow that suggestion. If we refer the petition to the relevant justice committee, we will have to close our consideration of it. It has been suggested that we could ask the Executive for the additional information, which we could pass on to the subject committee and the member for information. Would that be okay?

**Phil Gallie:** Yes, if it is all right with other members.

*Members indicated agreement.*

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

**The Convener:** The next petition, which is from Mr Duncan Shields, is on behalf of Fathers Fighting Injustice. It calls for a review of the membership of the Justice 1 Committee. We dealt with the petition at a previous meeting, but Phil Gallie asked for further clarification on the number of items that had not been put on the Parliament's website as part of the Justice 1 Committee's

inquiry on the regulation of the legal profession.

We have received another response from the convener of the Justice 1 Committee, in which she indicates that the committee has received 126 responses to its inquiry and that 33 of them have not yet been published on the website, as they are being edited by the committee clerks to ensure that they do not raise defamation and data protection concerns. She reaffirms the committee's intention to put the majority of those submissions on the website in due course.

The information that Christine Grahame has provided in her two letters appears to address the issues that the petitioner raises. On that basis, it is suggested that we agree to copy the most recent response to the petitioner for information and that we take no further action. Is that agreed?

**Members indicated agreement.**

**Phil Gallie:** Although I agree with the proposed course of action, the number of responses that have not been put on the website amounts to more than 25 per cent of the total. I presume that the situation is being dealt with with some urgency.

**The Convener:** The responses obviously have to be checked for defamation.

**Rhoda Grant:** That underlines the responsibility of people who give evidence to ensure that any evidence that they give does not contain anything that could be defamatory. If the people concerned had made sure of that when they submitted their evidence, their evidence would have appeared on the website much more quickly. People should learn not to abuse the committee system and to ensure that their evidence is publishable.

**The Convener:** That is a fair point. It has been pointed out to me that when we review our guidance on the submission of petitions, we should ensure that part of the guidance makes it explicit that no defamatory material should be included in petitions.

### **Political Process (Young People) (PE487)**

**The Convener:** PE487, which was submitted by Mr John Dick, called on the Parliament to take a range of steps to encourage young people in Scotland to become more engaged in the political process and in adult society. We agreed to seek the formal views of the Electoral Commission on the issues that the petitioner raised. The commission has written back to confirm that it took on responsibility for voter awareness on 1 July 2001. It has provided details of the campaign that it conducted in advance of the English local government elections this year and of the programme that it will conduct in advance of the Scottish and Welsh elections next year.

When the committee first considered the issues that the petition raised, members noted that much was being done by the Parliament's education service to encourage awareness and understanding of the work of the Parliament among young people. An educational visits scheme is operated by Historic Scotland. Such a structured educational approach would appear to be the most appropriate way of encouraging the interest of young people in Scotland in the work of the Parliament and in Scotland's built heritage. It is unclear how practical it would be to offer each 17-year-old the programme of visits that the petitioner suggested and it is unclear how the suggestion that each young person should be offered a voucher for a free kilt or other tartan garment would be funded or implemented. Taking those points into account, along with the positive response from the Electoral Commission, it is suggested that we agree to take no further action on the petition, other than to copy the commission's response to the petitioner for information.

**Rhoda Grant:** I go around many schools and I am impressed by the knowledge of the political process that young people have; many young people are way ahead of adults in that respect. We should acknowledge that children and young people have an interest in the political process. Some of the questions that they ask are much more difficult to answer than some that are asked by adults.

**Dr Ewing:** We have some wonderful visits from groups every day.

**The Convener:** Okay. Do members agree to the proposed course of action?

**Members indicated agreement.**

**The Convener:** We had hoped that Mr Derek Scott would be here for consideration of PE500, but he is not here yet. We could take a five-minute break or we could leave PE500 and move on to the rest of the agenda.

Let us move on. The final paper, on current petitions, is a description of the petitions that are still under active consideration. The clerk points out that if members want to pick up any of these petitions at any time during the recess or raise points about them, they are welcome to do so and to put them on the agenda of a future meeting. A range of petitions are still active and awaiting responses of one kind or another from other committees, the Executive or other bodies. The paper is simply for members' information.

**Phil Gallie:** I have an observation to make. The first petition on the paper is from Alex and Margaret Dekker. Cathy Peattie has lodged a motion that highlights the issue that the petition raises. The petition is outstanding from the

Parliament's first year of operation. It is taking a heck of a long time for something to come of it. It seems a bit discourteous to those who submitted the petition that we still have it on file. Furthermore, there does not seem to be any prospect of our bringing the matter to an imminent conclusion.

**The Convener:** To be fair, the Justice 1 Committee was waiting for the publication of research evidence by the Department of Environment, Transport and the Regions, which took a long time to come through. The committee has now raised the recommendations in the research reports with the Lord Advocate and the Minister for Justice and awaits a response from the Executive.

**Phil Gallie:** That is a fair comment. In the meantime, will there be any correspondence between this committee and Mr and Mrs Dekker, to tell them why the petition is on hold? Perhaps we should update them on the progress that has been made. It has taken a long time.

**The Convener:** One of the flaws in the current system is the fact that once we refer a petition to another committee, it becomes that committee's property and we have no further role in its progress, other than in checking that the committee responds. It would be for the Justice 1 Committee to keep Mr and Mrs Dekker informed. We could not do it.

**Dr Ewing:** Perhaps you could refresh my memory. Are the petitioners calling for a requirement to have a fatal accident inquiry in all cases of road traffic death?

**The Convener:** That is one of a range of things that the petition calls for.

**Dr Ewing:** That makes a lot of sense. In my experience, one of the strange things about the discretion of procurators fiscal is that one sometimes thinks that there is bound to be a fatal accident inquiry in a case but there is not and, at other times, there is such an inquiry when one is not expecting it. It might be a good idea to have a rule about that.

**The Convener:** The main thrust of the petition is that, although the Parliament has ruled that a sentence of up to 10 years can be passed for dangerous driving, the courts never do that—they leave it to the discretion of the procurators fiscal and the Crown, who almost never seek to use that power.

**Dr Ewing:** There is an unwritten law that if a death is caused by a bullet, there must be a fatal accident inquiry. However, I know of cases in which that has not happened. I am a great admirer of the Procurator Fiscal Service and I do not want to be thought to be attacking it. Nonetheless, a

rule would be helpful in such matters.

**The Convener:** Okay. If members have any further points on any of the current petitions, they should get in touch with the clerks during the recess.

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

**The Convener:** Mr Derek Scott is now here to speak to PE500, which was submitted by Mr Alex Anderson, on the subject of the Scottish Transport Group pension fund surplus. The Deputy Minister for Enterprise, Transport and Lifelong Learning came to the committee last week to answer questions on the petition. We agreed to ask Mr Scott, who has given evidence to the committee before, to return and respond to what the minister had to say. I welcome him to the committee. We are grateful that he has come back.

**Derek Scott:** Thank you for waiting. I am sorry; I had to come through from Fife. I take it that nobody from the Inland Revenue is appearing before the committee today.

**The Convener:** No detailed papers have been produced by the Inland Revenue, although it has indicated that if Scottish ministers were to raise with it the issue of exemptions to its policy on taxation, it would listen to what they had to say. However, it would not guarantee that it would change its position as a result. It would help us if you could respond to the various points that were made by the minister at last week's meeting and give us your perspective.

**Dr Ewing:** Just on that point, at last week's meeting, we asked the minister not only to take up the issue with the Treasury but to pursue the matter of the £50 million.

**The Convener:** We dealt with a whole range of issues, all of which members will be free to raise when we come to open discussion. However, I want to give Mr Scott the chance to give us his initial response. Mr Scott's letter has been circulated, but as it arrived a little late, members may not have had the chance to read it. Perhaps Mr Scott would go over the points that he wishes to draw to the committee's attention before we move to general discussion.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Before we hear from Mr Scott, I want to clarify something. My understanding was that the committee agreed last week to ask the Inland Revenue to give evidence.

**The Convener:** The Inland Revenue was asked.

**Fergus Ewing:** What was its response?

**The Convener:** The response was that it could not give evidence at such short notice.

**Fergus Ewing:** Will the Inland Revenue give evidence at a future date?

**The Convener:** That will depend entirely on what the committee decides today. In any case, let us hear Mr Scott's initial response, as that may help us to arrive at a decision.

11:30

**Derek Scott:** Since I e-mailed my written response to the clerk on Sunday, I have had a reply to my previous e-mail, which was referred to at last week's meeting. The letter that I received is dated 18 June, but it was faxed to me only yesterday afternoon, at about the same time as I also received an e-mail copy. I was in London until late last night, so I have had only a short time to reflect on the contents of the letter. In fairness, the letter is from Sharon Wood, who is one of the civil servants who has been dealing with the matters that have been raised by the action committee for some time.

I had asked a number of questions, but I will begin by dealing with the response to the question of the £50 million, which has just been mentioned. I had deliberately included in my e-mail a question about whether the £50 million was in the gift of the Treasury or the Scottish Executive. I did so because the action committee had heard information—which was perhaps not reliable—that there were two components to the deal that was struck in December 2000. One component was that £100 million would be offered to the pensioners; the other was that £50 million would somehow be retained for the consolidated fund.

What gave rise to that belief on our side was the fact that, when we talked to one of the trustees of the Scottish Transport Group and to MSPs who had made points on behalf of their constituents, their comments suggested that every penny above the £100 million that the pensioners received would come out of the £50 million that went to the consolidated fund. Therefore, the money would come out of the Scottish Executive's funds.

However, the reply that I received last night states:

"the £50 million ... has not been retained by the Scottish Executive ... this money has gone to the HM Treasury."

Therefore, the line that the committee took last week, which was that the minister should negotiate for the whole of the £176 million, seems to make sense, given the fact that everything seems to be within the gift of the Treasury.

My e-mail of 9 June also asked about the taxation of individuals who receive ex gratia benefits. I drew the attention of the minister and of the Scottish Public Pensions Agency to the rules for occupational pension schemes. Those rules

contain the well established principle that, although ex gratia payments may, on the face of it, be taxable, there are ways in which that tax can legally be avoided. Basically, the money needs to be put into the approved scheme. In this case, the approved scheme is administered by Royal and Sun Alliance in Liverpool.

The reply that I received yesterday, a copy of which I will give to the clerk at the end of today's meeting, states:

"the ex-gratia payments are not a consequence of the wind-up of the STG pension schemes. They are related to the outcome of the NBC settlement where Scottish Ministers negotiated with HM Treasury to secure for Scottish pensioners an outcome in line with their English counterparts. As such, the ex-gratia payments to Scottish members are not pension scheme benefits."

Therefore, my line of inquiry about possible tax relief does not apply, because the Scottish Executive minister has stated that the benefits are not ex gratia pension benefits, but ex gratia benefits of another kind.

The letter then goes on to say:

"The STG schemes have been wound up by the Trustees, and the Trustees discharged. The Trustees have maintained over the years ... that they would not further increase the benefits from the surplus."

Those are the same trustees who sought from the Finance Committee last June an indemnity for any actions that they took in winding up the scheme—an indemnity that was, I think, granted last September.

The letter goes on to say:

"I should add that the ex-gratia payments represent a concession from HM Treasury as the total surplus – net of tax – was, under the provisions of the Transport (Scotland) Act 1989, to be remitted to the UK Exchequer."

That is consistent with what the Deputy Minister for Enterprise, Transport and Lifelong Learning told us last Tuesday. He said that the Executive's advice was that the pensioners were not entitled to a penny of the surplus, and so the payments were being constructed against that advice.

The letter before us is a typical written response to a written question—it just raises new questions in my mind. If the Executive is saying that the payment is not an ex gratia pension settlement, that leads us to go back and examine what the Inland Revenue does in situations that involve ex gratia payments.

There is a presumption that ex gratia payments are taxable. I do not dispute the guidance given last week in the summary information bulletin, but there are well publicised tax reliefs. One of those is the £30,000 exemption that has been described to date as applying only in situations of termination of employment or redundancy.

I apologise for the fact that I have had only limited time to study those points. I said in my written submission that I am not a tax accountant; I am a general practitioner. I looked at the Inland Revenue's website this morning to find out what guidance it gives to employers and to people making lump-sum payments under the circumstances that we are discussing. I am left with a feeling that there are questions that the minister could take up, with either the Treasury or the Inland Revenue or both.

Usually, the Inland Revenue's pension schemes office in Nottingham would deal with this type of matter, but we are now being assured that what we are dealing with are not pension benefits, so I guess that that IR office is not relevant. An inspector of taxes deals with the affairs of the Scottish Transport Group and, I guess, with those of the Scottish Public Pensions Agency. In any event, such matters should always be considered in the light of the specific circumstances that apply, and the Inland Revenue will then give a ruling.

We have tended to rely so far on a feeling that there will be double taxation. Some individual pensioners have written to their inspector of taxes, asking, "In the event that I get an ex gratia payment from the Scottish Transport Group pension scheme, will it be taxable?" They have assumed that the payment is a pension scheme benefit. The replies from the Inland Revenue have said that such payments are indeed taxable.

As was pointed out last week, we have not had a meeting with the Deputy Minister for Enterprise, Transport and Lifelong Learning or with his advisers. The last formal meeting was held in Leith on 17 December last year. The minister referred to a rather informal meeting that was arranged at the time of the Labour party conference in Perth in February, at which he and the Minister for Enterprise, Transport and Lifelong Learning were present. However, only four members of the action group were there. I was not able to attend the meeting, even though it was held in my home town of Perth, nor were some of the other members of the group.

We have not had an opportunity to sit down with the minister and/or the minister's advisers and put these points across. We want to understand whom in the Inland Revenue they have been talking to and which provisions they have been seeking tax relief on for the pensioners.

Because of the letter that I have quoted from, the arguments that I put in my e-mail dated 9 June have been superseded. It is now clear that the payment is not a pension scheme ex gratia benefit; it is just an ex gratia payment by HM Treasury.

I listened to the committee's discussion last week and was pleased to have been invited and to have been able to hear it from such close proximity. I had expected to come and discuss with the committee the taxation of pension schemes today. I find that that avenue has, in effect, been withdrawn from me, as the letter from the Scottish Executive says:

"the ex-gratia payments ... are not pension scheme benefits."

Therefore, the tax reliefs do not apply. If that is the case, then I agree with it. Clearly, the Inland Revenue office that we had in mind was not the right one to approach.

**The Convener:** For the record, representatives of the Inland Revenue were invited to come along to give evidence, but said that they could not do so at short notice. In response to an inquiry by the clerk to the committee, Inland Revenue officials indicated that it may be possible to reconsider the taxation of the ex gratia payments that are to be made to the STG beneficiaries if they are asked to do so by Scottish ministers. However, it is important to emphasise that they also said that they could not guarantee a different decision. That is the official response of the Inland Revenue at this stage.

I thank Mr Scott for being here today, and invite committee members to ask any questions that they have.

**Rhoda Grant:** Thank you. That was helpful. Given that the ex gratia payment is not part of a pension scheme and is not a pension payment, have you any indication as to how it would be defined?

**Derek Scott:** I said in my written submission that this area is currently under the Inland Revenue's microscope. The practice over the years has been for the £30,000 tax-free exemption to be applied to a lot of things. I assume that the compensation paid to the 27 Scottish Transport Group executives to buy them out of a lifetime BUPA promise was not taxed. My experience as an accountant in recent years is that the Inland Revenue is increasingly seeking to tax ex gratia payments generally because it is rather frustrated at the number of times that executives in particular—I am not singling out STG executives, but referring to company executives throughout the United Kingdom—have been using the £30,000 exemption to take additional money from companies and dress it up as an ex gratia payment.

The thrust of the Finance Bill—it is still a bill as it does not have royal assent—is that the Inland Revenue does not think that the £30,000 exemption applies if somebody retires. The Inland Revenue has been looking at cases such as when

an executive reaches an age when they are unlikely to work again and they take a £30,000 tax-free payment that is dressed up as something else.

The Inland Revenue has said on individual cases, and now through the forthcoming legislation, that when someone is in that retirement position the retirement rules and taxation will apply. However, the letter that I received recently from Sharon Wood said that the Scottish Bus Group payment is not a pension matter and not an ex gratia pension payment at all. I had thought that it was. There is a lot in Inland Revenue guidance about dealing with ex gratia pension payments, but the Scottish Bus Group payment is not an ex gratia pension payment; it is an ex gratia payment.

**Rhoda Grant:** Is there any guidance on other ex gratia payments and how they would be taxed?

**Derek Scott:** Guidance is obtained by explaining the circumstances of the individual payments to the Inland Revenue, which will give a ruling in writing. That explanation can be requested by the minister or by individuals. I think that it can be done by individuals now in anticipation of receiving the payment. Because of Sharon Wood's letter, I feel confident about taking up the cases of some of the individual pensioners who wrote informally—I did not draft the letter—to their Inland Revenue inspectors asking a general question to which they got a general reply, which is what I expected.

We now have circumstances that need to be opened up with the Inland Revenue to discover its position. My experience as an accountant is that these things are negotiable. They are not clear and cannot be written clearly into statute so that the statute defines what happens and sets the circumstances. The circumstances must be discussed openly with the Inland Revenue, which will give its ruling.

**Rhoda Grant:** I do not think that the situation will have arisen previously in which ex gratia payments from a pension scheme are not pension payments. Do you think that the Inland Revenue might look favourably at this case, given that it would have to examine the situation as a new case altogether?

**Derek Scott:** I do not have the experience to answer that. What is clear to me in this case is that the payment is coming from Her Majesty's Treasury. This is an unusual payment because the Treasury has some relationship with the Inland Revenue and that needs to be explored. I am used to taking up the case of a private employer who has made a payment to an individual or a group of individuals. The Inland Revenue looks at the facts of such cases. In this case, the Treasury is making

the ex gratia payment.

**The Convener:** Fergus Ewing and Sylvia Jackson want to speak. I would like members to stay on this issue. I do not want to jump backwards and forwards between different issues. We are dealing just now with the nature of the ex gratia payments and the question whether the Inland Revenue should tax them. If you have other questions, leave them for later. Are there any questions on this subject?

**Fergus Ewing:** Last week, I raised with the minister my concern that widows and widowers of members of the Scottish Bus Group pension scheme would receive only 50 per cent of the payment that their partner would have received had he or she survived. The minister gave an undertaking that he would review that so that the widows and widowers could receive the whole payment. I hope that he will take into account in his review the fact that many of those people would have survived—and did survive until recently—and would have received the money had it not been for the gross delay in winding up the scheme.

In the interests of equity I hope that the minister will treat widows and widowers as generously as other pensioners. Had the payments been pension scheme payments, there might have been some legal objection, but now that Mr Scott has confirmed that they are not pension scheme payments, can you confirm that there is no legal impediment to treating widows and widowers in the same way as their loved ones had they survived?

11:45

**Derek Scott:** That is correct. If the payment is an ex gratia payment that is not being made as if under the rules of the scheme, that argument falls by the wayside.

I spoke to Fergus Ewing on that point briefly after last Tuesday's committee meeting. I do not have a copy of the *Official Report*, but the minister seemed to be saying that the payment would be in line with the rules of the scheme. That made sense to me at that time, because I perceived it to be a pension scheme settlement. Now that it has been presented to me in writing as an ex gratia payment from the Treasury, the rule impediment falls away. Ex gratia payments can be made on whatever terms the person making the payment wishes to make them—it is their gift and they can decide on its basis.

That does not rule out an unmarried individual taking issue with the basis of the ex gratia payment, but that individual has much less of a case than they might if the payment was being made under the rules of the pension scheme. The



Scottish Transport Group pension scheme is no different from most UK pension schemes, which proceed on the assumption that two people have a certain amount to live on and that if one of them dies the survivor will need only half the amount of money. I find that rather perverse given that most of the costs we face these days are fixed, regardless of whether there are one or two in the household. However, that is the basis on which most pension trusts were established and if we were using the rules of the scheme to determine such things, one would be advised very guardedly not to go beyond 50 per cent of the benefit.

**Fergus Ewing:** Thank you. That was extremely helpful. I have another technical issue that arose from the advice that you have given us, which has been confirmed by the Executive, that the payments to be made are not pension scheme payments. To put it as simply as possible, is it the case that people who worked for the Scottish bus companies will have to pay tax on the payment that they get, but those people who worked for the English bus companies did not have to pay tax on the payments that they received?

**Derek Scott:** I dispute the former because we are now talking about a payment from HM Treasury, and clearly none of the people worked for the Treasury. I am struggling to see the employer relationship between HM Treasury and the recipients of the ex gratia payments.

**Fergus Ewing:** However, from the point of view of those in Scotland who worked for the Scottish companies—there may have been many English people who worked for the Scottish companies—unless the Inland Revenue makes some sort of deal or concession, the Scottish pensioners will be taxed whereas the English pensioners were not.

**Derek Scott:** The Scottish pensioners have been told—this point is based on responses from the Inland Revenue to individual pensioners—that because they were members of the employer's pension scheme, they have to pay tax on the ex gratia payment. The current situation is that the payment will come from the Treasury, which was not the employer or former employer of any of the individuals. I see a new line of inquiry opening up because the ex gratia payment is not coming from the Scottish Transport Group. The Inland Revenue might have a position on that—I have not asked the question so I do not know the answer.

The position in England and Wales is that the National Bus Company pension scheme was reconstituted as a result of the legal challenge and therefore the settlement was paid out through the approved pension scheme—through Standard Life in Edinburgh, which acts in the same capacity as Royal and Sun Alliance does in the Scottish Transport Group pension scheme—and therefore the tax exemptions that Standard Life enjoys

continue to apply to those payments. It appears from all the correspondence that we have seen and the offer now being made to anyone over 50 to take a lump sum tax-free entitlement that they will not be taxed. The only element of taxation that I can see on the English and Welsh beneficiaries is when someone has sufficient income, including pension, to pay annual income tax, they may pay some income tax on their pension that has been increased through the process. Where lump sums are being paid, the pensioners can use the tax-free Inland Revenue limits; as none of the individuals of whom we are aware comes anywhere near those limits, the pensioners therefore receive tax-free lump sums.

**Dr Jackson:** I am a little unclear about the negotiations between the minister and the Treasury or Inland Revenue. From what you told us of what the Inland Revenue said, convener, it appears that it will consider the tax element if it has an indication that it should do so from the Scottish ministers—I think that that is how you put it.

I do not have the *Official Report* of last week's meeting in front of me, but, although the minister was a little unclear, I got the impression that he was willing to go back and talk about a number of issues. The extra £8 million was one such issue. He certainly indicated that the Executive made a proposal about the tax element, but I am not sure whether that proposal was put to the Treasury or the Inland Revenue. I think that the civil servant said that that proposal had not been successful, but I pointed out that the evidence that had been given to the Public Petitions Committee was, in my view, pretty impressive. That evidence suggested that there were reasons why the Scottish agreement was not comparable with the agreement that was reached down south. Eventually, we found out that the meeting had been held after the minister had spoken to either the Treasury or the Inland Revenue.

I would like more clarity about what the minister is going to do and whom he is going to talk to and, particularly now that we have received new information, whether the ex gratia payments are from the Treasury or from the pension scheme. I would like to know how we can find out that information and get that clarity.

**The Convener:** Mr Scott cannot answer those questions. We have so much information that our problem is how to bring it together—

**Dr Jackson:** That is what I was trying to do.

**The Convener:** We should do that so that we can find out how the committee can be of assistance.

It seems to me that the new information that we received this morning about the nature of the ex

gratia payments changes the whole discussion. If I remember correctly, one of the petitioners' demands was that they and their representatives would have appreciated the chance to meet the minister and to go over in detail questions about the ex gratia payments, such as why they were being taxed. There is no reason why the committee cannot recommend to the minister that such a meeting should take place. He should concede that point, meet them and discuss with them the detail of the latest information and its implications.

We could also address a number of other issues. The issue of the £50 million was raised. The minister hinted that the £50 million was still on the agenda, but he did not say that it was.

In December 2000, the Treasury agreed to take £50 million. As far as I can make out, the minister indicated that the Treasury's position is still that it will keep the £50 million, but it is prepared to talk to Scottish ministers about that.

**Derek Scott:** Can I, as an accountant, put some numbers on that issue? I am concerned about whether £124 million or £126 million is on the table. The basic rate of income tax that must be deducted under pay as you earn is 22 per cent. If 22 per cent tax were applied to those figures, we would be back down to a figure that is under £100 million, which is the amount that we were offered in December 2000. Until now, we thought that we were getting somewhere because we seemed to be getting at least some of the investment return that has been earned on those moneys. The December 2000 figure was based on a March 2000 pension scheme figure. We are very grateful for the reduction in tax on pension surplus from 40 per cent to 35 per cent, but because of double taxation, we will end up with a settlement that is no better—it is actually slightly worse—than the settlement that we were offered in December 2000.

**The Convener:** I want to be clear that the £50 million that the Treasury said that it would keep is part of the December 2000 agreement. Was that £50 million to cover taxation?

**Derek Scott:** No.

**The Convener:** Are you saying that the money for taxation is in addition to the £50 million, which the Treasury will keep, and that the Treasury will tax the payments that are made to the pensioners?

**Dennis Canavan (Falkirk West):** There are two elements to the tax: corporation tax and income tax on individual pensioners.

**The Convener:** Is the £50 million for corporation tax?

**Derek Scott:** The £50 million is a surplus, after

employer's tax has been paid. It is money that the Treasury—

**The Convener:** Therefore, the Treasury gets money for corporation tax, it taxes the payments that are made to the pensioners and it gets £50 million out of the surplus.

**Derek Scott:** Yes.

**Dr Ewing:** I will follow up with Mr Scott a good question that Sylvia Jackson raised at last week's meeting. Our briefing paper says:

"The Executive has explored in some depth with the Inland Revenue the possibility of tax free payments to STG beneficiaries."

It explored that before the latest change. The paper also says:

"However, the Inland Revenue has made it explicitly clear that they see no reason to make any concessions in this case. Further, they do not consider that the facts are so unique as to justify any special treatment."

Sylvia Jackson and others want to ask what amounts to special treatment.

**The Convener:** I did not speak to the Inland Revenue, but I understand that it would be prepared to discuss the exemptions, if ministers raised the issue. The situation is becoming extremely urgent. The committee will not meet again until after the recess. The minister's meeting with the Inland Revenue will take place over the summer. All that we can do is seek to influence the minister's position in that meeting by adopting a series of recommendations.

I suggest that, before the minister meets the Inland Revenue, he should meet the petitioners and their representatives to discuss his negotiating position. We can make recommendations on other points that continue to concern people, as committee recommendations to the minister.

**Dennis Canavan:** I suggest that we continue to pursue the possibility of a direct meeting between the minister and his advisers, on one side of the table, and the Scottish Transport Group pensioners action committee and its advisers, on the other side.

**The Convener:** I thought that I just suggested that as the first recommendation that the committee should make. The matter is detailed and complex and must be resolved round a table by people who know what they are speaking about. Unless any committee member has a different opinion, I suggest that our first recommendation should be that the minister arranges a meeting between himself and his advisers, and the Scottish Transport Group pensioners and their advisers, to discuss his negotiating position with the Inland Revenue. Is that agreed?

**Members indicated agreement.**

**Dennis Canavan:** I want to clarify some matters with Derek Scott before he finishes his evidence. Do paragraphs 3 and 5 in the e-mail that he sent to Scottish ministers on 9 June remain relevant? We have established that the ex gratia payments will come not from the pension fund, but from the Treasury. Paragraph 3 of that e-mail says:

"it is the Government's act of privatisation which led to the individuals and their beneficiaries being excluded from future service in the STG Pension Fund after 1993."

Paragraph 5 refers to the possibility of treating the payments similarly to compensation for mis-sold pensions. You were correct to say that the employees were never employed directly by the Treasury, but they were employed by a publicly owned company. Is that relevant?

**Derek Scott:** Sharon Wood has answered that point. Her letter says:

"Turning to the issue of compensation for mis-sold pensions. The Executive cannot find any evidence to confirm that the STG played a part in mis-selling pension schemes to their pension scheme members."

We have not brought evidence of that. I was just drawing an analogy with what happened between 1988 and 1994, which was when the STG pensioners gave away their share of a surplus through a rule change.

Dennis Canavan referred to that last Tuesday. The rule change was passed at a meeting of members that was held in Edinburgh. That meeting was scheduled for 9.30 on a Tuesday morning, when most bus drivers, bus mechanics and office workers had a job to do. We have copies of internal memoranda of that time that were sent to employers. Employers were not to give staff paid leave of absence to attend that meeting. As a result, our intelligence is that fewer than 100 people, from an active work force of 9,000, attended the meeting to vote away the right to a share of the surplus.

That meeting took place before the Transport (Scotland) Act 1989 was passed. It was an important part of the process. That act delivered something that the rules allowed. I cannot find fault with the act or draw an analogy with mis-selling on that point.

We said when we came to the committee in May that we reserve our right to take legal action, and I am grateful that that point was put to the Deputy Minister for Enterprise, Transport and Lifelong Learning last week. His advice was that if legal action commences, the payments will stop. That is the sort of threat that has been made to us.

We do not want this morning's discussion to lead to further delay. We have been promised that letters will be sent to all eligible members by the

end of July, and we have been promised at least interim payments in August. That can all proceed even if we have not resolved the taxation issue or the question of the type of compensation that it is. At the end of the day, if we are able to prove that tax should not be paid, that tax can be recovered, so the tax issue is no reason to delay making payments to pensioners, some of whom may have only a few months to live.

**Dennis Canavan:** Despite the reply that you received from Sharon Wood—which, unfortunately, I have not seen—are there still options to be explored, such that the payments that are to be made to the pensioners might be tax free?

12:00

**Derek Scott:** Yes, but the Inland Revenue exemption for pensions mis-selling is specific—it is for people who are mis-sold private personal pensions. We are not dealing with private personal pensions; we are dealing with an occupational scheme. I drew an analogy about the timing being similar to the timing in which the changes were made to the detriment of the members we are representing today. Interestingly, that was an example where the Inland Revenue conceded that such compensation should be tax free.

I do not have an answer to Winnie Ewing's question on special circumstances. Each set of circumstances has to be explained to the Inland Revenue, and if one is successful, one is added to the list of special circumstances. If one is unsuccessful, the list of special circumstances remains relatively short. So far—and it is not my area of practice—I have come up with only a couple of examples: war widows compensation and pensions mis-selling. Another example concerned police pensions, where the Inland Revenue did not capitulate and pension adjustments were taxed, so it would not be the first time that pension-related payments have been taxed. However, the letter from Sharon Wood leads me to believe that the payments we are discussing are not pension payments; they are ex gratia payments from the Treasury, which was not the employer. That is a line of argument that I have not seen developed with the Inland Revenue.

**The Convener:** I am trying to find a way to bring this topic to a conclusion, because we have already agreed that the minister and his advisers should meet the pensioners and their advisers. We can make a number of other recommendations. First, we can recommend that this committee believes that the minister should seek to renegotiate the £50 million that has been agreed with the Treasury to be redistributed to the pensioners as part of the settlement. Do members agree?

**Members indicated agreement.**

**The Convener:** Secondly, we could recommend Fergus Ewing's point that widowers and widows should be treated equally in the final settlement. Is that acceptable to the committee?

**Members indicated agreement.**

**The Convener:** Thirdly, we could recommend that the payments should be tax free, because they are non-pension ex gratia payments, and it is open to the Inland Revenue to rule that they should be exempt from tax.

**Dr Jackson:** Could you also recommend that the minister should negotiate based on all the evidence that has been given to the Public Petitions Committee?

**The Convener:** I was just saying that. Since the Inland Revenue has indicated to the committee that it would be prepared to renegotiate the issues if it was asked to do so by Scottish ministers, we are recommending that Scottish ministers should seek those renegotiations. Have I missed any points?

**Rhoda Grant:** Could we emphasise that we would like the meeting between the pensioners and the minister to take place first, because they are the people who know the details?

**The Convener:** Absolutely. That meeting must happen before the minister speaks to the Inland Revenue or anybody else.

**Dennis Canavan:** And should happen as soon as possible.

**Dr Ewing:** And should include their adviser.

**The Convener:** Yes.

**Fergus Ewing:** Perhaps we could ask the minister to remind his counterpart Gordon Brown of Mr Brown's remarks in an article in the *Daily Record* on 12 October 1989. He asked who would receive the surplus of the pension scheme, and stated:

"NOT the workforce ... NOT the ... pension fund, either.

*But the Government.*

It makes you wonder just who privatisation is for."

Perhaps it would be helpful to remind Mr Brown of the remarks that he made when he did not hold such an important position.

**The Convener:** We cannot write the minister's brief for him; the points that he makes are entirely up to him. However, I forgot to say that I am concerned about the minister's position that the payments will be suspended if the pensioners take legal action. Derek Scott's evidence suggests that that was not the case with the National Bus Company. Even though there was a legal

challenge, payments continued to be made.

**Derek Scott:** The legal action started in 1995 and was concluded in October 2001. The interim payments began in August 2000. However, I suppose that that decision was made because the legal action was proceeding in a particular way. Even though the case had not reached a final determination, the authorising parties were sufficiently confident about the outcome to start making interim payments, which were given first to pensioners in greatest need. Although that is not a totally compelling precedent, it serves as an example of how the process did not come to a dead halt just because the case was going through the courts.

**The Convener:** The petitioners would have the committee's full support if they pursued that issue with the minister at their meeting.

Does anyone have any final comments?

**Dr Jackson:** I just want to thank the committee for all its help.

**The Convener:** Thank you. I also want to thank Mr Scott for helping us through a very technical and difficult subject.

## Inadmissible Petitions

### Royal Cornhill Hospital (Patient Council) (IP25)

**The Convener:** The first petition under agenda item 3 is IP25, from Mr Mike Webster on behalf of Aberdeen mental health reference group, which called on us to investigate NHS Grampian's alleged failure and reluctance to implement a priority recommendation made by the mental health and well-being support group in relation to the introduction and funding of a patient council within Aberdeen's royal Cornhill hospital.

Although the Parliament may have a legitimate interest in more general issues relating to the procedure surrounding the submission and examination of such proposals by health boards, it is not able to interfere with or overturn the individual executive decisions of public bodies in Scotland. On that basis, it is recommended that the committee should agree that the petition is inadmissible. However, the committee may wish to advise the petitioners to pursue the matter further with NHS Grampian, the Scottish Executive and their local MSP.

Are members agreed?

**Members indicated agreement.**

### School Closures (Rayne) (IP26)

**The Convener:** The next petition is IP26, from Ms Fiona Cruickshank, which calls for the Scottish Parliament to take the necessary steps to prevent the closure of both Rayne North Primary School and Old Rayne School, as proposed in a current public consultation by Aberdeen City Council. Again, because the petition concerns an individual executive decision of an elected local authority in Scotland and is subject to public consultation, it is recommended that we agree that the petition is inadmissible. However, we have received additional letters from the petitioners indicating their concern about the process by which Aberdeen City Council has reached its decisions. As a result, they have agreed to re-enter into negotiations with the clerks about redrafting the petition. Do members agree to ask the petitioners to resubmit the petition in an admissible form?

**Members indicated agreement.**

## Annual Report

**The Convener:** The final item on the agenda is our consideration of the annual report that has to be issued by every parliamentary committee. Members have a draft copy of our report. We have to keep it fairly brief, because we are limited to 750 words. Do members have any comments?

**Dr Ewing:** Just that the report is excellent. I want to thank the clerks for their work.

**The Convener:** Once again, they have done sterling work.

**Dr Ewing:** I am proud to be a member of this committee.

**Phil Gallie:** I do not differ from that view. However, it would be interesting to have some indication of how many petitions have been cleared and how many are still outstanding.

**The Convener:** We can add that information. I want to thank the clerks for another excellent piece of work.

Do members agree the draft report?

**Members indicated agreement.**

**The Convener:** As there is no other business, I thank members for their attendance and wish everyone a good and happy recess.

*Meeting closed at 12:08.*



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