

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 17 December 2002  
*(Morning)*

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

Applications for reproduction should be made in writing to the Copyright Unit,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The  
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now  
trading as The Stationery Office Ltd, which is responsible for printing and publishing  
Scottish Parliamentary Corporate Body publications.

---

# CONTENTS

Tuesday 17 December 2002

|   | Col. |
|---|------|
| <b>ITEM IN PRIVATE</b> .....                                  | 2591 |
| <b>CURRENT PETITIONS</b> .....                                | 2592 |
| Commissioner for Bullying (PE412) .....                       | 2592 |
| Aphasia (PE 475).....   | 2593 |
| Public-private Partnerships (Schools) (PE526 and PE527) ..... | 2594 |
| Landfill Sites (PE541 and PE543) .....                        | 2595 |
| Housing Stock Transfer (Glasgow) (PE545 and PE553) .....      | 2596 |
| Housing Stock Transfer (Hamilton) (PE562) .....               | 2597 |
| <b>NEW PETITIONS</b> .....                                    | 2599 |
| Taxis (Use by Disabled People) (PE568) .....                  | 2599 |
| Borders Railway (Stow Station) (PE570).....                   | 2608 |
| Further Education (Management Practices) (PE574) .....        | 2619 |
| Multiple Sclerosis (Respite Homes) (PE572) .....              | 2626 |
| Adults with Incapacity (Scotland) Act 2000 (PE573) .....      | 2637 |
| Public Bodies (Complainers' Rights) (PE578).....              | 2643 |
| <b>INADMISSIBLE PETITION</b> .....                            | 2648 |
| Penicuik High School (Library Development) (IP35) .....       | 2648 |
| <b>CONVENER'S REPORT</b> .....                                | 2648 |

---

## PUBLIC PETITIONS COMMITTEE

20<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

Scott Barrie (Dunfermline West) (Lab)  
Irene McGugan (North-East Scotland) (SNP)  
Mrs Lyndsay McIntosh (Central Scotland) (Con)

\*attended

### CLERK TO THE COMMITTEE

Steve Farrell

### ASSISTANT CLERK

Joanne Clinton

### LOCATION

Committee Room 1

### THE FOLLOWING ALSO ATTENDED:

Alan Buchan  
Douglas Gilroy (Scottish Accessible Transport Alliance)  
Christine Grahame (South of Scotland) (SNP)  
William Jamieson  
Jeff McCracken  
Donald Mackinnon  
David Mundell (South of Scotland) (Con)  
Alan Rees (Scottish Accessible Transport Alliance)  
John Scott (Ayr) (Con)  
Jean Stock  
Muriel Williams (Scottish Accessible Transport Alliance)  
Jennifer Woods  
Patrick Woods



## Scottish Parliament

### Public Petitions Committee

*Tuesday 17 December 2002*

*(Morning)*

[THE DEPUTY CONVENER *opened the meeting at 10:15*]

### Item in Private

**The Deputy Convener (Helen Eadie):** I welcome everyone to this meeting of the Public Petitions Committee. We have received apologies from John McAllion MSP, who unfortunately cannot be with us this morning, so I have had to step into his shoes. The committee sends its best wishes to him—I am sure that he will be back with us soon.

Do members agree to take agenda item 4, on the appointment of an adviser, in private?

**Members** *indicated agreement.*

## Current Petitions

### Commissioner for Bullying (PE412)

**The Deputy Convener:** The first current petition is PE412, on establishing a commissioner for bullying in Scotland. We have received a response from the Executive, which members should consider.

The Executive appears to be confident that the wide range of initiatives that are already being taken forward to tackle youth crime will help to address the specific issue of intimidation of adults by children and young people. The Executive has made it clear that it considers the current initiatives to be the way forward and does not support the petitioners' suggestion that a commissioner for bullying should be introduced. It also takes the view that the children's hearings system provides sufficient flexibility to allow it to deal appropriately with cases involving the intimidation of adults and similar behaviour.

The various Executive responses appear to be reasonable and it is therefore suggested that there would be little merit in giving further consideration to the petitioners' proposal. It is recommended that the committee should agree to copy the most recent response from the Executive to the petitioners and take no further action.

I would like to hear the views of members.

**Phil Gallie (South of Scotland) (Con):** The committee will certainly hear my views. The Executive response gives a rosy picture that is not factual in respect of how children's panels are working and in its hopes and aspirations for the treatment of young criminals. I am afraid that I do not accept the Executive's assurances. Whatever is done with the petition, I want to register that I cannot accept the Executive's comments.

**The Deputy Convener:** The petition is about more general issues of youth crime.

**Phil Gallie:** A course of action has been suggested, but the Executive's response is unsatisfactory. I do not believe that the Executive is dealing with the matter. I do not know whether a commissioner would be the answer to the problem, but I would like the petitioners to be told that there was a minority view on the committee that the Executive is not dealing with the situation and that the matter needs to be considered further.

**The Deputy Convener:** The petition deals with the general issue of a commissioner for bullying. You are unhappy and I hear what you are saying, but we must address the petitioners' request. I am sure that your views will be recorded in the *Official Report* and the committee is happy that they will be.

**Dorothy-Grace Elder (Glasgow) (Ind):** I think that the Executive is moving towards introducing a children's commissioner and I would have thought that the bullying of children by children should be the commissioner's responsibility. Perhaps the petitioners should be told about that.

Although the Executive has made progress in tackling bullying in the playground, I agree with Phil Gallie that the bullying of adults by children in the community and many other forms of bullying—it is unfortunate that the petition does not include workplace bullying—continue to be a major issue throughout the British isles. Bullying is a nightmare. The Executive has not taken that on board.

**Rhoda Grant (Highlands and Islands) (Lab):** I suggest that we copy the petition to the Education, Culture and Sport Committee, which has been dealing with the Commissioner for Children and Young People (Scotland) Bill. It could examine the issues that the petition raises and could assess whether the children's commissioner could fulfil some of the roles that the petitioners seek.

**The Deputy Convener:** That would be a reasonable way to proceed, if members are agreeable.

**Dorothy-Grace Elder:** I do not know whether my suggestion is within the committee's remit, but the petitioners might consider getting an MSP to raise the subject in a members' business debate. There is one member in the room who might be interested in securing a debate on bullying.

**The Deputy Convener:** We will take on board the suggestions that have been made. It is proposed that we take no further action on the petition and that we copy it to the Education, Culture and Sport Committee. I am sure that members have noted Dorothy-Grace Elder's suggestion. Is that agreed?

*Members indicated agreement.*

### **Aphasia (PE475)**

**The Deputy Convener:** PE475, which concerns recognition of aphasia, was submitted by Cecilia Yardley. The Executive has provided a more comprehensive response to our second request for information. It claims that recording the levels of treatment for aphasia is difficult and it does not intend to conduct research to establish the number of sufferers, on the grounds that that would be costly and of limited practical use. The Executive also makes it clear that it is content with the current situation, whereby national health service boards decide how best to deploy the resources that are allocated to them to meet the health care needs of those in their areas. The Executive argues that if it were to issue instructions on

specific allocations for aphasia services, it would be difficult to resist similar arguments in relation to other conditions.

The Executive also gives details of its work on the development of new models of care, service design and delivery and recruitment and retention of allied health professional staff in Scotland, including speech and language therapists. Additional student places have been made available for that group of professions.

It is suggested that the committee should agree to seek the petitioners' views on the contents of the Executive's response before considering what further action to take on the petition. Do members agree to follow that course of action?

*Members indicated agreement.*

**Dorothy-Grace Elder:** I want to make the point that PE475 again shows up the paucity of real statistics on health, which many other sources have told us about. Although we handle a vast health budget, we often do not have an accurate idea of the numbers of people who are affected by particular ailments. When one asks a parliamentary question, one is usually told that the figures are not available centrally. That is true. We must consider the gathering of proper statistics on all sorts of conditions in the future. That would allow more accurate targeting of funds. The paperwork suggests that the Executive's position on aphasia is the same as the British position. That position is the same on almost every ailment.

### **Public-private Partnerships (Schools) (PE526 and PE527)**

**The Deputy Convener:** PE526 and PE527 were submitted by Mr Jeff Knight on behalf of the Rayne North Action Group. The petitions call for a review of public-private partnership funding and the introduction of audit procedures for future public-private partnership bids.

It is suggested that, before considering the detailed responses that the Executive and the Accounts Commission for Scotland have provided, the committee should agree to seek Aberdeenshire Council's comments, as the Executive suggests. The committee would have to make it clear that it was not seeking to interfere with the council's specific proposals for the closure and replacement of schools, but was merely requesting the council's formal comments on the concerns that the petitions raise. It is further suggested that we agree to copy the responses that we have received to the petitioner and to the clerks to the Education, Culture and Sport Committee and the Finance Committee for information only.

Do members agree to both those suggestions?

*Members indicated agreement.*

### **Landfill Sites (PE541 and PE543)**

**The Deputy Convener:** We move on to PE541 and PE543. The planning application relating to PE541 has been withdrawn, which I am sure will please the petitioners from the Roslin Community Action Group.

The Executive and the Scottish Environment Protection Agency both appear to be content that the current framework for addressing the impact of landfill sites on the health and environment of surrounding communities through the planning process is adequate and effective. In addition, the proposals contained in the Executive's consultation paper "Safer Landfill" will increase regulatory standards in relation to landfill sites, leading to better environment and health protection. However, it is suggested that the committee should seek a more independent view on the adequacy of current arrangements before reaching a view on whether any further action should be taken. It is therefore recommended that the committee request comments from the Chartered Institution of Wastes Management and the Institute of Environment Management and Assessment, and consider the petition again when responses have been received. In the meantime, the committee may also wish to pass copies of the responses received to both sets of petitioners and to the clerk to the Transport and the Environment Committee for information only. Do members have any views?

**Dorothy-Grace Elder:** I would also suggest that Friends of the Earth Scotland be contacted.

**The Deputy Convener:** Perhaps we should also contact Scottish Environment LINK, another very worthwhile organisation that we could approach for an independent view.

**Phil Gallie:** Is Friends of the Earth Scotland not part of Scottish Environment LINK, which is a kind of amalgam?

**The Deputy Convener:** It is an umbrella organisation.

**Dorothy-Grace Elder:** It could give an overarching view on this very important subject.

**The Deputy Convener:** Perhaps we can leave it to the committee clerks to clarify that point and seek advice. An independent view would be worth while. I see heads nodding, which seems to indicate agreement to the actions that are being suggested. If members agree, we shall move on to the next current petition.

### **Housing Stock Transfer (Glasgow) (PE545 and PE553)**

**The Deputy Convener:** PE545 is from Miss M McDonald on behalf of the Glasgow campaign against housing stock transfer and PE553 is from Mr John Carracher on behalf of the Scottish tenants a real choice campaign. Both petitions relate to housing stock transfer.

The Executive considers the housing stock transfer ballot in Glasgow to be valid and is content that it was conducted in line with all statutory requirements. It would, of course, be open to the petitioners to challenge the validity of the ballot in the courts. That is an option that they have considered but have not yet pursued. The Executive is also content that the procedures that are in place for the organisation and running of such ballots are in order, as is the mechanism for the funding of stock transfer programmes.

The Executive is also clearly not in favour of exploring any alternative method of writing off housing debt in Glasgow, although it makes it clear that councils have alternative options available to them for improving their housing stock. In addition, it would seem extremely unlikely that the Social Justice Committee would see any merit in examining the issues raised in the petition, given that it has already conducted a major inquiry following which it endorsed the principle of stock transfer. On that basis, it is suggested that the committee could agree to take no further action in relation to PE545 and PE553, other than to pass a copy of the Executive response to both petitioners and to the clerk to the Social Justice Committee for information only. Do members have views on that?

**Dr Winnie Ewing (Highlands and Islands) (SNP):** I have a question about the suggested action. On what ground could the petitioners challenge the validity of the ballot? Is it a question of a majority or a minority?

**Dorothy-Grace Elder:** The ballot gave no alternative. It did not propose a council deal as an alternative to the stock transfer, which would have given the voters a choice.

**The Deputy Convener:** The clerk advises me that it had to do with the title of the organisation as shown on the ballot.

**Dr Ewing:** So there was a question of validity.

**Dorothy-Grace Elder:** The word "Limited" was not included. That implied that the Glasgow Housing Association was a normal housing association.

10:30

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

**Dorothy-Grace Elder:** I am sorry to be a nark, but I wonder whether we should pass the petitions to the Justice 2 Committee. The Social Justice Committee might take a rather different view to that of the Justice 2 Committee. The petitions touch on questions of public accountability and of treating the public fairly. The date of the housing stock transfer has changed three or four times. There are real problems with it and there is real discontent in Glasgow over how the matter has been handled and over how things will go in future. I wonder whether the Justice 2 Committee might be minded to have a look at the petitions.

**The Deputy Convener:** The petitions are about the ballot itself. PE545 points out that the Glasgow Housing Association was fined £100 by the Financial Services Authority for not using its full registered title in adverts and letters, but there was no evidence to suggest that there had been a deliberate attempt to mislead tenants. As the issue is over the ballot itself, we have no option but to agree to the course of action that is set out in our papers. If members are agreeable to that, we will move on.

*Members indicated agreement.*

### **Housing Stock Transfer (Hamilton) (PE562)**

**The Deputy Convener:** PE562 is from Mr John Carracher, on behalf of the South Lanarkshire Tenants Federation. It is also on stock transfer. Members are aware of the background to the petition and of the circumstances surrounding the housing stock transfer in Hamilton. It is suggested that it would be inappropriate for the Parliament to interfere in the decisions or actions of Scottish Homes—now Communities Scotland—in relation to the specific circumstances surrounding the housing stock transfer in Hamilton.

The petitioners are calling for an option for Scottish Homes tenants to transfer to a local authority landlord. Such an option would be available where the local authority in question was in a position to acquire housing stock and had expressed an interest in doing so. In the case of the stock transfer in Hamilton, however, the local council is not in such a position.

In addition, the Executive has confirmed that it is satisfied that proper procedures have been followed and that approval for the ballot of tenants has been given. It is therefore suggested that the committee should agree to take no further action in relation to the petition, other than to pass copies of the papers to the petitioner and to the clerk to the Social Justice Committee for information only. Do members agree to that course of action?

**Dorothy-Grace Elder:** I would once again request that the papers be passed to the Justice 2

Committee, as there is so much discontent throughout Scotland about the way in which the stock transfers are being handled. We are talking about billions of pounds of public money.

**The Deputy Convener:** But that is not the committee that deals with the whole issue of the housing stock transfer.

**Dorothy-Grace Elder:** I am aware of that.

**The Deputy Convener:** We would have to provide justification for passing the petition to that committee.

**Dorothy-Grace Elder:** It is more of a public information and public consultation issue, and relates to the fact that the public are not given any choice on any ballot paper.

**The Deputy Convener:** But I think that it is the Social Justice Committee that would have to deal with the matter; if we referred the matter anywhere, it would be to that committee. The matter has been through all the processes, as I said in relation to PE545 and PE553. I do not see any particular reason to go down the route that Dorothy-Grace Elder suggests.

**Phil Gallie:** I will make a suggestion that may help Dorothy-Grace Elder in relation to her comments on the petitions concerning the Glasgow stock transfer, although I go along with what the convener is proposing now. I suggest that if people want to change the focus of their petitions, they might wish to talk to the clerk with a view to lodging a petition that addresses the issues that Dorothy-Grace believes to be of concern to them.

**Dorothy-Grace Elder:** That is a good idea.

**The Deputy Convener:** That is a reasonable proposition. Is that agreed?

*Members indicated agreement.*



## New Petitions

### Taxis (Use by Disabled People) (PE568)

**The Deputy Convener:** Some old friends of mine, Alan Rees, Douglas Gilroy and Muriel Williams from the Scottish Accessible Transport Alliance, will present PE568. Given that 2003 is the European year of people with disabilities, it is topical that the committee should receive this petition and members are particularly pleased to welcome the petitioners to Parliament this morning.

**Douglas Gilroy (Scottish Accessible Transport Alliance):** Good morning. Muriel Williams is the vice-chairperson of the Scottish Accessible Transport Alliance and Alan Rees is its secretary. I thank the committee for agreeing to hear our petition. We look forward with anticipation to a successful outcome.

**Alan Rees (Scottish Accessible Transport Alliance):** As members can see, our petition is based on a survey of the provision of taxis that are accessible to people with disabilities in Scotland. I do not know whether members received a copy of the survey, which was undertaken because of the knowledge gap in Scotland. There are 8,000 licensed taxis in Scotland and only a small percentage of them—approximately a third—are accessible to the disabled.

For Muriel Williams and her colleagues to be able to get in and out of a taxi, the cars must be fitted with ramps and other measures. The survey revealed a shortfall in accessible taxis and the fact that most of those that are accessible are based in the main cities of Edinburgh, Glasgow, Aberdeen and Dundee. The survey also revealed that only 14 of the 32 local authorities in Scotland operate taxicard concession schemes. The survey shows that accessible taxis form an important part of transport provision for disabled people. Because of that, the issue must be considered by Parliament. If concession schemes were nationwide, approximately 70,000 people would benefit.

The main problem is that, when the Strathclyde region was dissolved, the successor authorities did not take up the taxicard schemes as adopted by other authorities. Therefore, taxicard provision is subject to a notable east-west split. Taxicard schemes are not available consistently throughout the west of Scotland. That problem must be addressed. The 1994-95 survey in Strathclyde found that approximately 1.4 per cent of the population would benefit from a region-wide taxicard scheme.

Muriel Williams will emphasise the importance of taxi accessibility to people such as her who, because they are unable to access buses, would

benefit from concessions similar to those afforded on buses and are entitled to some assistance when travelling by taxi.

**Muriel Williams (Scottish Accessible Transport Alliance):** As Alan Rees said, although buses are becoming more accessible for people such as me, most of the infrastructure is not there. We can have accessible buses if we like, but if I cannot get from the house to the bus stop, the accessible bus is not much good to me. I have to rely on other forms of transport and taxis are a mainstay.

I am fortunate that I live in a major conurbation where taxis are accessible, but, as Alan Rees said, accessibility is not uniform throughout Scotland. Taxicard schemes vary widely. Some are generous and some are somewhat meagre. It would be beneficial all round to disabled people such as me if a uniform scheme could be devised.

**Douglas Gilroy:** I live in West Dunbartonshire, which comprised two district councils under regionalisation but is now one licensing authority. Prior to the unification, Clydebank District Council adopted a policy of having wheelchair-accessible taxis, so they now exist in Clydebank. However, in the Dumbarton, Balloch and Alexandria area, which includes one of Scotland's major tourist areas—Loch Lomond and the first national park—after six or seven years of campaigning we have succeeded only in getting two wheelchair-accessible taxis. That happened in the past two months.

It is totally unacceptable that we now have a situation in which we have to ask a wheelchair-accessible taxi to do a 20-mile journey to take somebody a few hundred yards along the road. That is not practical or financially feasible. As we have indicated, various surveys have shown that taxis are one of the major door-to-door modes of transport available to any member of the public. The fact that we are excluded from using that mode of transport because we are disabled is not satisfactory in this century, never mind years ago.

**Dr Ewing:** Do you know whether any financial incentive is given to a taxi owner to have his taxi adapted for wheelchair use?

**Alan Rees:** I am not aware of any such incentive. The taxi trade has to bear the cost of purchasing new taxis. Second-hand black cabs are now available, which are not as expensive to purchase as the new ones. The taxi trade has a problem with the cost of purchasing and adapting vehicles to make them accessible. The Parliament might like to consider whether there is any way in which the taxi trade could be assisted to purchase or adapt vehicles to make them more accessible.

The regulations under the Disability Discrimination Act 1995 have not been applied to

the taxi trade. The Government was planning to apply them in 2002, but that has been delayed in order to sort out the differences between the views of the taxi trade and the views of the disabled community. The Government is examining other options. The matter is reserved, but the Parliament would have to consider it. Some way of assisting the taxi trade to make vehicles more accessible would be very welcome.

**Dr Ewing:** Do you envisage a clear grant for any licensed taxi in any part of Scotland to do that? Do you think that that would work, if funding were available?

**Alan Rees:** Yes. The taxicard would be of assistance where it does not exist currently, because it offers the taxi trade more trade. Having more people use taxis and being offered an incentive would encourage the taxi trade to make more accessible vehicles available.

**Dorothy-Grace Elder:** This is an excellent petition on a first-rate subject. Are you talking about private-hire vehicles as well as black hackney cabs?

**Alan Rees:** We are talking mainly about black cabs.

**Douglas Gilroy:** Our proposal applies to licensed taxis. There are appropriate saloon vehicles. For example, one type of Mercedes-Benz vehicle can take two wheelchairs—it is a large limousine-style car, but it is a Mercedes. Normally, they are five or six-seater vehicles, but they have the capacity to take two wheelchairs.

10:45

**Dorothy-Grace Elder:** So you wish to include private-hire vehicles as well as black hackney cabs in your campaign.

**Alan Rees:** Yes. Particularly in rural areas and for longer distances, many people prefer saloon cars, so we must consider private-hire vehicles.

The survey shows that Dumfries and Galloway Council has the most generous taxicard scheme in the country. It offers 14 trips a week, which is a double journey every day, although the offer does not need to be taken up in full. The survey reveals that, although one authority offers that level of support, other authorities offer only two trips a week. Passengers still must pay about 50 or 60 per cent of the cost, so there is a limit to the number of journeys that can be taken. We want a national standard to be set so that the service is uniform and not, as with other services, a postcode lottery.

**Phil Gallie:** At present, the issue is left up to local authorities. We must be careful that the Parliament does not usurp local authority powers

and centralise everything, albeit that in recent times there has been an example of that in respect of free transport. I guess that in Dumfries and Galloway the bulk of cars that are used in the taxi service are private-hire ones.

**Alan Rees:** They are saloon cars.

**Phil Gallie:** Have any of them been adapted for wheelchairs?

**Alan Rees:** I will have to check with the survey, but some have been adapted. Dumfries and Galloway also has a limited accessible bus service. According to my survey—it was carried out in 2001, so the situation might have changed—there is one adapted car in Dumfries and Galloway.

**Phil Gallie:** Dumfries and Galloway is a huge region, but there is only one adapted private-hire car. If we were to concentrate on private-hire cars, we might do the owners a disservice by introducing a mandatory requirement for them to provide wheelchair access.

**Muriel Williams:** It would not necessarily benefit disabled people if all cars were converted to the same standard as the TX1 black cabs, because many disabled people find it difficult to access those cabs and would prefer to use a private-hire car. That is a double-edged sword.

**Douglas Gilroy:** That is why we have requested that 50 per cent of the vehicles, not all of them, should be wheelchair accessible. Our proposal would benefit not only people in wheelchairs. For example, I am blind and my wife, who is in one of the seats behind me, is also blind. Normally, if someone goes into a saloon vehicle with a guide dog, they move the front passenger seat back and put the dog underneath the dashboard. It is extremely difficult to take another dog in the car, for example by getting it in the back. Our proposal would be of benefit in instances that do not involve wheelchairs. If the Mercedes vehicle that I mentioned is big enough to hold two wheelchairs, it can hold two guide dogs or other assistance dogs.

**Phil Gallie:** I appreciate that point. However, I wanted initially to clarify the situation in relation to wheelchairs. If you try to insist on any ratio in private-hire cars, you could well give rise to the disservice that I mentioned. As for adaptations to saloon cars, we should bear in mind the fact that the private-hire trade tends to use a range of cars. Are you suggesting that, to achieve the level of adaptation that you want, there should be fixed sizes for private-hire cars?

**Alan Rees:** You are asking questions that we find it difficult to answer and to which even the Government does not know the answers. That is why the regulations on taxis under the Disability

Discrimination Act 1995 have been held up. No one has been able to crack such big problems. How do we give a varied market advice on adapting private-hire vehicles or cabs? Indeed, the Government itself has been wrestling with the problem of how to advise on accessibility.

In September, the Department for Transport in London issued a circular to authorities in England and Wales that contained some guidance on the sort of questions that licensing authorities should ask on this subject. However, that approach has not yet been replicated in Scotland, which is a shame. In the past, the Executive has issued similar circulars, but it has told me that, on this occasion, it is waiting to find out what the other options from London might be. I am happy to furnish the committee with a copy of that circular.

**The Deputy Convener:** I can confirm that I have a copy of the circular and have read it. It is a very helpful report and, as we approach the EU year of people with disabilities, I am sure that members will want to see what they can do to assist matters.

**Dorothy-Grace Elder:** I want to clarify one point. I take it that you are not asking for whole taxi and private-hire fleets to be adapted. I happen to know that Stirlingshire is a very good area in that respect and I would like to find out whether the sort of case that I am about to describe is fairly common in your experience. An elderly person who is taken every week to a place that is only a couple of miles away but is not on a bus route will not need to have a whole car adapted, but they might not know someone with a car to take them. In that case, the cab driver—the human being who drives the car—is terribly important for helping that person into the car and giving them a shoulder to lean on. They cannot get such a service from a bus driver, who is a one-man operation. Is that the kind of category of person you are thinking of, not just people in wheelchairs?

**Alan Rees:** Yes.

**Muriel Williams:** We are trying to be inclusive. Unfortunately, just as you cannot standardise vehicles, you cannot standardise disabilities. As a result, we have to find a way of incorporating all those aspects.

**Alan Rees:** One of the problems is the lack of standardisation. People who do not have difficulties are pretty sure that they can get into whatever taxi arrives. However, people with particular problems who phone for a taxi are not sure whether they will be able to access it. As a result, they need specialist lists to tell them whether taxis have the adaptations that they require. However, now that there is a mixed fleet, the issue of access has caused added problems. People need to know that particular firms can

supply the vehicles that they need, which makes ordering a taxi even more difficult. The area is very complex and we are asking the Parliament to help us to find a way through it.

**The Deputy Convener:** This is an area where the Scottish Parliament and local authorities throughout the land could specify exactly what they want companies to provide when they issue contracts and tenders for business. For example, the Parliament has a contract with a company that provides us with taxi services. Perhaps the Parliament could look at the standards and specifications of the taxis that come. That could be done not just by us but right across local government. We can use many ways other than just straightforward legislation to achieve our end of helping people with disabilities.

What makes people disabled is not really the people themselves but society, which does not provide the appropriate ramps and infrastructure. Manchester City Council is to be applauded for its provision of special ramps for all tram stops throughout the city. The facility that Manchester has provided is best practice and could be replicated across the country so that it replaced the sort of buses that we have.

Having had a double hip-replacement operation, I can tell the difference between the standards of different taxis. People can be affected by disability even if they are not in a wheelchair. For those who are limited in the extent to which they can bend down, the height of the taxi can also cause problems. There are many aspects to the issue. I want to see the Parliament do as much as it can to explore the issues.

**Dr Ewing:** I have a question arising from the evidence. Reference was made to the fact that the Disability Discrimination Act 1995 did not apply to taxis in 2002. Where is that stated?

**Alan Rees:** The Disability Discrimination Act 1995 allows the Government to make regulations that specify minimum standards on a whole range of vehicles, including buses and coaches. However, the Government has not issued regulations on taxis. Many local authorities are loth to issue regulations on taxi adaptations and design because they are waiting for the Government to lay regulations. The problem is that the Government has not been able to do that. We are somewhat in limbo because the Government has issued guidance, but not regulations.

We need to work with the taxi trade and with local authorities to come up with agreeable specifications and standards. The Scottish Parliament and the Scottish Executive should help the taxi trade by encouraging local authorities and by providing them with the financial backing to adopt taxicard schemes and to help the taxi trade to make the necessary adaptations.

**Douglas Gilroy:** The letter to which Alan Rees referred, which was issued by the Department for Transport in London on 3 September, certainly implies, if it does not actually state, that the licensing authorities now have sufficient information and detail on which to proceed.

**The Deputy Convener:** I sense that members are beginning to run out of questions. I thank the witnesses for answering our questions this morning and for bringing a petition to the Parliament that raises many general issues. I know that committee members will be keen to see how they can promote the issues in a way that is helpful and constructive for disabled people throughout Scotland. The witnesses are welcome to stay and listen while members consider what to do with the petition.

The recommendation is that the committee agree to write to the Scottish Executive to seek its views on the issues that the petition raises. In particular, we could request an indication as to when the Department for Transport is likely to be in a position to introduce taxi accessibility regulations under the Disability Discrimination Act 1995. We could ask the Executive whether such regulations would be likely to ensure that at least half the vehicles in licensed taxi fleets would be fully accessible for wheelchair users and other disabled people.

In addition, we could ask for the rationale behind the Executive's decision not to write to Scottish local authorities in similar terms to those used by the Department for Transport, which suggested that local authorities review the types of vehicles that operate in advance of any national regulations. We might also want to ask whether local authorities are addressing the issue of providing accessible travel options for disabled people through local transport strategies, as they were requested to do by the Executive.

We could also request details on whether the Executive has any plans to develop a standard concessionary scheme across all local authority areas for disabled people who use taxis, so as to ensure that the eligibility criteria and amount of subsidy available across Scotland is consistent. Alternatively, the Executive could encourage all local authorities to adopt their own taxicard schemes.

The committee may also wish to pass a copy of the petition to the clerks to the Transport and the Environment Committee and the Equal Opportunities Committee, for information only at this stage. I seek members' agreement to those recommendations and ask whether they have additional recommendations.

11:00

**Dr Ewing:** Can we also write to the Convention of Scottish Local Authorities?

**The Deputy Convener:** What would you like to ask COSLA?

**Dr Ewing:** The same kind of questions. COSLA is meant to represent local authorities. The evidence showed that many people visit the national park—I believe that 75,000 people a year go to Loch Lomond. I suppose that not all those people are from Glasgow; they must come from many parts of Scotland. There is now a new authority—the national park authority. Perhaps we could draw that authority's attention to the problems of people who need to get a wheelchair into a taxi. It may have a view on how to deal with the huge number of visitors that there will be in that part of Scotland. I know that VisitScotland offers all kinds of help to disabled people who seek its advice on holidays. I wonder whether VisitScotland could be told that we see the issue as a serious problem.

**The Deputy Convener:** Certainly. Those suggestions seem to be getting the agreement of other members, as I see that they are nodding their heads.

**Rhoda Grant:** Could we also ask the Executive whether local enterprise companies could give taxi owners grants or assistance to upgrade their taxis? They could do that as part of their business development programme.

**Dorothy-Grace Elder:** There is a danger in waiting for the Department for Transport to do something, as that could give the Executive a good excuse to sit on its hands for a few years. Possibly the most important request that we make is to ask whether the Executive plans to develop a standard concessionary scheme for disabled people involving taxis across all local authority areas. We should press the Executive hard on that point now because there is no reason why the scheme should not be standardised, even if there is currently a problem in respect of adaptations. People are not getting the service in some parts of Scotland.

**The Deputy Convener:** We can certainly formulate that into the words that we use in the point in the recommended actions about the rationale behind the Executive's decision not to write to local authorities in Scotland on similar terms to those used by the Department for Transport to suggest that local authorities review the types of vehicles that can operate in advance of any national regulations. We can embrace your point in that question.

My only caveat is on Winnie Ewing's suggestion about writing to COSLA. We all know that COSLA

currently has some difficulties with gathering information, but we could ask it how best to gather such information. We are happy to pursue other suggestions that members have made.

**Phil Gallie:** It is easy to be sympathetic to the petition, but I think that the cost implications of the proposal would be pretty high, particularly for local authorities, many of which are under considerable stress. In asking the Scottish Executive to make suggestions to local authorities, I feel that any such suggestions would have to be followed up with some form of cash support. The Executive would also have to deal with the different requirements of rural communities and urban communities. I am cautious about the situation in Dumfries and Galloway. It was suggested that that is an area where a good service is being provided. If we were to become too prescriptive and demand that 50 per cent of taxis are accessible for wheelchair users, that might even end up causing more problems for the disabled.

**The Deputy Convener:** I might have been inclined to agree with Phil Gallie in the past, until I became the spokesperson for roads and transportation on Fife Council. The detailed work that I did highlighted the issues for me. I will give the example of the bus route between Anstruther and Dundee. That was subsidised by the local authority to the tune of £28,000 and the bus was fairly empty most of the time. We have to examine all the subsidies that we give to public transport throughout Scotland and consider whether we can spend the money differently so that transport is more effective and inclusive. That is not always about asking for more money; it is about considering how we might spend money differently. I am sympathetic to your point.

**Phil Gallie:** I would go along with that in the context of an overall review of what is happening in this field, but that is slightly different from what we were being asked originally.

**Dr Ewing:** In Moray, where I live, some taxis—but not many—have wheelchair access. I believe that those taxi companies arranged that themselves. However, Moray Council regulates the fares that licensed taxis can charge. Could there be a recommendation that local authorities should be able to authorise an additional fare for wheelchair access?

**The Deputy Convener:** That is the sort of issue that we could explore before we return to the petition at a future meeting. However, I am sure that there is a consensus in the committee that the petition should be given a fair wind and that everything that can be done should be done. Once again, I ask members who have not signed my motion on the European year of people with disabilities to do so. I passionately support the view of disabled people that society does not do enough to include them in everything.

**Dorothy-Grace Elder:** We must all sign your motion. Perhaps we should also write to representatives of the hackney cab and private-hire cab companies in Scotland. People with disabilities are good customers for them, especially as they often use taxis during the day, which can be one of the slacker periods for the trade. Those companies might therefore be helpful.

**The Deputy Convener:** That is a good suggestion.

The message to everyone across Scotland who is watching us today is: start thinking about disabled people and help to make their rights a reality.

I thank the petitioners for attending. We will be in touch with you when we get feedback on the issues that have been raised. We always like to close the loop on any petition that comes to us. We pride ourselves on getting answers for petitioners, even though petitioners might not always like the answers that are given.

**Dr Ewing:** Are your guide dogs here today?

**Douglas Gilroy:** No.

**Dr Ewing:** I love guide dogs. They are beautiful creatures.

### **Borders Railway (Stow Station) (PE570)**

**The Deputy Convener:** The next petition, from William Jamieson, calls on the Scottish Parliament to take urgent steps to ensure that towns and villages in the Scottish Borders such as Stow are properly served by the proposed Borders rail link. I had the privilege of receiving the petition on behalf of the committee. I believe that Christine Grahame will also speak to this petition.

Mr Jamieson, we are pleased to have you and your colleagues with us. You have three minutes in which to make a statement to the committee.

**William Jamieson:** Thank you, convener. I would like to introduce my colleagues, Jean Stock and Alan Buchan, who will assist with our evidence.

I am sure that the convener recalls visiting Galashiels with the committee almost three years ago—it may be a surprise that it was so long ago. The committee is therefore well aware of the popular support in the Borders for the reinstatement of the Waverley line. There was support for it in Stow, but what sometimes seems to be the railway's promoters' determination to exclude the village from its plans has meant that a great deal of disillusionment has crept in. Such disillusionment should not be a surprise. We have been fobbed off with various technical excuses as to why a station would be impossible, yet there

seems to be no difficulty in providing six stops within 8.5 miles at the Edinburgh and Midlothian end, including one at Shawfair, where there is next to no population.

I will not go into that matter any further at the moment, but will concentrate on the environment, the economy and social inclusion, which we stressed in our petition. Those issues do not seem to have been addressed until now, and certainly not in relation to Stow.

On environmental grounds, it makes sense that every new railway should reduce the amount of traffic on the roads by getting as many drivers as possible out of their cars. That comment is especially relevant to the A7, which is very unforgiving of poor driving. In the past three years, there have been more than 125 crashes on the A7 between Galashiels and Gorebridge, which is the stretch from which there would be no intermediate access to the railway unless there were a station at Stow. I would like to see stations at Fountainhall and Heriot too, but perhaps that is pushing matters a bit too far at this stage.

On the economy, the traditional industries of the Borders are in decline and we desperately need to encourage more visitors into the area. It is not just a matter of getting people into the area to spend their money. For Stow, the issue is also about reversing the decline in local services, for example by creating demand for a cafe, tea room or restaurant, which would also benefit local people. The Borders has a beautiful natural environment and there is a vast untapped reservoir of country lovers, walkers and cyclists in the capital who could make day and weekend visits if they had easy access to such an attractive rural location with opportunities for outdoor recreation. Stow is admirably sited to fulfil such demands. It is located eight miles from Galashiels and has potential for linear walks and cycle rides. People could alight from and rejoin the train at different stations. That would be impossible with two proposed stations just 1.5 miles apart in Galashiels and Tweedbank.

On social inclusion, we believe that small communities such as Stow should benefit from and not be disadvantaged by public transport developments in their area. When the railway comes, it is inevitable that the bus service between Galashiels and Edinburgh will be reduced. If there is no station, some people will be even more socially excluded than they are at present. Stow and its surrounding villages have as high, if not a higher, proportion of young and elderly people than any other part of the Borders. Those age groups depend most on public transport. Young people are our future. If we are to retain them in the area, they must have easy access to educational, employment and leisure opportunities in both Galashiels and Edinburgh.

Our aim is that Stow should be provided with public transport that is fit for the 21<sup>st</sup> century. We are told that that is impossible for economic and technical reasons, but a railway with no station at Stow will guarantee the village's continued economic decline. We need to remind ourselves that we are in the 21<sup>st</sup> century and that technical solutions already exist to allow trains to stop at Stow without imposing on passengers from other stations along the line. All that is required is the will to make things happen.

**Christine Grahame (South of Scotland) (SNP):** The committee must wonder whether I attend its meetings only to speak about petitions that relate to the Borders. The petition says something about economic decline in the Borders. We are hitting two and a half years since the Parliament unanimously voted for the reinstatement of the Borders railway line from Edinburgh to Carlisle. We have discussed the Borders in relation to bus services, which are poor, the closure of the college at Hawick, Viasystems, textiles, foot-and-mouth disease, the lowest wages in Scotland and a growing elderly population. It would be lucky if the area stood still, but it is in a continual, quiet, slow decline.

Some 18,000 people signed a petition that called for a railway line through the Borders, but the reality is that they will not get it. The line will actually be a Midlothian railway line. Bill Jamieson was far more tactful than I will be. I will tell the committee that stops are planned for Waverley, Brunstane and Kinnaird—where stops already exist—and Shawfair, Newtongrange and Gorebridge, which are all in Midlothian. A stop at Galashiels and, possibly, a stop at Tweedbank are also planned.

At the moment, only one stop, at Galashiels, is planned for the Borders. That is not what 18,000 people campaigned for in the Borders. If the plans go ahead, we will end up with a commuter line that will serve Midlothian, with a throwaway line—if we are lucky—to Galashiels. That is not what the campaign was about and it will not open up the Borders. I make no apology for saying that. Midlothian politicians got involved late in the day.

By the way, I declare an interest: I am a lifelong member of the Campaign for Borders Rail, although I do not want to continue to be a member of such a campaign, as I want a Borders railway in my lifetime.

11:15

A survey by the transport research and information network was commissioned. Some 700 questionnaires were issued in Stow, Lauder and other places round about, of which 653 were returned. That is a high response rate. Responses

also came from Clovenfords and Fountainhall and 83 per cent of those respondents said that they would use Stow station. Nobody in Stow will drive seven miles south to Galashiels to get on a train that will pass their door on its way up to Edinburgh. Businesses locating to Stow also need a station. I can provide the committee with copies of the statistics.

I do not want to take up too much time, but I have asked that a late paper be passed to members. It is from a businessman in Stow who says that, at the moment, there are 20 businesses in Stow. They are small businesses, but they could grow. He was planning to develop his business there, but he has decided that he cannot do so because of the lack of infrastructure and transport, so he has relocated to Edinburgh where he is now hiring people. That is not a lone story in the Borders. We have already heard reservations about the A7 and its high rate of accidents. Although one can get from Galashiels to the Sheriffhall roundabout in 45 minutes, it takes a damned sight longer to get from the roundabout to business premises in Edinburgh. That takes no account of congestion charging in Edinburgh. There will be double congestion charging, as there will be charges for the outer circle at the Sheriffhall roundabout and for the inner circle. There is also the threat of office car parking charges. Commuters to Edinburgh will face all those charges. A station at Stow would provide an incentive for businesses to relocate out of the hot spot that is the city of Edinburgh.

One of my last points is about Scottish Borders Council, which, not for the first time, has been extremely disappointing. It lacks vision and has absolutely no fight in it. Its latest Eildon area committee business plan, dated today, says that no rail station site is likely to be proposed in Stow because of the lack of development potential owing to topographical and flooding constraints. Scottish Borders Council is walking away from the situation. When members of the Scottish Parliament went to Galashiels, the Parliament proved itself. There were more than 250 people at the meeting and for once the area was being paid some attention. Those people believed in the Parliament when we said that we would deliver a railway line. Now those promises are trickling through their hands like sand. I ask the committee to consider carefully Stow's case and beyond that, the case for a proper railway line through the Borders. What appears to be happening is that we will have a commuter line through Midlothian.

**Dr Ewing:** In the evidence before me, the petitioners estimate that the cost of a single platform with basic shelter would be in the region of £202,000. One of the points made on the Waverley railway project's website is that Stow would not only necessitate another passenger

train and crew—I do not understand that—but additional capital outlay to build the station at an estimated cost of £800,000. There is a clear difference between the two figures. Do you dispute that the project's figure is sensible?

**William Jamieson:** Yes. It is difficult to know where it comes from. Costs in the rail industry are a huge problem. When people work beside live lines, costs are much higher than they would be otherwise. A factor of two and a half to three times higher seems to be the norm.

I am a qualified civil engineer. I designed the platform and gave the details to a local contractor in the Borders whose company has 100 years of experience of carrying out public works and who put a price on the design. It includes all the associated infrastructure, car parks, shelter, lighting and so on. I am quite confident of our estimate.

**Dr Ewing:** Does there have to be an overhead bridge for people to move from one platform to the other?

**William Jamieson:** Not as far as we know. There is some confusion about that because when there was a presentation in Stow town hall in July, the plans showed a single line passing through Stow station. That £202,000 estimate is based on a single platform that would not require a bridge.

Recently, some have suggested that the line will be double track. I have not verified that but even if it were double track, the estimate for two platforms would be in the region of £320,000 to £325,000, so long as we do not need a bridge. An existing road bridge would give access from one platform to the other.

**Dr Ewing:** The project's website talks about passing loops, track bed strengthening and line curvature—Stow is on a curve. I thought that railways could deal with curves. It seems strange that it is only at Stow that the curves cannot be dealt with.

**William Jamieson:** The problem with the curve is that health and safety guidelines prefer that stations and platforms are not sited on curves. However, that is just guidance; it is not set in tablets of stone.

**Dorothy-Grace Elder:** I know that there has been a campaign for the Waverley line for the past 30 years. The line closed 30 years ago and I was on the last train, as was David Steel.

In 1998, one man—Richard Branson—kick-started the money side of the issue. I wonder if you should approach him again. He put up a large part of the money for the original survey and kick-started the Scottish Office and Gus Macdonald into action. I know because I went up to Richard Branson at a public function and asked him if he

knew about the Waverley line. He did not, but he put up the money and kicked Gus Macdonald into doing something about it in no time at all. He made a large investment—he is a mover and shaker. Have you approached him? He did not put that money in to run a line through Midlothian but one that runs through the Borders properly. I am sure that his ultimate aim was a line to Carlisle.

**Alan Buchan:** I do not think that we have approached Richard Branson, although that sounds an excellent idea.

**Dorothy-Grace Elder:** You have probably forgotten that he had a key role in 1998. That was when he moved, although I know that the Government claimed credit for it afterwards.

**Dr Ewing:** It always does.

**Dorothy-Grace Elder:** What a surprise. The Government—certainly Sarah Boyack—deserved a wee bit of credit for going along with the idea but, at the time, it was Richard Branson who moved and shook. I suggest that you get back to him, which would also stir up publicity.

**Christine Grahame:** I want to clarify a point that William Jamieson was making that might have got lost, although I hope that it did not. The figure that was quoted for the station was for building it before the line is up and running. If the station is not built when the line is built, it will be prohibitively expensive. You can bet your bottom dollar that any nonsense about re-examining the issue later will mean that the station will not be built, because the cost will be too high. The time to build the station is when the track is going down.

**The Deputy Convener:** I am surprised at the figure of £202,000 that William Jamieson quoted. When we were fighting for a bridge at Dalgety Bay station for disabled people, the cost was in excess of £450,000.

**Christine Grahame:** Was the line already live?

**The Deputy Convener:** The line was live and the cost of £450,000 did not allow for all the other infrastructure such as car parks and the railway station shelter. The cost of having a railway halt put in was nearer to £1 million, if I remember correctly. I understand that you are asking only for a halt, not for the infrastructure associated with a new railway line, because the railway line is going to go right through the area anyway.

**Christine Grahame:** That is my point. If the halt is put in when the line is being laid, it will be cheap; however, it will be very expensive to put it in later.

**The Deputy Convener:** My point is that the cost will be nearer £1 million than £250,000. That is the reality.

**Christine Grahame:** Perhaps that is a matter for another committee to examine.

**The Deputy Convener:** Exactly.

**Phil Gallie:** I do not know whether the cost is the issue that we should be discussing. The station that was built at Prestwick airport, with a double platform, an interlinking bridge and a flyover that goes right into the airport, has made it an excellent airport from which to travel. I believe that the station, which was provided by the airport, cost less than £1 million. I am not going to argue about the price. The real issue is about Midlothian and the fact that services to the Borders seem to have been hijacked. The advantage of the railway, as originally prescribed, was that it opened up the potential for development. Can you say something about Scottish Borders Council's negative view of potential development at Stow? If a station is built and the rail link is established, there will be the opportunity for economic development in the area.

**William Jamieson:** I would rather not answer that question, as I work for Scottish Borders Council.

**Alan Buchan:** The excuse that we were given by Scottish Borders Council was that the sewerage system could not cope with any extra housing and that the infrastructure must be improved before such development can take place. Is that correct?

**Christine Grahame:** That is true for many parts of the Borders, not just Stow. Scottish Water has problems with the sewerage systems and developments. However, we are not talking about domestic development, which is irrelevant. Why should domestic development be necessary? We are talking about commercial expansion that will bring money into the Borders.

**William Jamieson:** I regard the issue of additional development at Stow as a red herring. The survey that we had done earlier this year showed clearly that there is sufficient demand from the existing population in Stow and the surrounding villages to make a station viable.

**Phil Gallie:** How many other communities would be affected directly by the provision of a station in Stow?

**William Jamieson:** Lauder and Clovenfords would be affected. Fountainhall is in the wrong direction, but it is only 4 miles in the wrong direction. If a suitable bus service and car parking were provided, a proportion of people from Fountainhall would be prepared to come down to Stow to travel to Edinburgh.

**Phil Gallie:** What is the distance from Stow to Gorebridge?

**William Jamieson:** It is 21.5 miles from Galashiels to Gorebridge and the distance to Stow is about 8 miles less than that, so the distance from Stow to Gorebridge is about 13 or 14 miles.



**Phil Gallie:** Therefore, it would be a distinct advantage for people from those communities to travel to Stow rather than to Gorebridge.

Arguments have been made about the operation of the railway and references have been made to the timing of trains and the number of stops that they make. I recognise that we should not set one community against another; however, from Christine Grahame's evidence, it seems that having six stops in Midlothian would mean that people there would get more than their fair share of stops. If the stopping time was to be spread out, perhaps one of the Midlothian stops should be sacrificed. Would that be your view? If so, which stop would you select?

**William Jamieson:** I would hesitate to argue that locations in Midlothian should not be served. Different patterns of services are required. There needs to be a stopping service out to Gorebridge and an express service to Galashiels, which would stop at selected locations in Edinburgh and Midlothian but not at all six.

**Dr Ewing:** I want to address a different point. Why would a new station necessitate the provision of another passenger train and crew? I do not understand that.

**Alan Buchan:** The Waverley railway partnership has allowed only a short time at Tweedbank for the trains to turn round—about 10 minutes, I think. In that time, the driver has to come out of one end of the train and go up to the other end. It is reckoned that, if there was another station—making seven in total between Edinburgh and Galashiels—there would not be enough time to allow the crew to walk up to the other end of the train and come back. To my mind, that is ridiculous. Allowing such a short turnaround time is a recipe for chaos and unreliability, as we experience on other lines, particularly the Bathgate line, which I used until recently as I lived in West Lothian. We are asking the Scottish Executive for £80 million for a railway, but we are told that we cannot have another £2 million or £3 million for an extra train set. That is extraordinary.

**Dr Ewing:** Are there any barrow crossings in your part of the world?

**Alan Buchan:** Any—

**Dr Ewing:** At barrow crossings, disabled persons are assisted to go across the track, which means that they do not have to use a bridge. There are quite a lot of barrow crossings in the Highlands. One of my constituents cannot get to work by train because there is no barrow crossing at his station. He has been told that there will be no more crossings of that type.

11:30

**William Jamieson:** Those crossings would be completely barred on new lines. I think that they are being done away with on existing lines.

**Dorothy-Grace Elder:** Forgive me but when I read documentation on requests for new stations I never quite understand why we have to have a platform or whatever, rather than a simple halt. The convener referred to halts and in Canada or parts of Spain, a halt can be just that. That is also the case in France, which we all know is able to run a good rail network. In those countries, the important consideration is that trains agree to stop at halts X number of times a day. It is possible to start with such a system and progress to a shelter. Is it a safety requirement for there to be a platform wherever a train stops? I do not know whether that is the case.

**William Jamieson:** Access needs to be at the appropriate height, which is about 3ft above track level. Lower platforms exist in this country but disability requirements mean that they will be heightened. All new platforms have to be 900mm above track level to coincide with train door levels.

**Dorothy-Grace Elder:** Right but surely people could get on to the train without the need for a platform.

**William Jamieson:** Not in this country.

**Dorothy-Grace Elder:** Would that be against safety regulations?

**William Jamieson:** In this country, platforms have always been relatively high. On the continent, platforms are certainly lower and, in some cases, there are no platforms. However, even on the continent, an improved higher platform standard is coming into effect.

**Dorothy-Grace Elder:** I do not suggest that that is how things should be. I am trying to get at whether it is possible for a new service to start on that basis and move on to add the buildings and other paraphernalia. It does not seem that the suggestion to create a halt is being listened to.

**William Jamieson:** There is no getting away from the fact that we would need a platform, but we would be happy to start with a small shelter.

**Jean Stock:** We would even be happy not to have a shelter if that meant that we had a platform and could get on to the train. As Dorothy-Grace Elder said, the rest could come later. The important point is that, as the railway line will run through the village, the bus service will be axed and we will be stuck.

**Christine Grahame:** Let me make a final point. An argument was made about interruptions to rail journeys. I remind the committee that the stops that I mentioned in Midlothian are 1 mile to 2 miles

apart. We are talking not about great distances—such distances are like those between bus stops.

It is outrageous for anyone to claim that a station at Stow would add to journey times when it has been accepted that there will be so many stops in Midlothian. I have no problem with the number of stops in Midlothian, but, as Bill Jamieson rightly said, that would be a different service. A twin service, including an express service, could be run on a line that should be extended to Charlesfield, not to Tweedbank. That would not exclude the southern half of the Borders. We need to add a stop at Stow, with the line going on to Gala and Charlesfield.

**William Jamieson:** The question whether the community is big enough to be served by a railway has been raised. If we go for the suggested 5,000 cut-off, communities further south in the Borders, such as Melrose, would be excluded from having a station. That would also be the case with Newtown St Boswells, which is the location of one of the biggest employers in the Borders.

**Dr Ewing:** Shades of Dr Beeching.

**Dorothy-Grace Elder:** He is back from the crypt.

**Phil Gallie:** We considered the costs of building platforms, but the major aspect of providing a station is the signalling system. We need to ensure that the system meshes all the way down the line. Even if, according to the existing plans, Stow is not to get its station, is the signalling system such that it would allow for a station to be built there in the future?

**William Jamieson:** I am not really qualified to answer that question, although I suspect that the existence of a station is not dependent on signalling. If a station is on a single-track section, entry to that section will be governed at the extremes—at the passing loops. There can be only one train on such a section at a time. I do not think it is relevant whether the train has to stop in that section.

**Phil Gallie:** I was thinking that any platform would need signals, but I understand the position now. I take your point.

**The Deputy Convener:** I sense that members have come to the end of their questions. Thank you for coming to speak to your petition. Members will now consider what action they wish to take, following their questions and your answers. You are welcome to stay at the table while the committee agrees what action to take.

I turn to the suggestions that are in front of us. The Waverley railway partnership appears able to justify its decision not to open a station at Stow as part of the reinstatement of the former Waverley line between Edinburgh and Carlisle. The

committee may, however, wish to write to representatives of the partnership, seeking comments on the petitioners' claims that a station at Stow would ensure much needed access to employment and training opportunities; that it would provide an alternative for commuters who travel by car because of the shortcomings of the bus service; and that it would generate income and jobs for the area through visitors and tourists.

We could request an indication from the partnership as to whether it would be willing to review its decision not to open a station at Stow before its bill is introduced early in 2003. We could also seek its view on whether opening a station at Stow—despite the fact that additional funds would initially be required—could be a worthwhile investment in the longer term, as it would widen access to the new line. We could seek confirmation as to whether the partnership intends to review the options for any other stations on the proposed line prior to the introduction of the bill. As the proposals stand, only a limited number of stations are proposed for the Borders. The committee may wish to pass a copy of the petition to the Transport and the Environment Committee for information only. I seek members' views on those recommendations.

**Dr Ewing:** I suggest that we add Phil Gallie's point about signalling to the third bullet point on the paper before us, as he raised a valid question.

**The Deputy Convener:** Yes—we will take that on board.

**Phil Gallie:** Christine Grahame referred to the fact that the project could be said to have started with the Public Petitions Committee—it goes back to the committee's meeting in Galashiels. The clerk might somehow communicate some slight disappointment on the part of committee members, because we saw the project as a way of opening up the Borders. From what we have heard today, it seems that the project might have changed in context somewhere along the line. We could build in a query along those lines.

**The Deputy Convener:** If there are no further points, I invite members to agree to the recommendations that are set out before us, together with the additional points that Winnie Ewing and Phil Gallie raised.

**Members indicated agreement.**

**The Deputy Convener:** We agree that the petition will proceed on that basis. We will give feedback to the petitioners and will try to come back with full answers. I hope that we will be able to give the petitioners some help, although we can never guarantee that. We will certainly get them some answers to the questions that they have raised, and I thank them for their attendance this morning. We will be back in touch with them.

## Further Education (Management Practices) (PE574)

**The Deputy Convener:** PE574 calls for an investigation into management practices at Central College of Commerce. I welcome the petitioner, Mr Jeff McCracken, to the committee.

Before we begin our consideration of the petition, I advise the petitioner and members that they should avoid naming individuals in relation to the issues that are raised. The petition makes some strong allegations about the management practices at Central College of Commerce and I urge people to be cautious about making unsubstantiated allegations or allegations that might be, or might become, subject to other procedures, such as employment tribunals or legal action.

For example, I am aware that certain of the issues that are referred to in the papers that accompany the petition, such as a one-day strike by staff and a vote of no confidence in the management at the college, are closely connected to the dismissal of a particular member of staff. I understand that the dismissal will be the subject of an employment tribunal in the new year.

The Parliament is not the place for discussion of specific cases of alleged discrimination, as procedures for dealing with such issues exist elsewhere. Therefore, we should all be very careful about what we say and should concentrate on the more general issues that the petition raises.

You have three minutes to make your introductory statement. After that, members will ask questions.

**Jeff McCracken:** I thank the committee for giving the petition a hearing. The comments that the deputy convener has just made are particularly helpful. My MSP—Pauline McNeill—encouraged me to organise the petition. She had hoped to be here this morning, but unfortunately her car has broken down and has been put in for servicing.

I sent in a letter that the committee has probably received. I then decided on a second option—a statement for the committee. I have copies of the statement, if members want to read it. I am concerned about attending the committee meeting, because of the conditions of release that the principal has imposed. On the one hand, the principal has allowed me to attend the meeting; on the other hand, my being here is subject to an implied threat. I have no intention of referring to any matters that might crop up in any upcoming employment tribunal. My petition has nothing to do with that.

**Dr Ewing:** Did you say that your principal gave you permission to come, but that there was an implied threat?

**Jeff McCracken:** Yes. I have copies of a memorandum between the principal of the college and me. In the memorandum, the principal says that the problems at the college could be dealt with within the college before proceeding to external fora. The petitioners do not see how that would be possible, nor does my MSP, or other MSPs, including Gordon Jackson.

I appreciate the convener's comments to the committee and I will be cautious. Although my colleagues at the college seek improvements at the college, we seem to have come to an impasse in relation to internal resolution of the problems.

**Dr Ewing:** The main thing that you ask for is an inquiry into Central College of Commerce. Would it be reasonable for an inquiry to cover all such colleges?

**Jeff McCracken:** The petition is in two parts. One part urges the committee to undertake an inquiry into the college. The petition also suggests that the problem is sector wide—it is systemic.

Personalities obviously play a role. The personalities who are in charge of our college and who employ us do not encourage openness or the Nolan committee principles. That problem is systemic. The problem in the college is with the way in which it is run, particularly by the principal. The college is run secretly.

A sector for which taxpayers pay £400 million—my college costs £9 million annually—has no accountability or democracy in its internal operation. We might have some documents that imply that we have that, but in practice, staff have little access to the board or its decision-making process. For example, although I was a trade union branch convener for nine years until February this year, I have not seen a member of the board of management since 1999, apart from the principal.

11:45

**Dr Ewing:** Your petition and your written statement are on different aspects. Your petition asks for an

“enquiry into what has gone wrong”.

We heard about a strike. It is obvious that something has gone wrong if an educational institute goes on strike. Your statement contains a lot of stuff about financial questions, but your petition does not mention them. As the college is publicly funded, finance questions are more relevant for the committee than is going into the reasons for the college strike.

You talk about a European grant of £1.2 million. If that were intended for small and medium-sized enterprises and had not been spent on them, that

would be a financial problem. However, your petition does not highlight the financial aspect.

**The Deputy Convener:** That matter is mentioned in the background papers. The funding from the European regional development fund was audited and everything was found to be satisfactory.

**Jeff McCracken:** I say with respect that we have seen no documentation that supports that position. We have requested it. One person was advised that that should be done through a lawyer. I understand that another member of staff who requested a copy of the report was denied it.

**The Deputy Convener:** Perhaps your MSP, Pauline McNeill, could get hold of any audit report. You could pursue that.

**Phil Gallie:** In the circumstances, I was amazed that auditors had not been involved, but the convener said that they have been.

On analysis, three quarters of the petition concentrate on the Central College of Commerce, but the final part suggests that the Further and Higher Education (Scotland) Act 1992 should be amended to ensure

“openness and democratic accountability of College Boards of Management”.

How do you want that act to be amended and what would be the effect of doing that?

**Jeff McCracken:** Under the 1992 act, at least 50 per cent of a board of management's members must be businessmen. The act was passed in 1992, shortly before Scotland became a Tory-free zone—nothing personal, Phil. Our college has a culture of secrecy. All 43 colleges in the further education sector must comply with the legislation, but the personalities who are in charge of the colleges put different spins on that compliance.

I will return to a point that Dr Ewing made. The second sentence of the petition says:

“We are also disturbed by allegations of gross mismanagement and misuse of public funds at the College.”

The £1.2 million to which Dr Ewing referred was money that the college had managed to amass over some period of time. The funding for which the college applied successfully constituted something like £600,000.

Access to the audit report is not as straightforward as has been suggested. It may say in black and white somewhere that the report can be accessed, but any time that anyone asks for a copy, they are denied it or told to ask their lawyer to write to the college's lawyer for a copy of it. That is highly unusual. We thought that Audit Scotland could be among the different agencies that could be brought into an inquiry into the running of Central College of Commerce.

**The Deputy Convener:** My guess is that your MSP could obtain a copy of that report. Does Phil Gallie want to make a comment?

**Phil Gallie:** I will leave the questioning a Tory-free zone.

**Dr Ewing:** Phil Gallie is the acceptable face of the Tory party.

**Dorothy-Grace Elder:** You are, or were, the Educational Institute of Scotland branch convener in the college. Is the fact that you were a trade unionist the root of the allegation that you were targeted or bullied?

**Jeff McCracken:** I think that that is partly the reason. The documentation that was supplied to the committee is quite dense. It contains an awful lot of material. The issue is like all major problems: at first, they are simple, but when we try to tease our way through them, they become more and more complex. One of the three whom the principal and the board of management targeted, Ben McGowan, was not a trade union official, although he had been in years gone by. He was the branch secretary for some time, but that was something like 10 or 12 years ago.

**Dorothy-Grace Elder:** Are you still a representative of the EIS in the college?

**Jeff McCracken:** I am indeed. I am the vice convener of the branch.

**The Deputy Convener:** I ask members to be careful. We are bordering on getting involved in the detail.

**Dorothy-Grace Elder:** I know that sort of slipstream, convener. We have perhaps gone far enough with that line of questioning, but it is important to get in the *Official Report* the fact that Jeff McCracken was a representative of the lecturers in the college.

As for audits, I have seen a good number of them, and the results can be variable. Do not necessarily go by what an audit says. Without naming any names, if any threats, implicit or otherwise, are made against you, would you please come back to the committee and report to us? Prison officers made a similar allegation a few weeks ago. That resulted in us calling in the chief executive of the Scottish Prison Service and questioning him last week about those allegations of bullying. Please report back to the committee, because any of you have a right to approach the Parliament at any time.

**Jeff McCracken:** I appreciate those comments.

**The Deputy Convener:** We must be slightly careful about people coming back to the committee about threats. We need to tread carefully. There is a distinction between the workplace and the Parliament.

In May 2002, the Executive launched a review of how Scottish colleges are governed. That review followed on from the Audit Committee's report. Have you had a chance to look at that? If so, do you think that it would make a difference? One of the points that emerged in that report was that one of the weaknesses of the system is that the Scottish Further Education Funding Council has no powers to intervene on governance issues in colleges. What are your thoughts on that more general issue?

**Jeff McCracken:** I have not seen the Audit Committee report to which you refer. However, I am aware that the third aim in SFEFC's mission statement is to ensure good governance of further education colleges. Colleagues of mine have approached Roger McClure, the chief executive of SFEFC, who was as shocked and appalled as anyone who looks into the affairs at the college is. However, as far as I understand, his response to my colleagues was simply to write to the college principal asking whether the college had discipline and grievance procedures. I understand that he was satisfied with that. The problem at Central College of Commerce is that the procedures are not adhered to and were not adhered to, particularly in the past year.

In the statement in support of our petition, we say that all the claims that we go on to make can be supported by documentation or witness testimony. We have substantial documentation to support our points.

**The Deputy Convener:** The more general point is that SFEFC has no powers to intervene. Perhaps that is the crux of the matter. SFEFC might be able to agree or disagree about the merits of your case but it has no powers to intervene other than by withdrawing its financial support. That is a fundamental problem for all of us. Accountability is an issue that the Parliament might want to consider further.

**Jeff McCracken:** I agree with you. Where does that leave people in our situation? Where do we go when things go drastically wrong with the organisation that employs us? That has happened at the college. For example, although the letter that finally authorised my attendance at the committee today is dated 12 December, I received it only yesterday.

**The Deputy Convener:** Your petition highlights a fundamental issue that this committee can tackle. The autonomous nature of colleges is a matter of concern to people across Scotland and this is not the first petition that we have dealt with concerning colleges. We will do what we can to assist you and to ensure that the matters that you raise are dealt with. After we have taken action, we will notify you of the outcome of our investigations and tell you what we might be able to achieve.

**Dr Ewing:** How many of the signatures on the petition are by members of the college's staff?

**Jeff McCracken:** About a third of them. The other signatures are those of other educational professionals, schoolteachers and so on.

**The Deputy Convener:** Thank you for attending.

Members are reminded that the committee is unable to become involved in the specific issues surrounding the alleged mismanagement at Central College of Commerce. However, given the Executive's apparent willingness to address the general issue of the governance and accountability of further education, it is suggested that the committee should agree to write to the Executive to seek its comments on the general issues that are raised in the petition. In particular, the committee could request details of the time scale for publication of the outcomes of the Executive's recent review of how colleges are governed. We could also request an indication of whether the outcomes are likely to support the Audit Committee's recommendation that SFEFC's powers should be extended to allow it to intervene where poor governance arrangements exist in a college and confirmation that any measures that are implemented as a result of the review will ensure that the openness and democratic accountability of college boards of management are guaranteed. In addition, we could ask the Executive about any grievance procedures that exist in the colleges.

It has been suggested that it might also be useful to consult the Association of Scottish Colleges.

**Dr Ewing:** What status does the missing audit have?

**The Deputy Convener:** I am sure that we could ask for clarification of that and whether it is possible for the committee to secure a copy of the report.

**Dr Ewing:** Why is it being treated as a secret?

**The Deputy Convener:** We will certainly ask those questions.

12:00

**Phil Gallie:** I make the same point that Winnie Ewing made. Given that there are concerns about finance in the petition and we are told that there is an audit report, I would have thought that a very positive thing that we could do would be to pass back a copy of the report immediately. Never mind going to MSPs, we could get the clerk to pass back a copy of the report to Mr McCracken.

**The Deputy Convener:** We will certainly ask whether it is possible for a copy of the report to be made available not just to us but to the petitioners.

**Phil Gallie:** Who prepared the report and who conducted the audit on the college?

**The Deputy Convener:** We have to establish that first.

**Jeff McCracken:** I think that it is Deloitte & Touche.

**Dorothy-Grace Elder:** You were told that the report was okay, but that you cannot see it.

**Jeff McCracken:** Yes that is right.

**The Deputy Convener:** We will pursue the matter.

**Phil Gallie:** To my shame, I have always assumed that the Audit Commission would have responsibility for ensuring that there is financial probity in all public institutions, which further education colleges are. Is there not an Audit Commission report? If the Audit Commission is not responsible, who is responsible for financial management of colleges of further education?

**The Deputy Convener:** We can ask those questions.

**Phil Gallie:** That is fundamental. I would like an answer to some of those questions before we send the paper off to the Scottish Executive. We need more information before we take any action.

**The Deputy Convener:** Are you suggesting that we defer all action until—

**Phil Gallie:** We get some answers. I would like to know how the colleges' funds are audited and what levels of management oversee the colleges of further education.

**The Deputy Convener:** Do Phil Gallie and other members agree that we should proceed on the basis of getting as much information as we can by asking questions of the different agencies? The problem is that the committee will next meet on 14 January. As we all know, time is running out fast. It is in the interests of the petitioners that we get as much action on the petition as possible this side of Christmas. At the same time, we will try to address the points that Phil Gallie raised. I do not think that anything that Phil Gallie suggested and our proceeding on the basis that I have suggested are mutually exclusive. Does the committee agree to our proceeding on the basis of getting the additional information that Phil Gallie is asking for as well as taking the action that is suggested?

**Dorothy-Grace Elder:** We are not just talking about allegations of mismanagement. I take it that the term "audit" refers not just to finances, but to the whole way that the college was run. I must admit that I am shocked to discover, because I did not know this, that there is no real control over colleges. If something were going wrong at a school—if, for example, a terrible atmosphere had

developed, which was bad for staff and students—the council would send in a team or the education department would start an investigation. We cannot do that with a college.

**The Deputy Convener:** In fairness to the Scottish Executive, it is trying to establish that. The committee needs as much information as it can get before we go to the next stage. The best decisions are the most well-informed decisions. If we can get all the information that we are asking for in our suggested action and address the points that members have raised this morning, we will come back to the petitioner with the information as soon as we can. We are up against the clock, because Parliament will be dissolved at the end of March. As a result, we are very eager to satisfy as many petitioners as we possibly can in the time between now and then. Are members content with that?

**Members indicated agreement.**

**The Deputy Convener:** Mr McCracken, you have raised a very important issue, which we feel has wider and more general implications. That is the value of this committee's work. We will come back to you with answers.

**Jeff McCracken:** I appreciate that.

### **Multiple Sclerosis (Respite Homes) (PE572)**

**The Deputy Convener:** We move on to PE572, which concerns the provision of respite homes for sufferers of multiple sclerosis. I welcome Mr and Mrs Woods to the committee and invite them to speak for three minutes. After that, they will be asked questions by committee members. Perhaps I should say that, since I got up this morning, I have been hearing about a wide range of disability issues. In fact, the radio programme that I listened to this morning focused on disability issues and the challenges that people face. We look forward to hearing more about the issue that the petitioners will raise.

**Patrick Woods:** In that case, the petition is perhaps appropriate.

We thank the committee for considering our petition, although its subject might sound mundane after what I have heard this morning. I have had multiple sclerosis for 35 years, and for the past five or six years I have required constant assistance. My wife is my only carer and she finds that, to avoid undue stress, she needs a regular break. In fact, I think that she will need one after this meeting.

Our case is not unique and similar situations arise in relation to problems other than MS. At first, I was able to receive respite care at the Lanfine young disabled persons' unit at Liberton

hospital in Edinburgh—the definition of “young” at the unit was anyone between 16 and 65. Because that unit is essentially a rehabilitation unit, I benefited from occupational therapy and physiotherapy that is provided by excellent staff. However, when I reached 65, I had to look elsewhere for respite care. My care requirements were for 18 months met in an Edinburgh nursing home; however, the respite facility was withdrawn.

I became aware of the MS Society’s respite homes at Leuchie House, near North Berwick, and at Holmhill in Grantown-on-Spey and have used both facilities. However, I have used Holmhill more than I have used Leuchie, which offers only 11 nights’ stay at one time. When I stayed at Holmhill, my wife Jennifer had plenty of time to deliver me, have her two weeks’ break and then collect me.

However, despite users’ pleas and a petition that contained more than 1,400 signatures, the centre closed on 30 November. Two English homes that were run by the MS Society also closed. Those closures follow a similar pattern to events that prompted petition PE428, which was presented by Mr Egan about a year ago and to which we refer in our petition. We are concerned that the MS Society can suddenly propose to close a tried and tested home without prior warning to staff and users and that it can then, within only six weeks of discussions with staff—but with no formal opportunity to involve users and carers—finalise the decision to close without offering comparable alternatives.

I wrote in summer 2001 to the leaders of the parties in the Scottish Parliament to express my concern at the lack of respite centres. The general response from the Minister for Health and Community Care was that the carers’ strategy would improve matters in respite care and that £10 million would be made available to local authorities to support carers, including provision of short-break services. We refer to that in the supporting information that we submitted with the petition. Despite all the assurances, the letters to MSPs, MPs, Highland Council, the MS Society and the MS Society Scotland, and despite September’s new legislation for carers, a superb respite resource has been lost and there are no comparable alternatives.

**Rhoda Grant:** Holmhill was in my constituency and I spoke to the MS Society and to residents and staff of the respite home about the closure. I understand the petitioners’ frustration because I felt as if I was knocking my head against a brick wall. There was no proper consultation period or dialogue. I support the petition on that point.

What comparable alternative provision has been made? Many people to whom I spoke said that they had been offered accommodation in Fife, but they were concerned about the lack of

accessibility to facilities such as shops, pubs, restaurants and other facilities that one wants to access when on holiday. Have you considered other options for a holiday break?

**Patrick Woods:** The MS Society eventually gave a list of places in the same area. However, it seems that most alternatives have an age limit of 65—despite what the minister said—and there might be only one or two beds for respite in a nursing or geriatric home. The list was supposed to be available in June, but we received it only after we submitted the petition and, in our opinion, it is not adequate.

**Rhoda Grant:** Will you explain the difference between Holmhill and the ordinary residential care homes for the elderly that are offered as an alternative?

**Jennifer Woods:** By “comparable alternative”, I mean a place where I am happy to leave my husband, knowing that he will have a happy holiday and be reasonably independent. In Holmhill, he was able to take part in the community of Grantown-on-Spey because he has a power wheelchair and there were plenty of carers to take people into the village. The house had a lift, which he could use to access his room. The MS Society holiday home that remains open in Scotland is Leuchie House. It is good, but it is three miles out of North Berwick on a narrow road without a pavement. The lift is an old metal one that people with the use of only one hand find impossible to use, which means that such people do not have access to the whole house.

None of the alternatives offers anything comparable to Holmhill. As my husband said, many of the available places are single beds in geriatric wards. If the bed is free and one is lucky and wants it tomorrow, that is okay, but there is no question of booking it for a fortnight three months in advance. Some of the alternatives have age restrictions and two of them are irrelevant because they are travel companies that take people on holidays abroad, which we do on our own. There are many good self-catering places where we go together. Such breaks are lovely and we thoroughly enjoy them, but once a year, we like to have separate breaks.

None of the alternatives that are offered by the MS Society can accommodate couples; although we like to have separate breaks for a fortnight, many people do not. Holmhill and Leuchie accommodate couples, but the alternatives do not.

**Dr Ewing:** From reading the MS Society letter, I understand that it had two respite centres in Scotland, one of which was at Holmhill and the other is four miles outside North Berwick. The letter goes on to say that less than 2 per cent of Scottish people with MS use the centre. Other than MS sufferers, who uses it?

12:15

**Patrick Woods:** People with other neurological problems will be accepted, as will people with arthritis or who have had a stroke. Sadly, from the MS Society's point of view, Holmhill has been underused during the winter months—between January and March—so I presume that the society was concerned about the cost. However, it is my view that the MS Society exists to look after the welfare of people with MS and their relations. In 2003, Holmhill will have been in operation for 21 years. One expects a charity such as the MS Society not to be thinking about how to make money, but about how to use money effectively.

The MS Society could have advertised the facility better. It says that it did advertise, but we were not impressed by the campaign. One of its fund-raising staff visited Holmhill a couple of years ago and said that there would never be empty beds again. The MS Society in Edinburgh does not seem to have dealt with that issue effectively.

Likewise, earlier this year, the matron of Holmhill invited representatives from all the councils of the MS Society—of which there are approximately 44—to come and see Holmhill. As far as I know, only two people visited in May 2002, and letters of apology were not received from those who did not take the opportunity to visit. That is a general opinion taken from chats that I have heard at Holmhill, but we are disappointed with the way that matters are handled.

Jennifer has said how confident she is when I am in Holmhill. I enjoy being there; the care standards are extraordinarily high and the travel provisions are so good that I am confident and relaxed during my time there. I have enjoyed my stays in Leuchie House, but its main disadvantage, apart from those to which Jennifer referred, is that the longest possible stay there is only 11 nights, which does not cover the longer periods that are sometimes necessary.

**Jennifer Woods:** Dr Ewing referred to the figure of 2 per cent that is mentioned in the MS Society's letter. It seems to be very low, but it actually reflects the fact that only a small percentage of people who have MS need respite care.

**Dr Ewing:** You said that some of the people who use Holmhill come from Orkney, where levels of MS are very high. It is a medical puzzle.

**Jennifer Woods:** Those people are unhappy about the prospect of the journey to Leuchie House.

**Phil Gallie:** How many people in Scotland suffer from MS?

**Patrick Woods:** I am bad with figures. It is quite a high number, but I will not attempt to guess.

**Phil Gallie:** Two per cent does not sound like much, but if it is converted to a number of people, it could be quite significant. What are the occupancy rates in the centres?

**Patrick Woods:** The MS Society gave the figure for last year as 136 people. I stayed in Holmhill three times last year, but repeat visits are not included in the society's figure. If that figure also included those who benefit from the centres, such as wives and families, it could be doubled. I agree that 136 does not seem like many people in a year. Numbers have dropped, and the tourist office in the Highland region gave me figures that show that tourist numbers have also dropped, as was reflected in the press this year.

**Phil Gallie:** When you were there, how many beds were not taken up?

**Patrick Woods:** The last time I was there was during the last two weeks in November—after which it closed—and four rooms were vacant.

**Phil Gallie:** Out of how many?

**Patrick Woods:** The house could take 12 to 14 people at most.

**Phil Gallie:** So there was about 60 to 70 per cent occupancy.

**Jennifer Woods:** It might have been less than that because some double rooms are used as singles.

**Phil Gallie:** Thank you very much.

**Jennifer Woods:** The criteria for staying at Holmhill were changed, too. People who needed extra care were excluded during its final year, so of course the numbers dropped.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** We have had a lot of representations about the home in Grantown-on-Spey and I see in the correspondence that it closed at the end of November. You mentioned that.

Mr Gallie asked about the number of MS sufferers in Scotland. I do not have a figure but I know that, statistically, the west Highlands—the islands in particular—have the highest incidence of MS sufferers in the country. That statistic was released by the medical profession.

What facilities are currently available for respite care for people who are suffering from MS? Has any special provision been made following the closure of the home at Grantown-on-Spey?

**Patrick Woods:** No, although alternative addresses have been suggested. One would have to go to separated nursing homes and other places like that, apart from Leuchie House. Leuchie House was recommended for those who



would lose out when Holmhill was closed. However, there is now a lot of pressure on Leuchie House and it is quite a distance for anyone to travel from Orkney or further north.

**Jennifer Woods:** Yesterday, we heard of someone who tried to get in to Leuchie House next September and was told that there are no vacancies until October.

**John Farquhar Munro:** Are you finding the situation quite difficult since the home closed, or do you find that your needs are being met by other provision in the community?

**Patrick Woods:** I am fortunate because I can go to Leuchie House for short stays. However, by accident rather than design, at the beginning of the year I heard that there is a respite facility at Broughty Ferry in Dundee—the Mackinnon Centre. We have been to visit that centre and I know that I can apply to go there. I have not done anything about it and was not able to go for a short stay earlier this year. It is curious that that facility is not on any of the lists that are provided by the MS Society.

**Jennifer Woods:** Again, the Mackinnon Centre would not accommodate couples. That does not affect us but we are talking about other people, not just us.

**Dr Ewing:** Mrs Woods made the point that not all MS sufferers need respite care. We really need to know the percentage of sufferers that need respite. The figure of 2 per cent that is mentioned in the MS Society's letter is not really valid, is it?

**The Deputy Convener:** The letter that we received from the MS Society says that less than 2 per cent of Scots with MS use the centre. We also need to question the fact that running Holmhill uses up a quarter of the money that is raised by the MS Society Scotland. What are your thoughts on the response that we received from Mark Hazelwood, the director of the MS Society Scotland?

**Jennifer Woods:** The centre uses a huge amount, but the centre sets out to help everyone with MS. I presume that the centre has taken a huge chunk of the MS Society's funds, but it was never cheap to run.

**The Deputy Convener:** That leads me to another question. Is there a guide that provides advice and information about facilities throughout Scotland that people who have any disability can go to for respite care or holiday provision?

**Jennifer Woods:** There is a very good publication by the Royal Association for Disability and Rehabilitation, or RADAR. It is a guide for the whole of Britain and Ireland, which covers hotels that are accessible and self-catering places. It also includes places such as Leuchie House and

Holmhill. Very few places in Scotland are comparable to those, although there are several possibilities in England. The national MS Society has now produced a guide, but it is similar to that which the MS Society Scotland has produced—a lot of the places are irrelevant.

**Patrick Woods:** There is an organisation called VOCAL—the Voice of Carers Across Lothians—with which I am sure members are familiar. It is an organisation that cares about the carers. It is certainly working on things and has recently produced a document that I have not yet laid my hands on. RADAR is fine for holidays. As Jennifer said, we go on holidays and she helps me, but there needs to be this different set up in order for her to get a break.

I do not think that the MS Society is short of a penny; it has a lot of money. Although it is expensive to run places like Holmhill, the society has lots of money to do that sort of thing. The society is putting money into, for example, employing MS specialist nurses—I am sure that members will have heard about those. The society is financing them for the first three years, after which the health service will take over. I do not suppose that I will ever see an MS specialist nurse, because I was diagnosed a long time ago and we have learned from experience how to deal with the problems. The nurses will deal with folk in the early stages of MS, but I do not think that I will benefit from some of the things that the MS Society is now thinking about putting money into.

**The Deputy Convener:** We have received a letter from Mark Hazelwood, the director of the MS Society Scotland, in which he discusses how the society uses its money; he says that it proposes to use the money a little differently. What is your reaction to his points? The letter states that the society would use the money in other ways:

“For example:

Increasing the number of MS nurse specialists and other specialist care professionals such as physiotherapists, each of which benefits many hundreds of people affected by multiple sclerosis

Meeting financial needs through the expanding payment of Individual Support Grants (welfare grants)

Developing a programme of Self-Management Training for people with MS”.

Those are fairly profound differences.

**Patrick Woods:** My view on that is that very few of those things would help me, given the state of my MS. I cannot get physiotherapy because I can no longer go to the Lanfine unit, but I could get physiotherapy every day when I was there for a week or a fortnight. I am not sure how the suggestions in the letter are meant to work, although it all sounds fine. There are physiotherapists available for people who need

physiotherapy, but it is damned difficult to get it. Overall, I think that the MS Society Scotland is making a curious change in direction—I think that it is being led by the national organisation in London.

**The Deputy Convener:** I clarify that the letter that I quoted was a letter to Patrick Woods; it was not a letter to the committee. We have been copied into the correspondence that he has received from Mark Hazelwood.

**Phil Gallie:** You said that physiotherapy services are “damned difficult to get”. Is not that what the MS Society Scotland has recognised and is trying to address?

**Patrick Woods:** I would like to know how the society will do that. I do not know how it can do that more effectively than it currently does. I mentioned that physiotherapy was available in one respite facility, but—unfortunately—it seems that there are few respite units like the one in Liberton hospital, which provides respite and physiotherapy together. It has been said that the Liberton hospital is for rehabilitation, but why should rehabilitation stop at 65?

**Phil Gallie:** You also made a point about the number of MS nurses and the number of physiotherapists. Given the fact that the provision of nurses and physiotherapists is an NHS responsibility, should not that service be provided anyway?

**Patrick Woods:** I feel that it should. The MS Society will fund the specialist nurses for three years, after which the nurses will be taken over by the health service. MS is a neurological problem, so when one is diagnosed with MS, one is initially referred to a neurology department. I feel that all the folk with neurological problems should be in a system in which they can be provided with the follow-up care, continuous regular physiotherapy and anything else that they need.

12:30

**The Deputy Convener:** I sense that members have come to the end of their questions, so I thank the witnesses for attending. They are welcome to sit where they are for a few moments to hear what action we will take.

**Patrick Woods:** If I may make one more point, I want to return to the petition that Mr Egan submitted, which concerned the closure of a Sue Ryder home. That petition was quite helpful to us because when that petition was considered, it was strongly emphasised that it is unfair on the users when charities close such places at such short notice. One would like to think that both that petition and our petition make a point that should be addressed.

**The Deputy Convener:** As a committee, we always take on board that sort of issue. Consultation has been a theme throughout our work and we have given a high priority to it. I am sure that we will address that issue in our course of action.

I suggest to the committee that we should agree to the following actions. We should write to the Scottish Executive to seek its views on the issues that the petition raises. In particular, we should request that the Executive indicate the extent to which it monitors the effective use of resources that are allocated to local authorities for provision of respite care or short breaks, and whether the services that are offered without an upper age limit for MS sufferers and other disabled people have been found to be adequate.

We should also ask the Executive to comment on the MS Society Scotland's suggestion that it is likely that it will become more difficult for people to acquire local authority funding for respite at places such as Holmhill.

We should ask the Executive to confirm when the charity law bill is likely to be introduced and whether the bill is likely to include measures to prevent charitable organisations from implementing closures without a reasonable period of prior consultation, as has been requested by the petitioners.

We should also ask the Executive to clarify whether the Regulation of Care (Scotland) Act 2001 applies to providers of respite care such as the MS Society at Holmhill, and whether there would have been a requirement on the society to apply for cancellation of registration and to arrange similar care elsewhere for its service users. I also suggest that the committee should write to the MS Society Scotland to request details of its formal position on the proposed closure of Holmhill and of its policy on the provision of respite care and short breaks for MS sufferers.

The committee may also wish to pass a copy of the petition to the Health and Community Care Committee for information only.

Do members agree to those suggestions?

**Members indicated agreement.**

**Phil Gallie:** We must remember that the MS Society is basically made up of volunteers. It is a voluntary organisation that is not funded by the state. Under such circumstances, we should bear in mind the fact that it is perhaps better that Government does not extend its tentacles into the affairs of such an organisation. At the same time, I sympathise with the view that has been expressed about closures. I would expect such societies to take reasonable consideration of all other aspects and I would like to think that the MS Society has

done that. On that basis, I would be quite happy to send a sympathetic letter to the society to ask it about the matter.

**The Deputy Convener:** I am sure that we can take Phil Gallie's suggestion on board.

I do not know whether it is possible for the clerks to secure this information, but I also want to ask about overall provision throughout Scotland for people who are in a similar position to Patrick Woods. Is there a publication that can give good guidance to people? There is a requirement for such information to be in the public domain. We need to ask how that is promoted. We also need to ask those questions because the more information people have about what is available, the better will be the choices that they can make. It is sometimes not down only to the MS Society to provide the facilities. Excellent provision might be available but people sometimes do not know about it.

**Dorothy-Grace Elder:** You are quite right to home in on the subject of a UK guide. I believe that one is still published, although I have not checked recently. I think that it is called "Holiday Care", and is published by a charitable organisation of which Judith Chalmers is patron. It covers respite care holidays in Britain and on parts of the continent. I am not sure whether I would call the publication extensive, but I have seen it and it is quite detailed. I am pretty sure that the name of the organisation is also Holiday Care, and that it is based in the midlands.

**The Deputy Convener:** It would be interesting to know whether there is a Scottish-based website with that sort of information. The more we make information accessible, the better.

**Jennifer Woods:** Is the publication an English one?

**Dorothy-Grace Elder:** Yes. Holiday Care's headquarters is, as far as I am aware, somewhere in the middle of England, although it has addresses throughout Britain.

**The Deputy Convener:** We will do all we can to find the publication.

**Dorothy-Grace Elder:** If it is still being published. I last came across it two or three years ago.

**The Deputy Convener:** We will pass on the information to the petitioner if we can.

**Phil Gallie:** Could we ask the Minister for Health and Community Care to comment on the requirement on the Multiple Sclerosis Society to provide more specialist nurses and physiotherapists? There seems to be a hole in provision and the minister might like to comment on that.

**The Deputy Convener:** We will ask those questions too. If there is anything that the petitioners have found hard to follow among all those questions and answers—I see a slightly quizzical look—the *Official Report* will be the easy way to get clarification on this morning's discussion. We will also write to you following the meeting, specifying all the action that we will be taking on your behalf. I promise you that you will be kept well informed. Our committee clerks are very good at that. I thank you for coming to present your petition this morning. You have done very well.

**John Farquhar Munro:** Before we move on, could I ask that we address the first bullet point under the heading "Suggested action" in the paper on the petition? It says:

"found the service offered to Multiple Sclerosis sufferers and other disabled people ... to be adequate".

I think that we should change the wording of that. The petition has highlighted the difficulties that people have.

**The Deputy Convener:** Would you prefer the word "effective"? We are asking the Scottish Executive for its view on whether the services are effective or adequate. Is there another word that you would like to put in?

**John Farquhar Munro:** If we use the word "adequate", I think that that indicates our acceptance of the current situation.

**The Deputy Convener:** But we are asking the Executive whether it feels that the provisions are adequate. The word does not relate to our view; we are asking the Executive for its opinion. We will then feed its response back to the committee. However, we are open to suggestions.

**John Farquhar Munro:** Can anyone suggest a better word than "adequate"? I think that "adequate" indicates acceptance of the existing situation.

**Phil Gallie:** How about "meet the overall need"?

**The Deputy Convener:** Yes. We could ask whether the Executive has found that the service offered has met the overall need. Thank you, Phil: go to the top of the class—but do not take your books with you; you will not stay there long.

**Phil Gallie:** It is a Tory-free zone.

**Patrick Woods:** You have mentioned websites. We do not have access to the internet yet—a very small percentage of us in respite homes do. It sometimes sounds a bit overpowering, even if it is meant to be the easy way to get information. In fact, it is not so easy without the facility. Thank you anyway.

**The Deputy Convener:** Thank you. You have done very well this morning.

## **Adults with Incapacity (Scotland) Act 2000 (PE573)**

**The Deputy Convener:** We welcome John Scott MSP to the committee. He is joining us for petition PE573 from Dr J Beatson, who is not here today—he has sent apologies. John Scott will sit in the hot seat, or wherever he feels most comfortable.

**Phil Gallie:** Put him in the dock.

**The Deputy Convener:** I thank John Scott for coming to deputise at such short notice. I know that you were going to be here anyway to speak to the petition, but I believe that Dr Beatson has given you some words to speak on behalf of the petitioners.

The petition calls for the Parliament to amend section 47 of part 5 of the Adults with Incapacity (Scotland) Act 2000 and its code of practice to remove the assessment and certification work load requirements from general practitioners in favour of the appointment of dedicated personnel to fulfil those requirements.

**John Scott (Ayr) (Con):** Thank you for inviting me to speak in Dr Beatson's absence. As you have said, it is at very short notice.

Dr Beatson first wrote to me in August about the matter. Essentially, it is a problem with the Adults with Incapacity (Scotland) Act 2000. So far, 370 GPs have supported Dr Beatson's petition with regard to the workings of the act. Most of those doctors have written to Trevor Jones on the subject.

I will give you an illustration of the problem. A home such as Dundonald House in Templehill in Troon, which is one of the houses that Dr Beatson's practice looks after, might have 50 or so residents, many of whom suffer from dementia. To give all those residents a flu injection has turned into a week's work. Each patient has to be individually assessed before they can be given a flu injection. That process can take up to an hour per patient.

All patients have to be assessed and a report written, typed and filed, and all that has to be done by the GP so, instead of the GP going in and giving everyone a flu jab in one morning, that work takes one hour per patient. If there are 50 people in the house, that is 50 hours of work and that is causing the GPs great concern. That illustrates the point of the petition.

Dr Beatson has given me one or two notes. Essentially, it is a *cri de coeur* from doctors about the increasingly bureaucratic work load, which is in danger of compromising patient care, despite assurances that bureaucracy will be kept to a minimum. Dr Beatson and the 370 other doctors

feel that there is a crisis in general practice—a crisis of work load, of morale, and of recruitment and retention of GPs, who are not staying in the profession.

There should be no doubt that the GPs have been and remain in agreement with the general principles, spirit and benefit of the act. However, they take issue with the significant new work load that has arisen as a result of the act. The act is quite specific that only GPs can carry out the work.

The act is flagship legislation and a milestone achievement for all concerned. However, there has been a remarkable oversight, which is noted in an e-mail that I received from Margaret Jamieson, who sat on the Health and Community Care Committee when the bill was discussed. She pointed out to me that at no time did anyone raise the implications of the legislation for GPs' work load.

Dr Beatson feels that the British Medical Association should have raised the implications for the work load of GPs. Dr Beatson believes that the legislation is good, but he believes that the act has to be amended. He believes that psychologists and psychiatric nurses should be appointed to carry out such work. They should have been in place before it was gaily assumed that GPs would carry out the work. Dr Beatson believes that the legislation has created an extra burden of work and an injustice.

To that end, I have sought a meeting on the matter with the Minister for Health and Community Care, Malcolm Chisholm, who has undertaken to conduct a review of the code of practice. Dr Beatson and others seek amendment of section 47 and the code of practice at the earliest opportunity to remove the excessive work load from general practitioners.

That is probably the bones of the petition. I am happy to answer questions on it on behalf of the GPs and Dr Beatson.

12:45

**The Deputy Convener:** Thanks very much. I, too, have had representations from constituents on the matter and spoke to Margaret Jamieson on the topic last Thursday, having seen that it was on the agenda for today. She confirmed what you just said about Malcolm Chisholm having agreed to a review of the code of practice. Committee members will welcome that.

**Dr Ewing:** The papers on the petition say:

"The GPs highlight the lack of training or publication advising GPs how to make an appropriate assessment and the absence of a mechanism to arrange a second opinion".

I do not have the act in front of me. Does it say that there must be a second opinion on the GP's assessment?

**John Scott:** I have the act with me. I will quote from section 47(2):

"Without prejudice to any authority conferred by any other enactment or rule of law, and subject to sections 49 and 50 and to the following provisions of this section,"—

the key bit is next—

"the medical practitioner primarily responsible for the medical treatment of the adult shall have, during the period specified in the certificate, authority to do what is reasonable in the circumstances, in relation to the medical treatment, to safeguard or promote the physical or mental health of the adult."

That is the key paragraph that needs to be altered. It is clear that only the medical practitioner is responsible. He can come to a decision without a second opinion.

**Dr Ewing:** The petitioners' attitude is probably fairly widespread among GPs throughout Scotland.

**John Scott:** Indeed. Dr Beatson has been in contact with every GP practice in Scotland about the matter. He has been overwhelmed that so many of them have made the effort to write to him and Trevor Jones in support of the petition. We are looking at a grass-roots revolt among the doctors, who are essentially threatening—

**Dr Ewing:** It looks as if we are sailing in an uncharted sea of mental distress.

**The Deputy Convener:** The papers with which we have been provided say that 44 different practices from throughout Scotland responded to the petitioner. There have been representations from my area. I, too, have written to the minister on the issue, which is important. Winnie Ewing is right. When the act was passed, the Parliament probably did not anticipate the problem. Such things happen but, as long as they are addressed, that is fine.

**John Scott:** To be fair, I note that Malcolm Chisholm acknowledges that a problem exists. The question is how best to address it. The petition was lodged before I had my meeting with Malcolm Chisholm, but we have not withdrawn it because we want to keep up the pressure on the minister to do what he considers best, whether that is to amend the act or issue new and different guidance.

**The Deputy Convener:** The act has been positive. It has had a positive impact throughout Scotland. We should be proud of the fact that we were involved in it at an early stage in the Parliament's existence. Issues arise, but the important point is to sort them out when they arise.

**Phil Gallie:** I was on the Justice and Home Affairs Committee when the act was passed. It was the first major bill that the Scottish Parliament passed. There was a lack of experience on that

committee, but the surprise is that not even the BMA picked up on the problem. There is a lesson in that for all of us about nodding bills through. Their detail hides implications, in many ways.

With respect to the doctor's assessment, what happens when the guardian, or whoever has responsibility for the elderly person who cannot look after their own affairs, gives consent? Does there have to be medical confirmation, or can the doctor simply go ahead?

**John Scott:** I think that where the situation is life threatening the doctor can go ahead, but where the treatment is prophylactic, as it were, such as a flu injection, there needs to be an assessment. That is my understanding of the situation. If someone's life is in danger, the doctor can go ahead without anybody's consent and without any certification being provided.

**Phil Gallie:** My impression was that if the guardian, welfare attorney or person authorised under the intervention order simply said that it was okay to go ahead, they would be able to do so. You indicated that a problem arose in Dundonald House. Would the matron not be the authorised person, and could she not give the nod on a group of people?

**John Scott:** That is not how the situation has been represented to me by Dr Beatson. I do not think that that can happen, although you may have further knowledge.

**Phil Gallie:** No, I do not. I am simply querying the situation. I realise that the question is a bit unfair.

**John Scott:** The situation that has been represented to me is that each patient has to be individually assessed and thereafter a report has to be made on them. The work load is essentially about an hour per patient.

**Phil Gallie:** I will put this further point, as much for the record as anything else. I would have thought that the assessment by a general practitioner would be a one-off in the early stages for each patient. Is that the case? Once he has done it, does he have to do it on every occasion?

**John Scott:** He has to do it on every occasion for every patient. As I understand it, the assessment lasts a year and thereafter has to be carried out again. I am open to correction on that.

**Phil Gallie:** I understand.

**Dr Ewing:** But there is a flu injection every year.

**John Scott:** Yes, that would be an annual thing, but if there was something else that had to be carried out on the patient's behalf within three months, say, of the flu injection, the previous assessment would still apply.

Because of the imposition of an extra work load, doctors are talking about withdrawing their co-operation. That is why I take the matter seriously, as we cannot allow that situation to develop. Indeed, that is why the Minister for Health and Community Care is taking the issue seriously. The issue could be the straw that finally breaks the backs of many GPs in terms of the excessive work load that they feel they are carrying. That is why it is vital that the minister addresses the issue as a matter of urgency.

**The Deputy Convener:** I sense from the comments around the table, and from the inquiries that I made last week, that there is a consensus on this matter. It highlights the value of the Public Petitions Committee, because once again we are providing checks and balances. When a matter such as this one arises, there is an opportunity for it to be reviewed fairly urgently. I thank John Scott for presenting the petition on behalf of Dr Beatson. He is welcome to hang on while we reflect on the actions that we could take.

Do members agree that we should write to the Scottish Executive and to the BMA's Scottish general practitioners committee to seek their views on the issues that are raised in the petition? In particular, we should ask for confirmation of their respective positions with regard to the apparent widespread concern among GPs in Scotland as to the significant administrative burden that is placed on them by the requirements of the 2000 act in relation to assessment and certification, which they claim seriously affects patient care. We should ask for details of any measures that are being taken to reduce that burden on GPs, together with an indication as to whether the Executive will consider appointing dedicated personnel to reduce the burden on GPs.

We should also ask for an update on any outcomes from the meeting between the Executive and the BMA on 17 December relating to the issues that are raised in the petition; comments on the lack of training or publications advising GPs on how to make an appropriate assessment and the absence of a mechanism to arrange for a second opinion from someone who is more qualified in the area, such as a psychiatrist; and an indication as to whether the Executive has any plans to establish a working group, similar to that of the Cabinet Office, with a view to reducing GP work load.

The committee might also wish to pass a copy of the petition to the clerk of the Health and Community Care Committee for information only. Does the committee agree?

**Dorothy-Grace Elder:** I apologise, convener—I had to leave to make an urgent call because we are over-running. However, I confirm that the Health and Community Care Committee did not

hear evidence about the extra burden on already over-burdened doctors. The doctors in Troon should be congratulated for providing what is a national service and drawing the matter to our attention. As they point out, they have over a century of experience among them and are well qualified to talk about the issue.

I wonder whether we could include a question about the flu programme, of which the Executive and everyone in the Parliament approves. We heard from John Scott that it can take 50 hours for a GP to get round a home for frail people. Could we include a question about the possible effects that there might already have been this winter on that important flu programme?

**The Deputy Convener:** I am sure that that can be accommodated. I do not see any disagreement from members. We can agree to proceed that with the other actions. Again, I thank John Scott. As well as the Health and Community Care Committee, the Public Petitions Committee is helping to address this important issue.

**John Scott:** As you said, it reflects well on Parliament that, where a weakness has been discovered in legislation that we all accept is well intentioned and which largely works, a back bench can bring that to the attention of Parliament with a view to getting the legislation reviewed and sorted.

**The Deputy Convener:** Because you are being so nice to us, I hope that you will take away that message to Murray Tosh and your other colleagues and plead for more resources for the Public Petitions Committee. We have only 1.5 members of staff, so I use every available opportunity to plead for more resources. The Public Petitions Committee is a wonderful committee and I am told that it is the jewel in the crown of the Parliament. We would like more resources, so please speak nicely to your colleagues. Thank you.

**John Scott:** I have fond memories of serving on the Public Petitions Committee, so you do not have to convince me.

**Dorothy-Grace Elder:** This also shows the value of back benchers.

**John Scott:** Indeed.

### **Public Bodies (Complainers' Rights) (PE578)**

**The Deputy Convener:** That takes us to the last of the new petitions, PE578 from Mr Donald Mackinnon. The petition is about young and vulnerable people's exclusion from the right of absolute privilege. Members might recall that Michael Russell lodged an amendment to the Protection of Children (Scotland) Bill on the

matter, but he withdrew it when the minister agreed to act on the matter. The petitioner calls for the Scottish Parliament to take the necessary steps to extend the right of absolute privilege that is available to those who complain about the conduct of a range of public bodies to young and vulnerable people who report abuse to an appropriate authority.

I am pleased to welcome David Mundell to the meeting. I take it that he will say a few words in support of the petition.

**David Mundell (South of Scotland) (Con):** Yes, but given the lateness of the hour I will say very few words. Mr Donald Mackinnon is present and it is important to say at the outset that his son was involved in a case, although Mr Mackinnon does not seek in any way for the committee or the Parliament to comment on or become involved in that case. He wants to highlight a point where, it appears to me, public policy and the existing civil law of Scotland are not totally consistent.

I think that we would all agree with the position to which we have moved, whereby we encourage young people to report incidents of abuse and violence against them. However, that is not wholly consistent with civil law, which allows statements made during the investigation of allegations to be subject to defamation proceedings. Members will probably be aware that legal aid is not available for such proceedings.

The situation appears to be wholly inconsistent with a number of other areas of the law. For example, if I were to make a complaint to the ombudsman about the actions of the British Potato Council, nothing that I said about the council or its employees could be used as part of a defamation action. However, statements made by a pupil before a local authority hearing in relation to alleged abuse or violent conduct could be used in a legal action. It seems that the message of public policy on such issues is inconsistent with the basic civil law.

As the convener said, the issue has been raised with the Education, Culture and Sport Committee, but on that occasion, the matter was considered in a fixed context. I agree with Mr Mackinnon that the petition would allow the issue to be considered in a wider context rather than within the narrow parameters of a particular bill. The issue is worthy of further consideration.

13:00

**Dr Ewing:** I absolutely agree that there must be absolute privilege in such cases. Of course, if the allegation is made by a young person to the press and is published, and the young person has not gone through the correct procedures that are available to them, one would have to say that there was evidence of malice.

There are many cases of child abuse that we never hear about. If we want more children to report abuse, we must remove the fear that they might have that they will end up being prosecuted in court because of their allegation. When I was at school, there were teachers who should have been reported to the authorities, but we all agreed that we would not do so. We should encourage children to report cases of abuse.

When legal aid was introduced in Scotland—since 1424, court practitioners of Scotland had worked for the poor for nothing—defamation cases were excluded for reasons of expense. I believe that that was a bad decision. The saying goes:

“Who steals my purse steals trash ...  
But he that filches from me my good name”

robs me. It is wrong that we do not have legal aid for defamation cases.

On the matter of the children, Mike Russell withdrew his amendment because he believed that he had secured an undertaking from the Executive. Therefore, we should seek to ensure that what Mike Russell tried to achieve is delivered and that there is absolute privilege in cases involving reports of abuse by children.

**Phil Gallie:** Is not it the case that a defamation case can be accepted only if it is shown that a deliberate untruth has been told?

**David Mundell:** There is a difference between the balance of proof that is required in a legal situation and that which is required in an internal inquiry. The civil court requires a different balance of proof and different evidence. Often, young people do not come forward because there was no witness to the act, although a civil action could succeed on that basis.

The criteria that people are asked to apply in the civil legal system and in reporting incidents are different. It is important to get the balance right. As Dr Ewing indicated, we should ensure that if evidence and statements are given privilege, malicious attacks are not also protected, and there must be a basis on which malicious attacks can be weeded out. However, at the moment, it seems that the system is set up so that virtually any suggestion that does not meet civil evidential standards makes someone who complains liable to a defamation action.

**Phil Gallie:** Are you aware of other incidents whose outcome was similar to the outcome of the Dumfries incident? My constituency experience suggests that the outcome is usually the reverse. Allegations are made, a person is left with a stain on their name and they are never able to prove that the allegations were untrue. People who have had allegations made against them have ended up as victims. Do you have examples of people who have made a complaint being found guilty?

**David Mundell:** Such cases do not often come to court, as defamation proceedings in the circumstances that you have narrated require to be funded by individuals. If a person goes to court with a defamation action, they must fund it.

There are time bars. In the Dumfries case, the time bar was three years. The young person was 15 so when they were 18, they were brought within the legal parameters. There is no suggestion that an eight-year-old child, for example, could be sued, but youngsters in their vulnerable teenage years are open to such proceedings, as they could be brought back within the court system within the time bar.

**Dorothy-Grace Elder:** I want to clarify something. In referring to young and vulnerable people who report abuse to an appropriate authority, are you talking about under-16s?

**David Mundell:** Yes, because there is a three-year time period in which legal actions must be brought. Often, there is a delay between an allegation being reported to a head teacher and it being reported to the education authority and then going before another body. Each time that the report is repeated counts as the last time from which the three years run.

**Dorothy-Grace Elder:** Are we certain that in other reported abuse cases, adults or over-16s currently have absolute privilege?

**David Mundell:** No, they do not.

**Dorothy-Grace Elder:** I did not think so. It is obvious that the issue has been raised because of younger people's vulnerability. The case is good. *[Interruption.]*

**The Deputy Convener:** We are bemused by the range of mobile phone tunes. We have just heard the theme tune to "Mission: Impossible".

**David Mundell:** Is that appropriate for a member of the Conservative party?

**The Deputy Convener:** You must be a born optimist, especially in the light of today's headlines in the national papers. The Tory party is at its lowest ebb in four years.

I am sorry—I did not want to bring politics into this. If members have finished asking questions, we will turn to the action that has been suggested. In view of the recent discussion of the issue in the context of Mike Russell's proposed amendment to the Protection of Children (Scotland) Bill at stage 2, the committee may wish to write to the Executive. We could ask the Executive to comment on concerns that have been expressed by ChildLine, among others, that, in the absence of absolute privilege, pupils may be deterred from raising legitimate concerns about bullying by teachers or other pupils. We could also ask the

Executive to indicate whether it is willing to lodge an amendment to the Protection of Children (Scotland) Bill at stage 3 to ensure that children are able to raise concerns about their treatment without the fear of legal action being brought against them, or whether it will consider other appropriate legislative change to address the issue.

The committee may agree to pass a copy of the petition to the clerk to the Education, Culture and Sport Committee—for information only at this stage. Do members agree to those recommendations?

**Phil Gallie:** It is easy to agree to them, but David Mundell kept using the word "balance", and that is very much on my mind. I know of several cases in which adults appear to have been wrongly accused. I sympathise with the petition's aims, but we must remember to strike a balance. We cannot deal with the matter simply by having the Executive rush through a change to legislation.

**The Deputy Convener:** That is a fair comment. We could ask how the Executive intends to deal with malicious claims.

**Donald Mackinnon:** Mr Gallie makes a very good point. The issue that he raises should be addressed through rigorous assessment of allegations by the body that is carrying out the statutory function or that is responsible for conducting the investigation and deciding whether disciplinary procedures should be initiated. That is the point at which names should be cleared and at which it should be decided that a false allegation has been made. The disciplinary body can then take whatever action it considers appropriate. That could include reinstatement with an apology to a suspended member of staff and the imposition of whatever penal sanction is available on someone who is found to have made malicious allegations. If that person is a school pupil, they could be transferred to another school or suspended. However, it is not an appropriate public response to have the threat of bankruptcy hang over young people for six years and to have them incur costs of about £80,000.

**Phil Gallie:** I sympathise with Donald Mackinnon and recognise that his objective is fair. I have in mind a slightly different situation, in which allegations are made about incidents a number of years after they are supposed to have occurred. Perhaps I am confusing two issues. I accept the point that Donald Mackinnon makes about financial obligations, which are entirely unrealistic.

**The Deputy Convener:** In our letter, we can ask the Executive what it plans to do in the event that malicious claims are made. Do members agree to the recommendations?

**Members indicated agreement.**



**The Deputy Convener:** We have reached the end of consideration of new petitions. I thank David Mundell and Mr Mackinnon for their attendance. We will advise them of the outcome of the petition.

## **Inadmissible Petition**

### **Penicuik High School (Library Development) (IP35)**

**Dr Ewing:** I suggest that we agree to the finding that the petition is inadmissible, as we are short of time. The clerks' usual brilliance is exposed to view.

**The Deputy Convener:** I am content with that. Do members agree?

**Members** *indicated agreement.*

**The Deputy Convener:** As we agreed earlier, we will deal with the next agenda item in private.

13:13

*Meeting continued in private.*

13:23

*Meeting continued in public.*

## **Convener's Report**

**The Deputy Convener:** Our next meeting will be on 14 January. We will be back in business then. I am sure that there will be a big queue of public petitions, given that Dorothy-Grace Elder, Phil Gallie and I recently gave plaudits to the Public Petitions Committee on the radio.

I thank everyone for their attendance this morning. I apologise if the meeting has been slightly longer than expected. However, John McAllion once convened a meeting of the committee that lasted until a quarter to 2.

*Meeting closed at 13:24.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Wednesday 15 January 2003**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

**The Stationery Office Bookshop**  
71 Lothian Road  
Edinburgh EH3 9AZ  
0131 228 4181 Fax 0131 622 7017

**The Stationery Office Bookshops at:**  
123 Kingsway, London WC2B 6PQ  
Tel 020 7242 6393 Fax 020 7242 6394  
68-69 Bull Street, Birmingham B4 6AD  
Tel 0121 236 9696 Fax 0121 236 9699  
33 Wine Street, Bristol BS1 2BQ  
Tel 01179 264306 Fax 01179 294515  
9-21 Princess Street, Manchester M60 8AS  
Tel 0161 834 7201 Fax 0161 833 0634  
16 Arthur Street, Belfast BT1 4GD  
Tel 028 9023 8451 Fax 028 9023 5401  
The Stationery Office Oriel Bookshop,  
18-19 High Street, Cardiff CF1 2BZ  
Tel 029 2039 5548 Fax 029 2038 4347

**The Stationery Office Scottish Parliament Documentation**  
Helpline may be able to assist with additional information  
on publications of or about the Scottish Parliament,  
their availability and cost:

**Telephone orders and inquiries**  
**0870 606 5566**

**Fax orders**  
**0870 606 5588**

**The Scottish Parliament Shop**  
George IV Bridge  
EH99 1SP  
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers