

PUBLIC PETITIONS COMMITTEE

Wednesday 25 June 2003
(Morning)

Session 2

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PUBLIC PETITIONS COMMITTEE

2nd Meeting 2003, Session 2

CONVENER

*Michael McMahon (Hamilton North and Bellshill) (Lab)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

Helen Eadie (Dunfermline East) (Lab)

*Linda Fabiani (Central Scotland) (SNP)

*Carolyn Leckie (Central Scotland) (SSP)

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

*Mike Watson (Glasgow Cathcart) (Lab)

*Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Stephen Bird (Falkirk Supporters Society)

Dennis Canavan (Falkirk West)

James Crossan

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

Christine Grahame (South of Scotland) (SNP)

Pamela Greenslade (Women's Land Reform Group)

Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

Robert McWilliam

Ann Mallaby (Women's Land Reform Group)
Michael Matheson (Central Scotland) (SNP)
David Mundell (South of Scotland) (Con)
Cathy Peattie (Falkirk East) (Lab)
Robbie the Pict

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Joanne Clinton

LOCATION

The Hub

Scottish Parliament

Public Petitions Committee

Wednesday 25 June 2003

(Morning)

[THE CONVENER *opened the meeting at 10:35*]

Interests

The Convener (Michael McMahon): Good morning, everyone, and welcome to the second meeting of the Public Petitions Committee in the second session of the Scottish Parliament. The first item on our agenda is a declaration of interests. Unfortunately, Sandra White was unable to attend our first meeting, but we still have to go through the formality of asking her to declare any interests.

Ms Sandra White (Glasgow) (SNP): I have no interests to declare other than what appears in the register of members' interests.

The Convener: Colleagues, the petitioner who submitted petition PE618 is unable to attend this morning and has asked whether the petition can be deferred for another meeting. Do members agree that we should accept that request?

Members indicated agreement.

The Convener: Christine Grahame would like to speak to petition PE628 but she is currently at the Health Committee, as is Helen Eadie. The suggestion is that we do not discuss that petition until she arrives. Are members happy for us to push it continually down the agenda until she can speak to it?

Members indicated agreement.

New Petitions

High Court (Appeals System) (PE617)

The Convener: Item 2 is consideration of new petitions. PE617 is in the name of James Crossan, whom I thank very much for coming this morning. Our normal procedure is to allow petitioners to speak for three minutes, after which I open up the discussion to allow members to ask questions. We will then consider the information given.

James Crossan: Good morning. I call on the Parliament to establish a system of independent appeals against decisions of the Crown in High Court cases. As things stand, the family of a victim can do nothing about action taken by the Crown during a murder trial. Families of a victim—such as our family—who dare to complain to the Lord Advocate are treated with utter contempt. We would like the committee to consider our petition. Convener, would you like me to summarise it?

The Convener: You have distributed a paper that members have only just had the chance to see. If it forms the basis of information that you would like to put to the committee, you still have a minute or two to expand on it.

James Crossan: I will give members a quick summary of the background to the petition. In December 1997, five people came to my door, which resulted in our son being stabbed to death. One of the five was charged with murder but no charges were ever brought against the other four. The murder trial began on 8 April 1998 and the Crown closed its case on the same day. The jury heard just four hours of evidence. Even though the accused admitted killing my son, he was acquitted on a verdict of not proven. I was cited as a witness, as the only person who saw the fatal blow being struck, but I was not called to give evidence. No explanation for that has ever been given.

Neither the police nor the forensic experts were called to give evidence. We were told that there was no point in calling the forensic experts to give evidence because the tests that they carried out on the knives were inconclusive. However, we found out later that no tests had been done on the knives. That was one of the many lies from the Crown Office that we were to endure during the next five years.

I have spoken to many victims' families who have found the same pattern in their cases. I believe that the Crown Office can treat people like that because it is not accountable to anyone. I ask the petition to be given the utmost consideration.

The Convener: Thank you. We are sympathetic towards your situation. Members will now seek clarification of or make points about the issues that you have raised.

Jackie Baillie (Dumbarton) (Lab): Mr Crossan, I assume that your MSP at the time, John McAllion, wrote to the Crown Office on your behalf. Did the Crown Office shed any light on some of the contradictions that you have reported to us? Obviously, the committee cannot review individual cases. If the Crown Office had given you satisfactory explanations, I wonder whether you would be pursuing a right of appeal.

James Crossan: John McAllion represented us. We wrote the letters and he sent them. The replies to his letters were the same as the replies to our letters—he was not given any more of an explanation because he was an MSP.

Linda Fabiani (Central Scotland) (SNP): Too often, I hear complaints from victims' families who feel that they do not know what is going on or that they are not being taken into consideration. Did you feel that, throughout the process, you were given information and explanations of why things happened? Afterwards, were you offered a meeting with the Crown Office to allow you to talk through the events? If so, how were you treated at that meeting?

James Crossan: We wrote to the Crown Office and to the Lord Advocate on many occasions, but he refused to meet us.

Linda Fabiani: He refused?

James Crossan: Yes. He said that there was no way he would meet us, so we could not ask for explanations. That is why we have been writing to the Crown Office for the past five years.

Linda Fabiani: I know of people who have had meetings with the Lord Advocate when they felt that a case had not been dealt with properly, which has cleared the air a bit. It seems strange that a meeting was refused and that you are still writing to the Crown Office.

James Crossan: When the Lord Advocate refused to meet us, he arranged a meeting with the procurator fiscal in Dundee, but she simply said that she could not answer our questions—the meeting was a waste of time. The Crown Office has refused to meet us to discuss any of the issues that we raised in our letters.

Ms White: I have a great deal of sympathy, not only with your case, but with other cases that relate to the justice system. There are two issues. The first, which you have not touched on but which has been mentioned to me, is the issue of the not proven verdict. If the verdict had been guilty, the Crown could have appealed against the sentence. We should consider that point.

Secondly, the trial lasted only one day, but since then you have discovered what you say are lies in relation to the forensic evidence. If we were to pass the petition to the Executive to ask it to

examine the criteria for appeals, would it be acceptable to you if we sought a system in which it was possible to appeal only in cases where evidence had been withheld, for example? Any appeals system would have to have checks and balances—not every person who is unhappy about what happened to them should be able to appeal. Would you be happy if appeals were possible only in circumstances such as yours, where there is proof that not all the evidence was submitted?

James Crossan: Yes. That would be beneficial not only for me but for the other victims' families with whom I have spoken. We asked the Lord Advocate how a judge could advise a jury to bring a verdict of not proven when someone has admitted that he killed the deceased, but the Lord Advocate refused to answer that question. As things stand, there is nothing that we can do. The Lord Advocate lied to me and yet I have to write to him to complain about that. That is a ludicrous situation.

Ms White: I understand that. Thank you.

10:45

Carolyn Leckie (Central Scotland) (SSP): Hello, Mr Crossan. I extend my sympathies to you. You find yourself in a dreadful situation. My first question concerns the actions of the police. You said that forensic evidence was not gathered. Did you receive an explanation from the police or their forensic section about that?

James Crossan: No.

Carolyn Leckie: Did you make a complaint about that to the police?

James Crossan: We met the senior police officer who was involved in the case. He said that he was satisfied that everything had been conducted properly. The police believed that they had the knife that killed our son. Although the police did not fingerprint it or send it for forensic testing, they believed that they had the murder weapon.

Carolyn Leckie: Did the police explain why the knife was not fingerprinted or sent for forensic testing?

James Crossan: No.

Carolyn Leckie: Did you pursue a complaint?

James Crossan: No. We concentrated on trying to get an explanation from the Crown Office. When I met the police officer, he told me that he believed that the police had the murder weapon. At that time, we did not know how much further we could pursue matters with the police. We thought that it would be more beneficial to take up the case with the Crown Office.

Carolyn Leckie: When was it clear to you that you were not being called as a witness?

James Crossan: I was told just after lunch on the day.

Carolyn Leckie: Who told you?

James Crossan: Someone from the procurator fiscal's office in Dundee.

Carolyn Leckie: Did he explain why?

James Crossan: No. I asked him why and whether the accused was changing his plea. The person from the procurator fiscal's office said that the accused was not doing so as such, but that a plea of culpable homicide had been accepted. However, that plea was not brought into the court. I do not know what happened.

Carolyn Leckie: Was the reduced charge of manslaughter brought?

James Crossan: That is what culpable homicide is. The accused was discharged from the murder charge.

Carolyn Leckie: Right. So he was convicted of culpable homicide.

James Crossan: No. He was acquitted altogether.

Carolyn Leckie: So the culpable homicide option did not come before the court.

James Crossan: No.

Carolyn Leckie: But that was what you understood was going to happen.

James Crossan: Yes.

Carolyn Leckie: Did anyone explain why that did not happen?

James Crossan: No. It might be hard for people to understand that, but when you meet the people from the procurator fiscal's office and the Crown Office, they tell you only what they want you to know. When I met the woman from the procurator fiscal's office in Dundee, I tried to get answers by putting hypothetical situations to her, but she kept saying that she would not or could not answer the question. What was the point of arranging the meeting in the first place?

Mike Watson (Glasgow Cathcart) (Lab): My sympathies are with you and your family, Mr Crossan, not least because of the way in which things have been made worse for you by the fact that you have not been given the information that you have sought.

I do not think that we have received copies of the correspondence between Mr McAllion and the Crown Office. Is that correspondence available to us? It might be helpful for us to see it as we

consider how to follow up your case. From what you have just said, we might also have to read between the lines. I hope that the correspondence can be made available.

James Crossan: Yes.

Mike Watson: Your answers to Carolyn Leckie's questions have to some extent clarified the matter about which I wanted to ask. You have said:

"It was probably the 'shortest murder trial in history' – when the accused had actually pled – 'not guilty'".

However, you say that the accused had admitted to the killing, but claimed that it was not his intention to have killed your son.

James Crossan: He claimed self-defence. He said that my son had run out of the house with a knife and that there was a struggle.

Mike Watson: In point 7 of your supporting documentation, you said that the reason why you were not called to give evidence was that

"the Advocate did not want me to get a hard time from the defence even though my wife and son had already given evidence."

James Crossan: That was the information that I was given at the time.

Mike Watson: Presumably, you, your wife and your other son must have been there at the same time.

James Crossan: That is correct.

Mike Watson: If all three of you were there at the same time, what evidence could you have given that your wife and other son would have been unable to give?

James Crossan: They were asked in court whether they had seen the fatal blow being struck and they had to answer that they had not.

Mike Watson: But you saw it.

James Crossan: Yes.

Mike Watson: The police knew that you had seen it—you had told them that you had seen it.

James Crossan: Yes—I made three statements to that effect.

Mike Watson: You said that you met the police and the procurator fiscal. Were you accompanied by John McAllion, a solicitor or anybody else?

James Crossan: No. When the meeting was arranged, the procurator fiscal told us that only my wife and I could appear. We were not allowed to take copies of forensic reports, for example.

Mike Watson: Had John McAllion asked to be present at meetings as your representative?

James Crossan: To be perfectly honest, I cannot remember.

Mike Watson: It would be inappropriate for an elected representative to be denied access in such circumstances. Perhaps we could find out about that.

John Scott (Ayr) (Con): Mr Crossan, my sympathies, too, are with you. Even at this late stage, if you were to be given a full and proper explanation from the procurator fiscal's office and taken through the reasons why you were not called to give evidence, would you be happy with that?

James Crossan: I do not know whether I would be satisfied. I would like an inquiry into the whole handling of the case. Is it normal practice not to fingerprint knives, or did that happen only in this case? Is it normal practice to send knives for forensic tests? I do not understand the point of having a forensic department if items are not sent for forensic tests. Do such things happen all the time, or did they happen only in this case? It seems that people could not be bothered to do anything to gain a conviction.

Linda Fabiani: I have some brief questions, if you do not mind, Mr Crossan. I think that there is often a perception among people who end up in difficult circumstances that the law is a bit of a game and that lawyers are more concerned with playing games than with what actually happened. How did your legal representatives deal with the matter? Did they feel that you had been badly treated? Were you given any assistance by them?

James Crossan: I agree that some legal representatives enjoy themselves in court. When I approached a deputy at about 3 o'clock in the afternoon to ask him why I was not called as a witness—

Linda Fabiani: Are you talking about your lawyer?

James Crossan: I am talking about the deputy who was prosecuting the case. He was going back to his chambers. I asked him whether he could tell me why I was not being called to give evidence. He said, "I don't have to tell you anything. That was my decision." I shouted after him that surely my evidence was vital, but he just ignored me and kept on walking up the stairs.

Linda Fabiani: So you feel that even those who were supposed to have represented you did not do so.

James Crossan: I was not in the court at the time, but my wife and son were there and other members of the family told me that, when witnesses were speaking, he drummed his fingers and checked his watch with the clock as though he had something more important to do than prosecuting a murder trial.

Linda Fabiani: Did you go for legal advice after the trial?

James Crossan: Yes, we did. Our solicitor acted for us, but he could not get anywhere. He met the procurator fiscal, but their conversations were off the record.

Linda Fabiani: There would be cost implications there that—

James Crossan: He could not tell us anything that would have had any bearing on what we thought.

The Convener: The committee will now discuss what to do with Mr Crossan's petition, which essentially requests an option of appeal against decisions that the Crown takes in relation to murder trials. Our discussion should keep to what we should do about the direct request in Mr Crossan's petition.

Jackie Baillie: Although we are sympathetic, we cannot ask for a review of the circumstances of Mr Crossan's case. I suggest that we write to the Executive, making it aware of the terms of the petition and asking whether there is any appeal or review mechanism for use in such situations. Equally, I would be keen to tease out the Crown Office's proposal to have victim information and advice officers throughout Scotland, although there will obviously to be a rolling programme for that. I would like to find out what role that service could have played in preventing the lack of communication that has given rise to the issues in Mr Crossan's case. I would be keen for the committee to write to the Executive on those two points.

Linda Fabiani: Some time ago, the Executive said that better victim support services would be put in place, yet victims and their families are being side-stepped by the system and feel that they are not getting a fair hearing. Could we also ask the Executive whether it has monitored changes that have taken place in supporting people through those hard times? I am not a legal expert and could not begin to talk about whether it would be feasible to have an independent appeals system. We would have to start by writing to the Executive for information. We often hear of people being treated badly by the justice system. We must consider ways of trying to make the system better and force whatever Executive is in power to take action to stop such things happening.

Mike Watson: I agree with what Linda Fabiani says. I have great sympathy with the circumstances of the specific case. However, I have a problem with the idea that there should be a general right to appeal a case on the basis of the outcome. That would cut both ways and give the Crown the opportunity to appeal a case after a not guilty verdict. Moreover, it could lead to a huge glut of appeals, as I imagine that few people in the circumstances in which Mr Crossan and his family

find themselves would be satisfied with an outcome other than a finding that the person who had been charged was guilty, especially if they were in court at the time. I therefore have difficulty with that general proposal, as it could lead to an almost unlimited number of cases being reopened after a verdict had been given by a jury.

Nevertheless, the points that Linda Fabiani raises are valid. There have been cases in my constituency—as, I am sure, there have been in other members' constituencies—in which legal matters have been dealt with in a manner that was deemed unsatisfactory by the constituents, who have not received proper answers to their questions. Sometimes they have not received any answers, as in Mr Crossan's case. We have to get to the bottom of that. More attention must be given to victims' families, who must have the right to ask questions and to expect civil replies giving as much detail as it is possible to provide. I would like the committee to follow up that issue and make progress.

The Executive plans to introduce a bill that will, for the first time, address the way in which victims are dealt with after events, whether or not murder is involved. We might want to consider the issue in the context of that bill. However, we must try to ensure that, after a trial, families are not put in the position in which the Crossan family find themselves. People must have the right to receive answers.

Ms White: I agree with Jackie Baillie and Linda Fabiani. We should write to the Executive about this case and, perhaps, other cases as well. Unlike Mike Watson, I think that there is cause for a right of appeal in such cases and I would like to ask the Executive for its opinion on that. Checks and balances should exist. If it is proven that the Crown and the procurator fiscal have been negligent and that evidence exists that they did not produce, people such as Mr Crossan should have the right to appeal. However, I do not know the Executive's view on that. When we write to the Executive, we could ask for its opinion on the right of appeal in a case such as Mr Crossan's as well as in other cases.

11:00

Carolyn Leckie: The last thing that Mr Crossan needs is to come up against another closed door. We should do whatever we can to find an avenue for redress. I am not closed to the idea of an appeal in some of the circumstances that have been mentioned. We should not close down that option, because none of us here is a legal expert. The petition should be referred to one of the justice committees to examine the circumstances of the case and to determine the appropriate means of dealing with the situation.

If an appeal is not appropriate, what avenues of redress are available? How can we help Mr Crossan? I favour an inquiry along the lines of the one that was conducted into the fingerprint bureau. A police complaint investigation is warranted. An inquiry into the conduct of the procurator fiscal is also warranted. Mr Crossan is entitled to answers. How can the committee ensure that Mr Crossan and other people in his position get the answers to which they are entitled? The petition calls for a general right of appeal. What if Mr Crossan submitted another petition, calling for an inquiry into all the circumstances and calling for options to avoid such a scenario recurring? That would make the petition more general and perhaps give us a wider remit.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning, Mr Crossan. I understand that with your petition you are trying to establish a right of appeal, although not in your case—you are just giving us the benefit of your experience, which was distressing. I understand that your plea to the committee is to establish some sort of appeal in cases similar to yours.

James Crossan: That is correct. My plea is more to do with decisions that are taken during murder trials.

John Farquhar Munro: But you are not asking the committee to consider an appeal in your particular case.

James Crossan: Not on the acquittal, no. I know that nothing can be done about that. Mr Watson suggested that a lot of people who were not happy with the decisions of juries would come forward, but that is not what my petition asks for. It asks for explanations from the Crown Office if it withholds evidence. The Crown Office might think twice if the committee said, "Here, wait a minute. Why wasn't this evidence put to the jury?" As things stand, the Crown Office can do what it wants.

The Convener: Members have made a number of suggestions and asked specific questions on which they would like responses from the Executive. We can write to the Executive, asking those questions and seeking its views on the contents of Mr Crossan's petition.

Carolyn Leckie suggested ways in which we could proceed. I am not against the Public Petitions Committee taking the issue further, but it may be premature if we decide now, before we have seen the Executive's response, to write to one of the justice committees asking it to do something or for something specific to be done. The petition will remain on-going and we will revisit it when we get the Executive's response. For us to

decide on a final course of action this morning would be premature.

I recommend that we write to the Scottish Executive, raise the points that have been made in discussions this morning and await the reply. That will happen in the context of the Executive's announcement of a review of the Crown Office system in respect of victims and family liaison. Is that agreed?

Carolyn Leckie: What specific questions will you put to the Executive?

The Convener: The ones that were asked by members, for example Jackie Baillie's question—

Carolyn Leckie: Will you ask about the specific proposal for a general right of appeal or about the circumstances surrounding the case?

The Convener: We can write to the Executive and the Crown Office with the questions that members raised this morning and ask for a specific response on those points. I suggest that we wait for the Executive's response before we make any decisions about what we ask others to do.

John Farquhar Munro: There is a distinct line to be drawn. If we go for an absolute right of appeal in all cases, we are into a jungle.

The Convener: As I said, it would be worth while seeking the views of the Executive and the Crown Office. We have heard Mr Crossan speak on his petition this morning and, when we receive a response from the Executive and the Crown Office, we can decide what further action to take.

John Farquhar Munro: Who would define which cases would be allowed to go to appeal?

The Convener: We have to wait for the Executive's response to our letter, in which we will ask it for its views on the circumstances under which an appeal should be allowed. Is that agreed?

Members indicated agreement.

The Convener: Thank you, Mr Crossan. We will keep you updated.

James Crossan: Thank you.

Historic Scotland (Church Building Restoration) (PE620)

Mike Watson: Convener, this might be the appropriate time for me to give notice that I do not intend to participate in the discussion on PE620 because I was involved in the case in a ministerial capacity earlier this year.

The Convener: Thank you for clarifying that.

Thank you for attending this morning, Mr McWilliam. You are joined by Margaret Jamieson,

your local MSP. You have three minutes in which to outline the reasons for your petition. We will then take questions, before moving on to a discussion.

Robert McWilliam: First, thank you for agreeing to hear my evidence. I am the session clerk at Riccarton parish church in Kilmarnock. The church was built in 1825 and is a B-listed building. It stands on a hill and is the most prominent landmark at the south of Kilmarnock, just off the bypass. In 1997, the church entered into an agreement with Historic Scotland concerning restoration work. That came about because there were serious structural problems with the chancel of the church. We were faced with a choice between instructing that the work be carried out almost immediately or vacating the church. The congregation could not have coped with the cost involved in restoration and decided to vacate the church, at least temporarily, and worship elsewhere.

However, at that point our structural engineer brought us into contact with Historic Scotland, which offered us a grant of 60 per cent towards the cost of restoring the chancel. After careful consideration, the congregation decided to accept the offer, which meant that it had the responsibility of finding the remaining 40 per cent. However, before the grant could be made, Historic Scotland required the congregation to agree to carry out all restoration work that Historic Scotland considered necessary. There were six phases to that work. The congregation had to agree that it would carry out all six phases, although no time scale was placed on that. However, there was a time scale for the work on the chancel, which became phase 1A. The congregation had already carried out a phase previously. There was a time scale for the work on the chancel because of its structural problems.

That work was carried out with 60 per cent funding from Historic Scotland. The congregation is grateful for the financial help that we have received so far from Historic Scotland because we are fully aware of the many demands that are made of the organisation, but I have to say that, the congregation would not have agreed to carry out all six phases if we had not made the reasonable presumption that 60 per cent funding would be available for each phase.

When the chancel was completed, we had to proceed to phases 2 and 3, expecting to receive 60 per cent funding from Historic Scotland. Phase 2 involved repairs to the roof and putting back the original tiles and phase 3 involved the steeple, which had become dangerous and had had an order placed on it under section 13 of the Building (Scotland) Act 1959, meaning that it had to be inspected every three months and that the church could have been closed at any time.

When we entered into the agreement, there was no Heritage Lottery Fund and we gave the undertaking without any knowledge of that source. However, the 40 per cent funding that the congregation found for phase 1 of the project is more than 10 per cent of the cost of all six of the phases, which is estimated at £1.2 million. When planning our financial arrangements for phases 2 and 3, again, we based our plans on the assumption that we would receive 60 per cent funding—

The Convener: You have spoken for almost five minutes. Could you wind up, please?

Robert McWilliam: I will be quick.

Our point is that, in our case, the system that is operated by Historic Scotland is morally wrong. I have five letters from which I can quote that demonstrate that it was always understood that there would be 60 per cent funding at each phase. A figure of less than 60 per cent was not mentioned by Historic Scotland until two weeks after the work on phases 2 and 3 had started. Admittedly, that was because our architects asked whether the work could start because of the section 13 order. Historic Scotland, of course, states that, if permission is granted for work to begin before the grant has been awarded, it does not undertake to fund the work that has been done if no grant is awarded. However, the project was so far advanced that our architect had every reason to expect that the grant was coming and that it would amount to 60 per cent of the cost.

When we were told that we would receive only 45 per cent, the work had been started and we had no alternative but reluctantly to ask the Church of Scotland to agree that the work carry on. However, even with the Heritage Lottery Fund grant, there is a shortfall of £41,000, which we—

The Convener: I will have to ask you to come to a conclusion.

Robert McWilliam: Certainly. We are asking for the 60 per cent funding arrangement to be reinstated in our case as that was the understanding at the start.

The Convener: I should point out that the Public Petitions Committee's duty is to consider the general case that your situation highlights.

Margaret Jamieson, do you want to make a couple of brief comments?

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I will try to be brief. I am here supporting the petitioners because this is the second time since my election in 1999 that I have been involved in a case concerning Historic Scotland's funding for places of worship. I have found the system that is operated by Historic Scotland to be archaic and lacking in openness

and transparency. In my view, a lot of hoodwinking goes on.

Mr McWilliam is quite correct to say that the general impression at phase 1 was that the funding would be at 60 per cent but that that percentage was reduced at each later phase. I have been unable to obtain any information that would assist Riccarton parish church to get any other funding because, if more external funding is obtained, Historic Scotland will reduce the amount of money that it contributes. The point that needs to be understood is that Historic Scotland determines what work will be undertaken and by whom. Historic Scotland seems to be in charge but it uses somebody else's funding stream.

I have a problem with the way in which Historic Scotland has treated churches in particular. Riccarton parish church has used up money that it had set aside from its church hall to make the church compliant with the Disability Discrimination Act 1995. The church will find itself unable to be DDA compliant because of the actions of Historic Scotland.

11:15

The Convener: Thank you. Do members have any questions?

Linda Fabiani: Hello, Mr McWilliam. I want to ask a couple of questions to get the situation clear in my own mind. We are talking about a tax offset that allows Historic Scotland to reduce its support. Does Historic Scotland work out the grant, or whatever it is that it eventually gives, by looking at the total cost, including the VAT and all other costs, and then giving a percentage of that? Is that why you say that Historic Scotland takes the benefit from the tax offset?

Robert McWilliam: Yes. Historic Scotland gives us a percentage of the total estimated cost.

Linda Fabiani: So, if VAT went up, Historic Scotland would still give the same percentage of the total cost.

My other question is about the six phases. Is each phase a stand-alone job? For example, do phases 4 and 5 have to be done after phases 1, 2 and 3?

Robert McWilliam: Phases 2 and 3 were put together because it was felt that if work was done at a later phase on the steeple, damage might be done to the roof. We expect that each of the other phases will be taken as a separate entity.

Linda Fabiani: That is fine. So, although the work was defined as separate phases, the impression was certainly given that the same grant level would apply throughout.

Robert McWilliam: Yes. I have several letters

to indicate that, including a letter from Historic Scotland in which the only figure that is mentioned is 60 per cent. Until this time, Historic Scotland has never mentioned any figure other than 60 per cent in any of the correspondence. Before we decided to go ahead with the work, we were told in a letter from our architect:

"The offer of grant, if made, will set a precedent for the percentage offered for future phases of the work. With each phase of the work, the church will be asked to submit documentary evidence of the church's financial position, including accounts, and the percentage offered by Historic Scotland will only be varied if the church's financial position is seen to have improved disproportionately."

Linda Fabiani: Is Historic Scotland basically now saying that the church is so well off that the grant will be cut?

Margaret Jamieson: That argument has never been used.

Robert McWilliam: Historic Scotland regularly receives details of our financial position whenever they are requested. It is fully aware of our church's financial position. The annual income from our congregation is enough to cover the normal running of a church with very little left over. The fact is that, by a combination of means, we have already raised in phases 1 and 1A more than 10 per cent of the total because we had no other option. Therefore, we should not be asked for any more. If all the work had been done in one phase instead of six, we would already have raised more than the 10 per cent. Just because the work has been split up into six phases, we do not see why that means that the more than 10 per cent of £1.2 million that we have already raised should not be counted.

Linda Fabiani: I am trying to get at Historic Scotland's reasoning. Margaret Jamieson is right to say that Historic Scotland is not transparent or open. It is difficult to get information from and people have to try to work through the machinations of what it does.

The Convener: That is not really a question. Sandra White has a question.

Linda Fabiani: It is a particular interest of mine.

The Convener: I understand that, but I am trying to give everyone the opportunity to ask questions.

Ms White: The petition calls on the Scottish Parliament to investigate whether the grant practices of Historic Scotland are fair and reasonable, as well as whether its use of the listed places of worship grant scheme is proper. In your submission, you said that you wanted the 60 per cent grant reinstated for your church. If the committee wrote to Historic Scotland or the Executive, we would be writing for all places of worship and not just for your particular case.

Robert McWilliam: Yes.

Ms White: This is the first time that I have heard about the issue of listed places of worship funding although, like Margaret Jamieson and others, I have spoken to Historic Scotland and tried to get information about other areas. Is there a list of other churches that have been through this particular process?

Margaret Jamieson: The other church that I have been involved with is St Sophia's in Galston. Again, it needed work done in a number of phases and it had difficulty in having that work started because of the state of the building. The parishioners have been out of the church for three years. Recently, I went to look at the work that is going on just now and learned that it is anticipated that the parishioners will be back in the church by Christmas. Again, the work carried on over several phases and at each phase, the church was required to make that financial commitment. That was not explained at day one.

Forgive me if I revert to calling it "Hysteric Scotland", but I would like it just to explain exactly what the funding mechanisms are to be and to say, if there are six phases, or 10, or two, that a certain percentage will have to be paid at each phase. I have spoken to Mr McWilliam and others from the church who said that if they had known that, they would not have made the commitment and would have decided to close the church.

John Scott: Mr McWilliam, it seems to be unfair that the congregation has to make a commitment to pay its share of the renovation but, it appears, Historic Scotland does not. I find that bizarre.

You said that you have five letters that, in your view, expressed a commitment from Historic Scotland. Do those letters constitute a contract? Have you given those letters to your solicitors to see whether they form an undertaking that you could use to tell Historic Scotland that it must pay the 60 per cent grant?

Robert McWilliam: The letters do not constitute a contract and Historic Scotland would be able to say that. I refer you to one of the letters. We wrote to our architects, who have experience of dealing with Historic Scotland, to ask for their view on the commitment of Historic Scotland. The reply that we received was as follows:

"Further to receipt of your letter dated 16 November ... we would only comment that Historic Scotland 'allowed' the congregation and the design team to assume that the original grant level would carry forward into later phases, as all the figures quoted in letter form and discussion throughout the application process referred to a grant level of 60%."

John Scott: In that case, would it not be wise to run it past your solicitors?

Margaret Jamieson: That would cost money.

Linda Fabiani: As someone who has dealt with such matters, I have a point of information. The correct term is not a contract—it is an offer of grant, which is based on the condition of acceptance.

The Convener: After Carolyn Leckie has asked her question, I am keen that we get a chance to discuss what to do with the petition.

Carolyn Leckie: Will you clarify when you understood that the grant level would not be 60 per cent and how that was communicated and explained? Do you have anything in writing to that effect?

Robert McWilliam: Yes. The work on phases 2 and 3, which have now been completed, started in March 2002. The work started two weeks before we received the letter stating that the grant was being reduced from 60 per cent to 45 per cent. I have correspondence that shows the reason for that. Our architects requested that the work begin, because everything was in place—the contractor had been selected and all the finances seemed to be in place—and they were getting very worried about the steeple. Therefore, they asked whether the work could start before the grant had received formal approval from Historic Scotland. HS wrote back to the architects and said that the work could start, although it reminded them that it had no responsibility for work that started before the grant had been approved if, for example, it decided that there would be no grant. In other words, we would have been responsible for the amount of money that was spent in the two weeks prior to the decision on the grant. However, I am sure that our experienced architects were fully aware that the process was in place and the grant would come through. We had the six-phase agreement. The architects took their action in good faith; they assumed that within two weeks we would be informed that we would receive 60 per cent.

After two weeks, we received the letter that said that the level of grant would be 45 per cent. When we asked why we had not been told about that in advance, we were told that the architects had asked for permission to start the work. We probably would not have gone ahead with phases 2 and 3 if we had known about the reduction in the grant, but by that point, as two weeks' work had been done and quite a lot of money had already been spent, we felt that we had no option other than to tell the general trustees of the Church of Scotland to approve and accept the 45 per cent grant.

Carolyn Leckie: I was coming to that. You said earlier that Historic Scotland seemed to be able to make decisions about work that is to be carried out and to give people the idea that money will be available. Do you suspect that its intention is to obtain commitments from the other funding

bodies, to get that funding in place and to get the work started, so that situations in which decisions to close a church, for example, which might be made if people were fully informed, do not arise? Is that your suspicion?

The Convener: I ask you to be careful about asking for Mr McWilliam's impressions of whether someone did something right or wrong, as it might be difficult to establish the motivation.

Carolyn Leckie: The term "hoodwinking" was mentioned.

Margaret Jamieson: I used that term.

The Convener: I do not want anything to come back on anyone if they start making accusations.

Carolyn Leckie: I am just trying to understand—

The Convener: I understand, but I am asking you not to put Mr McWilliam in a situation in which he says something that could be difficult to substantiate in the longer term. I am just trying to be careful.

Margaret Jamieson: A difficulty is that the people who are in charge of the funding at Historic Scotland are not up front early enough in the process and do not indicate to people what level of funding they are talking about. The congregation at Riccarton was under the impression that 60 per cent funding would be available for the whole contract. It found out that 60 per cent had become 45 per cent only when it signed on the dotted line and even that level of funding is not guaranteed for future work.

Our point is that it would be helpful for Historic Scotland to be open and transparent at day one, by letting people know that whatever level of funding is available for the first phase of a project will not necessarily be available for its duration. If that had been made clear, a different position would have been adopted at Riccarton.

The Convener: I would like us to have a discussion about what we do with the petition. Do members have suggestions?

11:30

Jackie Baillie: In a slightly different guise, I have come across Historic Scotland before and have been aware of the difficulties expressed about its grant-awarding practices, so I am conscious that what the petitioner is calling for relates to more than just its use of grant funding for listed places of worship. Therefore I suggest that the committee write to the Executive seeking an explanation of the grant-awarding practice. We should ask specifically whether in the review of Historic Scotland's structure and functions that was announced in February particular

consideration could be given to grant-awarding practices, because they have caused people difficulties.

The Convener: That would form the basis of a good question to ask about Historic Scotland. If no members have other suggestions for questions to ask, we will write to the Executive as Jackie Baillie suggested and await the response. I thank the petitioners for coming along this morning.

I am going to seek the committee's advice, because a number of MSPs are here for a specific petition. I wonder whether we should move forward consideration of that petition or whether we should stick with the agenda as it stands.

Linda Fabiani: For which petition is everybody here? I am desperate to know.

Jackie Baillie: Petition PE647 on Falkirk Football Club—as if you did not know.

The Convener: I am not saying that one petition is more important than another, but spaces in the public gallery are being taken up by MSPs and I am a bit concerned that the gallery is becoming overcrowded with them.

Linda Fabiani: Just send them away.

The Convener: I would like to make that suggestion as well. If members are happy to stick to the agenda, we will do so.

Linda Fabiani: I am easy.

Jackie Baillie: In fairness we should stick to the agenda. I am sure that the MSPs will not mind and the other petitioners who have been waiting patiently should have their say.

Matrimonial Law (Women's Land Rights) (PE624)

The Convener: We come to petition PE624, by Ann Mallaby on behalf of the Women's Land Reform Group. I thank the petitioners for coming. I think that both petitioners want to speak to the petition. We will go into more detail in questions, so you can expand a bit more on the underlying problem then. Please stick to three minutes to explain the reason for the petition.

Ann Mallaby (Women's Land Reform Group): Thank you. I will try to do that.

My co-petitioner Pam Greenslade and I were both farmers, and I was a landowner, before we entered into equal business partnership contracts with our partners. We were not informed that it is state policy for women to lose their land and business rights should they subsequently marry. That knowledge would have been a deterrent to us when we were pressed into marriage. Male partners are better informed and supported by mutual accountants and lawyers, whose ingrained

attitude and practices are biased towards male landowners. Jointly purchased land is registered commonly in the males' ownership without the females' knowledge. Those fraudulent registrations prejudice any future litigation between the partners.

Matrimonial law, both Scottish and English, is regarded by sexist practitioners as a licence to defraud women. Miss Greenslade and I were both defrauded by our partners. That was deemed acceptable by lawyers acting for us, our partners, banks, accountants and Government departments.

When our business partnerships had to end due to our partners' misconduct and breach of partnership law, our lawyers failed to advise us that the simple mechanism of partnership dissolution could obviate any court litigation, but would incriminate those parties who had committed or acted on fraud. The partnership dissolution, winding-up process and sale of fraudulently registered assets had to be obstructed by our partners, accountants, lawyers and the judges to avoid land tax, accountancy and agricultural fraud investigations on an institutional scale. For that reason we were not allowed to resolve our business matters in the commercial court, but were forced into litigation in the divorce court. That allowed lawyers and judges to exercise their wide discretionary powers and thus suppress fraud investigations.

Miss Greenslade was coerced and deceived into signing Land Registry transfer documents to dispossess her, on the threat that another judge would sign if she refused to do so. That is illegal. In my case, I refused to sign transfer documents, as did the judge, but she authorised an unnamed third party to sign instead. That is another illegality. Those acts put us at risk of bankruptcy and disinherited our children. Few women landowners resort to divorce as they risk impoverishment and the mental abuse of their sons and daughters.

Sexist land dispossession is deemed to be in the public interest, but the public are appalled by this violation of women and children's human rights. Having been robbed of all their assets, women are forced into making divorce claims against former partners who have acquired sole land rights by unlawful means. Those women have difficulty in finding any lawyer to advise or represent them, as they fear repercussions from their professional colleagues who have incurred civil and criminal liabilities.

The Convener: I ask you to conclude your comments as soon as possible.

Ann Mallaby: Can I have half a minute more please?

The Convener: Yes.

Ann Mallaby: Thank you.

The Government has been advised that its land policy is illegal and is implemented by illegal means for illegal purposes, but it has no intention of discontinuing its policy and practices unless it is forced to do so. We ask the Scottish Parliament not to be complicit in such crimes against women and children. The policy and the fraudulent practices could be stopped by having it incorporated into matrimonial law that commercial matters must be referred to the commercial court to ensure transparency and fairness prior to any divorce proceedings.

Miss Greenslade and I are now represented by a very brave solicitor, Tahir Khan, who, as the result of taking on humanitarian cases against the British authorities, has been victimised to obstruct justice. The human rights activist Norman Scarth, who supports our case, has been imprisoned and subjected to mental torture and physical assault and threatened with potentially lethal injections by the state. We have been subjected to similar threats to our life and liberty.

We ask members of the committee, if they value our democracy, to speak out against state oppression before citizens have to take the law into their own hands.

The Convener: Thank you very much. Members will have a few questions on what has been said.

Linda Fabiani: I was glad to hear towards the end of your statement that your individual cases are being looked at. That is important and it is on-going.

I would like to say, as a member of the committee, that the petition that has come to us is a declaration by the co-petitioners. I do not have adequate information or knowledge to make any judgments on any of these matters until we have full information from the other side, if you will excuse the phrase. In other words, I do not think that we can discuss this matter properly until we receive full information from the Scottish Executive, with its views on what has been said here today.

The Convener: That is a valid point. However, I will take further questions.

Mike Watson: Our papers show that the Executive wrote to Ms Mallaby on 12 May. The letter from the equality unit stated that Yvonne Strachan

"will reply more fully in due course."

Has that yet happened?

Ann Mallaby: No.

Mike Watson: We should ask the Executive about that. The letter was in response to a letter

dated 28 April. Two months have elapsed since then. Has the Lord Chancellor—his office still exists, even if Lord Irvine has moved on—replied to the letter from Nino Gemelli, dated 7 February?

Ann Mallaby: There has been no reply to that letter, to my knowledge.

Mike Watson: Again, we need to get to the full facts behind that.

I have a few questions to put to Ms Mallaby about some of the points that she raised. You spoke about the title of land being transferred to a man without the knowledge of his partner or wife. How can something that is in one person's name be transferred without their knowledge? How can ownership of something that someone owns be transferred legally without their knowledge? I do not understand how that can be the case.

Ann Mallaby: It is the registration that is fraudulent. The transfer is to our knowledge, but it is against our wishes. If we do not sign the documents, third parties will sign them for us.

Mike Watson: I noted down that you said transfer "without knowledge". Did you mean "without agreement"? You said "knowledge", so I understood that something had been done surreptitiously.

Pamela Greenslade (Women's Land Reform Group): In my case, two farms were involved. My name was on the deeds of one of them—the home farm. The other farm was also paid for by the partnership, of which I was an equal partner. Unknown to me, however, the second farm had been entered with the Land Registry in my former partner's name, not in mine. The second farm was paid for fully by the partnership; my former partner had no funds other than mine and his with which to pay for it. In the court hearings, that farm was allocated to him, although I had paid for it as an equal partner. I was without knowledge that he had entered the farm with the Land Registry in his name only.

Mike Watson: And that has been held to be legal.

Pamela Greenslade: The farm has been held to be his, although all the accounts—I have copies of them, although I was not allowed to see them until after the second hearing of my case—showed that everything had been paid for by the partnership. Because my former partner had put the farm in his name with the Land Registry, it was allocated to him, as his, along with everything on it, despite the fact that the partnership had paid for all the things that he owned, as well as the things that I owned.

Ann Mallaby: If we had committed fraud against our partners, we would have been prosecuted for that. That is not the case when the man commits the fraud against the woman.

Mike Watson: You said, if I remember correctly, that the Government has been advised that its land policy is illegal. Aside from yourself, has some body or organisation informed the Government of that? Are you referring to the European Parliament?

Ann Mallaby: You have seen the letter from the European Parliament.

Mike Watson: So that is what you were referring to.

Ann Mallaby: Yes.

Mike Watson: I just wanted to clarify that. Thank you.

John Scott: I want to get to the details of this case. Where were you farming at the time?

Ann Mallaby: In England.

John Scott: Were both of you farming in England?

Ann Mallaby: Yes.

John Scott: So this is a matter for the English courts.

Ann Mallaby: No, because the same thing could happen in Scotland.

John Scott: I am not entirely sure that agricultural law in Scotland is the same as it is in England. Nonetheless, am I right in saying that, in Ms Greenslade's case, her husband owned the farm but that apparently a partnership was formed beneath that ownership to run it?

Pamela Greenslade: The partnership was formed before the farm was purchased.

11:45

John Scott: Your husband owned the farm, but the partnership was created and you were brought into it.

Pamela Greenslade: No. The partnership was founded when we got married in 1961. However, we owned no property at that time. Everything that was acquired after that was bought by the partnership with partnership funds.

Before I married Mr White and became Mrs White, I did not own land but ran my own pig business on my father's farm. My husband did not have a business at that time, and I put all the proceeds and assets from my business—indeed, everything I had—into the partnership in 1961.

John Scott: And the partnership bought the farm.

Pamela Greenslade: We bought one farm a year later. The other farm was bought in the early 1970s.

John Scott: And yet the farm was registered in his name.

Pamela Greenslade: The second farm was registered in his name, but the first one was not.

John Scott: Did you not protest about that at the time?

Pamela Greenslade: I did not know about it.

John Scott: Documentation must have been provided.

Pamela Greenslade: I did not expect to get divorced at that point. As the farm had been bought with partnership funds, I did not think that I needed to question things.

Ann Mallaby: The policy is implemented under matrimonial law. The discretionary powers in that respect are similar in England and Scotland.

John Scott: My final question is for Ms Mallaby. I understand from Nino Gemelli's letter that you chose to represent yourself in the court action in 1973. Why did you do that?

Ann Mallaby: When was that?

John Scott: I am referring to Nino Gemelli's letter, which states:

"Ms Mallaby's partnership action was stayed and she was forced to defend her former spouse's matrimonial action, without legal representation."

Ann Mallaby: Yes. I did not receive any explanation then about why solicitors would not take on the case. However, I have since discovered the reason.

John Scott: You approached solicitors but they would not represent you.

Ann Mallaby: That is right. They would not act on my instructions.

Pamela Greenslade: I also instructed lawyers. Although they said at first that they would act on my instructions, they did not do so when the final case came up.

Ann Mallaby: Lawyers are happy to take our money, but not to follow our instructions.

Jackie Baillie: Have you been to the Equal Opportunities Commission? If so, what was its response?

Ann Mallaby: Yes. The case was referred to Liberty.

Pamela Greenslade: My case was also referred.

Ann Mallaby: However, Liberty would not take it on, even though we presented it as a test case.

Ms White: I am absolutely amazed that such a thing can happen in the 21st century, and I thank

the petitioners for raising the issue. As Linda Fabiani said, we do not know enough about the background, so we should write to the Executive to clarify some points. Do you know how many other women are in a similar position?

Ann Mallaby: Pamela, would you like to answer that from an English perspective?

Pamela Greenslade: I have only read about other cases in the papers and know only what the public media have reported.

Ann Mallaby: From a survey that we have been conducting, it seems that women in farming are not aware that their land has been registered solely in their partner's name. However, they are very afraid. Some women are in abusive marriages and would like to come out of them, but they are afraid to get a divorce because they would lose everything—their homes, business, assets and even their children.

Carolyn Leckie: I have difficulty in understanding the legality of registering land in the male partner's name without your knowledge. Did you not have to sign any conveyancing documents? Are they not superior to land registration?

Ann Mallaby: In my case, the farm was unregistered—some farms remain unregistered in England.

Carolyn Leckie: I do not understand the process of the registration superseding any other documentation.

Pamela Greenslade: I think the reason is the policy. The belief is probably that registration should be in joint names. In my case, one farm was in joint names and one farm was not. However, all the documentation and all the accounts showed that everything was paid for by the partnership.

Ann Mallaby: We believe that our land and assets are registered in joint names, but that does not come to light until a case comes to court.

The Convener: I am becoming confused. Is the position under Scots law different from that under English law? Have women taken any test cases under Scots law of the circumstances that you have encountered? You claim that the Government knows that what it is doing is illegal, but is doing nothing to deal with the situation. Does proof of illegality under Scots law exist?

Ann Mallaby: I am not aware of that, but I am hearing of more cases that look as though they should have been taken to court, but were not, because lawyers are unwilling to do that.

Pamela Greenslade: I went to the Court of Appeal, because I was first given an award that was valued at my half-share of the milk quota on

the farming business that I had. The milk quota was in joint names, as were all the cows, the vehicles, the tractors and everything on the farms, although my former husband claimed in the court that they were his and he was allowed to get away with that. Given all the proof that the partnership owned all the property, the animals and everything else, I can think only that another agenda must be involved.

The Convener: Was that in an English or Scottish court?

Pamela Greenslade: I do not think that there is any difference.

The Convener: There is a huge and fundamental difference. If your case is based on circumstances that occurred in England and have never been tested in a Scots court, Scots law has not been proven insufficient to deal with those circumstances. That is fundamental to your petition. We must clarify whether what the Women's Land Reform Group says is the experience purely of English law or whether evidence exists of a similar problem under Scots law, which we would have to deal with.

Mike Watson: The answer depends on whether the law is UK-wide. The fact that the position has not been tested in Scotland would not matter if the law were UK-wide. The question that we must ask is whether different law applies in Scotland, not whether the law has been tested in Scotland. If the law were UK-wide, a case about something that happened in south-east England would still apply to Scotland.

Pamela Greenslade: We mainly seek justice, which we have not got.

Ann Mallaby: The policy can be implemented under English law and under Scots law and we have no reason to believe that it has not been.

The Convener: We will establish in our general discussion whether the petitioners' concerns about Scots law and the problems with Scots law are legitimate. The European Parliament's Committee on Petitions has received a similar petition from the petitioners, and I suggest that we should find out what ruling or decision it made. We have correspondence on that. The clerks will be able to check with their colleagues on the European Parliament's Committee on Petitions what exactly that committee looked into. We should find out from the Scottish Executive where we stand on the question that Mike Watson raises. The question in my mind is whether Scots law and English law would lead to the same difficulties for women in respect of land.

Pamela Greenslade: We would welcome that.

Jackie Baillie: I agree with you, convener. What you suggest is sensible.

John Scott: As Mike Watson said, we need further clarification from Yvonne Strachan of the Scottish Executive. We need to know whether the Scottish Parliament should be investigating a matter that was first heard—and was subject to an appeal—in the English courts.

Mike Watson: The principle could well apply in Scotland as well, as the petitioners are saying. Yvonne Strachan's letter is not clear. She talks about an English case and then describes the situation in Scotland. That may or may not mean that Scots law is different. Before we can rule on this, we have to be clear on the details.

Ann Mallaby: A survey of how many women could be affected in Scotland would be helpful.

The Convener: That would be difficult. I would ask for the committee's agreement that we start by writing to the Scottish Executive—

Pamela Greenslade: We are conducting further inquiries as we speak.

The Convener: Given the evidence that we have heard this morning, the committee will have to clarify many things before we can consider any other actions. The first point of contact will be the Scottish Executive on the issues that have been raised this morning. Do members agree that we should contact the Executive?

Members indicated agreement.

The Convener: I thank the petitioners for their evidence.

Falkirk Football Club (Promotion) (PE647)

The Convener: I think that everyone is becoming familiar with our procedure. Petitioners have three minutes to discuss the purpose of their petition, after which there will be questions from members. The committee will then discuss what further action to take.

I hope that what I am about to say will not colour the discussion, but we have to remember that we will be discussing a body of private groups over which the Scottish Parliament has absolutely no direct influence. We cannot order or instruct any organisation in that way. As I explained to the petitioners when they handed in their petition, I am very keen that an issue that affects many people in Scotland and can lead to petitions the size of PE647 should have light cast on it. I am also keen that light should be cast on the organisations that have a bearing on Scottish society. The Public Petitions Committee should hear the points that the petitioners will make.

12:00

Stephen Bird (Falkirk Supporters Society): Thank you, convener. What you just said has

summed up a fair bit of our case. Being a Falkirk supporter, I am not used to such big crowds, but I am delighted to see our local MSPs here. They have been tremendously supportive of the club over the years. That demonstrates the community impact of our campaign.

Three main elements should commend this petition to the committee. The first is that the petition and the campaign are for fans and are driven by fans. That does not only mean fans of Falkirk Football Club because, as members will have seen from the online sections of the petition, fans from virtually every football club in the United Kingdom have given us their support. There is a genuine sense of outrage that transcends club loyalty. People recognise that the decision is wrong, that it is against the concept of league football and that it rewards failure rather than success.

The decision sets a precedent that can be used to damage football clubs that aspire to succeed on the park but which have not had sufficient time or opportunity to put in place the required infrastructure over the years. The fact that Falkirk FC does not yet know in which way we have failed to put in place the infrastructure required under the Scottish Premier League's criteria is one of the reasons why we are here.

The second element is natural justice. If the decision is not overturned, the people who will suffer most in the coming season are the players and supporters of Falkirk FC. The fans have been disenfranchised. During the past season, we have watched our team compete on the park and gain the right to compete at the next level of Scottish football. The achievements of football teams should be determined by what happens between the white lines on a Saturday afternoon, not by what happens outwith them.

Our players have earned the right to compete at a higher level, but they are being denied that right, which has resulted in the club losing players. We do not yet know what the circumstances are and why we are being denied promotion, but our club is being seriously damaged. We estimate that the decision to deny the club promotion could cost us around £1 million in turnover in the coming season. That is a tremendous amount of cash for a Scottish first division football club. Fewer than five years ago, the club was in liquidation, but the fans took the club out of liquidation within four months. That compares favourably with the situation in which certain clubs in Scotland have recently found themselves.

It is hinted that the failure to meet the criteria relates to our inability to guarantee that we have a head lease on the Shyberry Excelsior stadium. I, and many other people, wonder whether North Lanarkshire Council has delayed the sale of

Shyberry to ensure that such doubts could be raised. If so, that issue requires investigation. Given that we have secured the agreement of the Dudley Group Ltd, KPMG and North Lanarkshire Council officers, the failure to conclude the transaction raises some serious questions.

The SPL's decision-making process is not acceptable in an open society. The decision will have a major impact on the principal leisure activity of thousands of people, but the SPL feels no obligation to explain, justify or defend its actions. I ask members to consider the outcry that there would be if the Parliament made decisions in the same way. The SPL's process is not open, reasonable or subject to scrutiny. It will be for the Office of Fair Trading to determine whether the SPL has acted legally in reaching its decision.

We hope that the Scottish Football Association's appeal hearing, which should conclude tonight, will give us a positive ruling on the question whether football rules have been broken, not on the legality of the decision. However, it is important to understand that the matter will not stop there because the issue transcends more than this season and Falkirk FC. Questions will remain about the use of public funds—through grants, Scottish Enterprise and other means—by a body that is closed and secretive and which rewards failure. Those attributes are the antithesis of the type of Scotland that the Parliament has declared we should have. Falkirk FC supporters have the reputation of not going away when they get their teeth into an issue. Questions remain and we will continue to pursue the answers.

The third element of the petition is that we have not had a reason for the decision. Members might find it difficult to believe that, despite the press coverage, interviews and the three-hour hearing at an appeal tribunal headed by a Court of Session judge, Falkirk FC has still not been given a reason why it fails to meet the SPL's criteria. The Parliament cannot force the SPL to take action, but it can ask the SPL to explain how the decision was taken and why it was taken in secret. The people of Scotland need an explanation.

By means of a letter from my colleague Michael White, which we have circulated, we have, as you see, asked 10 questions of the SPL. It has, as yet, failed to give us a single answer. For the good not only of Scottish football, but of Scotland as a whole, we need answers. We need to stop such behaviour.

The Convener: Thank you very much. If any MSPs want to make brief comments, they are welcome to do so, although I ask them to keep their contributions very brief.

Dennis Canavan (Falkirk West): I will be brief. Would it be all right if I also suggested a course of action for the committee?

The Convener: I have no problem with that.

Dennis Canavan: The situation is one of the biggest injustices in the history of Scottish football. Those who were members of the Parliament in the previous session will recall that I lodged a motion on the matter that was debated in the Parliament in March. That motion was supported by more than 70 MSPs and called on the SPL to

"ensure that the champions of the First Division of the Scottish Football League are given the opportunity of promotion to the Scottish Premier League provided they have guaranteed use of a suitable stadium, whether through ownership or lease or a ground-sharing arrangement."

Since that motion was lodged and debated in the Parliament, Falkirk FC has won the first division championship. It is adamant that it has met the SPL's stadium criteria in respect the new stadium at Westfield on the outskirts of Falkirk—on which work has already begun and which will be ready this time next year—and the temporary ground-sharing agreement at the Shyberry Excelsior stadium in Airdrie. I emphasise that there would be no disadvantage at all to Airdrie United Football Club in that ground-sharing arrangement.

Nevertheless, SPL members decided by seven votes to five to deny Falkirk's bid for promotion. The decision was made behind closed doors and the SPL has failed to disclose any reasons for it. Therefore, as Stephen Bird said, Falkirk FC has submitted a complaint to the OFT and an appeal to the SFA.

The appeal is due to be heard this evening, which is why the committee must move quickly if we are to be helpful. I suggest that the committee contact David Taylor today by e-mail or fax, send him a copy of the petition, tell him that the committee is concerned to read the contents of the petition—particularly the SPL's failure to disclose any reasons behind its decision to exclude Falkirk FC from the SPL, despite the fact that Falkirk apparently met the criteria for inclusion. I suggest that the committee ask David Taylor to bring the petition to the attention of the appeal body before it reaches a decision later today. I also ask the committee to consider expressing support for the contents of the petition, but if it finds that that is too difficult for it, the committee should at the very least ask that the petition be considered and that there be a fair hearing of the appeal and a detailed statement of the reasons for the decision.

Michael Matheson (Central Scotland) (SNP): It is a pleasure to come along to a committee that has musical accompaniment from next door.

I certainly endorse Dennis Canavan's comments. The SPL's decision to deny Falkirk FC entry into the Premier League was not only a

financial blow to the club, as Stephen Bird has outlined, but a betrayal of the fans, who have supported their club loyally through thick and thin. The injustice that has been done to Falkirk fans this season could be done to some other group of fans next season if we do not find a way in which to resolve the issue.

My concern is about the way in which the SPL arrived at the decision. I take on board the comments about it being a private entity and a private association, which arrived at the decision privately, as has been outlined. We do not even know which clubs voted which way. We have found out that information anecdotally from other sources, but there is no public record of it. There is no explanation from the various clubs as to why they voted in such a manner. Also, as Stephen Bird indicated, the club has had no explanation yet as to how and why the SPL arrived at its decision.

I can understand that as a private organisation the SPL must work within its own constitution, but I would have thought that, in this day and age and given that the decision that the SPL made is so important, it would be reasonable to expect some form of explanation. We should keep in mind the fact that a number of the clubs that made the decision have benefited from public money in the past for their own stadia development and training facilities, and I am sure that they will seek public money in future. It is reasonable for a committee of this Parliament to try to find some way in which to make the SPL accountable and to examine how it operates to ensure that it becomes more transparent and accountable. That would be to the benefit of Scottish football and, in particular, to the benefit of Scottish football fans.

Cathy Peattie (Falkirk East) (Lab): I will be brief. A lot has been said already. Falkirk football fans are frustrated, as are the folk of Falkirk in general. At a time when it is necessary to work to grow football by encouraging youngsters to participate and by involving local people, it is an outrage that the decision has been made behind closed doors. A form of glass ceiling is appearing for clubs such as Falkirk. As Michael Matheson and Dennis Canavan said, this is not just about Falkirk; it is about other football clubs in similar situations. I know that Falkirk fans are pleased that the committee is considering the petition. I support Dennis Canavan's call for action, and his recommendations on how to proceed.

The Convener: I take on board Dennis Canavan's comments, which the committee can discuss, but before I open up the discussion, I have a question.

The point about the criteria has been made, and I take it that you are aware exactly what the criteria are. Do you believe that the criteria have not been met? My view is that either the criteria

are met or they are not met. How, then, can a decision have been made in which seven people believe that the criteria have been met and five do not? Do you believe that there are question marks over the delayed signing of documents, which, in black-and-white terms, means that the criteria have not been met?

Stephen Bird: At the beginning of each calendar year the SPL writes to each first division football club, asking them to submit proposals on what would happen in the event of their being promoted. The SPL wrote to Falkirk FC as it wrote to everyone else. We replied and asked for a full set of the criteria listing what we would have to do. Having gone through those criteria, we submitted the documentation to the SPL at the end of March, before it was scheduled to make a decision on 31 March. The SPL decided at that point that it was not going to make a decision until later in the season.

The SPL and its lawyers met Falkirk FC and our legal team at Brockville the following Wednesday, and went through the criteria. The SPL raised several relatively minor questions. For example, it asked about the quality of light at the Shyberry stadium. The stadium has been used for SPL fixtures in the past, so that should not be a problem. As far as I am honestly aware, the SPL did not raise with us anything of any substance.

Our deal is with the Dudley Group, which is the property group that is the preferred bidder to take over the running of the Shyberry stadium. We were advised that in addition to the agreement with the Dudley Group, we should take a belt-and-braces approach and seek the same back-up from KPMG, as the liquidators, and North Lanarkshire Council. We proceeded to do that. The documentation has been on the Falkirk FC website for some time now.

We have established that we met all the criteria, as far as we are aware. The week before the SPL made its decision, we were offered the use of another SPL-compliant stadium. We and our lawyers are absolutely confident that the deal we have in place at Shyberry is—as described by Donald Findlay QC—watertight.

As has been alluded to, from the beginning of the year, representatives of certain football clubs have made public statements that Falkirk would not be promoted—end of story—regardless of the criteria that have been set down and regardless of what we do to fulfil those criteria. That is not acceptable. If the SPL lays down criteria under its own rules and we satisfy those criteria, we deserve to be promoted. Even during a three-hour appeal hearing last Thursday the SPL was unable to tell us how we—allegedly—failed to satisfy those criteria.

12:15

Jackie Baillie: You will be pleased to hear that, being a Partick Thistle fan, I am used to huge crowds.

I have a couple of matters that I want to pursue with you. It is worth putting on the record again that the SPL is not a public company but a private one. Therefore, some of the issues of transparency have to fall by the wayside. I am sure that some MSPs in the room will share that view.

I watched as Partick Thistle threw up a new stand so that it could meet the criteria on capacity. It did so within a tight timetable; as far as I recollect, it had to be done prior to the March preceding the end of the season. Why was not your proposal sufficiently watertight? Why was there such a degree of uncertainty that the SPL deferred taking a decision?

Stephen Bird: Without wishing to be flippant, if I knew the answer, we would probably not be here today. We have not yet been told by the SPL what the reason is.

Jackie Baillie: At the relevant point in March did you have the capacity and all the things that the SPL was looking for?

Stephen Bird: Yes. We have an agreement with the Dudley Group for a head lease for the 10,000-capacity stadium at Shyberry. It is also agreed that we will have first access to the ground for all cup-ties within the SPL, the Scottish cup and the CIS Insurance cup, and any other access as and when we need it, if we give 24 hours' notice. Even if matches—cup-ties and so on—have to be abandoned or replayed, we have a watertight agreement. I do not know why the SPL has decided that we do not meet the criteria. That is one of the questions that I hope the committee can ask the SPL.

Jackie Baillie: Let me press you further. I am conscious that there are issues of timing. Was the package tied down prior to the end of March?

Stephen Bird: Yes. Had it not been, I have no doubt that on 31 March the SPL would have told us that we did not meet the criteria for this or that reason and would have thrown out our application. If we were told that we had done something that we should not have done, or that we had not done something that we should have done, that might have been painful but we could have lived with it. What we find unacceptable is being told that we do not meet the criteria but not being told why.

Jackie Baillie: The SPL considered the appeal last week—

Stephen Bird: The SFA considered the appeal last week.

Jackie Baillie: Who is considering the appeal today?

Stephen Bird: The SFA—the appeal was inconclusive last week. Tonight has been set aside for the appeal, which starts at 6.30 and ends at about 9.30; tomorrow night has also been set aside. The SPL has been unable to say, "There is something clearly lacking in Falkirk's capacity to meet the criteria." Were that the case, we would have been blown away a long time ago. The fact that five clubs say that we have fulfilled the criteria indicates the strength of our position.

We heard a rumour that only five clubs voted against us but, like everything else at the SPL, we can neither confirm that nor knock it back because the SPL will not tell us who voted and why they voted in a particular way. For many of us who are involved in the game on a Saturday afternoon, football is not quite our life-blood but it is close to it. We need to know what is happening, and we are being deprived of a basic piece of information. That is fundamentally wrong.

John Scott: What is the relationship between the SFA and the SPL?

Stephen Bird: Last week, that would have been a difficult question to answer, because the SPL was challenging whether the SFA had jurisdiction to hear an appeal against the decision. My understanding is that prior to the hearing's going ahead last Thursday night, all parties accepted that in football terms the SFA appeal is the end of the road. The SPL said originally that the SFA did not have jurisdiction over its affairs, because the SPL is a completely private entity. However, the SFA puts forward nominations for clubs to compete in Europe, and clubs have to be members of the SFA to be nominated. At the moment, it appears that the SFA has primacy.

John Scott: Were your appeal to the SFA successful, would the SFA have the legal capability to enforce its decision with the SPL?

Stephen Bird: I understand that the SPL has given the undertaking that it will accept the decision. If the SFA says that we are at the end of the road and Falkirk has met the criteria, I sincerely hope that that will be the end of the matter. Time is pressing for the start of the new season.

Dennis Canavan: The SFA is the governing body for the whole of Scottish football. Every league in Scotland, including the SPL, must abide by the SFA's constitution and rules.

Mike Watson: I have a couple of questions. Am I right to think that both Falkirk FC and the SPL will give evidence at tonight's hearing?

Stephen Bird: Yes, that is my understanding. Motherwell Football Club will apparently be represented as well, although I am not sure why.

Mike Watson: I can understand that; if the decision goes Falkirk's way, Motherwell will be relegated. Do you anticipate that the hearing tonight will bring answers to the 10 questions that you listed? Will the outcome be made public in relation to the basis on which a decision was made?

Stephen Bird: I do not expect that we will get those answers. The hearing tonight will consider whether the case that Falkirk FC put forward satisfied the criteria set out by the SPL. If we are deemed to have met the criteria, my understanding is that we will be promoted. If we are deemed not to have met the criteria, we will not be promoted. I very much doubt that the member clubs of the SPL will say that they decided not to vote for a particular reason. I also doubt that the SPL will tell us officially what the vote was.

Mike Watson: I have two other questions that concern the ground in Airdrie, which Jackie Baillie touched on to an extent. The question of 31 March is important, because the rules state that the conditions must be satisfied by then. Presumably one of the reasons for that is that the outcome of the league championship is not known so the date cannot necessarily be seen to serve one of the clubs' interests. Were the guarantees that you received put in place by the 31 March?

Stephen Bird: Yes.

Mike Watson: I understand that the ground in Airdrie is still owned by North Lanarkshire Council.

Stephen Bird: There is an arrangement between North Lanarkshire Council and KPMG, the liquidator. Dudley Group is the preferred bidder to operate the stadium.

Mike Watson: Has North Lanarkshire Council given a written assurance that it will allow Falkirk to have the necessary primacy of use?

Stephen Bird: We received letters from North Lanarkshire Council while it was no longer a political body, because of the elections. We received letters from the officers of the council saying that if for any reason the agreement entered into for the Dudley Group falls through, the council will ensure that any subsequent bidder has to honour the terms of the contract between the Dudley Group and Falkirk FC.

Mike Watson: The point is that the guarantees from North Lanarkshire Council were in place before 31 March.

Carolyn Leckie: Mr Bird made reference to public money. Even if we do not have a legal locus in relation to the actions of the SFA and the SPL—although I think that we should have—the fact that public money is involved means that we have some moral authority. Does Mr Bird know how

much public money has been received by the SPL, the SFA and the individual clubs?

Stephen Bird: No.

Michael Matheson: Recently, sportscotland gave Rangers Football Club £0.5 million for the building of Murray park as a training facility.

The Convener: I think that we are straying into areas where we should not go. As I said at the outset, we need to be clear about what the Public Petitions Committee should consider in relation to this matter. The petition concerns an organisation that affects a large number of people making decisions in a non-transparent manner. I do not think that the value of money that flows between one organisation and another has any bearing on that.

Carolyn Leckie: I think that it is relevant in relation to what political pressure can be brought to bear and how the committee might exert such pressure. Would it not be feasible to ask the Executive how much public funding it has committed to the football bodies and whether it thinks that it should take into account their current actions when considering future funding?

Jackie Baillie: The issue before us is what we do today. There is no time for us to engage in correspondence with the Executive, given what has been said about the appeal.

Carolyn Leckie: We could correspond with the Executive at a later stage. There is a strong moral argument in that regard.

The Convener: I am conscious of time and—although I should let Carolyn Leckie's question stand because we have had an answer to it—I am trying to keep us focused on the situation that affects Falkirk Football Club today, bearing in mind that an appeal will be heard this evening and that we have no influence on that process.

Dennis Canavan: The points that Carolyn Leckie raised about public funding might be extremely relevant, especially if the committee decides to suggest that the Enterprise and Culture Committee should conduct a longer-term inquiry into the matter. However, immediate action is of the essence, given that the appeal will be heard tonight. If the Public Petitions Committee is going to be helpful at all, it should make a decision at this point to communicate with the SFA.

The Convener: That was the point that I was trying to make. I appreciate your assistance, Dennis.

What do members of the committee think we can do about the situation? Dennis Canavan has made a suggestion that could form the basis of our discussion.

Ms White: We should write to the SFA as soon as possible, as the issue is important for the economy and for the feelings of Falkirk's supporters. We should take on board what Dennis Canavan has said. I note the point about the public money that the bodies have received and I think that Carolyn Leckie is quite right to raise that issue, but we should not enter into that argument at the moment as time is of the essence.

John Scott: The terms of the letter that we write are crucial. We should note that we have no particular jurisdiction over the decision-making process but that, nonetheless, we would like the SFA to note the petition. We should let the SFA have a transcript of the discussion that the Public Petitions Committee of the Scottish Parliament has had and ask for our deliberations to be taken into account. I do not know how much more we can do.

The Convener: That is the crux of the issue. The purpose of dealing with the petition today is to ensure that the issue has a hearing in the Scottish Parliament before the decision is made and to ensure that the people who will make the decision are aware of the strength of feeling of the people of Falkirk and beyond. We do not seek to influence the decision, as it should be made by the powers in Scottish football, but it is important that the organisations are made aware of the strength of feeling that has been expressed today in the Parliament. The committee should make them aware of that.

12:30

Stephen Bird: It is also important to note that this is an issue not only for Falkirk. Having arisen this year, the situation could arise another year. Imagine that Ayr United Football Club were to find itself in the same situation next season as we were in this year and so entered into an agreement with St Mirren Football Club to secure access to an SPL-compliant stadium. Before submitting its papers to the SPL, the club might want to touch base with Falkirk Football Club to find out what went wrong with our bid to ensure that the same mistakes are not made, but we could not say what went wrong with our bid.

It is important that the Public Petitions Committee points out to the SPL that it has a responsibility that does not end when the new season kicks off in August. Its duty, and the duty of the other football bodies, is to continue to look after the interests of Scottish football.

Dennis Canavan: I do not think that it would be technically possible to send the SFA a transcript of this meeting before the decision is made as the appeal will be heard tonight. I suggest instead that, at the very least, the convener sends a letter

summarising the views expressed at the meeting, appending a copy of the petition, which should be brought to the attention of the appeal body before a decision is taken. The letter should also ask for the outcome of the decision to be communicated to the convener along with a detailed statement of the reasons for that decision.

The Convener: I have no problem with that, apart from the logistical problem of getting a 3,000 or 4,000-name petition to the SFA by tonight, although it would be useful if we highlighted the text of the petition to the SFA. We should also state that we are concerned about the impact of the football bodies' decision-making process on society. As Dennis Canavan suggested, we should ask the SFA to take cognisance of what has been said at today's meeting.

Does the committee agree to follow that course of action?

Members indicated agreement.

Seagulls (Health and Safety Hazards) (PE616)

The Convener: Petition PE616 is from John Boyd, on behalf of Wellpark Action Group.

The petitioner is calling on the Scottish Parliament to investigate and assess the health and safety hazards caused by seagulls in urban areas. The petition is prompted by the petitioner's concern about the threat to public safety in the Wellpark area of Kilmarnock caused by the marked increase in seagulls nesting and breeding in the area and their level of aggression during the spring and summer months. The petitioner claims that, last year, there were at least two incidents of direct attacks by seagulls on residents and that there were problems with postal deliveries being disrupted to the extent that the Royal Mail issued staff with sticks and protective headgear. Concerns have also been expressed that the presence of seagulls is preventing smaller birds that are normally present in residents' gardens from raising their young in the area.

I invite Fergus Ewing and David Mundell to comment on their knowledge of the situation, so that we can proceed to a discussion.

David Mundell (South of Scotland) (Con): I came along today because I secured a members' business debate on broadly the same issues on 7 November last year. The debate was primarily based on difficulties that had been encountered with the seagull population in and around Dumfries. During the debate, members from all parties and representing all parts of Scotland spoke about the serious issues that many communities faced.

One of the difficulties is that the subject is often trivialised: people think that it is a bit of a joke. However, for those people who are directly affected, the issue is very serious. When he summed up at the end of the members' business debate, the Deputy Minister for Environment and Rural Development, Allan Wilson, specifically undertook to consider the ability to provide national guidance on how to deal with seagulls that affect communities. At the moment, it seems that each individual local authority is being left to come up with its own solutions, even though it is clear that the problem affects communities throughout not only Scotland but in the United Kingdom and elsewhere. Regrettably, it is clear from correspondence with the Executive and some local authorities, including Dumfries and Galloway Council and East Ayrshire Council, that no progress has been made on national guidance on how to tackle the issue.

There has also not been much progress on the related issue of waste management, which needs to be addressed. Many aspects of the problem concern food. Gulls have moved into urban areas because food from takeaways and in domestic rubbish is much more readily available than food from the sea. Who would blame a seagull for picking up a ready-cooked fish supper, rather than diving into the ocean to try to find a live fish?

I hope that the committee can inject a degree of urgency into the commitments that the Executive has made to tackle the issue. I hope that members feel able to underline the fact that the issue is serious, and is not trivial to those who have been affected. As members might have heard on the radio, the people from Wellpark in Kilmarnock do not find it trivial. I have met some elderly people who have been trapped in their homes. They do not find the matter trivial. Shopkeepers in the centres of towns such as Dumfries and Kilmarnock do not find the problem trivial, because people are put off from going into those shopping areas. It is a serious issue for them.

The problem cannot simply be left to individual local authorities to tackle. We require someone to take a view of the problem for the whole of Scotland. As was pointed out in a previous discussion, moving the seagulls out of Kilmarnock might result in them going to Ayr—as Mr Scott might suspect—or across to Hamilton or Bellshill. If the issue is not dealt with nationally, it will just move around.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I agree with a great deal of what David Mundell has said. I am sorry that Mr John Boyd is not here to describe the two attacks that took place. I can appreciate the problem. As the convener might know, Margaret and I stay in Lossiemouth, where seagulls are called gows.

One day, I was out for a run between Lossiemouth and Roseisle, when I was attacked by a seagull, which dive-bombed me from the rear. I am happy to say that the seagull missed—I hope that members feel that that was a happy conclusion. It was an intimidating experience—far more so than questioning the First Minister. I read subsequently of a senior citizen in England who was attacked by a dive-bombing seagull while he was halfway up a ladder doing some work on the outside of his house and, as a result, fell off the ladder and died.

The petitioner is asking for an investigation into whether there are risks to human safety. I believe that there are. However, in the debate to which David Mundell referred, Allan Wilson said that the chief medical officer says that there is no risk to health and safety. The chief medical officer should take affidavits from the individuals to whom Mr Boyd refers. I am not convinced that the CMO is correct. Although the topic has a humorous side, as do so many things, we are talking about a possible risk to human life.

The problem of seagull control has been tackled piecemeal around Scotland by each local authority. That is not good enough. There should be a national strategy, which should deal with the control of waste and should make bins gull-proof, although then there is the problem of displacement. One option is to have a policy of legal control. The law permits control of gulls, but only where there is a proven risk to human health and safety. Local authorities should consider the matter and form a conclusion. Where control is necessary, I hope that we all believe that it should be done humanely. That could be achieved by local authorities instructing pest-control officers or by adopting an alternative, the pricking of eggs, which the Scottish Society for the Prevention of Cruelty to Animals proposes and which might be the most humane method.

I am satisfied from trips around Scotland that the gull population is at worryingly high levels; in areas where we did not see them before inland they are now there aplenty. I worry that a serious incident might take place that affects human health—it could result in a fatality and the victim might be a young person. The only thing that we should not do is do nothing.

Ms White: I had better declare an interest, as my husband has a pest-control business, and seagulls are certainly a pest. I know a wee bit about the nuisance that they cause and how to get rid of them.

I am glad that Fergus Ewing mentioned a national strategy, because I was going to ask about that. We should consider a national strategy. He also mentioned that gulls are coming inland. That is true. I live in the middle of Glasgow, just off George Square, and we are pestered by seagulls there.

Do David Mundell and Fergus Ewing believe that the Public Petitions Committee should write to the Executive to ask it to write to local authorities or to ask it to start up a national strategy in conjunction with local authorities? What would you like us to do with the petition, apart from write to the Executive, so that the petition has some impact on a national strategy?

David Mundell: The minister is already committed to developing a national strategy in conjunction with local authorities, which clearly is how it must be done. The committee should gee him up to move that forward, because little or no progress appears to have been made. Extensive research is taking place to try to track the number of birds, where they are and what are the patterns. I understand that the total number of some species of gulls is dropping, which is why certain protections exist, but now seagulls are not just on the coast, they are in urban communities. That is one of the challenges in dealing with the problem.

There is still a lot to find out about how gulls move about and suchlike. For example, in the Dumfries area, it was suspected that the gulls were in the town because there is a landfill site relatively near to the town. However, research showed that a different colony of gulls inhabited the landfill site from that which inhabited the town. The research showed that dealing with the landfill site would not have dealt with gulls in the town.

12:45

Ms White: I am sorry, but the reason why I asked the question was to hear whether other members would say that we should be geeing up the Executive to produce results from the strategy.

Fergus Ewing: I do not think that there is a national strategy. However, David Mundell rightly said that the Deputy Minister for Environment and Rural Development stated on 7 November:

“the seagull problem is very real and ... it needs action.”

The minister went on to say that he would

“ask officials to develop the proposition with some urgency and to consult the RSPB ... on how best to act.”—[*Official Report*, 7 November 2002; c 15168 and 15170.]

We should ask the deputy minister what happened after he made that statement.

The petitioners are not at the committee today, but their petition relates to matters that we should investigate. PE616 raises the prospect of people being killed. If we do not investigate that possibility, what are we here for?

Mr Boyd should be asked for further details about what happened. It would be useful if the chief medical officer could be asked to make contact with the petitioner to ascertain the details

and perhaps also to obtain affidavits. The Royal Mail appears to have a policy of issuing safety gear and it should also be contacted. It must have discussed the matter at senior level and decided that the problem was sufficiently serious for safety gear to be issued. If the Royal Mail is issuing safety gear for its posties, what about everyone else who works outdoors? Those people lack safety gear and so must be at risk.

My overall worry is that the chief medical officer has said that seagulls do not pose a risk to public health and safety. I want to know on what basis that conclusion was reached. What evidence does he have? Does the CMO feel that it is time to reconsider the issue in the light of PE616 and any other available evidence? We need to ask him whether a national consultation is called for and whether a national strategy is required to secure national safety. If so, we need to ask about its composition, implementation and funding.

John Scott: I agree with Fergus Ewing and David Mundell. I represent a maritime constituency and my constituents share the petitioners' problems. We have a particular problem in McCall's Avenue in Ayr, where there has been a huge problem for a number of years.

It is vital that we establish the scale of the problem and ascertain whether it is seasonal. The birds' aggressive behaviour would seem to be tied to nesting. We need a national debate to establish the risk and find out whether lives are at risk—as Fergus Ewing mentioned—and we need to urge the Executive to produce guidance on the matter.

The Convener: Do committee members agree to those suggestions?

Ms White: We should remind the Executive that it said that it would consider a strategy in conjunction with the local authorities.

The Convener: We will ask the Executive where it is with the strategy. We will ask the CMO for the evidence on which his conclusions were based and ask the Royal Mail to input to our discussions. Are we agreed?

Members indicated agreement.

Local Archives (PE628)

The Convener: Christine Grahame has joined us and we can now move on to our consideration of petition PE628, on the Scottish Borders archive and local history centre.

Christine Grahame (South of Scotland) (SNP): Thank you for taking my petition out of turn—I was stuck at my own committee. I will take the committee from seagulls to Selkirk and from the high drama at Falkirk Football Club to the high drama of Selkirk, which has been caused by the proposal to remove the archives.

The petition makes a serious point—it is not simply concerned with a local issue. The Selkirk archives have been in existence for about 30 years. I did not know much about them until I went to see what all the fuss was about. They predate the internet and represent an extraordinary repository of material that is literary, educational and social. Local archives are important to local communities, as they are to tourism and so forth.

The archive at Selkirk contains everything from the acts of the Scottish Parliament to a wee thing called “Memories”, which is a personal diary of someone who lived many centuries ago. There are receipts. Receipts tell a lot about people: if someone rummages through our wheelie bins, they would find out an awful lot about each one of us from our receipts and bank statements. The Selkirk archive has a collection of receipts that go way back, as well as notes of things and photographs.

The collection also contains national treasures such as John Buchan welcome addresses—mostly illuminated—Walter Scott first editions and James Hogg letters. The visitors book contains comments from interesting people from Argentina, Singapore and the United States of America—people from all sorts of places, including many displaced Scottish citizens, come to Selkirk to look at the archives.

The archive contains many wonderful entries that tell us about lifestyles in times when we did not have computer operators but we had mill workers, wool weavers, spinners, housekeepers and even someone who called themselves a scholar.

The point behind the petition relates not only to the Selkirk archives but to archives generally. Although we are talking about national strategies to deal with seagulls, there is no national strategy for archives. They are a forgotten resource and are often not kept in the best places. Precious documents are sometimes kept in damp or dusty conditions when they should be kept in proper buildings. Against the background of what is happening to their archive—they are looking for another site in the area for it—the petitioners are asking the Parliament to consider proposals to publicise archives and to take measures to protect a part of our heritage of which I suspect many members of the committee were, like me, unaware. I am trying to excite members, but I see that I am failing.

Many places were rural areas at one time; Corstorphine was once a wee village and parts of Glasgow were wee villages that were subsumed into the greater city. There must be other areas that have such documents. The petitioners are asking the committee to consider whether it would be appropriate to bring the matter to the attention

of the relevant parliamentary committee for it do something about it.

Linda Fabiani: Our heritage is something that everybody thinks is there, but nobody gives much thought to the way in which it is preserved. The issue ties in with the lack of funding for small town museums. I back the call for someone to look into the matter. I am surprised that there is not a national strategy—although that sounds a bit overworked—or somewhere where someone can go to find out where to find all the things from different locations all over the country. I am also surprised that there are no guidelines for storage and so on. I would like to explore this important issue further.

Christine Grahame: As the petition states, no guidance is issued to local authorities. Practice is determined on an ad hoc basis, and that cannot be satisfactory.

The Convener: That is clear. Without pre-empting what anybody else might want to say, I think that the committee will want to look into the matter further. The question is how we will do that, whether by contacting the Executive or by looking further.

Mike Watson: In the interim, we should ask Scottish Borders Council what it intends to do if there is nowhere else in Selkirk where it can house the collection.

Christine Grahame: Part of the drama is the rivalry between Selkirk and Hawick. People who live outside the Borders do not realise how bloodthirsty that can get. It was proposed that the archive be moved to Hawick, but the Selkirk people regard it as a tourism asset in their area and they want to keep it. There are other facilities in Selkirk for it.

However, I would not want the particular case of the Selkirk archive—important though it is—to overshadow the national picture. I was surprised to find how casual we are about such material and felt that the Scottish Parliament should really have considered the situation under its remit on culture and education.

Ms White: Has an alternative site been identified?

Christine Grahame: There is one in Selkirk.

Ms White: That is fine, if that is what the Selkirk people want.

Last year, I met some archivists from the Society of Archivists who came to the Parliament with the same concern that nothing at all was being done. I advised them to write to the Parliament.

I also raised the matter when I was a member of the Local Government Committee. You are right—we need to have a national strategy, as some of

our treasures are being lost. I know that some of our treasures have already been lost in Glasgow, Paisley and other areas. I back the call to contact the Society of Archivists; I can provide a contact name.

The Convener: There are two issues that we must tackle. On the local issue of the archive in Selkirk, we could write to Scottish Borders Council to ask for its proposals for a strategy to deal with the situation. We could also write to the Scottish Executive to ask whether it has any relevant plans and, if not, why not. That would enable us to identify a further course of action; we could refer the petition to another parliamentary committee for further scrutiny. After writing to Scottish Borders Council and the Scottish Executive, we will collate the information that we receive.

Christine Grahame: I also ask you to contact the Society of Archivists in the first instance, as it might be able to give advice on a database of information about where all the archives are kept.

The Convener: Do members agree that we should write to the Society of Archivists, too?

Members indicated agreement.

Christine Grahame: Thank you very much, convener. Good luck in your job.

Carolyn Leckie: Before we move on, you might be aware that there is a Unison reception in the Hub today, which I and, I imagine, Jackie Baillie, want to go to.

The Convener: I am aware of that.

Carolyn Leckie: However, there is still a relevant, pertinent and topical item on the agenda.

The Convener: I would like to deal quickly with the final item of new business. When we move on to current petitions, I will deal with the petition on nursery nurses first. Is that okay?

Carolyn Leckie: That is great. Thank you.

Asthma Treatment (Prescription Charges) (PE623)

The Convener: Petition PE623, which is from Vicki Ferguson, is on the abolition of prescription charges for the treatment of asthma. As the petitioner is unable to be here, I will read out the background.

The petitioner is calling on the Scottish Parliament to take the necessary steps to amend existing legislation to abolish prescription charges for all medication prescribed for the treatment of asthma. The petition is prompted by concern that the inability of many asthma sufferers to afford to purchase their prescribed medication is aggravating their condition. The petitioner refers to statistics that suggest that asthma rates are

three to four times higher in adults than they were 25 years ago and that poor adherence to medication contributed to 18 per cent of the 101 deaths from asthma in Scotland in 2001.

Last week, in response to a question in Parliament about free prescription charges, there was discussion on a similar issue. At a cross-party group meeting, Carolyn Leckie and I discussed extending the availability of free prescriptions to terminally ill people. The Executive has promised a review of free prescriptions for people with chronic illnesses and asthma obviously falls within the scope of that review. I suggest that we write to the minister to ask specifically that asthma be considered as a priority. We should ask for a response purely on asthma, so that we can advance the petition on the petitioner's behalf. Is that agreed?

Members indicated agreement.

Current Petitions

Early-years Education and Child Care (PE523)

The Convener: We move to consideration of current petitions. As agreed, we will deal with the petition on early-years education and child care—PE523—first. Although it will not make much difference, I invite any Unison members to acknowledge their membership, as the declaration of any interest is always worth while.

Jackie Baillie: As my entry in the register of interests indicates, I am a member of Unison.

Carolyn Leckie: I am a former branch secretary of Unison.

The Convener: Thank you for providing that clarification.

The background to the petition is that the petitioners are calling on the Scottish Parliament to urge the Scottish Executive to initiate a national inquiry into early-years education and child care, with a view to producing a report and recommendations on the way forward. The petition is prompted by the petitioners' belief that early-years education and child care should be recognised as a separate profession within overall education provision, through the standardisation of qualifications for nursery nurses and the identification of career progression.

Our predecessors noted that the Executive is undertaking a significant amount of work to increase the number of qualified workers in early-years education and child care and to promote career opportunities in the sector. The Executive has been involved in discussions at a United Kingdom level to ensure that any sector skills council that covers the interests of the early-years education and child care work force reflects the increasingly integrated nature of children's services. That is the petition's context. What are members' views about it?

13:00

Jackie Baillie: I want to say something briefly, as I am conscious that our discussion is taking place against a backdrop of industrial action, which is a matter for local government to resolve in the first place. I will confine my comments to the petition.

I recognise that a great deal of attention has been paid to and a great deal of additional money has been put into early-years education, which has created a momentum for change. In that context, it is legitimate to consider a nursery nurse's role as part of the whole package of early-years education.

I note that responses from Children in Scotland and others suggest that the training and status side is being addressed quite robustly. However, people are asking whether we can be sure that the increased funding is being allocated to early-years services. Perhaps scrutiny is needed. The Education, Culture and Sport Committee, of which I was a member, suggested in its legacy paper for the new committee that it might want to conduct an inquiry into early-years education. On that basis, there would be no harm in the Public Petitions Committee forwarding the petition to the new Education Committee for its views.

Carolyn Leckie: I would be happy for the petition to be referred to the Education Committee. It would not be appropriate to suspend any action because of the industrial dispute—the briefing paper alludes to that possibility. That dispute specifically relates to the grading of nursery nurses, which is part of the whole issue of early-years education. I make no bones about the fact that I support the nursery nurses' regrading claim. Pay, careers structure and status are integral and fundamental to the development of the early-years education sector. Such matters cannot and should not be separated out.

Another avenue that I hoped to explore is the fact that, although not all nursery nurses are female, females dominate the work force. I think that they can earn a maximum of only £13,300 per year for the immensely skilled job that they do because they are women and look after children. There is structural discrimination in society against the female work force and in respect of valuing children in society. Therefore, it might also be worth while to ask the Equal Opportunities Committee for its views on the petition.

The Convener: That suggestion is certainly worth discussing.

Ms White: There should be an inquiry into early-years education and child care, which are important educational and social aspects of children's growing up.

I have spoken to and worked with nursery nurses. Like them, I have always been concerned about the anomaly in councils' pay structures. That is seen as a local government matter, so perhaps we should also contact the Local Government and Transport Committee. Constituents and friends raise the issue of pay structure differences time and again, but kids are kids, no matter where they live, and nursery nurses provide the same training no matter where they live. Having different pay scales in different councils is an important issue and must be considered.

Jackie Baillie: I am concerned that referring the petition to half a dozen committees might mean

that no committee will take responsibility. If we refer it to the Education Committee, we should tell it that the Local Government and Transport Committee, the Equal Opportunities Committee or another committee might be interested in certain issues. Responsibility would then rest with the Education Committee, where it should properly rest, and there would be no loss of focus.

The Convener: I was just about to make that point, which has just been clarified to me. I welcome Jackie Baillie's helpful explanation. Apparently, the Public Petitions Committee's practice has been to identify a committee but suggest that that committee invite other committees to have an input into its overall investigation. We can write to the Education Committee to highlight the petition and ask whether it will have a review, as the petitioner has suggested. We could invite that committee to consider the equalities aspect of the petition and ask it to invite the Local Government and Transport Committee to consider the petition too, if it thinks that that is appropriate.

Carolyn Leckie: I would also like to mention the "Bridging the Gap" funding—which I think Jackie Baillie has been involved with—and the relationship with the Scottish Trades Union Congress. I do not know who is currently involved with those matters, but it may be that their attention should be drawn to this petition too.

The Convener: Is everyone happy that we should write to the Education Committee?

Members *indicated agreement.*

Tolls (Trunk Roads) (PE445)

The Convener: The next petition is PE445, on the Skye bridge.

Robbie the Pict: For the convenience of committee members, I have typed out what I am about to say, so that I can get it into three minutes and you will still have a record of it. Before the clock starts, I would like to ask—with your indulgence, convener—about two procedural points that concern me. Does the committee have the power to recommend that an issue be discussed in the chamber of the Parliament? I was advised by the previous convener that that power was available in emergency or extreme circumstances. Can you confirm that that is the case?

The Convener: That is the case.

Robbie the Pict: I would also like to make it clear to committee members that this motion, if I may call it that, is an emergency motion. It is a missile strapped to a torpedo, if you like, because of the urgency connected with our tourism season and the proposals that the coalition has

announced on negotiating abolition with the concessionaires. A loading has been put on the original petition, so today's petition is, in a sense, two-tiered. I hope that new members of the committee will respect and understand that. The subcurrent is the original petition, which requested that the matter be referred to the justice committees and the Audit Committee; today's "emergency motion", about which I am about to address the committee, seeks to do something about the 2003 season.

The Convener: I do not want to pre-empt anything that the committee may decide, but I hear your concerns about the time scale.

Robbie the Pict: I just wanted to clarify matters for committee members who are lucky enough not to have been subjected to this before.

In Scotland, a private finance initiative tolling licence is called an assignation statement. It is imperative that the Secretary of State for Scotland make such a statement. It must be dated, signed and published; that is, printed for sale. The statement tells the public who has official powers to charge tolls and the statement in question states that tolling shall end when a total of some £24 million at 1990 prices has been received. It is a criminal offence to exceed that total and it is a criminal offence to demand tolls without a signed licence.

There is only one similar case: in Birmingham in 1998, Mr Justice Sullivan reported that particular statement as

"published with the schemes and orders".

It is not competent to prosecute the public using unpublished law, but the certificates stating "unpublished" were removed from the Skye toll order and the road scheme and Lord James Douglas Hamilton certified them to the court in Dingwall as true copies, which is felonious perjury.

The seven pages of anonymous type before members are the tolling licence that was foisted on Scotland. It even employs the phrase,

"as at the date hereof",

although there is not even a year identified. It is not a probative document. The minister has failed to meet the requirement to make a statement in law and it is a plain matter of fact that the tolling licence is not a signed and dated tolling licence. No legal interpretation is needed. It can go to the Public Petitions Committee, as the public jury, to decide whether it is signed, or not.

The licence was withheld from courts for four years and its proper examination was then avoided for another four years. In the appeal court, Lord Sutherland evaded the question completely. In a Court of Session appeal, Lord Johnston did

the same and unlawfully claimed that the licence was ousted from discussion. Everyone else has hidden behind those two unjust evasions. The then Lord Advocate, Lord Hardie, replied mendaciously to the local MP and claimed that the statement had been found to be in proper order; the Executive has now told that same lie to this Parliament. Please note that the Executive was caught out in its last two lies to the Public Petitions Committee—the Executive now avoids comment on the licence and is a discredited witness.

The scheme is fraudulent: the official construction cost was £13 million but, to date, the public contribution has been more than £50 million. If we negotiate with Skye Bridge Ltd, Scotland will be liable to Bank of America's investors for full compensation of perhaps another £100 million.

Despite Mr Darling, the petitioners urge the committee to act as bouncers for the Scottish people and their Parliament. UK ministers contracted the liability in 1992, so any liability is Anglo-American in nature; it is not this Parliament's doing and there is no legal basis for devolving the debt as property. The factual evidence of the unsigned paperwork decrees that no concessionaire is lawfully in place. As no parties have contracted, a third party cannot commence negotiation of a buy-out price. In addition, no lawful toll period has been commenced. For the above reasons, the whole scheme is discredited.

We urge the committee to use its powers of referral to recommend to the full Parliament that criminal tolling be immediately suspended. That means tomorrow. Save our season.

The Convener: Do members have any questions?

John Farquhar Munro: Mine is not so much a question as a basic statement. I do not doubt anything that the petitioner has said, nor do I doubt his commitment to the cause. There is nobody more committed to removing the tolls than the petitioner, but I and many others in that part of Scotland share that commitment.

I find myself in the position today of understanding and appreciating the petitioner's previous campaigning. However, despite all the petitioners' best endeavours, we still come to a dead end each time. The Scottish Executive, the Scottish Office before that, the law courts and Westminster have all suggested that the documentation is in order. That is a moot point that could be argued over many years through the courts.

My fear is that, if the petitioner pursues the legal argument through the courts as he suggests, we could be back here in four, five or 10 years' time.

We might still be arguing the same case because we have been unable to convince the law lords—or whoever makes those decisions—that the paperwork is flawed—although there is no doubt that there is a strong argument that that is the case.

The present position is that we have a partnership agreement that is committed to negotiating to buy out the toll regime, which will, I hope, happen in the not-too-distant future. I know that negotiations or discussions on that have already started. I am of the opinion that our best option is to encourage the debate to come to a conclusion at an early date.

I know that the petitioner will probably say that there is no need to negotiate if we can prove that the documentation is flawed, but how long will it take us to arrive at that conclusion?

Robbie the Pict: It would take 24 hours. The document is in front of you—it was supplied to every member of the committee. Has every committee member seen the assignation statement or tolling licence? Did anyone see a signature on the back page of it?

Jackie Baillie: As a new member of the committee, who can therefore take a fresh view of things, I want first to get some clarification. You referred to the urgency of the current situation and your desire for the issue to be presented to the Scottish Parliament for debate—

Robbie the Pict: The urgency is for the people of Skye. The tourism season lasts only two or three months. The petition has been before the Parliament for two years. If you ditch the matter again, we will lose another season.

Jackie Baillie: I understand what you say about the urgency of acting. The clerks can clarify that the request to which I referred was in the petitioner's letter of 12 June to the committee. How does that sit with the original petition? I understand that we are considering the original petition, which relates to the legality of the process.

13:15

The Convener: We wanted to consider the petition early because it was on-going and the petitioner said that he had new information that built on it. I am concerned about the petitioner's aspiration to have the matter debated in the Parliament to address the concerns before the season. After today, we will have only one more day for chamber business before the recess. No time has been allocated to the committee to debate any subject, so the petition will not be debated before the end of this week. That is the practical reality.

Robbie the Pict: I suggest that the question is one not of law or interpretation, but one of fact that can be put to a public jury.

The Convener: Is it not a fact that the court has decided that the documents are legal?

Robbie the Pict: No—that has never been decided, but that is the illusion that is being spun and which we deeply resent. That is why I talk about mendaciousness and lies from the Executive. The Executive has callously and dishonestly deceived the Parliament about the state of those documents. No judge in any court has ruled on the question of the tolling licence's not being signed. That matter can go to a jury as a question of fact and I ask the committee to act as that jury.

The Convener: We do not have the authority to act as a jury, no matter how much we wish to accept your arguments. The committee does not have that power.

Robbie the Pict: Can the committee recognise whether a paper is signed?

The Convener: As John Farquhar Munro said, there are no doubts about whether the document was signed. I hope that you can clarify two issues for me. First, do you require Parliament to address the issue before the season starts? Secondly, do you dispute that the High Court has ruled that, even though the document was not signed, it is still legal?

Robbie the Pict: The High Court has never ruled that the document is legal. That falsehood has been perpetrated by the Executive and by Lord Hardie, to his eternal shame. He spun an opinion by Lord Sutherland, who addressed only the question of updating an assignation statement. He did not talk about whether the original assignation statement had been made or signed. The Executive's reply claimed that Lord Sutherland had dealt with the matter. I replied to that in detail and the Executive has not answered. The Executive has been caught out.

The matter is now for the police, who are investigating it. Today's issue of *The Herald* shows that academic opinion across the board condemns the licence for having no signature, so a crime is being committed and has been committed for seven and a half years. I ask the committee please to put a stop to that crime.

The Convener: I would like you to say not whether you agree with the decision, but whether the High Court decided that the document was legal.

Robbie the Pict: The High Court has not decided that—such a decision has never been made.

The Convener: I and other members have a letter from the Lord Advocate that was sent to this committee's previous convener, which says that although you disagree with the court's view,

"it is not for me to proffer comment on what has been decided after due legal process other than to observe that the Opinion is set out comprehensively and is binding."

The Lord Advocate says that, whether or not you agree with it, the decision has been made.

Robbie the Pict: A decision has not been made. Show me the words that say that the document is in lawful order. That issue was not addressed; it was evaded. I asked that question and raised four appeal points, not one of which was answered. Instead, judges talked about the requirement to update an assignation statement on the presumption that such an assignation had been made. Lord Sutherland's only comment is that there is no statutory requirement to update for the public's information any new information concerning the contents of an assignation statement from when it was made. The key words are: "from when it was made". The licence has never been made or signed. There has never been a statement with a date, a name or a signature for the tolling licence.

If there is no licence, tolls are being charged without authority and a criminal offence is being committed. If you let that happen, you are aiding and abetting a continuing crime, which has cost us £28 million so far. We are the victims of crime, and we would like it to be stopped. You have the ability to make not a judgment, but an observation, and to say, "This tolling licence isn't signed." I ask the committee to lodge an emergency motion. Otherwise, we will lose another £4 million this season.

Carolyn Leckie: Politically, I agree fully with Robbie the Pict. I want to clarify whether the committee has asked the Executive specifically whether it believes that it is applying tolls illegally with reference to the unsigned document?

The Convener: Yes.

Carolyn Leckie: Has it responded to that question? If not, can we ask again?

The Convener: I think that I read out that response. It was a response to the convener from the Lord Advocate.

Carolyn Leckie: Was it a response to that specific question?

The Convener: It was clarification of the decision that the court made.

Carolyn Leckie: Was that with specific reference to the unsigned licence?

John Scott: The courts

"found the documents in question to be legally competent."

That is part of the clerk's note on the petition.

The Convener: The detailed terms of the contract with Skye Bridge Ltd are subject to the normal requirements of commercial confidentiality. It is a commercial agreement.

Carolyn Leckie: That does not answer the question about the unsigned licence.

The Convener: The previous committee wrote to the Lord Advocate to ask what was the legal standing of the decision. He has written back clarifying that the decision is legal and binding, although he accepts that some people do not agree with that decision.

Robbie the Pict: What the Lord Advocate has said is legally binding is irrelevant to the appeal points that have been raised. What was commented on was the updating of an assignation statement. There has been no reference to the fact that the licence is unsigned and undated. It is anonymous—nobody's name is on it. What is really interesting is that, in the assignation statement, there is a discrepancy of £100 million between the total that is supposed to come in and the total that is hidden in the toll order. It is no wonder that the assignation statement was not published, because it gives the game away.

The PFI is an official scam and an official cover up. The Lord Advocate has prosecuted 500 people and convicted 130 of those falsely and wrongly. It is therefore no wonder that he would try to tell the committee that Lord Sutherland's judgment is in order. He could not point a finger at the line that says that the unsigned, undated, anonymous seven pages of type are in proper legal form. If he is to prosecute the public, the document must be flawless and published.

The Convener: That is the point that I am trying to clarify. Although no one would dispute that the document is not signed—I do not think that even the court disputes that—the court has decided that the document is legally binding.

Robbie the Pict: It is not.

The Convener: The court has written back to the Executive. The clerk's note says:

"The response also states that the Orders associated with the scheme, together with the Assignation Statement were advertised and made available for public inspection, as required by statute. The public were therefore able to comment on and object to these proposals. The Executive states—in line with Lord Sutherland's Opinion—that there is nothing in the relevant statute which required either the Statement or the Orders to be laid before Parliament."

Robbie the Pict: That is nothing to do with the assignation statement, which is a political

statement. It has its own regulations and orders. The procedures for assignation statements are the subject of statutory instruments and the relevant regulations state that the assignation statement must be published. Most important, the statute says that the Secretary of State for Scotland must make a statement.

There are two halves to tolling. The civil contract is subject to commercial confidentiality. We have no difficulty with that. It is interesting that the contract has the Secretary of State's seal and two signatures—the Secretary of State's representative's and a witness's—and that is repeated by the other parties. The assignation statement, which is the statutory half of tolling, has nothing on it. One bit is private and the other bit is public, but the public bit has not been addressed at all and is therefore not in lawful order. Money cannot without a licence be taken from people on a public road. That licence is the seven pages of anonymous type that were submitted to you.

The situation is appalling and the committee cannot let the Executive off.

The Convener: I do not want to have a dialogue between only you and me, but I do not see any other member indicating that they want to come in. I am just trying to clarify the point.

Robbie the Pict: You are taking legal advice. I notice that.

The Convener: I am trying to clarify the situation. You are making points and asking me questions about the information that the committee has. The clerk has just pointed out to me the information that the committee has, which is that the Executive is of the view

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

Robbie the Pict: It says it right there in the Executive's letter—the assignation statement does not prove anything and it is not probative. It does not give evidence of any licence.

The Convener: I have asked you this question several times. Do you accept that a decision was made, even though you might disagree with it?

Robbie the Pict: No—my point is that there is no decision to disagree with.

Ms White: I do not have Robbie the Pict's expertise and I admire his tenacity for taking the matter further every time. The first petition this morning—PE617—concerned the judiciary, and we were very sympathetic towards that petitioner's situation. The judiciary is not always correct. In that sense, Robbie the Pict has a valid point.

I have read through the documents and I have to say that I am not a lawyer, so I cannot quite interpret some of the language. However, all the

documents say is that the Executive accepts the court's findings. As we do not know what those findings are, it is Robbie the Pict's word against the court's. We did not accept the court's findings about the earlier petitioner's treatment at the hands of the judiciary and decided that we should look into the matter. As I have pointed out, the documents simply say that the Executive accepts the court's findings; they do not say whether the licences are stamped and therefore whether they are legal or not. Surely we can dig somewhere else to find some answers. Just because the court deems that something is correct, that does not mean that we should accept its findings.

The Convener: I do not think that this petition is comparable with PE617. We are not examining a remotely similar matter.

Ms White: I am not saying that we are. However, the earlier petitioner had to bring his case to us because he had no recourse in law, which is why he is asking for an appeal. I know that this matter is not the same, but my point is that we cannot always take at face value what the courts say. Sometimes we have to question their findings.

Carolyn Leckie: This petition is different from PE617, because in this case we are talking about the political responsibility to grant a licence. That is separate from issues such as commercial confidentiality. However, I am not clear about whether there has been a specific ruling on the legality of the licence. Has the Executive commented specifically on that issue? If not, can we ask it to do so?

The Convener: I think that this is the Executive's response to that question. It states that Lord Sutherland referred to

"the validity of the assignation statement"

when rejecting Robbie the Pict's arguments as to why

"the prosecution at appeal should not have proceeded".

The question was asked, and the Executive has concluded that

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

The Executive accepts that the court has made a ruling on the matter.

Robbie the Pict: That is false; that is not what the court said at all. Executive civil servants are lying to the Parliament, which is atrocious. They would rather lie to cover up the mistake that they made early doors and save themselves embarrassment, and they would prefer to prosecute the people of Skye unlawfully. That is criminal. Those people are supplying documents feloniously.

I was invited to comment on the information that the Executive supplied, which is in the documents before the committee; that information is mendacious. Indeed, I find it appalling that senior civil servants at the Scottish Executive are continuing to cover things up, simply because £100 million and more is at stake. The assignation statement says that the public debt total should be £23.64 million at 1990 prices. Even allowing for all kinds of inflation, that means the total today should be £33 million. We have paid £50 million and bought the bridge with £14.6 million-worth of sweeteners. The bridge is and always has been owned by the public. This scam is an easy model for encouraging PFI. There was no risk at all, because public money bought the bridge. Now a criminal offence is involved.

The Convener: I will bring in Jackie Baillie and then try to get the committee to agree on what action we should take.

Jackie Baillie: I am very clear that we need to maintain a focus on the substance of the petition instead of introducing all sorts of extraneous matters. I have noted some questions of fact from our papers. I should point out that I am not receiving any legal advice from anyone.

First, this is not just a matter for the Scottish Executive; the toll order has also been to the Select Committee on Statutory Instruments in the House of Commons. The matter has also been before the Auditor General for Scotland and the Comptroller and Auditor General. It was also before the court of appeal on 16 December 1999, when Lord Sutherland made his judgment. The matter went back to the Lord Justice General, when you lodged a petition against Lord Sutherland's court of appeal judgment. As I understand it, that petition was deemed to be incompetent simply because—

Robbie the Pict: That petition is still live.

Jackie Baillie: Excuse me, I did not interrupt you; please do not interrupt me.

Robbie the Pict: I was making a point of fact.

Jackie Baillie: May I continue, convener?

The Convener: Yes.

13:30

Jackie Baillie: The judgment from the Lord Justice General states that Lord Sutherland took into account, among other points, the full argument that was put before him, including the complaint that the assignation statement was undated and unsigned. I understand that other members might want to question individual members of the judiciary, but facts have been put before us—

Robbie the Pict: They are not facts.

Jackie Baillie: I understand them to be facts.

There are two separate issues. The first is whether we should concede any urgency to the matter—the convener's points have already covered that. The second is whether the petition has been fully explored. On that issue, I am happy to rest with John Farquhar Munro's suggestions. He has been close to the issue and has been an advocate of the removal of tolls from the Skye bridge.

The Convener: As no other members want to speak, I assume that we accept John Farquhar Munro's suggestion that we should wait for the outcome of the Scottish Executive's review. On the pressing need for a debate, we cannot have a debate because the Parliament's agenda for the next two days is set.

Linda Fabiani: When we write to the Executive to ask about the review, we should stress the urgency of the matter. Many people believe that no tolls should be charged on the Skye bridge; that is a general feeling in the country. We should ask the Executive to proceed with the review without delay so that the tolls can be stopped as soon as possible after the review ends.

The Convener: Are members happy to urge the Executive to deal with the matter as swiftly as possible?

Members indicated agreement.

The Convener: To clarify, we will ask the Executive to provide the details and time scale of the proposed review of bridge tolls in Scotland, and to carry out that review urgently. We will also ask how the Executive proposes to approach the negotiations to end the tolls on the Skye bridge.

Robbie the Pict: I object strongly to that action, which endorses the tolls as legal. You are betraying the people of Scotland and you will land them with paying full compensation for a UK contract that was made with an American bank. That is a betrayal of the Scottish taxpayer and the people who have been convicted unlawfully.

The Convener: Thank you. Your words are on the record.

Police Assaults (PE482)

The Convener: Petition PE482 is on the compulsory blood testing of suspected criminals. The petitioners call on the Scottish Parliament to take the necessary steps to make it compulsory for assailants and others who have exposed, or potentially exposed, police officers to a risk of infection, to submit to a blood test or tests, information on which would be made available to the police officer should he so wish. The

petitioners also call for an amendment to the Data Protection Act 1998 to allow the results of such tests to be retained on the police national computer.

The Executive response was that, given the circumstances, ministers had decided that more time was required to allow discussions to take place with key stakeholders, including the petitioners. When the response was submitted, it was anticipated that the consultation paper would be published by early summer. The clerks have established that Executive officials hope to give advice to ministers on the matter by the end of June.

Mike Watson: The issue is potentially serious and perhaps requires legislation. The Executive responded positively to Bill Aitken's amendment on the issue to the Criminal Justice (Scotland) Bill.

We have been led to believe that advice will be given to ministers before the end of June, which is where we are now. Of course, that is not the same as the advice's being in the public domain. We should ask to be kept informed so that we can monitor progress. However, it should be made clear that we are behind what the Scottish Police Federation suggests and that, in that context, we hope to see action as soon as is reasonably practicable, considering the legislative programme.

Members indicated agreement.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (PE601)

The Convener: Petition PE601 is about the rights of audience in Scottish courts.

The petitioners call for the Scottish Parliament to take the necessary steps to commence sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. That will allow interested parties to make submissions for rights of audience in Scottish courts.

The Executive acknowledges the issues that are raised in the petition and indicates that it is now minded to revisit commencement of sections 25 to 29 of the 1990 Act. It also flags up a legislative flaw that would obstruct the commencement, in that section 32 of the Solicitors (Scotland) Act 1980 makes it an offence for any unqualified person to draw up or to prepare any writ relating to any action or proceedings in any court. The Executive indicates that that would have to be corrected by primary legislation. We have also had responses from the Lord Chancellor and the Scottish Consumer Council.

It appears that the system of granting rights of audience is working well in England and Wales, and the Office of Fair Trading states that it would

encourage its adoption elsewhere. The OFT and Scottish Consumer Council expressed concerns that extension of the system is being prevented by failure to commence the relevant legislative provisions. The Executive is willing to re-examine commencement of sections 25 to 29 of the 1990 act and it intends to raise the subject with ministers. That is a positive response that members might wish to encourage. Should we do that?

Members indicated agreement.

The Convener: We will write to the Executive to encourage it to deal with the issue as promptly as possible. It would be a good idea if the Executive told us how it intends to act and what the time scale will be.

Linda Fabiani: The time scale is important.

Military Action in Iraq (Legality) (PE619)

The Convener: Do we need to go into the background to this one? Do members have a view?

Linda Fabiani: I have plenty.

The Convener: I meant do members have views on how the committee can deal with the petition.

Jackie Baillie: Given that we have already debated the issue and that it is reserved matter, we cannot progress the petition.

John Scott: There is also an on-going inquiry into the matter at Whitehall. What would be the point in our doing so?

Jackie Baillie: Exactly. Thank you.

Ms White: I take the same view as Jackie Baillie, except the part about its being a reserved matter. The Parliament debated the issue in February, but it would be nice if someone would lodge another petition that asks where are the weapons of mass destruction. Maybe we could have a debate about that.

The Convener: Are we agreed that we should take no further action on the petition?

Mike Watson: I agree, but I have to challenge Sandra White. The matter is reserved. Whether this country—meaning the United Kingdom, of which Scotland is a part—goes to war is not a matter for the Scottish Parliament. It is not an issue for debate, although I can understand Sandra White's personal view. We have to have the record clear on that.

Linda Fabiani: We could get well into that debate.

The Convener: We are going over the debate again.

Ms White: If it were not for the Scottish Parliament, the issue would never have been debated because Westminster was not going to allow a debate.

The Convener: We are not about to revisit the Iraq debate. Does the committee agree to take no further action on the petition on the basis that the Scottish Parliament has already debated military action against Iraq and that further debate on that reserved matter is unlikely?

Members indicated agreement.

Referral of Current Petitions to Subject Committees

The Convener: We do not have to go through all the outstanding petitions that were sent back because they went to subject committees and there was no guarantee that those subject committees would exist in the new parliamentary session. Some of the committee remits have changed, so we have to find the petitions that were outstanding through the election period and send them to the appropriate new committees. Is the committee happy with the recommendations on which committee should receive which petition, as detailed in the paper?

Members indicated agreement.

Inadmissible Petitions

Scottish Business Registry (IP40)

Motherwell and Wishaw (Boundaries) (IP41)

Miscarriage of Justice (IP42)

Election Ballot Papers (IP43)

The Convener: The committee is invited to agree the recommendations on inadmissible petitions that are contained in the paper. Do members want to go through the recommendations individually?

John Scott: No.

Linda Fabiani: I have looked at the recommendations and I agree with them all.

The Convener: For good reasons?

Linda Fabiani: Yes.

The Convener: Are we all agreed?

Members *indicated agreement.*

Convener's Report

The Convener: The final agenda item is the convener's report. I had to ask what that meant. I have not prepared a report, but I can tie up any loose ends about things that have happened since our previous meeting.

Prior to commencement of the meeting this morning, I received a petition from students and staff at the Scottish Agricultural College. Obviously there are time scale issues and the matter was not on our agenda, but I suggested—I hope that the committee will agree—that without making any judgment on the petition, we should make the SAC and the relevant minister aware that a petition of 3,000 names has been submitted to the committee for its consideration at the same time as those bodies are considering the Deloitte & Touche report. If the committee agrees, we will notify both bodies that Parliament has received a petition. We will advise them of the remit of the petition and ask them to take cognisance of it in their discussions. Are we agreed?

Members *indicated agreement.*

The Convener: There is one more matter to mention. The afternoon of Thursday 28 August has been suggested for our away day, but not every member has contacted the clerk to let him know whether they are available. Could members please advise the clerk whether that date is suitable? If anyone has specific items for the away day agenda, could they also advise the clerk of those?

Meeting closed at 13:41.

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