

PUBLIC PETITIONS COMMITTEE

Wednesday 9 June 2004
(*Morning*)

Session 2

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PUBLIC PETITIONS COMMITTEE

10th Meeting 2004, 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)
*Campbell Martin (West of Scotland) (SNP)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
*Mike Watson (Glasgow Cathcart) (Lab)

COMMITTEE SUBSTITUTES

Frances Curran (West of Scotland) (SSP)
Susan Deacon (Edinburgh East and Musselburgh) (Lab)
Phil Gallie (South of Scotland) (Con)
Rob Gibson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

David Barrie (Dundee City Council)
Dennis Canavan (Falkirk West) (Ind)
Madge Clark (Murray Owen Carers Group)
Councillor Fiona Grant (Dundee City Council)
Jeanette Kelly (Murray Owen Carers Group)
Margo MacDonald (Lothians) (Ind)
Councillor Derek Mackay (Renfrewshire Council)
William Perrie
Councillor Rod Wallace (Dundee City Council)

CLERK TO THE COMMITTEE

Jim Johnston

ASSISTANT CLERK

Joanne Clinton

LOCATION

Committee Room 2

Scottish Parliament

Public Petitions Committee

Wednesday 9 June 2004

(Morning)

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

Item in Private

The Convener (Michael McMahon): Good morning. Our first item of business is to decide whether to take item 4, which relates to unauthorised disclosures, in private, in keeping with the code of conduct. Are we all agreed?

Carolyn Leckie (Central Scotland) (SSP): As before, I would like to place on record my belief that all our business should be conducted in public.

Mike Watson (Glasgow Cathcart) (Lab): We should make it clear that, in agreeing to take item 4 in private, we are acting in accordance with the Standards Committee's guidance on which matters it is acceptable to deal with in private.

The Convener: Yes, that is what I pointed out. A decision to deal with the matter in private would be in keeping with the code of conduct.

Having noted Carolyn Leckie's comments, do members agree to take item 4 in private?

Members *indicated agreement.*

New Petitions

Local Government Elections (PE726)

10:03

The Convener: Our first new petition is from William Perrie. PE726 calls on the Scottish Parliament to urge the Executive to appoint an independent body with responsibility for the regulation and training of returning officers for local government elections and a complaints procedure to deal with any irregularities concerning those elections.

William Perrie is present to give evidence in support of his petition and is accompanied by Councillor Derek Mackay.

William Perrie: Good morning. My petition is based on our experience after the May 2003 election, when it was found that more than half of the marked registers for the Paisley North constituency had been lost. Various inquiries that were carried out revealed, in my opinion, a failure of the returning officer to comply with the recommendations of the Electoral Commission. The deeper I delved into the situation, the more I realised that it was difficult to have those points dealt with without taking legal action, although individuals, and even political parties, cannot always afford that. In any event, not all the actions are criminal, but they reflect on the democratic process that we are so proud of in this country. The fact that those failures have been highlighted has brought the process into disrepute. We have a problem with people turning out to vote as it is, but the inability to bring people to task for those failures demeans the democratic process even more, especially when people are advised that, if they have a problem, their only recourse is legal action.

I believe that the Electoral Commission is in an ideal position to take on the tasks of regulating the returning officer and staff, and of dealing with any problems that may arise because of a failure to comply with its recommendations. It obviously does not make recommendations lightly, and those recommendations are put to the Parliament for approval. That is why I believe that the Electoral Commission is an ideal body to regulate independently of everyone. That is one of the few areas in which we do not have an ombudsman to deal with complaints from members of the public.

The Convener: Thank you very much, Mr Perrie. Mr Mackay, do you have anything that you wish to add?

Councillor Derek Mackay (Renfrewshire Council): Yes. The position in Renfrewshire is that many of the elections were never technically

concluded. As politicians, you will all be aware that, if there are no marked-up registers, you cannot cross-reference those who have said that they have voted and those who have not voted. Half of the marked-up registers in one parliamentary constituency disappeared, and it could be argued that there is no verification of my being elected as a councillor or of Wendy Alexander's being elected as the MSP for Paisley North. We were concerned that that election was not brought to a proper end.

Not only were there failures in practice with regard to the checklist that is provided by the Electoral Commission, but there was a failure in statutory duties. There is no recourse for anyone, other than through the courts. In a democratic system, that excludes the poor and the less well-off. If your argument does not fit into the tight legal framework for what would constitute grounds for rerunning an election, you cannot challenge major issues such as the fact that ballot papers and checklists disappeared, marked-up registers were never there and receipts were never received from the sheriff's office.

There is nowhere to take the problem, so we are asking the Parliament to seriously consider regulating returning officers so that our system is transparent from start to finish. The elections in Renfrewshire were never concluded, and it was only because of our scrutiny and vigilance that we discovered the problems. Although the Electoral Commission has made recommendations that the system be reviewed, there is already a rigid checklist of things to do at an election. Those instructions were not followed, but there is nothing that can be done about it. That is the position that we are in.

With elections tomorrow, it is clear to us that elections must be transparent and perfectly run if people are to have faith in the democratic system. However, there is still a big question mark in Renfrewshire and people have grievances about that.

The Convener: Thank you for bringing that information to the committee. I would like to make one technical point. Councillor Mackay referred to the Scottish Parliament election, but we are not technically responsible for anything to do with the Scottish Parliament election. We can address only those issues that relate to local government elections. That is a technical point, but it is one that we must bear in mind.

Jackie Baillie (Dumbarton) (Lab): I found your presentation interesting and I have a couple of questions. First, are you looking to substitute the role that the courts have, or are you looking for something in addition to the role that the courts have?

William Perrie: We are looking for something in addition to that role. My point is that not all the action was criminal. People have recourse to the courts if they can prove that there has been a criminal action, but where there is a non-criminal failure of someone to do the duty that they are expected to do, there is no recourse. We expect staff to carry out their duties as laid down, but if they do not carry them out as laid down there is no recourse.

Jackie Baillie: Some people would argue that recourse can currently be achieved through the courts. If you are poor and have few resources, you would qualify for legal aid in a case such as you describe. Is that not correct?

William Perrie: In many legal cases, we fall into the trap that the legal system works for people only if they are rich enough or poor enough. The majority of people, who have some income, do not qualify for legal aid.

Jackie Baillie: With respect, Councillor Mackay made the point that poor people would not get access to the system, which I was challenging.

I understand that the conclusion of an election is not the point at which marked registers appear, but the declaration of the result. Can you comment on that? I understand that the petition is based on a point of clear principle. That being the case, I am concerned that Councillor Mackay does not intend to stand down if he has not been elected, as he seems to be suggesting.

Councillor Mackay: I will happily set a challenge. On the train, we were speaking to Wendy Alexander. If she stands down in Paisley North, I will not hesitate to stand down in the Blythswood ward. With a majority of more than 500 votes, I feel reasonably comfortable, but perhaps it was a dodgy election. If you said to President Bush that events in Florida gave him a mandate in which he could be absolutely confident, some people would be a little surprised.

The declaration is the point at which a politician is named as the winner and as the elected member. However, the process does not end until one year after polling, when the ballot papers and marked-up registers are destroyed. It is a legal requirement for those to be available. There is no point in our having laws if we do not stick to them. That is the technical end of the democratic process. The ballot papers and marked-up registers are supposed to be destroyed one year after the election, but that is not what happened in this instance.

I return to legal aid. Not only are a number of people excluded from legal aid, but the Scottish Legal Aid Board would be very unsympathetic to taking on a case of this nature. It would be extremely difficult to find a solicitor who is an

expert on electoral law and could deal with a case such as this, on an issue that has never before been challenged in Scotland. People are being denied the opportunity to demand the transparency that they deserve. We have a legal requirement that is currently unenforceable.

Linda Fabiani (Central Scotland) (SNP): I was interested to read the background information that you submitted. It seems that the whole process was a disaster. I have two questions. First, was it the first time in your experience that this had happened? Secondly, you say that

"Many questions remain unanswered"

and that you would have to go to law to discover the answers to them. You mention "various enquiries". What were they, and how far do the recommendations of the Electoral Commission currently go?

William Perrie: What was your first question?

Linda Fabiani: To your knowledge, has this happened before?

William Perrie: This was the first election in which I have been involved—previously, I was excluded from involvement in politics. Before the election, we decided that, regardless of the result, we would check the marked registers afterwards, just for future reference.

I turn to the things that went wrong. One point that was highlighted to me was that the Electoral Commission recommends that all these important papers are stored in clear plastic bags, but we were told that the marked registers were left in a room in black plastic bags. The common image of a black plastic bag is that it contains rubbish. No one has been able to explain to me why important papers such as the marked registers were put into black plastic bags.

We were also informed that the registers and ballot papers were left on the Friday after the election, without a full check having been carried out. The staff returned on the following Tuesday, but failed to check which items were still there. Had a check been carried out on the Tuesday, there would have been an opportunity to find the items, even if they had been taken to the landfill site. That opportunity was not taken. The marked registers were taken to the sheriff clerk's office and deposited there. No check list was produced of those items. When we went to check the marked registers, no one was sure what was there, because the items were simply dumped at the sheriff clerk's office.

Linda Fabiani: Who instigated the inquiries that were carried out? Did you have to push for inquiries to be made in the first place? What inquiries were made and what were their results?

10:15

William Perrie: The first inquiry was made by Renfrewshire Council at the behest of the Scottish National Party group, which asked for an independent inquiry. The council decided that it would get its chief auditor to carry out an inquiry. A difficulty that I have with that is that the auditor is still an employee of the council. A completely independent inquiry would have been of public benefit. There was no one there to do that.

I complained to the fiscal, who had a police inquiry carried out. The difficulty is that the police do not really have the expertise to conduct inquiries about a political exercise. That is where things fell down. In my opinion, the body that should be able to carry out such inquiries is the Electoral Commission, because it recommends the various procedures that should be followed. It knows not only what should be done, but why it should be done. The involvement of the Electoral Commission would emphasise the fact that the process was independent of everyone who takes part in the political exercise.

Linda Fabiani: Did the inquiries decide that what happened was just the result of incompetence?

William Perrie: At the end of the day, the blame was put on the town hall's cleaning staff. It was decided that, inadvertently, they threw out the black plastic bags, which were then taken to a landfill site and disposed of.

Linda Fabiani: So it was just one of those things.

William Perrie: I think that that was the expression that was used.

Carolyn Leckie: The arguments that you have made this morning are overwhelming. It is incumbent on us all to deal with the issues and to put aside party-political interests. I have a question that follows on from Linda Fabiani's. Has the returning officer accepted that what you have told us in your evidence this morning actually happened in the specific instances to which you refer?

Councillor Mackay: Yes.

Carolyn Leckie: Right. Everything that has been said is factual. I suppose that the question is what the course of redress is. I want to clear up what you are looking for in the final paragraph of your submission. It seems to me that, even if you were able to pursue the matter through the courts, the law as it stands would not allow you to cry foul on the election, unless there was evidence of criminal activity. At the moment, there is nothing that would give you a basis for requesting that the election be rerun.

You ask that

"an organisation ... be charged with the duty to oversee the running of all elections and where necessary invoke procedure to rectify malpractice".

Do you envisage that that would include calling foul on an election and rerunning it? What sort of procedure and timescale do you envisage for that?

Councillor Mackay: We spent many hours and days on what is an extremely technical debate. I will focus purely on the local government elections. The courts would continue to have overall responsibility in cases in which the rerun of elections was being sought. In conjunction with the police, the courts would also be best placed to deal with cases in which there were any suspicions of electoral fraud, which is an extremely serious matter. However, the Electoral Commission should be able to investigate cases in which, although it would not necessarily be possible to prove that there had been fraud or wrongdoing, it would be possible to prove that there had been incompetence that called into question the outcome of the election.

There is also the issue of responsibility. At every election, the responsibility rests with the returning officer. Our returning officer took very little responsibility, even though, ultimately, he must do so. Blame was put on the cleaners and they were frightened of losing their jobs. A bonus is paid to returning officers for the work that they do, and they are invariably the chief executives of councils. Should they not be penalised financially, through performance-related pay, for causing an electoral process to become a shambles? There should be some sort of penalty for people who do not do their job properly; people in the democratic process—electors—who feel aggrieved should have the option of challenging the result of an election in cases in which the records are not correct or have not been kept. The police have a role to play in cases of fraud and the courts have a role to play if there is enough evidence that an election should be rerun. However, the Electoral Commission should have a role to play in deciding whether an election has been run properly and has met all the recommendations. Bill Perrie will cover exactly what he seeks through the petition.

William Perrie: My aim is to ensure that the people who are appointed to run our elections, whether local government or whatever, are competent to do that job and are not simply placed in that position because of their full-time job. Currently, no one has power over such appointments when the returning officer is the chief executive of a local authority. I want the Electoral Commission—I keep referring to that body because it is an independent body that was appointed to make certain recommendations; it would be a small step for it to take on other

duties—to be able to assess a returning officer, tell them, if necessary, that they are not up to the required standard for running elections, move them aside, and bring someone else on board. I believe that that approach should apply right down the line to the staff that are used for an election. Returning officers cannot do all the duties themselves. They must appoint various staff. Some blame can be apportioned to a returning officer if something goes wrong. However, at the end of the day, the staff are also in good positions and they also get a bonus to run elections on our behalf. If they cannot do so, they should not be allowed to continue in that job.

Timescales are obviously an issue. The law currently requires marked-up registers and ballot papers to be available for a year. If someone can prove within that year that something went seriously wrong with the procedure, the Electoral Commission should be able to set in motion a procedure to allow a rerun of the election. Ultimately, we are trying to gain the public's confidence so that they come out and vote. If people do not have confidence in the system, it will fail. We can give confidence only by showing the public that we work to the highest possible standards. If the people who are entrusted to do such work cannot do it, let us have a procedure to move them aside.

Carolyn Leckie: I would not agree with you on performance-related pay, but perhaps chief executives are paid too much. I might agree with that. Obviously, there is a question of accountability and I share your concerns about that. It is abhorrent that cleaners end up getting the blame for something that we would imagine the returning officer, who is the chief executive of a council and on a salary of £100,000 a year or thereabouts, is accountable. It is disgraceful that he can publicly blame low-paid staff.

On recommendations, we should move to get the Executive's views, come back to the petition and take it seriously.

The Convener: I will take that on board, Carolyn.

Mike Watson: I preface my remarks by asking whether the contested votes affected the outcome of the election for an individual ward within the council or for overall control of the council. My knowledge of Renfrewshire politics is limited.

William Perrie: I lost the seat that I contested by five votes; another seat was lost by 10 votes; another was lost by 14 votes; another was lost by 23 votes; and I think that another was lost by 63 votes, give or take one or two. The figures are on the record. Therefore, in that election, five seats were lost by fewer than 100 votes, which I think anyone would agree is a tight margin. For the vote

to be as tight as that without there being confidence that everything was done properly raises doubts in the public's mind. That is the biggest concern.

Mike Watson: Has that situation or anything similar happened previously in Renfrewshire Council?

Councillor Mackay: We could not check the marked-up registers. We do not think that that has happened previously, but we do not know. We discussed the matter with colleagues around the country and it appears that one or two marked-up registers have disappeared in other authorities, but there has been nothing on the scale of what happened in Renfrewshire.

Mike Watson: That was going to be my next question. Are you aware of this happening in any other part of Scotland?

Councillor Mackay: Yes, it has happened in other counties across Scotland, but it is most concentrated in Renfrewshire, where more than half of the marked-up registers have disappeared.

Mike Watson: That is important, convener. Obviously, we cannot get involved in the specific case, although the information that we have had today is quite worrying, particularly the issue of the black bin bags versus the clear bin bags. If there is a duty on returning officers, then there has been a clear failure of that duty. To try to blame cleaners for putting bags out really misses the point. Cleaners would probably be blamed if they did not put black bin bags out.

I have concerns about returning officers. I remember the City of Edinburgh Council election in 1999, when votes went missing. I am also concerned about the fact that we do not have a postal vote in Scotland tomorrow, because returning officers claimed that they could not get their act together in time, whereas parts of England were able to have one. There are issues about the role of returning officers and oversight of them which, as you said, does not exist at the moment, apart from the courts.

On the basis of what we have heard, there is some substance to the suggestion that there should be greater scrutiny of returning officers. Although I do not want to get involved in the issues that have been raised about Renfrewshire Council, whatever else we do—and we should ask the Electoral Commission and the Executive what they think of the suggestion—we should write to Renfrewshire Council and ask what proposals it has to ensure, at the very least, that the things that happened at the last election do not happen at the next one. At the end of the day, the returning officer—who presumably is the chief executive—will be involved in United Kingdom parliamentary elections and Scottish parliamentary elections,

because the same person tends to be involved. They may even be involved tomorrow.

John Scott (Ayr) (Con): Has any research been done on why local government elections and procedures relating to all the other elections were excluded from the provisions of the Scotland Act 1998? Do you know why that is the case? Perhaps there was a good reason. Perhaps they were not relevant to the act.

Councillor Mackay: The Scottish Parliament regulates local government elections and the Scotland Office regulates all other elections in Scotland, so it is probably down to who is in control, rather than for any other reason. I dare say you can take that up with the Scotland Office.

John Scott: If local government elections were to be included in terms of the Scotland Act 1998, that might—

Councillor Mackay: If it were concluded that we could have proper monitoring of local government elections, and if good practice were set for those elections, I am sure that that would be replicated for UK and Scottish Parliament elections.

John Scott: On your elections in Renfrewshire, Mr Perrie said that the results for five seats were all within 100 votes. I presume that there were several recounts, and that people were content with the outcome.

William Perrie: That is correct. In my case there were three recounts. The process of being able to check the marked registers ensures that everyone who has voted is entitled to vote. That is especially relevant nowadays with the rolling electoral register, which is updated monthly, because if someone moves away they may not be entitled to vote. Human nature being what it is, although people are not supposed to do such things, they take opportunities as they arise.

Councillor Mackay: When you are at the count you can scrutinise the ballot papers, but you have no idea what is happening with the marked registers. You do not see them until after the count. That scrutiny comes post-declaration, which is when we discovered that something was seriously wrong.

We are not looking for a judgment to be made on Renfrewshire Council. We have discovered that there are serious flaws nationwide, and that is what we want to address. The debacle in 1999 was resolved by the returning officer going, but no such thing happened in Renfrewshire. We are not looking for a judgment, we are looking for a national framework and a system to ensure that elections are fair, proper and transparent.

The Convener: On the basis of what the petitioners are looking for, Carolyn Leckie has suggested that we at least take the matter to the

Executive. Mike Watson has suggested that we go to the Electoral Commission and Renfrewshire Council. Should the Convention of Scottish Local Authorities be included, so that we have a broad sweep of all those who are involved, since the issue is a general one? Are members happy that we write to all four bodies?

Mike Watson: My suggestion was that Renfrewshire Council should be asked to comment on the points that have been raised, because its reply will help us to decide whether to take the matter further.

Linda Fabiani: I do not know the answer, so does anybody else know whether chief executives and returning officers have a professional association to which we could also write?

Helen Eadie (Dunfermline East) (Lab): It is the Society of Local Authority Chief Executives and Senior Managers.

The Convener: Do members think that that is worth doing?

Linda Fabiani: Why not? They are entitled to say their piece. We can treat it like a trade union.

The Convener: I do not think that SOLACE is quite that.

Carolyn Leckie: I suggest that we write to the Electoral Commission.

Helen Eadie: It is not always the chief executive who is the returning officer, so we could include the professional association for the legal officers and the head of law and administration—I do not know what that association is called.

The Convener: It is the Society of Local Authority Lawyers and Administrators.

10:30

The Convener: If we seek views from the Executive, the Electoral Commission, COSLA and SOLACE, and if we ask individual councils to answer specific points in relation to the conduct of their elections and their inquiries, we will get a broad range of answers on which to deliberate. Is everyone happy with that?

Members indicated agreement.

The Convener: I thank the petitioners for bringing the matter forward. We will let you know the outcome.

Town and Country Planning (Scotland) Act 1997 (PE740)

The Convener: The next petition is PE740, from David Barrie, on behalf of Dundee City Council. The petitioner calls on the Scottish Parliament to amend the Town and Country Planning (Scotland)

Act 1997 to the effect of giving the democratically elected planning authorities the final say on the planning merits of all applications competently before them for determination with the current appeal provisions that pertain to reporters' decisions applying to appeals against the decision of planning authorities. Councillor Rod Wallace is here to give evidence in support of the petition and he is accompanied by Councillor Fiona Grant and David Barrie. We welcome them to the committee. Councillor Wallace has three minutes in which to make his submission, after which we will enter into a discussion.

Councillor Rod Wallace (Dundee City Council): I am here to speak in support of the written submission that we lodged with the committee and to give supplementary evidence. As you stated, convener, we propose that when an application is appealed against, the reporter should consider reversing the decision only if a procedural error has occurred. As we see it, that is in effect along similar lines to the right of appeal on licensing matters.

The elected members of Dundee City Council have consistently taken the view that the planning merits of a proposal are best determined by those who have first-hand knowledge of our development plan and of the locality. The council has in place a structure plan and a local plan, which have been submitted to and approved by the Scottish Executive. The elected members and officers have adopted those plans as the blueprint for our city and the surrounding area and as the way in which we want our city to develop.

When planning applications come to my committee, the plans, paperwork, consultations and officers' recommendations have been put into a comprehensive report. In Dundee City Council, it is standard procedure to grant a hearing to deputations when that is requested, so that the applicants' and/or objectors' perspectives can be heard before a decision is made. Elected members recognise the value of hearing oral submissions before they make a decision, as they take the view that the opportunity to put questions adds value to the decision-making process.

It is an accepted fact that a substantive number of decisions on applications are delegated to officers when no objections have been received. Paragraph 4.5.3 of the Scottish Executive consultation paper "Rights of Appeal in Planning" states that, on average, such cases account for about 75 per cent of applications. It falls to elected members to make decisions on the remainder of cases in line with the development plan and relevant material considerations. In all cases, whether they are delegated or considered by a committee, planning officers go through the same exhaustive procedures to arrive at their

recommendations. It is only when objections are received, recommendations are overturned and the case goes to appeal that the reporter becomes involved.

If an appeal is upheld by the reporter, it is as if the application has bypassed the democratically elected members of the council and has been made direct to the reporter in the first instance. Not surprisingly, we regard that as a democratic deficit in the system, hence our move to draw it to the committee's attention. It is a hard pill to swallow when the majority view of our elected members of Dundee City Council can be overturned by the judgment of the reporter, who might simply disagree about the extent of an element of a proposal or the weight that should be attached to it. Furthermore, if the decision is reversed, the only mechanism that exists for us, as a local authority, to appeal is via the Court of Session, and that appeal is on a point of law, not on planning merits.

In conclusion, we request that the democratically elected members of the planning authority should have the final say on the planning merits of all applications that are competently before them for determination. We request that that be addressed in your deliberations and ask that due consideration be given to our petition.

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

Linda Fabiani: I do not know about your authority, as I do not come from the east of Scotland, but I know that in other local authority areas the electorate are sometimes unhappy about planning decisions that are made by the local authority. There is some comfort in the fact that an appeal can be made to the Scottish Executive. How would you address the concerns—indeed, the rights—of the electorate regarding planning applications and decisions if that right of appeal did not exist?

Councillor Wallace: We give people every opportunity to make their personal and collective views known to our development quality committee through personal representation or deputation or in a written submission to the planning case officer, who then considers the merits of the objections. Those views are always drawn to the elected members' attention.

We feel that the reporter is perhaps a substitute planning officer who should go through the same exhaustive efforts to look at the merits of the application and almost seek guidance from—dare I say it?—those who we feel know best about our area and the way we want to see our city. I do not think that that is different from what many other elected members feel about the situation in their parts of the country. We have felt aggrieved at

many of the decisions that the reporter has made. He has not had any sympathy for our local plan or our structure plan.

Linda Fabiani: Have you had any thoughts about the proposed member's bill on the creation of a right of appeal for third parties? I am concerned at the thought that there could be no appeal at all. That seems strange and a bit autocratic.

Councillor Fiona Grant (Dundee City Council): We have not discussed the proposed bill as a council, but we are aware of it. The consultation period ends on 30 June and I would not want to pre-empt anything that the council may say on the proposed bill.

We are talking about human rights and environmental rights in the system—I am aware of the discussions about establishing a tribunal specifically on environmental rights. It would be timely for us to look at the process of appeal. As Councillor Wallace said in his submission, the point of appeal to law at the moment is to the Court of Session. That would be beyond the means of many. On to your point about disquiet about certain decisions, if an application is approved, at the moment the objector has no right of appeal.

Carolyn Leckie: I would not argue that the current system is perfect, but I am concerned. Can you explain in more detail some of the situations in which there has been conflict between you and the appeal decision? Has the appeal decision sat with any community campaigns in the area? In my experience, although councils are democratically elected, there have been situations in which the council has not taken into account the democratic will of the community. You referred to people's views being heard, but perhaps the councillors do not agree with the views that are put forward by the community. Your petition seems to suggest that the right of appeal should be taken away. What are your views on the proposed creation of a third-party right of appeal? Do you not think that communities have a right to seek some sort of redress by appealing to another democratic body over which they have control?

Councillor Wallace: We consider all planning applications purely on their planning merit. It does not always stack with the electorate that that is the right decision—we accept that. Our guidance from officers is that we have to consider that. There comes a time when, as elected members, we have to recognise the will of the people. Fiona Grant has examples of cases in which Dundee City Council's decisions have been overturned.

Councillor Grant: We sent two examples with our original letter, but I am not sure whether they are appended to the documentation that the

committee has. From memory, one of the examples was a decision on an application for a bookie's or an amusement arcade that was overturned on balance by the reporter, despite a vociferous campaign from local residents. I respect the right of individuals to a third-party right of appeal but, as I said, I cannot give a council position on that. I have read the Executive's consultation document on the issue and I am aware that other jurisdictions, such as Ireland and Denmark, operate a right of appeal to an independent tribunal. No one suggests that councils get decisions right all the time, but we must be aware that the present system is quasi-judicial. The type of community campaign that Carolyn Leckie mentioned has a large part to play in deliberations, but equally we must be governed by the development plan, which is a legal requirement.

Councillor Wallace mentioned that the decisions to overturn are often made on balance. We must question whether those decisions are objective or subjective. I argue that 29 democratically elected members who know the area and their town perhaps have a more objective view. Some people may disagree with that, but I think that elected members can see the bigger picture.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): You referred to the hearings procedure that you offer to applicants. At what stage of an application does the hearings procedure come into force?

Councillor Wallace: On the evening of a development quality committee meeting, we give private individuals the opportunity to come forward as a deputation. We allow them a seven-minute slot to put their case to the elected members, after which they are cross-examined on the merits or otherwise of their submission. We then deliberate on the issue.

John Farquhar Munro: Is a decision taken after the hearing?

Councillor Wallace: Yes. During the evening, we come to full decisions on all the applications that are before the committee.

John Farquhar Munro: You referred to the structure plan and the local plan. Before you come to conclusions on those plans, are the electorate consulted as part of the process of forming them?

Councillor Wallace: There is an extremely lengthy process of listening to objections. Dundee City Council has just concluded a review of the local plan, which has taken some months to finalise because of the hearings system. The plan will be submitted to the Scottish Executive for final approval.

John Farquhar Munro: So your suggestion is that, if a planning application complies with the structure plan and the local plan and is approved by the members, there is no need for further consultation.

Councillor Wallace: Yes. We have thought long and hard about the content of the local plan and have set aside, for obvious reasons, various areas in the city for commercial, retail or housing developments. That is how we want it to be. We feel that when applications are overturned by the reporter a conflict arises with our local plan.

Helen Eadie: What are the likely cost implications for people who go to the Court of Session to have a decision made in their favour?

Councillor Grant: As Mr Barrie is a lawyer, he is probably more aware of the costs in the Court of Session.

David Barrie (Dundee City Council): If the party is unsuccessful, there is a risk that the court will award expenses against them, which can be a considerable sum of money.

Helen Eadie: Can you give us a ballpark figure for the cost? If a community council or another community group wanted to go to the Court of Session, what would be the likely cost that it would face? Are you talking about a few hundred pounds, a few thousand pounds or £10,000?

David Barrie: I think that the last figure that you mentioned is most likely.

Helen Eadie: So £10,000 is likely to be the ballpark figure for costs of going to the Court of Session.

David Barrie: Yes, if someone is unsuccessful in the Court of Session.

10:45

Helen Eadie: I am not unsympathetic to the points that you have raised this morning. I served on the planning committee of Fife Council for 13 years. However, let us suppose that the local councillors are in tune with local people and community groups and then the issue goes to the reporter. Might the reporter and other politicians at a different level not argue that there are bigger strategic issues in the European Union directives and the EU framework? I am thinking of targets for landfill sites and so on. The local council might support the community group and might agree to refuse planning permissions in such cases but, because of other strategic pressures at the Scottish level or the EU level, bigger policy objectives and strategic directions kick in. What is your comment on that?

Councillor Wallace: On your point about councils being in tune with the electorate, that is

one of the most frustrating elements of planning at the moment, especially with the new rules and regulations from the Standards Commission for Scotland. We are often frustrated when we are called to discuss with a constituent a planning application on its merits. We find ourselves having to back off rapidly from giving the constituent any idea as to whether we support or are against the application. We have to hear and see all sides of the argument, from those in support of the application, from those who are against it and from the planning officers.

Councillor Grant: I reiterate that we are not suggesting that there should be no right of appeal; our concern is the mechanism of the process. Where a local authority's interest is in the land, it would be inappropriate for decisions to be made locally. I think that the cases that Helen Eadie is highlighting are probably atypical. I know what she is saying, however. Such things happen; they trundle along and the issue is referred to ministers. I do not think that we are suggesting that that right should be taken away.

Our concern is not parochial or small level. It is about giving the council the right to represent the people; it is about big government and about small government. We represent local government and people at that level. As Councillor Wallace pointed out, the fact that the reporter has a full de novo right to consider the merits of an application calls into question why we have a planning committee in the first place.

John Scott: I want to pick up on the points that Helen Eadie has made, because they are valid. Perhaps I have misunderstood the petition, but it seems to me that you are saying that there should be no right of appeal. As I understand it, reporters report and make recommendations to ministers, who then make the decision. I believe that it is important that there are checks and balances so that a minister can take a strategic overview of a situation if that is required. That rarely happens, but I would not be keen to see that process taken out of the system, which is what you seem to be suggesting.

Councillor Grant: That is certainly not what we are suggesting. We are talking about the process and what it involves, whether that be a full-merits review or whether a decision is just made on a point of law. We are not proposing a particular model, but we believe that the process should be considered. For example, an employment appeal tribunal does not give a full-merits review; it considers whether the decision was reached correctly. There is a whole body of law for local government but, in relation to planning, we have an anomaly. That is not to suggest that ministers should not be involved in the process.

The issue of the third-party right of appeal cannot be divorced from the wider discussion, but we are not here to talk about that. However, as a country, we are at the stage—and it is a mature stage to be at—where we can consider the issue that we are raising. We have the human rights aspects to consider and recent case law from the House of Lords—I think it was *Begum v Tower Hamlets*—suggests that judicial review and a non-full-merits review are perfectly acceptable under human rights legislation. That case, which was heard in 2003, followed on from the *County Properties* and *Alconbury* cases. There are wider issues, but we request that you consider the issue that we are raising when you investigate the other matters.

Mike Watson: I get more confused the more that I hear. My initial concern about the petition was that it seemed to suggest that appeals should be taken out of the system. Are you now suggesting that, if people in Dundee are unhappy about the council's decision, they could appeal to the council?

Councillor Grant: No. The point that I made earlier was about considering a tribunal model.

Mike Watson: There would be an appeal to an independent body.

Councillor Grant: Absolutely. The issue is the factors that the review will consider and whether it takes into account the planning merits or the process and how the decision was reached.

Mike Watson: Would the independent tribunal's decision be final, subject only to judicial review?

Councillor Grant: Yes, but I am not here to propose a model because I cannot do so. I could give you a personal view—

Mike Watson: I am sorry, but I think that you have to propose an alternative. If you are suggesting that an appeal process be removed but that the system will not be left without a mechanism through which to appeal, you have to have a clear idea of what would replace that process.

Councillor Grant: I hope that we are all clear now that there is to be an appeal process. However, we have to consider the issues of third-party rights of appeal, who can and cannot currently appeal, the costs of appealing and whether the appeal process is accessible to ordinary people. That relates to what has been said about the community, which may be aggrieved about a decision.

Mike Watson: Would you make that sort of proposal in response to the Executive's current planning consultation?

Councillor Grant: I cannot pre-empt that as an individual.

Mike Watson: I mean as a council.

Councillor Grant: I cannot pre-empt what the council will say because it has not yet taken a view on the matter, but the consultation document is currently under active consideration. I think that our response to the consultation document may well contain an alternative model.

Mike Watson: Are you referring to Dundee City Council's response to the consultation?

Councillor Grant: Yes. I cannot pre-empt what the council will say, because the response has not yet been drawn up.

Mike Watson: Have you discussed your proposal with other councils or with the Convention of Scottish Local Authorities?

Councillor Grant: No. We have not taken that route. We raised the matter with the Executive when we wrote to it about another issue, which related to the use class order. Councillor Wallace can perhaps refresh my memory on this point, but I think that one enterprise was able to turn into a bookie's overnight because it was in the same use class. Again, the council has no control over that. Local people come to us and say, "How can a chip shop turn into a bookie's overnight?" but we do not have the power to decide on that because the two enterprises fall within the same use class order. There are issues on which we do not have the power to make the decision, but nonetheless people come to us and say, "How did that happen?"

There are broader issues, although it is fair to say that the particular matter that the petition raises has exercised the council most. I hope that the forthcoming planning bill will address those issues. All that we are respectfully requesting is that the Parliament considers what we are suggesting today as part of the wider process that it is about to embark on.

Jackie Baillie: I am clear that you want a system that reviews the process and not the decision, because you feel that the decision belongs to you.

Councillor Grant: The decision belongs to the democratically elected body.

Jackie Baillie: Do you agree that some people would argue the reverse? Consider the example of the Scottish public services ombudsman. People may say that the situation is desperately frustrating because all that the ombudsman does is review the process. The ombudsman may want to say that the decision is wrong, but all that she can do is push it back to, for example, the local authority.

Councillor Grant: Yes, but then you are arguing against judicial review, on which the system relies.

Jackie Baillie: Do you accept that some people would put the opposite argument?

Councillor Grant: There will always be the opposite argument.

Jackie Baillie: Would the start and end point be the local authority?

Councillor Wallace: Yes.

Jackie Baillie: Usually a reference is made to a reporter because you have contravened your local plan or structure plan—I use the word "your", because you are the ones who drew it up and it is your guiding strategic document—and because there are a substantial number of objections. Those are the two conditions for reference to a reporter, who exercises functions delegated to them on behalf of ministers. Is my understanding of the system right?

Councillor Wallace: Those are the same criteria that the case officer takes into account when considering the application.

Jackie Baillie: Absolutely, but the planning case officer works for the local authority, whereas the reporter is independent of the local authority. I suspect that that injection of independence gives a degree of comfort to the objectors that someone will consider the substantive decision. If decisions were simply pushed back to the council, I assume that people would have no right to appeal a questionable decision in which no procedural issues were involved. People would be able to challenge such decisions only in the courts.

Councillor Grant: The situation that you have outlined is exactly what happens for licensing decisions. Under the Civic Government (Scotland) Act 1982, licensing decisions come back to the council for redetermination. The planning system is anomalous because most processes—licensing is the major example—come back to the council. The licensing process has been in place for 20 years or more.

Jackie Baillie: That takes me back to my original point, which is that some people take an entirely different perspective.

Councillor Wallace: There are other anomalies in the system. Planning is not an exact science and it relies on exhaustive searches that consider all the aspects. However, it appears that there can be some variance among officers on what weight they attach to each factor. We feel that the local plan and structure plan should be the bible. At the end of the day, the local plan and structure plan should be supported by all people, including the reporter. If the reporter must err, he should err on

the safe side by accepting the recommendations of the case officers.

Councillor Grant: Decisions can depend on what weight is given to the policies that are contained within the structure plan. I recall one case in which a house in multiple occupation did not meet the criteria, but the reporter took a different view—which was certainly against the will of the community—because there was another need in another part of the plan. Councillor Wallace is right that planning is not an exact science. Equally, we should not be in a position in which one person can overturn the will of 29 elected representatives and our only recourse is to the Court of Session. In this day and age, that is not right.

Mike Watson: Today, as in your submission, you have talked about decisions being made by unelected officials. However, such decisions are ultimately made by ministers. The final decision is made by the minister, who is elected.

Councillor Grant: I understand that appeals can be referred to the minister. I do not know the statistics, but I suspect that perhaps only 0.1 per cent of cases are so referred.

Mike Watson: No, 100 per cent of cases go to the minister. No decision is announced without going across a minister's desk and being either accepted or rejected.

Linda Fabiani: At the moment, the Executive is consulting on planning rights of appeal and a member's bill on a third-party right of appeal is doing the rounds. There is confusion for everyone here. When I read the petition, I thought that the petitioners were calling for there to be no right of appeal. Although all these discussions are on-going, the Executive's response to the council's letter makes it clear that the Executive feels the same way. The Executive is quite bullish:

"I note from your view that all planning decisions should be taken by planning authorities alone, with no recourse to the Scottish Ministers."

The Executive is also under the misapprehension—if that is what it is—that the council wants to do away with the right of appeal.

I suggest that we send a copy of the petition to the Executive to inform its consultation and that we also send a copy of the *Official Report* of today's meeting, which will make it plain that everyone seems to be at cross-purposes about what is being required.

Helen Eadie: I do not disagree with any of Linda Fabiani's comments, but I want to ask Dundee City Council to let me—and other interested committee members—have a copy of the document that was mentioned. A copy of the document should also be included in the council's

submission to the consultation. In particular, attention should be drawn to international comparisons, such as the third-party rights of appeal that are provided in New Zealand, Ireland and the other country that I think was mentioned. I do not know about other members, but I would certainly find such international comparisons helpful.

It would also be useful if the committee clerk could ask the Royal Town Planning Institute and Planning Aid for Scotland for their views. I recently organised a meeting in my constituency and the director of Planning Aid for Scotland spoke on this very topic. It is a topic about which I am very concerned. I have come across situations of the kind that the witnesses describe and I am sympathetic to the views that they have expressed.

11:00

John Scott: It might be worth while seeking COSLA's views. Although I am sure that the witnesses are representing what they perceive to be a national problem, it would be good to hear from COSLA that it is indeed a national problem.

The Convener: We have had suggestions that we write to the Executive, to COSLA and to the town planning organisations that Helen Eadie mentioned. I do not know whether it would be helpful to do any comparative case studies. During our assessment of the Local Government in Scotland Bill, I had the opportunity of visiting Belfast. I discovered that the system there is entirely different; it does not bear comparison with ours. I do not think that a comparison between our system and theirs would serve any purpose.

Helen Eadie: A document has been produced and I have read some of it. It gives comparators with other places. I am being a bit mischievous, because what I am really trying to do is to get other people to support a case that I believe in.

John Scott: I do not think that we need to write to every member of the Commonwealth, do we?

The Convener: No.

Carolyn Leckie: I am happy with the suggestions so far but, in order to be helpful to the petitioners, we should consider their petition in the context of their overall view on rights of appeal in planning. When the petitioners' response to the consultation is drawn up, it would be useful to put it together with the petition, to allow us to have a better understanding of what the petitioners intend and where they are coming from. From the petition alone, we have all concluded that they do not want a right of appeal and I do not think that that will assist their case.

The Convener: Is everyone happy that we should seek information from the sources that have been mentioned, to allow us to make a considered decision in due course?

Members *indicated agreement.*

The Convener: I thank the petitioners for coming this morning.

Adults with Learning Difficulties (Provision of Services) (PE743)

The Convener: Our next petition is PE743, from Madge Clark, on behalf of the Murray Owen Carers Group. The petition calls on the Scottish Parliament to urge the Scottish Executive to review the implementation of "The same as you? A review of services for people with learning disabilities", and to ensure that adults with learning difficulties who are still living at home and are cared for by elderly parents are given the same level of support and community care as is given to hospital-discharged patients.

Madge Clark is present to give evidence in support of her petition. She is accompanied by Jeanette Kelly. I welcome you both. You have three minutes, after which we will ask some questions.

Madge Clark (Murray Owen Carers Group): We have brought this petition to the Parliament after years of campaigning for better services for the mentally handicapped. We have seen, and had consultations with, innumerable people, as members will have seen from the correspondence. However, we now feel that we have been forgotten. In the rush to empty the hospitals and then the hostels, when definite targets were given to local authorities, our needs have been put on hold.

The Murray Owen Carers Group was formed a year ago. It consists of a group of parents who are now in their 60s, 70s and 80s and who have looked after their mentally handicapped children since birth and are still doing so. Many of the parents are now in failing health, some have been left on their own to care, and all are in a desperate situation.

When we all moved to East Kilbride in the 60s and 70s, the new town was developing and excellent services were provided. We had a hostel that was designed to accommodate 24 people with a mental handicap when their parents were no longer able to care for them. We also had a day centre where people were given day care five days a week, to assist parents to live a normal life. Various other things were planned. Latterly we had Key Housing Association accommodation for eight people, four of whom were to come from hospital, and another Key project was planned,

which was going to accommodate 13 people, half of whom were to come from hospital and half of whom were to come from home. At that time, we had the security of knowing that when we were no longer able to care for our children or when we became ill, there was a place for our children to go where they would be looked after properly. We could then rest in the knowledge that they were safe and that we could help them in the gradual transition from home to the hostel.

It is unfortunate that the position has changed drastically over the years. Because we became part of the wider Strathclyde Regional Council and subsequently South Lanarkshire Council, the services that we had were used to cover a much greater number of people. The services also changed. People were no longer given day care on a five-day basis automatically. Most people will probably get only two days of day care; the rest of the time, it will be up to them to find alternatives.

I am deliberately using the phrase "mental handicap", because we do not think that the phrase "learning disability" conveys the complex needs of the people whom we have been looking after. People with a mental handicap have many complex disabilities. They can be epileptic or incontinent and many of them need full 24-hour care, including personal care such as having someone wash, bath and shave them and take them to the toilet, which is a huge amount of work. It is a burden to people when they are young, but it becomes virtually impossible when they are older.

Our situation is deteriorating, rather than improving. We feel that after 40 or 50 years of caring for somebody at home, we should have the right to spend our remaining years in peace, so that we can look after ourselves and have some relaxation, which ordinary elderly people take for granted. We have never been able to live a normal life, which has affected our families as well as us. Some of us with other children have had to restrict their lives because we were not able to do things with them. They have been our main source of support as we have got older and we do not want to pass the burden on to them. It is unfair that, having spent all their lives helping us, they should then take on the burden of a brother or sister who is handicapped.

We have tried to put our position across on numerous occasions, but it appears that we have been wasting our time and that nobody has been listening, which is why we have had to lodge the petition. We hope that you will consider it earnestly.

All the people in our group are known to the social work department. Most of our members' sons and daughters have been attending a day centre for the past 30 years. All but one of them have had community care assessments and some

have also completed care self-assessment forms and have stated their needs plainly. We do not know whether those needs have been registered as unmet needs, but in any case they appear to have been totally disregarded.

The situation has gradually worsened. In 1998, we were told that the new Key project that was being built was for hospital-discharged patients only. That meant that none of our people on the waiting list had a chance of admission. The waiting list included 25 people from East Kilbride, 10 of whom are in our group. None of them has had an offer of accommodation, although we have repeatedly asked for that.

Our requests for information have been ignored. We were continually promised that accommodation would be available in the community and that the hospital discharge programme would lead to better services that would make everyone's lives better, but that has not happened. I do not think that local authorities appreciated the effect that so many people leaving hospital would have on local services or the vast amount of resources that would be needed and the cost that would be incurred.

We have been told that no accommodation is planned for or will be made available to us. Last August, we were told that we had to put our sons' and daughters' names on the housing list in East Kilbride and that when and if they received accommodation, the council would try to provide a package of care. We did that, and—

The Convener: Will you allow members to ask questions? That will give you a chance to explain your circumstances to us and we can go into the reasons for your petition in that way.

Madge Clark: Yes, of course.

Carolyn Leckie: I am astonished at some of the events that you have described. You have presented your petition extremely well and articulately. I share your frustration at needing to come to the committee to achieve something that is already policy and to which a commitment has been made, according to the Executive.

I understand that you met the Deputy Minister for Health and Community Care, Tom McCabe, in December. Given that what you are asking for is already an Executive policy commitment, what was his response on implementing that policy and auditing it to ensure that it is being implemented?

I am a bit concerned that it seems to be an Executive habit to confirm that something is policy but to say that it is for local authorities to determine the allocation of their resources. That is frustrating, because, politically, it is the Executive's responsibility to ensure that policy is implemented. What does the Executive say that it is doing about that? What response have you had?

Madge Clark: We have had no response.

Jeanette Kelly (Murray Owen Carers Group): I will answer in a simple way. We have had just tea and sympathy from many people, which does not move things forward. That is why we are here. We feel so desperate that we must appeal to everybody. Not just our group, but people throughout the country, will be affected. We are getting older and our sons and daughters are getting older and have more complex troubles. We are old-age pensioners and we should be able to say that we can enjoy life, but we cannot. Discrimination is emerging.

Carolyn Leckie: What was South Lanarkshire Council's explanation for your situation and for telling you to register on the housing list? I believe that the waiting time in East Kilbride is up to 10 years.

Madge Clark: It is 12 years now.

Carolyn Leckie: Does the council say that you must wait on the waiting list like anybody else? Does it assume that the care package might kick in 12 years down the line?

Madge Clark: That will be too late for us.

Carolyn Leckie: What is the council's explanation? Has it said openly that it does not have enough resources?

Jeanette Kelly: The council has constantly said that there is not enough housing but we know that a great deal is going on in housing. We are asking only for some justice in relation to housing. It should not be all on one side. The parents we are talking about—who are also taxpayers—should have the right to have their sons and daughters in accommodation that allows them to enjoy a good degree of independence. Their children are adults in many ways.

Madge Clark: In many of the letters that we have had in reply to our letters, people have quoted the guidelines that were produced by the Scottish Executive in 2001. In our experience, however, few of the recommendations in "The same as you?" are being complied with. Sections 2 and 26 specifically state that long-term plans should be made for people living at home, particularly those who are living with elderly parents. However, that has not happened. None of the people in our group has had long-term plans made for them, although several people have asked for them. Local authorities seem to be able to pick and choose which recommendations they implement and their excuse for not implementing all of them is that they do not have the necessary resources.

11:15

The position is getting worse all the time. At the moment, the situation is that there is only crisis intervention. That means that if you are stuck at home because you are ill but have someone who depends on you for care 24 hours a day, you have to ring the social work department, which might take three or four days to respond. The only help that we are offered in such a situation is for someone from a private care agency to come to our house and give us a couple of hours' help a day. People who are employed by private care agencies can be completely inexperienced. They are not trained, they are strangers to us and our sons and daughters and there is no way that they can come in and immediately provide proper care for people with complex needs. However, that is what we are offered if we are lucky. Often, by the time such help can be arranged, the crisis has passed and people have had to rely on their families—if they have families.

Linda Fabiani: Carolyn Leckie was quite right to point out that it is the implementation that is the problem. The framework is set by the Scottish Executive and it is up to local authorities to implement it.

I have some concerns about the situation. Madge, Jeanette and others in the group have discussed this issue many times with many people, myself included. I have tried to discuss the matter with South Lanarkshire Council. I have sent decent and straightforward letters outlining the situation and asking to discuss it with the council in an attempt to find a way forward. However, I have been refused a meeting with the social work department. The chief executive has written to me to say, "There is no reason for you to have a meeting with us. Go away. We're dealing with this as it is our remit." The other three councils that I work with are much more reasonable and are willing to talk about the issue.

We have been trying hard to be listened to. Yesterday, through Tom McCabe's office, I had a meeting with Scottish Executive officials, which was useful. However, when we monitor the implementation of policy such as that contained in "The same as you?", everything can look very good on the surface and local authorities can make it look as if various objectives are being met but, if we go to the level that lies beneath the tick boxes, we can find a different story about the quality of the work that is being done. My worry is that we are too intent on reaching targets to be able to see what is going on under the targets.

Our petitioners can talk about the situation much better than I can, so I will bow out now. I simply wanted to let members know that the petitioners have not come to the Parliament before exhausting every other avenue.

John Scott: I congratulate the petitioners on the skill with which they made their presentation. The problem that they describe exists in my constituency as well.

Nobody would dispute the ideals behind "The same as you?", but the reality is that not enough people are trained to implement them.

In my constituency, people from the Arroll Park facility are being put back into the community with tremendous care packages. However, it is of great concern to me that it may not be possible to give the remaining people in the area care packages that are comprehensive enough. The problem that the petitioners highlight is an extraordinarily real one. I am particularly concerned that 21 out of the 32 local authorities have apparently not done anything about implementing the plans. The minister could pursue that matter with local authorities. That must be done and the petitioners' situation must be addressed.

Jackie Baillie: I am the convener of the cross-party group for learning disability, so the points that I want to make are similar to those that Linda Fabiani made. What the petitioners are saying is not new. Our approach, which may be slightly different, is not just to look at specific recommendations but to get the Executive to put in a framework that will monitor the implementation of all the recommendations. We are finding that, although some local authorities are exceptional at providing local area co-ordination and supported accommodation—that is, doing everything that we would want them to do—some local authorities are not quite up to the mark. The challenge for us is to ensure that the best services are delivered throughout Scotland. There has been some success in getting the Executive to move down that road and think more about quality instead of simply ticking boxes.

I am interested in two things concerning the petitioners' specific situation. First, Madge Clark was about to describe what happened when the petitioners accepted putting names down for accommodation and a package of care. Was it just a problem of waiting lists or were other obstacles put in the way? If so, what were they? Secondly, has South Lanarkshire Council now put local area co-ordinators in place? Some local authorities were slower than others to implement that measure, and it may be that the council has rectified that.

Madge Clark: The council has not appointed local area co-ordinators, although the health board has. We have health co-ordinators but we do not have social work co-ordinators who, as you say, would have been able to oversee what was happening and monitor the position. In one of his letters, the director of social work says that, instead of appointing area co-ordinators, the

council has appointed a number of people as support workers. However, support workers are not of the same status as area co-ordinators. Support workers try to provide alternatives to day care mainly for people who have come out of hospital. They will be on a lower grade, not qualified and probably under the supervision of a social worker. They are not up to the job of an area co-ordinator. That is how it is.

The Convener: What do members think that we should do? Clearly, there is a degree of sympathy with the views that have been expressed by the petitioners. What should we do to address their concerns?

Mike Watson: The information that we have is that 13 local authorities have appointed area co-ordinators and that eight are in the process of doing so. By my calculation, that still leaves 11 authorities that have not appointed area co-ordinators and are not doing so. We should ask the Deputy Minister for Health and Community Care what he intends to do about that. What we are talking about are just recommendations, but in significant parts of Scotland, including South Lanarkshire, the coverage does not exist. That is a serious concern that must be addressed.

Linda Fabiani: We have to write to the Deputy Minister for Health and Community Care on a lot of issues. I have a huge concern—which Jackie Baillie and I have talked about—that although everything seems to be going quite well on the surface, underneath there are a lot of issues. I would like some detail about how the Executive monitors implementation and what the quality of that monitoring is. I would also appreciate it if the committee could write to South Lanarkshire Council on the specifics of what it is doing, to see whether the committee has more success than I have had in trying to get information from the council. Would that be acceptable?

The Convener: We have already agreed this morning to write to a local authority to get answers on a specific issue. We are not questioning that council; we are asking it to respond to points that have been made at the committee this morning. I think that that is legitimate. We have done that on a number of occasions, so it is not out of order.

Jackie Baillie: Given that the cross-party group for learning disability is pursuing the issue in general, it might be helpful, if the petitioners are willing, for me to take the matter to the group. I would also suggest writing to Enable, which is one of the leading voluntary organisations in the area of learning disabilities. I am sure that the petitioners have already been in touch with it.

Jeanette Kelly: I have been chairperson of the East Kilbride branch for nine years. I campaigned for 40 years before any social work department or

anyone else took the matter up. Actually, we are the experts. When I hear other people saying that they are experts, I say, "No. Come to the troops in the field, and you will find out how tough it is. It is 24 hours a day, seven days a week."

Jackie Baillie: I was suggesting Enable because it is very much a user-led organisation, and I think that that perspective will come through.

The Convener: I suggest that we also include the Scottish Association for Mental Health.

Linda Fabiani: There is also a consortium of all the organisations—the Scottish Consortium for Learning Disability or SCLD. Perhaps we should write to it, as it will encompass a wide membership of organisations.

Helen Eadie: We should perhaps also write to the Scottish Development Centre for Mental Health. I also agree with my colleagues' recommendations, which I think are appropriate.

Carolyn Leckie: To be consistent with what we have done with other petitions, and given that we are writing to South Lanarkshire Council—which we should—we should also write to the Convention of Scottish Local Authorities, as references have been made to a number of local authorities that have not implemented the guidelines.

The Convener: Is everyone happy that we do that?

Members indicated agreement.

The Convener: I thank the petitioners for coming to speak to their petition. We will let you know how we get on.

Juvenile Court System (PE744)

The Convener: There are no more petitioners to speak to us this morning, so we will consider the next two petitions on the basis of the information in front of us.

The first is PE744, on legislation to reintroduce the juvenile court system. The petition is from Carol Munro, on behalf of the Save Our Scheme Campaign. The petition calls on the Scottish Parliament to initiate legislation to reintroduce a juvenile court system with the power, resources and range of relevant disposals to deal adequately with those aged 16 years and younger who persistently commit crimes in communities. It also calls on the Parliament to make provision for sufficient custodial places where a rehabilitation and educational programme can be delivered and to require the parents and guardians of those involved in criminal activity to attend appropriate parenting education.

The petition is prompted by the petitioners' own experiences of the Broomhouse estate in Edinburgh. They believe that the children's hearings system has insufficient powers, experience and resources and provides no effective deterrent to persistent offenders. I seek members' views.

Carolyn Leckie: I think that I heard one of the petitioners commenting on the radio this morning that they had tried everything else, but that their resources had run out. It would have been helpful to have got some detail about that. There is obviously a debate around children's panels and antisocial behaviour, and stage 3 of the Antisocial Behaviour etc (Scotland) Bill is coming up. I suspect that there will be different shades of opinion about what the issues are and how they can be addressed.

There is a big question about the children's panel and the amount of resources that it has to process cases quickly enough, either in the eyes of the children involved or in those of people in the communities concerned. It does not take a punitive approach; it works slightly differently. The suggestion that the petition be referred to the consultation on the children's hearings system is probably the right way to go.

Jackie Baillie: The petition is highly topical, and there is the opportunity for it to influence a number of things that are going on, not least the Scottish Executive's review of the children's hearings system, to which Carolyn Leckie referred. The Justice 2 Committee is about to conduct an inquiry into youth justice, and it will consider all these areas. It would be helpful to refer the petition to the Justice 2 Committee, too.

The Convener: Is everyone happy that that is an appropriate course of action?

Members indicated agreement.

Chinese People's Liberation Army Band (Edinburgh Military Tattoo) (PE746)

The Convener: The next new petition is PE746, on the Chinese People's Liberation Army band performing at the Edinburgh Military Tattoo. The petition is in the name of Rosemary and Stefan Byfield and calls on the Scottish Parliament

"to urge the organisers of the Edinburgh Military Tattoo to consider, in view of the human rights record of the Chinese Government especially in relation to Falun Gong practitioners, the appropriateness and consequences of inviting the band of the Chinese People's Liberation Army to perform at the Tattoo in August 2004."

The petitioners have supplied a response to their concerns from the Edinburgh Military Tattoo. The response, dated 18 May 2004, states:

"A decision was taken in 2002 to engage a group from China for the 2004 Tattoo. This is in line with British

Government policy and initiatives to promote cultural interaction between the United Kingdom and China and to establish good relations with an increasingly important global power ... The Chinese participation in the Tattoo is, of course, purely cultural and based entirely on the group's abilities as professional entertainers—artists who have had no involvement in anything other than the world of entertainment."

In addition, a motion on the issue was lodged by Chris Ballance MSP on 30 April 2004.

11:30

I should say at the outset that considering the admissibility of this petition was quite difficult, because there are a number of issues that arise from it. First, the Edinburgh Military Tattoo is a private organisation, so we would be looking into the actions of an individual group. Secondly, if that group were falling foul of any regulations, it would be in breach of laws on reserved matters. If the organisation were in breach of any international laws, it would be for the Foreign and Commonwealth Office or the Home Office to determine whether the Chinese performers were entitled to enter the country in the first place.

That caused us a bit of difficulty but, given that it is on a topical issue, I felt that we had to consider the petition. However, I think that we are in danger of considering something over which we have no direct influence.

Carolyn Leckie: I understand some of the issues and concerns that you are raising, but my query is about consistency. The petition calls on the Scottish Parliament

"to urge the organisers of the Edinburgh Military Tattoo to consider"

the appropriateness of inviting the Chinese performers. I suppose that that means that the petitioners want us to express an opinion and to associate ourselves with or dissociate ourselves from the tattoo, and I think that that is within the remit of the Scottish Parliament, and indeed of the Scottish Executive. In fact, the Executive and the First Minister are quite happy to be associated with the MTV awards, for example. There is a danger of inconsistency. If it is okay to associate ourselves positively with something, it must be okay to dissociate ourselves from something.

The Convener: That is exactly my reason for saying that the petition should go on today's agenda and should not be ruled inadmissible. Equally, however, if any member wants to dissociate themselves from the tattoo or complain about it, Chris Ballance has led the way by lodging a motion, to which members can attach their names. Whether the committee can do anything is a different matter but, given that there is a motion before Parliament that takes a view on the Chinese involvement in the tattoo, it would have

been wrong to rule the petition inadmissible. However, I am also highlighting the fact that I do not think that there is anything that we can do with the petition within the remit of the committee.

Carolyn Leckie: Can we not at least draw the Executive's attention to it?

Jackie Baillie: Putting the petition on the agenda has made people aware of the issue and has certainly excited some interest, so it has served the purpose that many people would have wanted, and members have the opportunity to sign Chris Ballance's motion on the subject.

Mike Watson: I agree. I do not think that there is much that we can do. I have personally taken up the case of the Falun Gong practitioners and have written to the Chinese Government, although I never got a reply, of course. It is an important issue and it is disingenuous of the Edinburgh Military Tattoo to say that the performers are only artistes, if they are full members of the Chinese People's Liberation Army. I cannot see what the Scottish Parliament can do in what is in effect a matter of whether or not the performers are allowed into the country—that is not for us to say. Individual members can make their points, as Carolyn Leckie and I have done, but that is probably about all that we can do because of the way in which the petition is framed.

The Convener: Having raised the petition and allowed the issue to be aired, shall we just note the petition?

Members *indicated agreement.*

11:35

Meeting suspended.

11:42

On resuming—

Current Petitions

Scottish Transport Group Pension Funds (PE500)

The Convener: Welcome back colleagues. We move to item 3, which is our consideration of current petitions. The first petition is on the subject of the surplus from the Scottish Transport Group pension funds. The petitioners are calling on the Scottish Parliament to urge the Scottish Executive to increase at the earliest possible date the amount on offer to the former members of the Scottish Transport Group pension funds so that they receive maximum benefit from the pension funds surplus.

Petition PE500 was prompted by the petitioners' concerns about the continued failure to make payments from the pension funds surplus to former members of the Scottish Transport Group pension funds despite the fact that the Scottish Bus Group was privatised 10 years ago.

At our meeting of 3 March 2004, the committee agreed to seek further comments from the Executive on a number of issues arising from the petition. In particular, the committee sought confirmation of whether the £49.5 million surplus in the pension funds has been allocated to the Scottish consolidated fund. We also sought clarification of whether the interest that has accumulated since December 2000 would be allocated to the ex gratia payments.

The committee also noted that a residual sum of £4.3 million from the £126 million that was allocated for ex gratia payments has yet to be distributed because the Scottish Public Pensions Agency is awaiting the submission of late claims. The committee asked whether the Executive has any plans to set a deadline for claims after which time the residual sum could be distributed among those who have submitted valid claims.

The committee has received a response from the Minister for Transport in which he states that the £50 million surplus was retained by the Treasury. He goes on to say:

"The actual interest accumulated in the pension funds after December 2000 and prior to their winding in 2002 was secured for the ex-gratia payments".

He also says that he is "considering the way forward" on the subject of the residual sum.

The committee has also received a response from the Inland Revenue in which it states:

"There are no 'special' or exceptional circumstances under which the Inland Revenue will agree to the payment of an ex-gratia lump sum from surplus funds of an approved pension scheme to the scheme beneficiaries ... There are, however, clearly defined circumstances under which we will consider approving an ex-gratia lump sum payment under the discretionary powers afforded by section 591 ICTA 1988."

The subject is complicated. Dennis Canavan is at the committee today to say a few words. I hope that he can take us through some of the issues.

11:45

Dennis Canavan (Falkirk West) (Ind): Thank you for giving me the opportunity to address the committee. I promise to be as brief as possible.

None of the letters that the committee has received constitutes a satisfactory response to its inquiries. I therefore respectfully suggest that the committee consider pursuing the matter by writing further letters to Nicol Stephen and Gordon Brown. Why Gordon Brown? The first bullet point of Nicol Stephen's letter states that the £50 million is

"wholly a matter for the UK Exchequer",

but we have never been given a satisfactory explanation as to why the UK Exchequer is holding on to that money. When the ex gratia payments were announced, the UK Exchequer and the Scottish Executive said that the aim was to achieve parity of treatment between the Scottish Transport Group pensioners and the National Bus Company pensioners south of the border. However, the fact remains that the National Bus Company pensioners got 60 per cent of their gross surplus and paid no income tax, whereas the Scottish Transport Group pensioners are getting only about 47 per cent of their gross surplus and are having to pay income tax.

The Chancellor of the Exchequer has ministerial responsibility for the Inland Revenue, whose reply is also unsatisfactory, although the fourth paragraph leaves the door very slightly open by referring to the discretionary powers of

"the relevant Inspector of Taxes."

I suggest that we pursue that point with the chancellor.

In his letter, Nicol Stephen gives no details about how the interest was calculated and he claims that no interest is payable for the period from March 2002, when the scheme was wound up, to August 2002, when the first ex gratia payments were made, because he says it is "normal government practice" to treat such money as a fixed sum and not to pay interest on it. I do not think that Nicol Stephen is correct in saying that, because the Inland Revenue pays interest on late payments and the ex gratia payments in this case were undoubtedly very late payments.

On the residual sum that is referred to in the final paragraph of Nicol Stephen's letter, I suggest that we urge the minister to announce an early cut-off date for late claims and then divide the residual amount among all successful claimants. Average payments would amount to about £330 per pensioner, which is not a huge amount of money. However, that is the very least that the Scottish Executive could do to bring about a fairer deal for the Scottish Transport Group pensioners.

The Convener: Thank you. I have taken a keen interest in and attended meetings with Dennis Canavan on the issue and I am amazed that unanswered questions are still hanging about. From the outset, the pensioners have consistently asked questions and the lack of answers has increased their frustration as time has worn on. We need to get to the bottom of why money remains outstanding and why people are talking about discretionary payments and what have you at a time when a decision must be made about what is to be paid out and when that might happen. The situation is very unsatisfactory and we must stress to the minister and the Treasury that we want a definitive answer to the questions that Dennis Canavan and others have continually asked without receiving answers. We must also stress that we want to know the timescale for the commitment to pay out the amounts in the surplus fund that remain outstanding.

John Scott: The convener and Dennis Canavan know more about the situation than I do. Have efforts been made to track down the people who are entitled to payments but who have not come forward? How much money is being spent on doing that?

Dennis Canavan: I understand that the Scottish Executive and/or the Scottish Public Pensions Agency have advertised and done everything possible to try to trace potential late claimants. I presume that the SPPA has access to the records of members of the pension scheme that would have been passed over when the scheme was wound up and I understand that the agency has been proactive in trying to trace late claimants.

However, let us suppose that the worst came to the worst: a cut-off date was specified, the residual amount was paid out to all successful claimants, and then some very deserving late claimant suddenly appeared. A huge amount of money would not be involved. The amount needed could easily be met from the contingency fund, although I do not foresee that happening at all. In the interests of justice, it would be fair to announce an early cut-off date and then pay out the remaining amount to all successful claimants.

John Scott: That seems reasonable to me.

Helen Eadie: I agree with everything that the convener and Dennis Canavan have said. I, too, have constituents who have been affected. I suggest that we should do what Dennis Canavan suggests, which is—he can correct me if I am wrong—that we write back to Nicol Stephen about the interest. Dennis Canavan is right about that matter. We should also pursue the issue with the Treasury. Those are the two key points that have been made and I hope that the committee will write back along those lines.

Carolyn Leckie: I share everybody's frustration, as the matter seems to be simple. The money—plus interest—belongs to the pensioners and no explanation has been offered as to why people are sitting on money that does not belong to them. The responses simply state the sums and the facts—they do not offer any explanations, which is wholly unacceptable. I am happy to endorse Dennis Canavan's suggestions for pursuing the matter.

The Convener: I think that Dennis Canavan will agree that, initially, Treasury rules prohibited any payment of any sort from the fund, but a change by the Government allowed moneys to be paid. Therefore, I cannot understand why, having decided to pay out the sums of money, it is prevaricating on how to pay out the money. That baffles me.

Dennis Canavan: I do not think that Treasury rules prohibited such payments, but a Treasury attitude was certainly involved. To this day, the Treasury and the Scottish Executive claim that they have no legal obligation to give out a single penny in ex gratia payments—indeed, that is why such payments are called ex gratia payments. However, the matter has never been tested in the courts. The pensioners action group in Scotland has received a legal opinion to the effect that if the matter was tested in the courts, the action might very well be successful, as indeed the NBC pensioners south of the border were successful. There was not really a change of Treasury rules. I pay tribute to Gordon Brown and Henry McLeish. For a long time, there was no sign of the Treasury budging on the matter, but in December 2000, following a meeting between Henry McLeish and Gordon Brown, a joint announcement was made that £100 million would be allocated for ex gratia payments. Since then, there have been modest increases in that amount.

The Convener: Do members agree that we must get answers to the questions that have been posed and that we should continue to pursue the matter further until we receive those answers?

Members indicated agreement.

Dennis Canavan: Thank you, convener.

Eating Disorders (Treatment) (PE609)

The Convener: The next petition is PE609, on specialised treatment of eating disorders. The petitioners are calling on the Scottish Parliament to ask the Scottish Executive to address, develop and fund the specialised treatment of eating disorders in Scotland.

At our meeting on 17 March 2004, the committee agreed to invite the Minister for Health and Community Care to comment on the view of the Scottish division of the Royal College of Psychiatrists that it is

“extremely concerned about the lack of appropriate specialist services for patients with eating disorders.”

The committee also agreed to seek the views of Dr Harry Millar from the Aberdeen eating disorder unit.

The minister has stated that national health service boards are responsible for assessing the need for local eating disorder services and for providing appropriate services to meet such needs. Dr Millar has stated:

“Within Mental Health Services eating disorders are, for various reasons, often given lower priority than other disorders”.

Do members have any comments to make on the responses?

Carolyn Leckie: I think, as I thought when the petition came up previously, that the issues are of serious concern. The issues probably fit in with a number of issues to do with various conditions and whether adequate resources are available. I note that the Health Committee has indicated that it has a heavy work load and might not be able to consider the petition in the near future. However, we should still refer it to that committee, as it might inform wider work that it is doing.

John Scott: I have a variety of concerns about the petition, particularly the fact that the guidelines from the National Institute for Clinical Excellence are being implemented in England and Wales, but apparently there will be no equivalent implementation in Scotland. If we write to the minister, we should ask him why he has no plans to implement such guidelines, because that situation is simply unacceptable.

We also must be aware that the petition has now been passed between the Health Committee and this committee three times. We will have to stop doing that, because there must be a resolution to the issue for the petitioner's sake.

I am also particularly concerned about the point that Adele Wright made in her presentation to the committee about no service being made available to her daughter after her 18th birthday. It is an issue of concern that the system copes in a limited

way until people are 18 but makes no provision thereafter for those with eating disorders, who have hitherto had the benefit of hospital care. Those issues need to be addressed.

The Convener: They do. The Health Committee has indicated that it is waiting for us to get back to it about its need to pursue an inquiry. From what I hear from members, we believe that that is what is required. We will obviously not dictate the Health Committee's work programme to it, but this committee and the Health Committee recognise that the petition raises a number of issues that fit in with other health concerns that would form a part of any inquiry that the Health Committee is considering. We should leave the Health Committee to decide the appropriate way for it to proceed with the issue, but we should ask it to proceed.

Mike Watson: We should say that we expect the Health Committee to make room for the issue at some stage in its work programme.

The Convener: Are members happy with that?

Members indicated agreement.

Motor Neurone Disease (PE674)

The Convener: Our next petition is PE674, which concerns funding for services for sufferers of motor neurone disease. The petitioner calls on the Scottish Parliament to consider the funding of services for those who suffer from motor neurone disease in the context of the Scottish Motor Neurone Disease Association's "Manifesto for the Scottish Parliament".

At its meeting on 17 March 2004, the committee agreed to invite the petitioner's views on the Scottish Executive's response. The petitioner states in his response:

"I appreciate the view of the Executive on condition specific organisations, however motor neurone disease (MND) in itself does not compare to many aspects of other fatal diseases."

However, in its response, the Executive stated:

"The Committee is also aware of the Executive's view that the planning and management of services is in general best carried out at local level, and that the unified budgets made available to NHS Boards should be maximised rather than holding back funds to be used for specific conditions."

Do members have any views on how we should deal with the petition, now that we have had the responses?

Carolyn Leckie: My general concern about all such issues, which takes us back to the earlier petition on learning disabilities, is the accountability framework and the need to ensure that services are provided. That leads to people asking for ring-fenced resources for specific conditions, because they do not see evidence of

the services being delivered adequately. Politically and ideologically, we might not agree with the action for which the petitioner asks, but there is a problem, because there is a perception that motor neurone disease is not given adequate resources or priority. That is something that the Health Committee should consider at some stage in any relevant item in its work programme and I imagine that, in many matters that that committee considers, the problem will inform its discussions.

The Convener: So you are asking not for an inquiry but that the Health Committee somehow take into consideration the way in which funds are administered or the fact that moneys that the national health service has are not made specific to particular illnesses.

Carolyn Leckie: There needs to be a way of addressing the matter through accountability. I do not agree with the idea of having national budgets for each specific condition. Although I do not think that that is the way to run the health service, I understand the problems that lead people to draw that conclusion. It is a question of ensuring, through accountability, that the resources on the ground are adequate to deal with all the specific conditions in the appropriate way. It is important that the Health Committee is aware of that when it considers a raft of issues.

12:00

John Scott: Perhaps the action that we should take is to pass the petition on to the Health Committee for information rather than for it to take action on.

Carolyn Leckie: Yes. We should ask the Health Committee to keep it under consideration.

John Scott: We should make the Health Committee aware of it, as there is probably nothing further that we can do.

The Convener: We will make the Health Committee aware of the petition and the general concerns that Carolyn Leckie has expressed. For information's sake, it is worth while passing the petition on to that committee. We will then close our consideration of the petition. Is everyone happy with that?

Members indicated agreement.

Historic Scotland (Remit) (PE703)

The Convener: The next petition is PE703, which relates to the Executive's review of Historic Scotland. The petitioners call on the Scottish Parliament to urge the Executive, as part of its review of Historic Scotland, to amend the organisation's remit to ensure that it is accountable for its decisions and responsive to the views of communities.

At our meeting on 31 March 2004, the committee considered a response from the Scottish Executive and agreed to seek further clarification on the recommendations in the review that relate to Historic Scotland's consultation processes, and the likely timescale for their introduction. The Executive states that Historic Scotland aims to consult on, and issue, new guidance by 31 December 2004; that it will over the next year engage with stakeholders in a debate about the organisation's practices; and that it will report regularly to the Minister for Tourism, Culture and Sport. Do members have a view on the petition?

Jackie Baillie: The final paragraph of the letter from the Executive discusses the engagement with stakeholders that Historic Scotland will undertake following the review. It is disappointing that local communities are not mentioned in the list of stakeholders despite their being affected by what Historic Scotland does. I wonder whether we should write back to the Executive to say that, although the proposed engagement process is welcome, we would prefer a more fundamental exercise, especially as it is my recollection that other petitions have been similar to petition PE703 in that they have complained about Historic Scotland's high-handed attitude. It is critical that a connection be made with local communities rather than with just the professional associations, welcome though that may be.

Mike Watson: I agree. The letter fails to mention anything about communities. It mentions VisitBritain, which has no direct responsibility for Scotland within the United Kingdom, although it promotes Scotland as part of the UK abroad. The fact that bodies such as VisitBritain and English Heritage are referred to serves only to highlight the fact that there is no mention of communities in Scotland. It is important that communities be consulted, especially on highly sensitive matters such as that with which the petition deals. I think that it is on record that Historic Scotland ought to have realised that the issue would be highly sensitive. The proposed engagement process is a good example of a situation in which communities must be consulted. On that basis, perhaps we could write back to the Executive.

The Convener: We could bring that issue to the Executive's attention. We will not close consideration of the petition until we have written back to the Executive to ask what it is going to do to involve communities. Is that okay?

Members indicated agreement.

Street Prostitution (PE705)

The Convener: Our next petition is PE705. The petitioners call on the Scottish Parliament to urge

the Executive to address the problem of street prostitution in residential areas.

At our meeting on 3 March 2004, the committee agreed to write to the expert group on prostitution to seek an update on developments in its work and clarification of whether it is considering the specific issue that the petition raises. The expert group states that its remit will allow it to examine the many issues that the petition raises and that it expects to be able to submit a report on stage 1 of its work to Scottish ministers in the autumn of this year.

Margo MacDonald has an interest in the petition. Do you want to make any comments?

Margo MacDonald (Lothians) (Ind): I am a member of the expert group. Thank you for giving me the opportunity to address the matter, but I would rather do so as a local member, because I do not speak for the expert group. As the committee may know, I have a particular interest in the subject under discussion in that a bill in my name is before Parliament and is due to be considered again in December. I have been studiously careful in separating my work on the expert group, which is taking a strategic overview of all the different forms of prostitution, and my work on the bill, which seeks to address the particular problem of street prostitution and which would apply only to three cities in Scotland. I want the committee to be aware of the difference.

The Convener: Members have seen the response. Do we have any ideas on what to do? Do we accept that the expert group will look into the issues, as requested by the petitioners, or is there something else that requires to be addressed?

Mike Watson: I do not think that there is anything that we can do at this stage.

The Convener: We will let the working group report and leave the petition at that, having made sure that it is addressed by the working group.

John Scott: It is worth noting the comment from Lothian and Borders police, which I found to be helpful. It is important to put every side of the case.

Margo MacDonald: There is a real and urgent problem in Edinburgh, which has given rise to the petition, but the matter is being addressed. That is all I can say at the moment, because I do not speak for the expert group. The matter is being taken seriously.

The Convener: We cannot do anything else with the petition.

Members indicated agreement.

Planning Applications (Scrutiny) (PE710)

The Convener: Our next petition is PE710, on planning applications in areas of historical and cultural significance. The petitioner is calling on the Scottish Parliament to urge the Scottish Executive to ensure that local authorities, in considering planning applications in areas of historical and cultural significance, such as Briery Bank in Haddington, consult relevant bodies such as Historic Scotland and the Royal fine art commission for Scotland.

At our meeting on 31 March the committee agreed to seek the views of the Executive, including an indication as to what, if any, action is to be taken to ensure that local authorities in considering planning applications in areas of historic and cultural significance consult relevant bodies such as Historic Scotland and the Royal fine art commission for Scotland. The committee also indicated that it would be interested to establish to what extent local authorities are currently conducting such consultations.

The Executive has provided details of a number of areas where statutory consultation is required with Historic Scotland, and also where Scottish ministers must be notified if planning permission is granted contrary to the advice of Historic Scotland. Do members have any views on the information that we have gained so far?

Jackie Baillie: The response from the Executive is full and helpful. Previously, in a letter to the committee in December 2000, the Executive said that it had concerns about development at Briery Bank, and that it therefore expected the proposed development framework to be prepared in consultation with Historic Scotland and the Royal fine art commission for Scotland. The Executive is echoing the petitioner's comments—which I hope the petitioner will find to be a helpful response—so we can conclude the petition.

The Convener: Do members agree?

Members indicated agreement.

Local Authorities and Public Agencies (Public Petitions) (PE713)

The Convener: Our next petition is PE713, on consideration of public petitions by public bodies. The petitioner is calling on the Scottish Parliament to urge the Scottish Executive to issue guidance to local authorities and public bodies, to ensure that they take into consideration relevant public petitions in their decision-making processes.

At our meeting on 31 March, the committee agreed to write to the Scottish Executive seeking its views on the issues that are raised in the petition. The Executive states in its response:

"An important aspect of local government is its independence from central Government, with councils answerable first and foremost to the people who elected them. It is therefore for each local authority to determine the way in which it consults the public on its policies and proposals, and how to take account of views expressed ... in setting policies and reaching decisions."

Carolyn Leckie: The Executive's response is not adequate. We should at least ask the petitioner for their response to the Executive's response, because it does not deal with the issues. Local authorities work within the legislative framework that is set by the Scottish Parliament. The Local Governance (Scotland) Bill will affect—all sorts of other legislation already affects them—local authorities. The Scottish Parliament could, if it was of a mind to do so, legislate to ensure that consultation takes place in a certain way.

The Executive has framed its response as if it cannot do anything, but it could if the political will existed. The response does not address the issues, so I would not accept it. I would ask for the petitioner's view, however.

The Convener: Are members happy that we do that?

Members indicated agreement.

Scottish Judiciary (Freemasonry Membership) (PE731)

The Convener: Our final current petition is PE731, which calls on the Scottish Parliament to initiate any steps that might be necessary, including legislation, to require members of the Scottish judiciary to declare masonic membership. At our meeting on 28 April, the committee agreed to ask the Justice 2 Committee to clarify whether its previous inquiry into the matter addressed the question of why the situation in Scotland differs from that in England and Wales, where new judges are required to declare masonic membership. The clerk to the Justice 2 Committee confirms that the committee did consider the difference between Scotland and England and Wales, and provides details of that consideration. The position, that the Justice 2 committee conducted an inquiry and that that inquiry reached its conclusions, is not for us to challenge. The committee took into account an aspect of the petition on which we were not clear. That seems to have been cleared up, so it would appear that nothing changes.

Are members happy for us to close the petition?

Members indicated agreement.

The Convener: We are about to go into private session.

Mike Watson: Before we do so, I wish to make a general request of the clerks. When we get the

background to current petitions, would it be possible for us to get transcripts of meetings of the subject committees that dealt with them? It is often interesting to look at what points were considered. I know that that would be extra admin for the clerks, but I would find it helpful; I am sure that other members would, too. From time to time, I have looked up the *Official Report*, but if the clerks could supply us with transcripts it would be much appreciated.

The Convener: That seems to be fine—it would be helpful to members. Members are reminded that there is an extra meeting of the committee on Tuesday 29 June at 10 am in the chamber and that the next committee business is the event that we have organised at Discovery Point in Dundee, which is at 10.30 on Monday 14 June.

John Scott: Sadly, I will not be at the meeting on 14 June, so could the details be circulated to other constituency members who might be interested?

The Convener: Yes.

12:12

Meeting continued in private until 12:30.

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

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

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Monday 21 June 2004

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