

# **PUBLIC PETITIONS COMMITTEE**

Wednesday 23 February 2005

Session 2

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## PUBLIC PETITIONS COMMITTEE

3<sup>rd</sup> Meeting 2005, 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)

Rosie Kane (Glasgow) (SSP)

\*Campbell Martin (West of Scotland) (Ind)

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

\*Mike Watson (Glasgow Cathcart) (Lab)

\*Ms Sandra White (Glasgow) (SNP)

### 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 :

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

Michael Davis (Scottish Council on Deafness)

Dr Sylvia Jackson (Stirling) (Lab)

♦Lilian Lawson (Scottish Council on Deafness)

Aeneas Nicolson (Esk and Liddle Improvement Association)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

David Mundell (South of Scotland) (Con)

Drena O'Malley (Scottish Council on Deafness)

Mark Oddy (Esk and Liddle Improvement Association)

Caroline Paterson (Stirling Before Pylons)

Ian Paterson (Stirling Before Pylons)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

♦speaking through an interpreter

### CLERK TO THE COMMITTEE

Jim Johnston

### ASSISTANT CLERK

Richard Hough

### LOCATION

Committee Room 1



## Scottish Parliament

### Public Petitions Committee

*Wednesday 23 February 2005*

[THE CONVENER *opened the meeting at 10:09*]

### Item in Private

**The Convener (Michael McMahon):** Good morning, everyone. I am sorry for the delay in starting, but we cannot do much about the weather. Phil Gallie is supposed to be here as a substitute for John Scott, but I think that Phil may have fallen foul of the same problem that has created the delay. If he shows up, he will be attending in his capacity as committee substitute. We have received apologies from John Scott and Jackie Baillie, who cannot make it to the meeting.

Under agenda item 1, the committee is invited to consider taking item 4, which relates to the payment of witness expenses, in private. Do members agree to do that?

**Members** *indicated agreement.*

## New Petitions

### Mental Health Services (Deaf and Deafblind People) (PE808)

10:10

**The Convener:** Under agenda item 2, the first new petition is PE808, by Lilian Lawson, on behalf of the Scottish Council on Deafness, calling for the establishment of a specialist in-patient mental health unit and provision of resources for mainstream services for deaf and deafblind people. Lilian Lawson is here to make a brief statement to the committee in support of her petition, and she is accompanied by Drena O'Malley and Michael Davis. Welcome to the committee. You have three minutes to make your opening remarks and we shall then open up the debate. Andrew Dewey and Shaurna Dickson will provide an interpretation; we also welcome them to the committee.

**Lilian Lawson (Scottish Council on Deafness):** I would like to ask Michael Davis, the convener of the Scottish Council on Deafness, to make the presentation on our behalf. He is one of only two deaf counsellors in the whole of Scotland.

**Michael Davis (Scottish Council on Deafness):** I have a copy of the presentation, which I shall circulate to all members later. First of all, I shall speak briefly on the statistics on deafness in the United Kingdom. There are 8.7 million people who have some form of hearing loss. Around 8.5 million are hard of hearing, 6.2 million of whom are over 65. Around 120,000 are deafened—that means that they have become severely deaf later in life. There are between 50,000 and 70,000 people who are born severely deaf and whose first language is British Sign Language. There are 23,000 deafblind people. The numbers in Scotland are about 10 per cent of those figures.

On mental health and deafness, it is a fact that 71 per cent of deaf and hard-of-hearing people feel isolated because of their hearing loss. It is also a fact that 40 to 50 per cent of deaf sign language users are likely to suffer from mental health problems, compared with 25 per cent of the hearing population. It is a fact that deaf people have a higher chance of having been abused during childhood—with a 40 per cent incidence, compared with 10 to 15 per cent in the general population. It is also a fact that 23 per cent of deaf and hard-of-hearing people have left a doctor's appointment unsure of what is wrong with them.

Having specialist mental health services for deaf and deafblind people is necessary for three main reasons. First, it will address the varied

communication needs of patients. Secondly, staff will have awareness of deaf and deafblind culture. Thirdly, staff will have knowledge of the implications of deafness.

In England, there are three specialist centres and two secure centres. In addition, in England and in Northern Ireland, there are registered mental health nurses and community psychiatric nurses who are deaf. However, in Scotland, there are no centres and no staff who are deaf. Out-patient clinics, provided by the John Denmark unit from Salford, are held on one day a month alternately in Edinburgh and Glasgow. However, that service is patchy because of staffing problems. Furthermore, it is not regarded as providing a timely intervention. I shall give an example. A young deaf man who was referred to the Glasgow outreach clinic from Aberdeen had to wait three months before being seen by a consultant. That man had been a detained patient, and so was being seen by a mental health officer as a priority.

In any case, that out-patient service is currently being reviewed and may cease in the future, which would leave Scotland without access to specialist services. The unit may even close, which would mean that the nearest specialist service would be the one in Birmingham.

Existing mainstream services in Scotland are not necessarily fully accessible, due to staff's lack of awareness of deaf and deafblind culture, communication problems and a shortage of qualified communication support, such as sign language interpreters, especially those who are trained in mental health.

I will give a case example. An elderly deaf man who communicated with sign language was placed in a home where none of the staff could sign. One day, he asked for help to attend a friend's funeral, but he was not understood and was ignored. He became frustrated and lost his temper, as a result of which the police were called and he was sectioned and admitted to a psychiatric ward. He remained there for several months, during much of which he had no communication support.

Communication is vital, since any problems could lead either to a diagnosis of problems where none exists or to the misdiagnosis of an existing problem, both of which could lead to inappropriate treatment. Therefore, we call for the establishment of appropriate specialist mental health services for deaf and deafblind people in Scotland as a matter of urgency.

10:15

**The Convener:** Members of the committee will now ask questions. To assist the interpreters, I ask members to speak as deliberately as possible to make clear the questions that we are asking.

**Ms Sandra White (Glasgow) (SNP):** I declare an interest: I am a member of the cross-party group in the Scottish Parliament on deafness. I also shared a taxi with Lilian Lawson and the other witnesses this morning because my train was late.

Mr Davis mentioned that the figures for Scotland are 10 per cent of the UK figures. We have information that it is estimated that 750,000 people in Scotland have a hearing loss problem, although there are no official statistics to support that figure. Do you have any statistics or evidence to support that figure?

**Lilian Lawson:** That is one difficulty that we face. In the past four years, Drena O'Malley and I have tried to persuade the Scottish Executive to consider identifying funding possibilities so that we can conduct research and collate information and evidence to find out how many deaf people suffer from mental health problems. A person named Dr Black was commissioned, who at that time worked for the national services division of the national health service. He wrote a draft paper entitled "Developing Specialist Mental Health Services for Deaf People in Scotland", which considered a strategic plan for the development of mental health services in Scotland. The paper was produced and approved, but the difficulty, as the member mentioned, was the lack of statistics about the number of people who are involved. Dr Black came back to us and we set up a task group and approached the Scottish Executive to seek funding. We were given one or two costings, which we pursued. We filled in forms and received approval, but it took us about three years to get to the end of the process, by which time people had changed posts and the goalposts had moved, which meant that we were unable to get funding to carry out the research. That is one main reason why we are in the present situation.

Two years ago, in November 2003, the task group met again and decided to be more proactive and to do something, because nothing had happened and there was an evident weakness in the estimate of the number of people in Scotland who were involved. We raised the issue with the cross-party group in the Scottish Parliament on deafness. The task group agreed that one way forward would be to submit a petition to the Parliament. I agree that we have only rough statistics and no official ones.

**Drena O'Malley (Scottish Council on Deafness):** In relation to deafblind people only, 10 per cent of 23,000 would be 2,300. According to the statistics that the Scottish Executive collects on blindness and partially sighted people, 2,280 people in Scotland are registered with a dual sensory loss. However, we reckon that the number is nearer 5,000, as the Executive's figure refers only to people coming from the blind first

perspective. That information is logged and is available to you in the Scottish Executive's figures.

**Ms White:** Thank you for that. It is obvious that we need some form of audit and perhaps we can follow that up.

You will be aware of the Mental Health (Care and Treatment) Scotland Act 2003, which places a duty on local authorities and NHS boards to ensure that advocacy services are available. Local authorities will have to respond within 14 days and, if they refuse a request for assessment, they will have to give a reason for that decision. Will it be possible to implement those provisions if we do not have separate clinics for deafblind people with mental health problems? Will it be possible for the NHS to carry that through?

**Lilian Lawson:** One of the difficulties with the new act is the fact that the assessment has to be done within 14 days. That is fine if an interpreter can be booked at short notice, but that can be difficult because, as you know, there is a national shortage of interpreters. In addition, it is necessary to find an interpreter who is appropriately experienced and trained to work in that field. However, very few interpreters can cope with working in a mental health situation with deaf people. Deaf people have been sectioned and taken to hospital without interpreters being provided; they have then stayed in hospital for several months and have been unable to source an interpreter.

The answer is to set up a centre of excellence in Scotland. Such a centre need not require a building or a multimillion-pound project; all that we are looking for is a small unit somewhere in Scotland—whether it is in Glasgow, Aberdeen or Edinburgh—that is part of a larger hospital. It would be a small unit with a few beds and staff who had the appropriate skills to communicate with deaf people without having to look for interpreters. That is the challenge that is faced.

Drena O'Malley would probably have difficulty in finding interpreters for deafblind people. Is that correct, Drena?

**Drena O'Malley:** Yes, that is absolutely correct. It is important to realise that the issue is not only the availability of interpreters; it is people's knowledge about deafness. My only expertise is in deafblindness. Getting the communication wrong can make a patient respond in a really odd way. I see that every day. For example, this week I met a man who was devastated because he thought that his dogs were going to be put to sleep. He has one retired guide dog and one working guide dog. The truth was that the dogs were going to be given an anaesthetic prior to having their teeth pulled; however, that did not change the distress that he suffered. The confusion was between the phrases

"put to sleep" and "go to sleep". I do not know how the interpreters would be skilled enough to be sure that the right information was always being given. We need people who are steeped in the culture of communication cut-off that deaf and deafblind people have suffered. Such people would be able to tell the difference between someone having the wrong concept and their having a certifiable mental illness.

**Michael Davis:** If a deaf person needs in-patient medical treatment, they have the choice of going either to a mainstream hospital in Scotland, where they are more likely to be isolated because of the communication problems, or to Manchester, where there is a specialist in-patient unit but where they would be away from family and friends for stretches of time, which would not help. That is the problem that we face in Scotland.

**Mike Watson (Glasgow Cathcart) (Lab):** Good morning. When I read the committee papers, I was struck both by the figures, which you have spoken about this morning, that potentially 15 per cent of the Scottish population suffers from issues related to being deaf or deafblind and by the fact that no specific provision is available for them in this country. Frankly, I am surprised that we have not heard more about such a major issue. Nevertheless, I appreciate your bringing it to our attention.

I have a couple of questions, particularly about the briefing paper that we received only this morning and which, I think, Mr Davis spoke to. At the end of page 1, the paper says:

"In addition, there are some deaf RMNs"—

I take it that that stands for registered mental health nurses—

"and CPNs in England and Northern Ireland."

The next line says:

"there are no specialist centres or deaf staff in Scotland".

By "deaf staff", do you mean staff who are themselves deaf or staff who are able to care for people who are deaf?

**Lilian Lawson:** I would say both.

**Michael Davis:** Oh, definitely. Some deaf people are trained to work in psychiatric hospitals. However, as far as we know, there are none in Scotland.

**Mike Watson:** So there are no CPNs in Scotland who are able to deal with the conditions that you have highlighted today.

**Michael Davis:** There might be one or two CPNs who can communicate with deaf people.

**Drena O'Malley:** It would be worth while pointing out that one of them is in Shetland.

**Mike Watson:** Are they based in Shetland?

**Drena O'Malley:** They live in Shetland.

**Lilian Lawson:** That is correct. Someone who previously worked in Glasgow is now based in Shetland. She tried actively to set up a service for deaf people with mental health difficulties in Glasgow, but she received no funding or support from management. At the end, she became so frustrated that she simply gave up and moved to Shetland. She no longer works with deaf people; she works only as a mainstream nurse. She was very self-motivated; after all, she paid out of her own pocket to learn sign language. However, the systems in Scotland did not allow people such as her to provide services.

**Mike Watson:** I have one or two questions about the current service. On page 2 of your submission, you say:

"Outpatient clinics, provided by the John Denmark unit (from Salford), are held on one day a month alternately in Edinburgh and Glasgow."

Does that mean that the clinic is in Glasgow one month and in Edinburgh the next; or does it mean that the clinic is held in both cities once a month?

**Lilian Lawson:** In one month, the clinic is held in Edinburgh, and in the following month, it is held in Glasgow. The service rotates. In other words, the unit comes to Glasgow or Edinburgh once every two months.

As Michael Davis pointed out, the service is patchy. The clinic has great difficulty with staffing levels and illness and sometimes distance prohibits the provision of services. As a result, the clinic itself is often cancelled. Some patients might not see a consultant for three or four months.

**Mike Watson:** So the clinic might not be held even on one day a month in Scotland. I take that point.

Have individuals who require to be seen between visits to the clinic by medical staff who have the ability to deal with their problems approached their health board for referral to a clinic in England, whether it be in Salford or wherever? Have Scottish health boards paid for patients to travel to such centres?

**Lilian Lawson:** Yes. At the moment, a number of patients attend the clinics that are held once a month alternately in Glasgow and Edinburgh. However, they receive no support. They might receive an assessment, but if they need treatment and care they need to go to Salford. I think that I am correct in saying that each of the Scottish health boards has had no problem with paying for patients to go to Salford. However, treatment can be delayed because places are not always available and there is a waiting list. As a result,

people become more ill and severely mentally impaired. As I said, the outreach service that comes up to Scotland may be cut. We are concerned about what will happen to deaf people if that is the case.

10:30

**Drena O'Malley:** The outreach service has been in place for nine years on a temporary basis. The people in the John Denmark unit are committed to starting something in Scotland. Our worry is about the temporary basis of the unit. It is no longer helpful for us to have a temporary service; we need a proper service for deaf and deafblind people.

My experience—again, it is only with deafblind people—is that there is absolutely no problem in getting funding from a health board for deafblind people. Usually, by the time that people need to use the service, their need is absolutely desperate. We are talking about people who have severe mental health problems and the health board is only too glad to have somewhere to send them. It is not normal for a health board to refuse funding for either an in-patient stay or out-patient treatment. As Mike Davis said, such treatment should be possible in Glasgow, Edinburgh and Dundee or in other places in Scotland that families can get to.

**Mike Watson:** Thank you. The Scottish Association of Sign Language Interpreters submission sets out the situation that you have just described. It says that the measure was meant to be a stop-gap, but, as you said, it has been in place for nine years. Who decided that it would be a stop-gap measure? Was that decision made by the then Scottish Office or was it a health board decision?

**Drena O'Malley:** I know Dr Davidson of the John Denmark unit quite well. He was just trying to be helpful by putting a clinic in Scotland. He did so because organisations such as the Scottish Council on Deafness, Deafblind Scotland and others were saying, "Please bring your expertise here, even if it is only once a month or once every two months." There has never been anything particularly official about the arrangement; we have just been trying to get the expertise where we can.

We need to remember that organisations such as SCOD work nationally across the United Kingdom. Indeed, we work internationally—the group of people whom we deal with is not huge in number. There was never anything official about the arrangement. It happened simply because the John Denmark unit was trying to help us.

**Mike Watson:** So the unit made the decision. Do you know whether the unit pays for its staff to



come to Scotland or does the NHS in Scotland make a contribution?

**Drena O'Malley:** I am sure that the health boards in the places where patients live pay for the services. That is the case for deafblind people and I am sure that it is the same for deaf people.

**Mike Watson:** Right. You continue to regard the measure as a stop-gap measure.

**Lilian Lawson:** If I may, I will come in on that point. Five years ago, in 2000, Dr Davidson, who is a consultant psychiatrist at the John Denmark unit gave a presentation to a conference here in Edinburgh. He made it clear that he was happy to continue to provide the service on a temporary basis, but he reinforced the point by saying that in no way would the arrangement carry on for ever. The service has some negative impacts: its infrequency means that, if patients become ill in between times, there is no intervention for them. Dr Davidson has recommended that a similar unit to the John Denmark unit be set up in Scotland.

**Mike Watson:** By definition, a stop-gap service can be stopped at any time. I take the point.

I have one or two recommendations to make, convener, but I will wait until other members have asked their questions.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** Good morning. Much of what I was going to ask has been covered by my colleague Mr Watson. However, I would like to clarify the difficulties that the deafblind experience in Scotland. We have heard about referrals that can be made to a monthly clinic in either Edinburgh or Glasgow. We also heard that the alternative is the clinic at the John Denmark unit in Salford. How does the deafblind patient arrive at Salford? How long does the assessment take? Is it a day or a week?

**Drena O'Malley:** If a deafblind patient is going to Salford, a guide communicator from Deafblind Scotland will normally take them there. If they were sent any other way, who would be able to communicate with them? Assessment as an in-patient at the John Denmark unit usually takes between two and three weeks.

**John Farquhar Munro:** If the assessment is made by professionals and they recommend that the individual must have treatment in Scotland, is the patient just admitted to a general hospital or is special provision made for their accommodation?

**Drena O'Malley:** Deafblind people are admitted to a generic psychiatric ward. Recently, however, we had a patient in Glasgow at midnight on a Saturday night with a skilled guide communicator who could communicate with him. Obviously, going to the John Denmark unit and the monthly clinic were not options at that point. He was

offered beds in Edinburgh or Dumfries without communication support, because that is where the beds were. With a great deal of consultation at midnight, he was admitted to another hospital in Glasgow. The generic psychiatric services are not set up to cope with that.

**John Farquhar Munro:** On occasion, therefore, it could take long enough to place the individual in appropriate accommodation and, even after accommodation has been secured, there may be no appropriate staff to minister to their needs.

**Drena O'Malley:** That is the problem. Even with all the difficulties of going to John Denmark, at least all the staff there, including psychiatrists, are able to sign—if not quite at the level of an interpreter, they are almost at that level. Every conversation takes place in sign language. That is what we need, but with all due respect to our good NHS staff, that cannot happen in the Southern general or Parkhead hospital or any of the psychiatric hospitals in Scotland. Even if the specialist unit was in Edinburgh, the staff at the Southern general could phone the unit at midnight on a Saturday night and say, "We have a man here with special problems. If you can't take him tonight, could you take him tomorrow?" We want support and expertise from a specialist unit.

**John Farquhar Munro:** However, as you can appreciate, if that decision were to be taken by a particular health board, the onus and costs of establishing the service would fall directly on that health board, which might be difficult. The suggestion is that the Scottish Executive should introduce legislation or encourage the health service to provide such facilities.

**Drena O'Malley:** I am stepping outside my area of expertise but, with all due respect, I think that we set up specialist units for other reasons, such as for heart transplants. This is another area in which such provision should be made. That has been done in England and Wales, and it would be really good to have a similar small, expert facility in Scotland.

**John Farquhar Munro:** The submissions mention that there is an application from the Royal National Institute for Deaf People to the Scottish Executive's futurebuilders Scotland programme. Has there been any success with that initiative? It is suggested that something like £18 million should be invested in the facilities that you promote.

**Drena O'Malley:** I do not know about that.

**Lilian Lawson:** I am not aware of that application.

You referred to a specialist unit being set up in Scotland. That is what we are seeking. It is equally important that, at community level, community

psychiatric nurses, mental health officers, general practitioners and so on are made more aware of the services that are available. I am sure that lots of deaf people are missed in the system. A deaf person may go to see their GP suffering from depression but, because they cannot communicate, there is frustration and the GP might just give them medication, such as antidepressants. Mistreatment is therefore occurring. There will be many such situations, in which deaf people are never referred to the appropriate services because they are not appropriately diagnosed at the beginning.

The unit could be publicised so that GPs would be aware that there was a unit in Scotland that was funded by the Scottish Executive. Our petition seeks Scottish Executive funding for an accessible specialist service like those for people with cancer and heart needs. Although a low number of deaf people might need mental health services, the need is still great. There are funded units for cochlear implants and specialist hospitals. There is a specialist hospital in Kilmarnock that has a cochlear implant service and Glasgow royal infirmary has the transplant unit. If hospitals had the funding, they would be interested in setting up a specialist unit in Scotland as has been demonstrated by the units for other health needs. It is important that people from GPs all the way up are made aware of the need.

**Campbell Martin (West of Scotland) (Ind):** Some of the information that the committee has received indicates that the Scottish Executive does not have any plans to set up the sort of unit that you are asking for. In your communications with the Scottish Executive, have you been given any reason why the Executive would not set up the sort of unit that you are seeking?

John Farquhar Munro referred to the RNID seeking Scottish Executive funding to establish a centre to support deaf and deafblind people with mental health problems. Given that you have indicated that you do not know about that, perhaps the committee could ask the RNID about it.

Do you know why the Executive thinks that it is not necessary to have the unit that you are requesting to address your concerns?

**Lilian Lawson:** I know nothing of the RNID's plans but perhaps there is some confusion over the fact that the RNID has recently had a lot of discussion with the Scottish Executive about the modernisation of audiology services. The RNID has been heavily involved with that.

During the past five years we have been speaking with the Scottish Executive about the mental health needs of deaf people. Over those five years, the Executive's response has been, "Well, we'll think about it but we'll have to look for

funding for research first." We never got that funding. Then it says, "We need additional information." There has been one delay after another.

I have spoken to other people about it and it just seems as if the Executive is using delay tactics. The group is tired of that now and that is why we have come to the Public Petitions Committee. There are hundreds of deaf and deafblind people who suffer with mental health difficulties and they cannot wait for ever. We need appropriate services now and that is why we have come here to plead for some action and for your support to put pressure on the Executive so that it will do something about it now rather than delaying for several more years.

**Drena O'Malley:** I serve on the same committees as Lilian Lawson and we have had meetings with Dr Ian Pullen—he is a very nice gentleman but I have forgotten his job title. He said that there are no plans to set up this kind of unit. We have been asking, negotiating and speaking for five years. This is a little group of profoundly deaf and deafblind people who have been in a cupboard for far too long. We are coming out now and I think that you are going to be astounded at what has been going on.

We believe that, in the health service, we can do everything through equalities. I of course support equalities, but some people, particularly deafblind people, cannot be included unless special arrangements are made. No amount of awareness training will include a deafblind person who comes into this room. You would all be completely flummoxed, as are NHS staff. It does not make any sense to try to train everyone up. Yes, we should do awareness training and make people aware of where they can go to get help, but they should be given the specialist services they need.

As a great example, I ask the committee to check on a piece of guidance from the NHS executive called management executive letter (1998) 4. The name gives away the fact that the guidance was issued in 1998, yet after more than six years fewer than half the health boards follow it. That is why we need the Scottish Parliament to support us and to fix the situation. We have been told that the unit will not happen.

10:45

**Campbell Martin:** In all your communication with the Executive over the years, has it ever refuted the level of the problem that you have identified? Has it said that there is no medical reason to establish such a unit, or does it have a financial reason for not doing so?

**Lilian Lawson:** Five years ago, when I became director of the Scottish Council on Deafness, we

agreed that mental health was a priority, so we arranged a meeting with the principal medical officer, who was Dr John Loudon. He was supportive and was already aware of the needs, because he had been involved in working with stop-gap services. Unfortunately, he retired and was replaced by Dr Ian Pullen, who knew nothing about the matter and was surprised by everything he was told, so he had a steep learning curve. He agreed that the issue was serious and said that we would meet again, but for two years we were in a wilderness of no meetings because of other work and pressures. Dr Pullen's eventual response was lukewarm and the proposal was not taken anywhere.

**Mike Watson:** I will ask about the availability of signers. Am I right in thinking that all health boards have signers as part of their staff, or do they contract them when necessary? Whatever the arrangement, how common is it for a person who is deaf and who goes into hospital with a common-or-garden illness that anybody would go to hospital with not to have someone at that hospital to interpret for them?

**Lilian Lawson:** No health board has its own interpreters or interpreting service. Some health boards have service agreements with a sign language agency, similar to those that some local authorities have. A health board may have an agreement to use a local social work department's interpreters from time to time or may have an agreement with an interpreting agency. A health board will have a list of interpreters to call when one is required at the last minute, but that is very ad hoc. In an ideal world, each health board would have an interpreter on standby whom it could call and bring in. That would be wonderful.

I will give a personal example. Last year, my husband was taken to hospital when an urgent incident occurred. That was in the middle of the night and no interpreter was available. What could we do? I had to interpret for him, and I am profoundly deaf. I wrote on pieces of paper to try to discuss with the doctor what he was trying to tell my husband and I tried to assist with communication between my husband and the medical staff. That happens time and again for deaf people. When mental health is involved, the situation is even worse and more painful for a family to deal with.

**Drena O'Malley:** Two weeks ago, an ambulance in Glasgow went to collect a deafblind patient. When the ambulance personnel found that she was deafblind and knew that they could not communicate with her, they left her. From a health and safety perspective, they did not want to touch her when they could not communicate with her. We sent a guide communicator within about 40 minutes.

No health board has signers on their staff, although they have people with stage 1 sign language. Andrew Dewey and Shaurna Dickson have spent eight or nine years to become interpreters. It is great that the health service does that for conversational purposes, but it does not do the same for assessment or diagnosis. The situation for deafblind people is obviously much worse.

**The Convener:** Having read our briefing papers and heard your evidence, I think that your petition would achieve a desirable outcome. However, regardless of the outcome of the petition, it is vital to address the lack of information, which was mentioned in the briefing papers, because that could remain an issue after the establishment of a special unit.

The letter that we received from Deaf Action states that the majority of resources available to support people in the circumstances that you outlined are published in English or are accessible only by telephone. That would make it virtually impossible for such people to access even a special unit. Do you have any information that would highlight the difficulty that people with deafblindness experience? Do you have any projects in mind to deal with that problem, both before and after the establishment of a unit?

**Michael Davis:** There have been several attempts to make resources accessible. A DVD called "Listen Up" has been developed, which is a deaf awareness training package to inform medical staff about the problems of deafness and how they can address them. However, such developments are few and far between. Many resources are not accessible to deaf and deafblind people. That is one of the problems that we face and it is partly to do with the lack of funding to develop new resources.

**Lilian Lawson:** Recently, the health rights information Scotland project set up training through the Scottish Consumer Council. It tried to develop information leaflets for the general public on their rights regarding health. It produced standards that set out how each health board should produce information to make it accessible to deaf and deafblind people, to people with learning disabilities and other disabilities and to people from ethnic minorities. Recently, it produced two leaflets on confidentiality and access to health records. Those leaflets are easy to read. I have seen them and I thought that they were excellent and clear. A signed, subtitled DVD version is also available. That is a good example of how each health board can produce information on health that is accessible, rather than relying on deaf and deafblind charities to produce it. The responsibility should lie with the health boards.

**Michael Davis:** Recently, the Scottish Executive collaborated with NHS Education for Scotland about communication with deaf people. It has produced a deaf awareness communication tactics pack, which will be used to train medical staff on deaf awareness. That is one of the positive moves that NHS Education for Scotland has made.

**Drena O'Malley:** I reiterate that if we want information to be made accessible to deafblind people, we have to underline three times that we need to make special arrangements to do so by providing a guide communicator service, which people in every other country in Europe and, I am ashamed to say, in England and Wales have by right, but in Scotland they do not. That is the subject of a parliamentary motion and of another petition. Without such a special arrangement, we help to close the cupboard door on information. All the things that Michael Davis and Lilian Lawson talked about exist: if we fund them properly, accessible information can be provided. The political will exists, but funding has to be put in.

**The Convener:** I ask members for recommendations. Mike Watson indicated that he had some.

**Mike Watson:** Yes. I am concerned to note that, although a working group in NHS Scotland last year identified that specialised mental health services for deaf, deafblind and hard-of-hearing people were a key gap in service provision, the Executive has no plans to set up the unit that that working group recommended. We should certainly write to the Executive to ask for an explanation of why that is the case—other than that it is for individual health boards to decide their priorities. The issue is not one for individual health boards; it is a question of Scotland-wide provision.

Last month, the Deputy Minister for Health and Community Care announced a review of existing community care guidance, specifically for those with sensory problems who also have mental health problems. I would like an update on where that review stands and how the Executive's declining to set up a unit as recommended by NHS Scotland fits in with that.

If I understood the petitioners correctly, they said that the Executive keeps figures on the number of blind and partially sighted people in Scotland, but does not keep figures on those who are deaf or hard of hearing. That seems to be lacking in logic and we should ask the Executive to carry out some kind of survey that would corroborate the figures that have been given to us today. We have no reason to believe that those figures are not accurate, but the Executive's not having those figures seems a strange lapse.

**Ms White:** I agree entirely. Mike Watson has picked up on the report from NHS Scotland, to

which the Executive has made no reference. We have to find out why it is not taking those recommendations on board. Campbell Martin will probably mention the RNID proposal, which is also a good idea. I would also like to write to the John Denmark unit to get some information on how it proceeds. Such units seem a great idea. It is a pity that they exist in England but not in Scotland. If we are writing to the Executive about the NHS working group and the figures for the number of deaf and hard-of-hearing people in Scotland, we should also ask it to comment on everything that we have heard from the petitioners.

**Campbell Martin:** I ask that we contact the RNID and ask whether and how its proposal, if it were awarded the funding it seeks, would address the problems that have been highlighted today. When we contact the Scottish Executive, we should ask whether it accepts the level of the problem that the petitioners have identified and, if it does, why it considers that it would be inappropriate to set up the type of unit for which they are asking.

**The Convener:** That is a good question, Campbell. As we have agreed to write to the Executive, I would like to know what sort of funding it thinks it is providing or expects to provide for the programmes of accessible information that we have discussed. There is a series of questions to ask a lot of people. Are members happy with that action?

*Members indicated agreement.*

**John Farquhar Munro:** We should have some clarification on the futurebuilders programme. Mention has been made of a cost of £18 million to set up a centre in Scotland. There might be useful information in that programme.

**The Convener:** We will have to get a lot of information so that we can address the petition properly.

I thank the petitioners for presenting their petition this morning. We will keep them informed on its progress and the responses that we receive from the people whom we contact. We will keep a close eye on how the petition progresses.

I also thank the sign language interpreters for their assistance.

**Lilian Lawson:** We thank you for your time as well. We know that you are busy, so we appreciate our petition being heard.

10:58

*Meeting suspended.*

11:01

*On resuming—*

### **Angling (Border Esk Rod Licence System) (PE810)**

**The Convener:** Our next petition, PE810, by Aeneas Nicolson, calls on the Scottish Parliament to urge the Scottish Executive to reject proposals by the Environment Agency to introduce a rod licence system on the Border Esk river.

Aeneas Nicolson is here to make a brief statement to the committee in support of his petition. He is accompanied by Mark Oddy and David Mundell. Mr Nicolson, you have some minutes to make your presentation; we will then debate the subject.

**Aeneas Nicolson (Esk and Liddle Improvement Association):** We seek your assistance on a Scottish issue regarding a Scottish river and a Scottish custom. The Border Esk river originates in Scotland and, for two thirds of its length, flows through Scotland; it goes into the Solway firth in England. By an accident of history, the management of the river is now the Environment Agency's responsibility. That English body has done little or nothing for the management of the river to date. The practical management of the river has been in the hands of the Esk and Liddle Improvement Association, which is based in Langholm, although its members come from north and south of the border. The association has carried out electrofishing tests and conservation work in conjunction with the Galloway Fisheries Trust; in the past five years, that work has cost £62,000. Education projects in local schools have also been carried out, and the association has agreed to work in partnership with the Environment Agency to the best advantage of the river and for its protection.

The Scottish Executive has the right to review the EA's proposal to introduce rod licences, as it affects Scottish anglers and visitors to Scotland. Allan Wilson is on record as stating, when he was Deputy Minister for Environment and Rural Development, that there would be no rod licences for Scottish waters. The EA has claimed that the rod licence scheme has been agreed with the Scottish Executive, but when that claim was researched, it was discovered that the consultation had consisted of sending the Scottish Executive a draft copy of the proposals, in which rod licences were merely an option. As that was only a draft, it was neither considered nor commented on. Indeed, the EA now admits that it has not received a reply to that correspondence.

In the absence of such proper consideration or approval, the Environment Agency proposes to introduce an English rod licence on the Scottish

section of the river from 1 April this year. Dumfries and Galloway Council strongly opposes that and is currently seeking legal advice on the matter. The impact of the proposal on Eskdale is obvious. The Environment Agency is ignoring the inequality that would be created between Eskdale and all other Scottish fishing locations and the impact on fishing tourism in Eskdale. Further, it is ignoring the Scottish legal position and the tradition of not fishing for migratory trout on a Sunday, which was instituted on religious grounds originally, but is a sound conservation method. It is also ignoring the fact that Scottish parents who wish to tutor their children in healthy outdoor pursuits will be penalised by having to obtain licences for themselves and their offspring before they can take them to the water. Finally, it fails to recognise that illegal fishing will inevitably occur, with Scots being prosecuted in Scotland by an English agency.

We seek the Executive's assistance. We do not wish to compound an accident of history through the unnecessary imposition of rod licences; we wish Scottish custom and tradition to be maintained. We wish to prevent the discord and lawlessness, and the imposition on the legal system, that might arise, and we want to ensure that our area is not economically disadvantaged.

It is estimated that fishing in Scotland injects £118 million into the economy, and it is a major tourism draw to Eskdale. We ask that you reject the Environment Agency's proposal to introduce rod licences on the Border Esk on 1 April. We accept that this is a complicated cross-border issue and if it is not possible for you to reject the proposal, we ask that you use your authority to postpone the process for a period of one year, during which the legal situation could be clarified and the best solution found.

**The Convener:** Thank you for bringing the petition to us this morning. I invite members to ask questions on the issue.

**Phil Gallie (South of Scotland) (Con):** Could you comment on the prosecution process, Mr Nicolson? It seems a strange situation for an English agency to have to police areas in Scotland, where the judicial system is totally different. Have you made any inquiries to find out whether the Scottish police will be involved in that policing?

**Aeneas Nicolson:** At present, the Environment Agency has authority to control the river. However, there was an incident last year when poaching was taking place on the river. A chap was using a snare behind my house, as it turned out. The police were called, and the bailiff who came was the Buccleuch Estates bailiff, who acted immediately and brought the police on to the scene.

The police phoned the Environment Agency to ask for its assistance, as the matter fell within its jurisdiction, but they were told by the party who answered the phone that the agency had no jurisdiction in Scotland. That is how confused people at the agency are themselves. People from the Environment Agency eventually turned up, and they were about to use the wrong legislation to charge the individual. They would not have brought the correct charges had it not been for the presence of the Buccleuch bailiff.

As we understand it, the Environment Agency maintains that it has taken parties to court in both Roxburgh and Dumfriesshire and has had successful prosecutions. We know that there have also been prosecutions that have been abandoned by the procurator fiscal—the people were not taken to court. It is a grey area.

**Phil Gallie:** I think that things changed to some degree with the introduction of licensing, on the basis that substantial fixed fines—or at least maximum fines—now apply. That suggests that the position is almost an impossible one for both the Environment Agency and the—

**Aeneas Nicolson:** We are trying to ascertain whether charges can be brought or prosecutions sought under the licensing system in a Scottish court. We have not had an answer to that question yet. Dumfries and Galloway Council is working on our behalf; it is seeking legal views on how everything will come out in the wash.

**Phil Gallie:** Have you approached the Scottish Executive on the matter? The Executive is deeply involved and has had communications on the matter, and questions have been asked in Parliament. Has it come up with any comments on the judicial process?

**Aeneas Nicolson:** We have had a bit of correspondence over the past 12 months. May I bring Mr Mundell in at this point?

**The Convener:** Yes.

**David Mundell (South of Scotland) (Con):** The designated area of the Esk goes quite a bit out into the Solway estuary. There was an issue around some netting activity near Powfoot, on the Scottish side, in which the Environment Agency became involved. It confiscated some nets, which were taken to Penrith, and it was suggested that there would be court action. However, the six-month deadline has expired and an opportunity to explore, in the courts in England, whether somebody can be prosecuted for activity in Scotland has been lost. I have my suspicions that that was not accidental. Obviously, it is for prosecutors in England to decide which cases to proceed with.

This is a complicated legal area, and I support a review of the matter, which is the position of

Dumfries and Galloway Council. A number of pieces of legislation are relevant. As with other situations in which several different pieces of legislation apply, the various laws do not necessarily gel together to produce a clear outcome. During the passage of the Scotland Bill, various issues relating to such matters were raised in the House of Lords by Lord Monro, the former MP for Dumfries, and by Lord Sewel. At that time, Lord Sewel's approach was that such situations would never arise. He thought that if everybody turned a blind eye to the situation of the cross-border rivers, everything would be okay and we would not need to go into much detail. Now the prospect has been raised of rod licences on the Border Esk, which would become the only river in Scotland to have such licences. With that comes a need to consider the legislative framework that affects activities on cross-border rivers.

**Phil Gallie:** Mr Nicolson suggested that the Scottish Executive has not replied to the Environment Agency on the issue.

**Aeneas Nicolson:** There has been correspondence with MSPs, but not with the Executive.

**Phil Gallie:** Lewis Macdonald, the Deputy Minister for Environment and Rural Development, has said that the Executive supports the introduction of the fisheries management plan. That suggests that the Executive has responded.

**Aeneas Nicolson:** We understand that the Environment Agency has put forward a draft proposal but that it has not received a response. We can only go on the basis of that information, which we got from the Environment Agency.

**Phil Gallie:** I think that that is well worth investigating.

**David Mundell:** A rod licence system is just one of a large number of options that were presented. Although everybody accepts the general concept that there should be a fisheries management plan for the Border Esk and other rivers, that does not necessarily mean that there is support for rod licences.

**Phil Gallie:** I accept that, but I suggest that the proposed rod licence system is the one thing that will create serious divisions and perhaps confrontation. On that basis, the matter must be addressed.

**Aeneas Nicolson:** There were 17 points on the action plan. The other 16 went through without debate, but the proposed rod licence system was slipped in through the back door.

**John Farquhar Munro:** I have never had the pleasure of fishing on the Border Esk, although I have fished on many other rivers in Scotland. For clarification, will you confirm whether the Scottish

section of the river is in community or private ownership?

**Aeneas Nicolson:** It is virtually all in private ownership, but there is accessible fishing from the Buccleuch estates for locals and visitors. There is a scheme whereby youngsters up to the age of 15 and pensioners get free fishing within the town boundaries and discounted fishing elsewhere, but now they will have to pay a rod licence, which will negate the benefit of that.

**John Farquhar Munro:** So the fishery is fairly well managed.

**Aeneas Nicolson:** It is very well managed.

**John Farquhar Munro:** When an individual goes along for a day's fishing, he gets a permit locally.

**Aeneas Nicolson:** Correct.

**John Farquhar Munro:** There is a suggestion that that system should be extended to include rod licences. What is the difference?

**Mark Oddy (Esk and Liddle Improvement Association):** There are set charges for fishing, which vary between different parts of the river. Local residents fish for half the full rate, or if they are a pensioner they may fish for a quarter of the rate and children may fish for free. A local resident may fish for the season for £22, or for £11 if he or she is a pensioner. The Environment Agency proposes that, in addition to paying that charge, people will need to go to a local post office or write to Warrington to obtain a rod licence. The fee for that, depending on one's age, ranges from £62.50 downwards.

**John Farquhar Munro:** Is the rod licence that one eventually acquires for the day or for the season?

**Mark Oddy:** Licences can be purchased for the day or for the week, but most people would buy a licence for the season. The system is administered separately; it is not administered by the owners of local fisheries. The licence is required by the English Environment Agency.

**John Farquhar Munro:** But, in the past, you have had a very successful fishery in the Scottish section of the Esk, so what is the problem? Why is an additional burden being put on the angler?

**Aeneas Nicolson:** Precisely. The management of the river has been carried out by the Esk and Liddle Improvement Association. For example, it has provided funding of £62,000 over the past five years. That is money from the riparian owners and from grants that we have applied for. In addition—this may simply have been coincidence—we received £3,500 from the Environment Agency last year, after it mentioned the introduction of rod licences. Surely that was just a coincidence, but it

was the first time that the agency has been involved financially. It has grandiose plans for the river but there are no dates and no specifics.

11:15

**John Farquhar Munro:** That could create all sorts of complications. I see from our papers that salmon and migratory sea trout are affected. If I go along there and am fishing for brown trout, do I still need to have a rod licence?

**Aeneas Nicolson:** You require a rod licence for any fishing—even for eel—on a river for which there is a licensing system.

**John Farquhar Munro:** I can fish all over Scotland where there is not a managed fishery for brown trout and I would not be committing an offence. Why should it be an offence on the Esk?

**Aeneas Nicolson:** We would like to know that as well.

**John Farquhar Munro:** The suggestion that there should be a rod licence is ridiculous and I would be opposed to any additional licence being required in order to enjoy a day's fishing on any river.

**Aeneas Nicolson:** As you will know, the Tweed is controlled by a Scottish authority and there are no rod licences on either the English or the Scottish sections of the river.

**Mark Oddy:** At the request of the ELIA, the Environment Agency reluctantly agreed to enter into consultation with us. We support the EA 100 per cent in 16 out of the 17 areas in the plan that it produced, because the ELIA is about conservation, the management of the river and education.

The Environment Agency has said that the most important thing for it is to collect accurate catch data. We fully support that. Because the ELIA represents more than 95 per cent of the whole border Esk system, the Environment Agency has accepted that we can give it that information and that it can regard our information as accurate. That is evidenced by the fact that it has mentioned the idea as an option in its plan.

The issue is the income raised through rod licences. The Environment Agency has suggested that licences would raise £5,000. In order to avoid conflict in the local community, the riparian owners said that they would voluntarily raise £5,000. However, the Environment Agency refused that offer.

It is interesting that the Environment Agency's own figures suggest that, in order to collect the £5,000, it would need to employ two bailiffs at a cost of £50,000. It is therefore very difficult to see the logic in any of this. That is what is causing so much frustration in the community.

I have here a petition that was raised within a fortnight; it contains the signatures of 900 local people. When you consider that the population of Langholm is just over 2,000, you can see just how strongly the whole community feels about this issue.

**David Mundell:** I have been in correspondence with the Environment Agency to ask the very question that John Farquhar Munro asked. The agency says that the Esk is the only river for which it is responsible that does not have rod licences. I wrote back to say that I thought that the situation was unique because the river was in Scotland whereas the other rivers for which the agency is responsible are not. However, I am afraid that it does not see that point. I have therefore come to the inevitable conclusion that this is a tick-box or tidying-up approach. All the other rivers are governed in a certain way and the agency wants to govern the Esk in the same way, despite the fact that it is inappropriate to do so.

The Scottish Executive has made it clear in parliamentary answers to me and others that it has no plans to introduce rod licences on any other river in Scotland. For example, I asked the minister why

"if rod-licence charges are not a good idea on any other river in Scotland, they are a good idea on the Esk?"—  
[*Official Report*, 10 February 2005; c 14521.]

**Ms White:** John Farquhar Munro has asked some questions that I was going to ask and I agree with everything that he said. However, I think that things are much more complicated than they have been made out to be, as David Mundell has said. There is the Salmon and Freshwater Fisheries Act 1975 and the Scotland Act 1998 (Border Rivers) Order 1999. The exercise is a money-making exercise as well as a tick-box exercise for the Environment Agency.

I wonder why the agency suddenly decided to introduce the system, given that the situation has continued for so long. The petitioners will probably say that they do not know the answer to that question. Two thirds of the river belongs to Scotland rather than to the other side of the border and the situation is much more complicated than it has been made out to be. It has been said that various pieces of legislation, rather than one piece of legislation, must be considered.

**Mark Oddy:** I do not see how raising £5,000 by doing something that costs £50,000 can be a money-making exercise. The agency has confirmed in writing that it cannot guarantee that £1 of any income raised will be spent on the Border Esk system.

I think that things are happening now because of pure bureaucracy. There has been a complete and utter failure to acknowledge the local community

or the feelings of people in it. The agency is trying to steamroller in the system. I think that it is potentially acting illegally because it must consult the Parliament and the Executive, but it has singularly failed to do so.

**Ms White:** You mentioned the £62.50 that people will have to pay that they do not need to pay now. That is what I was referring to. Where would that money go? It would certainly not be spent on the two thirds of the river that belongs to Scotland.

**Aeneas Nicolson:** The agency has stated that that money will not be ring fenced. It could go anywhere—to south-east England or to anywhere in England.

**Ms White:** That was the point that I was trying to make. We cannot even follow where the extra money will go. When I mentioned that the exercise was a money-raising exercise for the Environment Agency—

**Mark Oddy:** The income that is raised would go to Bristol, which is where the headquarters of the Environment Agency are and from where it is administered.

**Ms White:** That was the point that I was trying to make. The exercise is a money-raising exercise.

**Aeneas Nicolson:** I can give a small example. Two or three seasons ago, I met one of the agency's bailiffs, who are great chaps. He was sitting next to the stretch of water that I look after and said that he should not have been there because his petrol allowance did not allow him to come past Longtown. He was poaching in my water, although I did not say anything about that. He had not been given the authority to go as far as he had.

**Mark Oddy:** There is further evidence. The Environment Agency says that it has had control of the water since 1975. There is a telephone hotline in all English telephone directories to report poaching incidents, but despite numerous requests, there has never been an Environment Agency hotline number in any directory in the area that we are discussing. To this day, there is no such number in local directories.

**Mike Watson:** The issue is a real enigma and the papers that we have been given do not help much to clarify matters. I wonder whether any of the witnesses could explain the press release from the Environment Agency, which says that the agency

"will implement the scheme as a statutory requirement."

That seems to link in with Lewis Macdonald's comment that

"the Salmon and Freshwater Fisheries Act 1975 does not provide the Environment Agency with discretion over



whether to introduce rod licensing for salmon and trout.”—  
[*Official Report*, 10 February 2005; c 14522.]

It seems that that is the law and that the agency is complying with the law, but that begs a question: if the law has been in place for 30 years, why has it not been enforced before now?

We have more correspondence. Keith Kendal, who is a technical fisheries team leader in north Cumbria for the Environment Agency, mentions consultation. He states:

“One of the principal aims ... was to attempt to find a viable alternative to licensing.”

Either there is a statutory requirement or there is not. Having a statutory requirement means that there is an open-and-shut case.

**Aeneas Nicolson:** There have been proposals, but the agency has certainly not interpreted the case as a fixed case until now. It has now decided that the system will go through.

**Mike Watson:** I think that I heard you say that two thirds of the Esk is in Scotland and one third is in England. How long has licensing applied to the third of the river that is in England?

**Aeneas Nicolson:** Rod licences have been on the go in England for quite a long time, although I cannot say exactly how long.

**Mark Oddy:** They have existed for more than 25 years. The question raises a salient point because if such a scheme is statutory, why are rod licences only an option in the management plan?

**Mike Watson:** Yes; and why is it called a proposal?

**Aeneas Nicolson:** There are gentlemen sitting in the back of the room who fought against the introduction of similar measures 50 years ago. The proposals were thrown out then because it was accepted that the situation was an anomaly that should be left as it was.

**David Mundell:** If one looks at *Hansard* reports on the passage of the Scotland Act 1998 and at subsequent correspondence, one sees that Lord Sewel took the view that nobody would want to open up the issue because it is too complicated. Rod licences have never been used on the river and he did not anticipate that anyone would introduce a proposal for licences. Therefore, during the passage of the Scotland Act 1998, rather than open up the issue, he gave an undertaking that the situation would carry on as it had done. It appears that, more than anything, a change of personnel in the Environment Agency has led to the issue arising. Mike Watson is right that there is a contradiction: on the one hand people are saying that the measure is a statutory requirement, while on the other hand they are consulting on whether the measure should be taken.

**Mike Watson:** The Environment Agency is in a difficult situation. It has issued a press release that states that the licensing system is a statutory requirement. If it pulls back from that, somebody, for whatever reason, could claim that the agency is contravening the law in not implementing the system. I do not expect you to comment on that, but that seems to me to be the situation that the agency is in, having stated in writing that the proposals are simply to meet the legal requirements.

My last question, which is to David Mundell, is about a point made in Mr Oddy's letter, which states:

“David Mundell MSP received assurance from Allan Wilson that any Bye-Laws introduced by the Environment Agency need to be approved by Scottish Ministers.”

When was that assurance received and what form did it take? Was it verbal or in writing? Do you regard that assurance as being formally retracted in Lewis Macdonald's response to your question?

**David Mundell:** I will answer your final question first. I do not regard the assurance as being retracted. Allan Wilson indicated in a parliamentary answer that the Executive would have to approve byelaws. I subsequently sought to discuss the issue with the Executive, but, during the period in which the court case to which I referred was pending, the Executive was understandably reluctant to discuss the issues. I do not believe that Lewis Macdonald's subsequent answer and correspondence contradicts that, because he focused primarily on the legislation, not on the nature of the byelaws. My view is that the Scottish Executive will have to approve the content of the byelaws.

**Mike Watson:** So that is still officially the Executive's view.

**David Mundell:** That is my understanding, although Lewis Macdonald did not specifically say that in his answer.

**Mike Watson:** To be clear, was Allan Wilson's assurance to you given in a parliamentary answer?

**David Mundell:** Yes.

**The Convener:** Like other members, I am trying to work out exactly what is going on. I suppose that my lack of knowledge of the geography of the river does not help. I assume that the river flows from Scotland to England. Is that correct?

**David Mundell:** Yes.

**Aeneas Nicolson:** It rises in Scotland and runs two thirds of its way through Scotland and then forms the border between England and Scotland with the Liddle, which is a tributary that is also affected. However, the river goes into the Solway firth in England.

**The Convener:** Historically, dating back to the 19<sup>th</sup> century, the river has been administered under English law.

**Aeneas Nicolson:** That is correct. There was a trade-off with the Tweed—the Tweed was taken by the Scottish authorities and the English authorities took the Esk.

**The Convener:** That is the crux of the issue—regardless of what the Scottish Executive might want to do, the river is, in effect, English and is bound by English legislation. To amend that, procedurally one would be required to amend legislation that goes back as far as the 19<sup>th</sup> century. I ask David Mundell whether that is his understanding of the situation.

11:30

**David Mundell:** I would not quite say that. However, as I said in my initial remarks, a number of pieces of legislation to do with the rivers do not necessarily gel together. When we try to examine the overall legal position we find that it is not necessarily consistent, hence the points that were being made at the start of the discussion by Phil Gallie about what the legal process is in relation to enforcement, for example.

That there has been very little activity by English bodies as far as prosecution is concerned is down to the fact that everybody considered this to be a legal minefield. I think that what has happened is that the Environment Agency has waded into the situation without having done its homework properly and without having considered the impact that its action was likely to have on the public perception of its activities. At the very least, the introduction of rod licences should be deferred, as Dumfries and Galloway Council has suggested, until the very complicated issues can be sorted out and we can perhaps get agreement from all stakeholders as to the legal position. As members have seen from the correspondence that the committee has received, at present there is no such agreement.

**The Convener:** We must get that clarified before we can start to address the issue. I wonder how complex the legalities are and how far back they stretch: it may be easier to bring in immigration laws and give the fish a passport. We could resolve the matter practically by looking at what a statutory body such as the Scottish Environment Protection Agency can do, rather than look at legislation that affects how it can act. It is a complex matter and we must get to the bottom of it.

**Aeneas Nicolson:** The 1999 order states that reference that used to be made to the Westminster minister must now be made to that minister in conjunction with his Scottish

counterpart. Our interpretation is that a precedent has been set—the licensing system was not introduced before devolution and to do so now would require the agreement of the Westminster minister's Scottish counterpart.

**The Convener:** We must get some legal expertise involved. The petition will be useful if it can get that point clarified. I look to members for recommendations as to who we should get some clarification from, but I think that the Executive will have to be asked for legal advice. Some organisations that are involved in angling and coarsing could perhaps help us with their knowledge of the law. I am sure that John Farquhar Munro will know of organisations that have had to deal with such legalities.

**John Farquhar Munro:** There is only a month left; we have only until April 2005.

**The Convener:** We can put some pressure on quickly. We can get the paperwork done so that we get the questions asked fairly speedily.

**Helen Eadie (Dunfermline East) (Lab):** Should we write to the Scottish Anglers National Association, the Association of Salmon Fishery Boards, the Salmon and Trout Association and the Scottish Federation for Coarse Angling? Would those be appropriate organisations for us to contact?

**The Convener:** Those are the types of organisations that I was talking about. Given the timescale that we are working to, the Executive is the primary organisation.

**Helen Eadie:** Of course; I took that as read.

**Phil Gallie:** I presume that we are now at the discussion stage.

**The Convener:** That is right.

**Phil Gallie:** Contacting the fishing organisations is very much a secondary issue. The current problem lies totally with the Scottish Executive. We have heard that it has not given a response to the Environment Agency. That is a weakness. We need to know the Scottish Executive's position at an early date. Given that we have heard that the rules governing the river go back to the 19<sup>th</sup> century, the fact that a decision is to be taken over the next month or two is an absolute nonsense. I suggest that perhaps Dumfries and Galloway Council has got it right: decisions should not be made when we do not have the facts. Without a doubt the Lord Advocate, the Solicitor General for Scotland and the Scottish Executive need to examine the whole situation very carefully.

**Mike Watson:** Can we also write to the Environment Agency to ask the simple question why it is introducing rod licensing now and why it did not do so before? Some reasons are given in

the letter, but the agency has not explained why it did not introduce rod licensing previously. We should ask what has suddenly changed.

**Phil Gallie:** There is no reason why we cannot ask it to suspend taking action for the moment.

**The Convener:** I am not sure that we can ask the agency to do that—

**Phil Gallie:** We can always make the request.

**The Convener:** Our letter will be worded such that the urgency of the situation is emphasised so that we receive a speedy response. However, to ask the agency not to implement what it considers to be the law would be to enter very dangerous territory. We will ask for clarification.

The petitioners have brought an interesting issue to our attention. In view of the timescale, we will try to get responses as quickly as possible from all the bodies that we contact. We will keep the petitioners updated. I thank them for bringing the petition before us.

**David Mundell:** Will the committee also write to Dumfries and Galloway Council, which is currently considering the legal position? It might be useful to have the council's view on that.

**The Convener:** That might be helpful and there is no harm in asking for the council's view.

Are those points agreed?

**Members** *indicated agreement.*

### **High Voltage Transmission Lines (Potential Health Hazards) (PE812)**

**The Convener:** Our next petition is Caroline Paterson's PE812, which calls on the Scottish Parliament to urge the Scottish Executive to acknowledge the potential health hazards associated with long-term exposure to electromagnetic fields from high-voltage transmission lines and to introduce, as a matter of urgency, effective planning regulations to protect public health.

Caroline Paterson, who is accompanied by Ian Paterson, will make a brief statement in support of her petition. Members may wish to know that Professor Olle Johansson, who was listed on the agenda, is unable to attend today's meeting. We welcome the petitioners and we will be interested to hear their comments over the next few minutes. We will then have a discussion on the matters raised.

**Caroline Paterson (Stirling Before Pylons):** We were alerted to the public health threat that is posed by electromagnetic fields when Scottish and Southern Energy issued its routing proposals for the proposed Beauly to Denny high-voltage power line, which will carry 400kV. Disregard for public

health was apparent from the fact that it was proposed that the line should follow populated routes, virtually passing over people's roofs.

In response to our concerns, the multinational said that it had complied with the National Radiological Protection Board guidelines, which allow exposure to a maximum of 100 microtesla—which is, incidentally, the maximum exposure to which one would be subject beneath a 400kV line. We were not reassured by that, as preliminary research revealed that low-frequency electromagnetic fields are recognised as a possible carcinogen.

In 2004, the NRPB joined the international scientific community in acknowledging a doubling of the risk of childhood leukaemia from long-term exposure to levels of 0.4 microtesla or above. Effects start to be registered at levels of 0.2 microtesla. The publicly funded report, which is yet to be published, by Dr Draper of the University of Oxford's childhood cancer research group is expected to reveal a near doubling of childhood leukaemia in areas that are within 100m of high-voltage transmission lines such as the one that is proposed by SSE.

The epidemiological association is internationally recognised, although the scientific community is divided on the mechanisms involved. Further epidemiological studies, including the California health department's 2002 study and work by Professor Denis Henshaw of the University of Bristol, strongly suggest that certain adult cancers, depression, miscarriage and neurological conditions may also be triggered by exposure to high-voltage transmission line electromagnetic fields. Those are not isolated studies. Some Governments have already adopted effective precautionary exposure limits for new installations, which are summarised in Dr Henshaw's letter of 2 February, which I have circulated to the committee. My hope is that Scotland will seriously consider following suit.

In March 2004, the NRPB recommended that the Government take precautionary measures. In recognition of the discrepancy between the level of 100 microtesla that is specified in the current guidelines and the 250 times smaller level of 0.4 microtesla at which there is a doubling of the risk of childhood leukaemia, the stakeholders advisory group on electromagnetic fields—SAGE—was set up.

The impact of what is a possible carcinogen is preventable. A new installation should not be allowed to compound the problem. The evidence is compelling and the precautionary principle should be upheld with all new installations to reduce unnecessary human suffering. The power companies will act only if they are compelled to do so, so I request that the Scottish Parliament urge

the Scottish Executive, which has a responsibility for public health, to acknowledge the health hazard that is associated with long-term exposure to high-voltage transmission line electromagnetic fields and to introduce effective planning regulations as a matter of extreme urgency.

I have with me more than 1,000 signatures—mainly from local people—in support of the petition. Further support has been offered by action groups along the Beaully to Denny line.

**The Convener:** Do members wish to ask questions of the petitioners?

**Ms White:** Good morning. The subject is controversial and important. The committee's briefing paper mentions high-voltage overhead power lines and says that there is no evidence that low-level electromagnetic fields from power lines are responsible for children's illnesses such as leukaemia. What do you say to that? Our paper says:

"neither the 1996 World Health Organisation report, the 1999 UK Childhood Cancer Study nor the 2001 National Radiological Protection Board confirmed"

the claims about exposure to EMFs.

**Ian Paterson (Stirling Before Pylons):** Although the initial conclusion of the UK CCS study was that there was not a link between childhood leukaemia and EMFs, in September 2000 the authors of that study came out and said, "Sorry, we got it wrong." The assertion that the UK CCS study did not show a link between childhood leukaemia and EMFs is regularly repeated, even though it showed such a link. In September 2000, the authors' apology was reported in *The Lancet*. As recently as March this year, the power companies were claiming in their literature that the UK CCS study did not demonstrate the link in question.

**Ms White:** Thank you for clarifying that. It is important to reiterate that the authors of the report were wrong.

**Ian Paterson:** Unfortunately, it is still being reported that the CCS study did not prove a link.

**Ms White:** You want the Executive to do something about the situation. Do you think that there should be a moratorium on the construction of high-voltage overhead power lines or are you arguing that a specific level should be set? What should the Executive do?

**Caroline Paterson:** I would like there to be a moratorium on the building of high-voltage new installations, by which I mean 275kV to 400kV installations.

**Ian Paterson:** A number of other countries have taken regulatory planning measures. They considered the cost benefits of doing that and

decided that it was a good way to go. They took action a number of years ago, long before the evidence was as strong as it is now. Those countries seem to be doing very nicely. I understand that Dr John Swanson is evaluating how they are getting on with such measures and how difficult or easy it has been to implement them. It is possible to word the regulations in a way that does not cripple industry but still gives protection to the public and saves children's lives.

**Caroline Paterson:** A moratorium has been issued in Belgium. Instead of issuing precautionary guidelines, the Belgian Government has placed a moratorium on high-voltage overhead power lines of this scale.

**Ms White:** I was just going to ask which countries have a moratorium.

**Caroline Paterson:** I circulated a paper—

**Ms White:** I am sorry, but I do not have the full set of committee papers. I should have asked for them.

**Ian Paterson:** The European countries that have regulations in place are Sweden and Switzerland. There are also regulations in some Italian regions, in six or more US states and in some Australian states. Those are the ones that I know of.

**Phil Gallie:** In part, you have answered one of the principal questions concerning what you consider to be high voltage—we are talking about 275kV to 400kV. Although you have petitioned the Scottish Parliament, I suspect that radiological limits and EMF limits would probably be a reserved matter. Have you inquired about that? I seek guidance from the clerks on the issue.

11:45

**The Convener:** The matter had to be checked out because, as you say, the regulations of the National Radiological Protection Board are reserved to the UK Government. However, the petition has been lodged in respect of the Scottish health hazard and the Scottish Parliament has a right to consider the issue under its devolved responsibility for health. The petition is legitimate in that respect and the issue is not reserved if we approach it from a health perspective.

**Phil Gallie:** All right. Thanks for that clarification.

**Caroline Paterson:** We would have concerns if the matter went to Westminster, as the urgency of the case might be missed. New 400kV lines will come through the planning system soon.

**Phil Gallie:** Most of the proposed new 400kV lines are being either upgraded or provided to meet the Scottish Executive's renewable energy targets. Do you recognise that, if you were to have

your way and if the health arguments outweighed all other considerations, that could have a substantial effect on Scotland's plans for wind farms, for example?

**Caroline Paterson:** There need not be a conflict. In the Stirling area, Scottish and Southern Energy picked the most populated route that it could choose, but there are less-populated routes. There is also the option of undergrounding, which would mitigate the health impacts. As a last resort, compensation packages could be offered if there were no alternative and the Scottish Executive deemed it an important issue.

**Ian Paterson:** At the moment, the power company says that the lines pose no problem with regard to health, so it has not made an effort to avoid dwellings. Its own guidance was originally to keep the lines about 100m from houses, but it threw that out fairly early on and, as Caroline says, its latest proposed route goes virtually over the top of some houses. No effort has been made on this, although the power company could make an effort without expending much money on it. The option of undergrounding would be far less difficult and less disruptive to the environment than the power companies have claimed, and a lot of work is being done by various groups, including Highland Council, to find out what the real cost would be of undergrounding sections of the line.

**Caroline Paterson:** It would seem rather ironic to have a policy in place to prevent global warming and environmental damage if it created environmental health issues of major proportions. We are talking about not just a few people; if the limit of 0.2 microtesla is accepted—as it is by the international scientific community—thousands of people will come within this bracket.

**Phil Gallie:** If the figures that you propose are accurate, you are right to have concerns; however, those figures are disputed worldwide by people on both sides of the argument.

**Caroline Paterson:** I do not think that they are disputed. The NRPB—which is the Government's advisory body—recognises the doubling of childhood leukaemia at levels above 0.4 microtesla. That is not disputed internationally.

**Ian Paterson:** Until recently, the NRPB was very dismissive of the idea that these lines might cause a health problem, but it is changing slightly. The language that is coming from the NRPB is changing and it is saying that the Government should consider further precautionary measures. Historically, it has not even entertained the precautionary principle. There is no reason why it cannot do so; other countries have done it and have survived perfectly well. There does not seem to be any moral or pragmatic reason why Scotland should not adopt precautionary measures similar

to those adopted by some other countries. There are cost benefits of not having people dying of leukaemia or getting depression. Other countries have looked into those cost benefits. There are also visual cost benefits if you underground a section beside a tourist attraction, for example. There are lots of benefits that can be keyed in that have not been looked at because nobody has decided that it is necessary to do so.

**Caroline Paterson:** The controversy seems to rage over the mechanism, not the epidemiological evidence.

**Phil Gallie:** Thank you. That is very helpful.

**The Convener:** I would just like to mention something for the record, since Phil Gallie raised the issue. Section D1 of schedule 5 to the Scotland Act 1998 reserves the

"Generation, transmission, distribution and supply of electricity."

However, the Scottish ministers are responsible, under the Electricity Act 1989, for granting consent for the installation of overhead electricity lines and for granting planning permission under the Town and Country Planning (Scotland) Act 1997.

**Phil Gallie:** Thank you, convener.

**John Farquhar Munro:** I see that your petition specifically mentions the Beaully to Denny overhead transmission line. I am sure that you are aware that Beaully is right in the heart of my constituency. The proposal is to take the overhead line from further north, from areas such as Achiltibuie, down to Beaully. I have attended numerous public meetings with Scottish and Southern Energy and the local communities from Ullapool, Beaully and Fort Augustus. Whatever Scottish and Southern Energy is proposing, it has certainly been scrutinised to the  $n^{\text{th}}$  degree. I am sure that, if and when that transmission line is eventually built, the developers will take account of all the submissions that have been made to them, particularly with regard to the problem of the overhead line being near communities. I know that the developers have, so far, agreed to alterations and modifications to their scheme.

The basis of your petition is that you are urging the Executive to amend the planning regulations to protect public health as regards overhead transmission lines. Do you not think that the regulations currently in use are pretty stringent and take control of what is happening with any overhead transmission line?

**Ian Paterson:** There are currently no regulations that protect anybody from any level of meaningful EMF. At the moment, you can build a house directly under a 400kV power line. Nor are there any regulations to prevent a developer building a power line directly over somebody's

house. There are no existing regulations to protect anybody from the biggest voltage power lines that we have.

**John Farquhar Munro:** I thank you for that answer. I am also aware that, since its initial proposal for running the line, Scottish and Southern Energy has diverted the line quite considerably away from human habitation, just to satisfy local opinion.

**Caroline Paterson:** In our area, it has actually diverted the line closer to more people. Alterations have been made according to different principles, or not according to any principles at all.

**John Farquhar Munro:** According to your own information, what is the closest proximity to a habitation that is acceptable?

**Ian Paterson:** The recommendation that we got was 400m. That recommendation came from Denis Henshaw at Bristol University. A number of workers in Europe are saying similar things, recommending 350m to 400m as a prudent avoidance distance. The Draper study shows a doubling of child leukaemia. It echoes all the other pooled international studies, which show a doubling of leukaemia at 0.4 microtesla. However, it does not cut off abruptly at 0.4 microtesla, which is perhaps equivalent to 100m; it will extend out well beyond that. That is why researchers are suggesting 350m to 400m. In some cases, it will be possible to do that without any major economic expense or disruption. In other cases, it may cost some money to deviate the lines. People have to consider the cost benefits of that and decide whether compensation could be appropriate.

The difficulties and problems associated with undergrounding have been grossly exaggerated by the power companies; we know that.

**Mike Watson:** On the 400m limit, how far advanced is the development of the Beaulieu to Denny grid?

**Ian Paterson:** As we understand it, an application might be going into the Scottish ministers next month at the earliest.

**Mike Watson:** Have you surveyed the route? Do you have any idea of how many houses would be within the 400m limit?

**Ian Paterson:** I do not have an accurate figure on that and we should get around to getting that.

**Caroline Paterson:** We do not know what the route is. There have been two pre-consultation proposal groups and in some areas there are three or four options.

**Mike Watson:** I see. The route is not definitely decided.

**Ian Paterson:** The latest proposed route came very close to several properties in the east of Stirling.

**Mike Watson:** Would it be possible for the route to be constructed so that ScottishPower gets what it needs while maintaining that 400m distance from occupied houses?

**Ian Paterson:** As we understand it, routes could be found that would achieve that. Technical considerations might mean that undergrounding is necessary in some places, but we do not have the capacity to do a survey of the whole route. It is not our field.

**Mike Watson:** As I said, that should be the line that we pursue. I do not see any point in trying to decide whether there is danger from such electricity generation because we will get only conflicting opinions. If the petitioners are saying that they would be satisfied with a 400m cordon, we should put our energies into urging the Executive, Scottish and Southern Energy and ScottishPower to observe that.

**Caroline Paterson:** I just point out that the corridor would have to be 800m wide; 400m either side of the pylons.

**Mike Watson:** Not everywhere. That would be true only in some places.

**Caroline Paterson:** It might become an issue only in populated areas.

**Mike Watson:** If it were to skirt a village or something, it would need only a 400m cordon, but I take your point.

**Ian Paterson:** The power companies have said that undergrounding does not give a great improvement with regard to health, which is not true. When a line is put underground, the electrical field that lies directly over it is strong, but it is the equivalent of standing next to a shaver or beside the microwave. The field drops away very rapidly to the sides of the line so there is not the effect of long-term exposure, particularly at night, which people think is a problem if they are living beside the lines.

**Caroline Paterson:** I reiterate that the scientific community is united on the issue. Even the NRPB has a stakeholder discussion group, so it is not the controversial issue that it was in the 1970s. Things have moved on substantially since then and the health issue should not be ignored.

**Mike Watson:** I was not saying that it should be ignored; I just do not think that there will be any profit in the committee pursuing who is right and who is wrong. It should deal with the petition's specific issue.

**Campbell Martin:** I have a couple of concerns, one of which relates to the fact that it is 36 years since we put someone on the moon and we now have the technological ability to put bombs through specific windows in specific buildings, but

we do not seem to have a definitive answer on whether electromagnetic fields cause health problems in the general population. That might say that certain sections of the Government have their priorities wrong.

I am also concerned about the Executive's position as we understand it. It does not support any alteration to planning guidance but it supports the need for further research. I would have thought that if it is accepted that there should be further research, perhaps it would be smart to adopt the precautionary principle in the meantime.

Mike Watson highlighted your point about the 400m minimum avoidance distance. From your experience of the situation, what do you understand to be the planning role of local authorities in this? Irrespective of the current national planning guidance, is it not the case that an individual local authority could impose a 400m minimum avoidance distance on any application to site the pylons and their lines through its area?

12:00

**Ian Paterson:** It seems to be very new territory. The line that we are talking about is of a magnitude that nobody has come across before. The planners seem to be scratching their heads and not knowing exactly what the situation will be. The councils are reluctant to discuss the situation with us much at the moment because they have not seen the pylon plan and they do not know where it will go, although we are pretty certain that we know the corridor where it will go.

No application has been put in for undergrounding, so there is no plan to underground any section at this point. Historically, when big lines such as this are built, a section is usually undergrounded. As I said before, the cost and difficulty of undergrounding is coming down all the time.

It is possible to put the lines in a 2m trench beside the motorway, but that is too expensive at the moment. In a few years' time, doing that might be feasible. We could save Scotland from a tremendous eyesore if that were done.

**Caroline Paterson:** However, it would seem foolish to rush ahead and give approval to the line when the NRPB is in discussions about safety levels. If the information is taken on board, the line would then have to be moved, which would be extremely expensive.

**Helen Eadie:** Will you expand on the underground aspect? What research has been undertaken? With today's new technology, I would think that there must be some way of getting the cables underground without digging massive trenches, in the same way that electricians fish

through walls for wiring without having to drill into the walls. There must be a way of doing that underground and working in an appropriately near spot.

**Ian Paterson:** Absolutely. It is difficult to get independent accurate information on what it would cost to put the cables underground. The cabling companies have been approached by some of Mr Farquhar Munro's constituents, but the companies will not speak to the public to give them an accurate costing because they say that, as they are in conversation with the power companies, there would be a conflict of interest.

Even Highland Council has been unable to get accurate figures from the companies, as has Jacob Babbie, the organisation that Highland Council commissioned to try to get to the bottom of undergrounding. So the companies will not speak to us to tell us whether it is feasible—as they say on their websites—to put the cables economically beside the road in a small trench as opposed to the large trench that the power companies say is essential.

We know that undergrounding does not cost as much as the power companies say because major independent studies have been done on undergrounding. They always quote the capital costs, but the lifetime costs are far lower because less time is spent on repairs and losses are fewer. Various other benefits are never quoted. The capital costs vary between three times as much and 20 times as much. The British grid organisations always quote costs that are at least 20 times as much. It depends on the price of cables at the time and various other factors. There are very few major cabling companies. They are all speaking to Scottish and Southern Energy, but not to us or to the councils.

**Helen Eadie:** It is interesting that major studies have been done, but we have to be able to access some of that information. We need to know whether undergrounding is technically feasible. People would then have to do costings against feasibility.

One of the worst aspects of America is all the overhead cables one sees everywhere. It looks ugly. When we have iconic landscape, as we do in Scotland, we need to make a major effort in that respect.

Are you aware of any medical litigation that has been brought by any major lawyers? About five years ago there was a big write-up in *The Observer* about a big case that Martyn Day led on behalf of Leigh, Day and Company. It was concerned with electromagnetic fields.

**Ian Paterson:** We do not know of any that have been successful. I gather that there was a case in America in which a farmer successfully sued a

power company over damaged animals, but I do not have the details of that.

As a vet I have come across apparent EMF damage to animals. It is anecdotal, but it is widely accepted that one cannot get mares in foal if they live under power lines. That has been accepted for quite some time.

**The Convener:** The committee is joined this morning by other MSPs—Sylvia Jackson, Mark Ruskell, Andrew Arbuckle and Brian Monteith—who have indicated their interest in this matter. I will come to Sylvia Jackson first, as the local member.

**Dr Sylvia Jackson (Stirling) (Lab):** Thank you. George Reid is sorry that he cannot be here as he is at a meeting of the Scottish Parliamentary Corporate Body. However, his sentiments are similar to mine, which means that the Ochil and Stirling areas are represented.

It is correct that we have only the indicative line; we heard from Scottish and Southern Energy that the final line will be announced next month. It then very much depends on the Scottish Executive, which is why we are concerned about the length of time we have to act. The important issue that Caroline Paterson touched on is that all the evidence, such as the international research, points to moving the overhead transmission lines further away from where people live.

Ian Gibson MP recently asked a question in the Westminster Parliament about when the Draper report—which has a lot of evidence in it—will be published. Melanie Johnson is the minister who responded. She mentioned the fact that the NRPB is recommending a precautionary principle. She has set up the stakeholders group that is considering moving that forward. All that seems to indicate that, as in the case of telecommunications masts, we must apply the precautionary principle. Members know that I have been a great campaigner for that.

We had good vibes from telecoms companies, which said that they wanted to work with us. Regrettably, I have found that when I have tried to move masts that were put up when we did not have the planning regulations, the companies will not move them to where we had previously said we wanted them even though they can be moved. It is clear that we have to take a stand now, because it is very difficult to change things afterwards.

We have either, as Campbell Martin suggested, to take the precautionary approach or, as Caroline Paterson suggested, to wait for the evidence before we move, or—and this will come with time—to give careful consideration to overhead transmission lines. As Helen Eadie asked, have we investigated all the various ways in which we

can put them underground? George Reid has particular problems in his constituency because pylons go over Sheriffmuir. The route that may be used involves some transmission lines going over people's garages. It is important, particularly where terrain is difficult, that the precautionary principle is used, because it may be argued that undergrounding will not be as easy in those circumstances as it is in others.

**Mr Mark Ruskell (Mid Scotland and Fife)**

**(Green):** I have been pleased to support the petition. I should probably say from the outset that I am not against pylons, which I believe are a necessary evil. One of the proposed routes passes through villages quite close to where I stay. There are associated landscape impacts, but if we are serious about developing renewable onshore energy in Scotland and about upgrading the electricity grid, we need to get that electricity into the cities where it will be used. Pylons are a part of that, but we need to consider undergrounding.

I do not necessarily agree with the petitioners that undergrounding is a panacea and that we have only to stick the cables underground to remove many of the health concerns. There are cost implications and there may well be environmental implications to undergrounding, especially over sensitive landscapes such as the Ochils, where there is shallow soil cover.

I believe that the upgrade between Beaully and Denny needs to be sustainable in all senses of the word—not just environmentally sustainable but socially sustainable. That means that we have to take seriously the potential for health problems that the petitioners raise. It is about the precautionary principle and approach, which I have talked about in the committee before with regard to terrestrial trunked radio—TETRA—and the two petitions that you considered and punted to the Communities Committee to consider in more detail.

The key issue is whether the planning system deals adequately with health as a material consideration. I believe that it does not do so. In the context of the planning bill we need to consider how the planning system can be improved to deal with it adequately.

There are a lot of similarities between the concerns of the petitioners and the concerns of my constituents in Comrie and Fife about TETRA. The committee could punt the petition to the Communities Committee where it could be considered in the broader context of how the planning system addresses concerns about EMF radiation and health.

**Mr Andrew Arbuckle (Mid Scotland and Fife)**

**(LD):** I live in an area that 30 years ago was criss-crossed by oil pipelines being laid between the



North sea oilfields and Mossmorran and Grangemouth. Although they were unsightly for a short time, few if any people know where the lines now run; we see only the occasional relief valve. For health reasons we should try to put new high-voltage lines underground when people are living in the vicinity. The health issue is difficult, because although evidence of health problems is growing it is not definite. Until it is, the lines should be put underground when people live within a 400m radius of them.

On the other part of the petition, on which Mark Ruskell commented, I recently sat as a councillor on the planning committee that was dealing with the TETRA masts and we were not allowed to use the health issue as a reason for rejecting the masts. Please do not get the planning committees into the same situation with regard to power lines. The Executive has to deal with the issue before we get to that stage.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I am pleased to speak in support of the petition for a number of reasons. First, it is clear from what members have said that there is a concern about the relationship between devolved and reserved issues. The petition seeks to influence the Executive, through the Parliament, with regard to planning and acknowledging public health issues. The National Radiological Protection Board said that the Government should consider further precautionary measures and that has been initiated at Westminster. Given that that process is on-going, it has to be given due consideration in the same timescale as that for the development of the power line—the difficulty is that the timescale for the development of the power line is ahead of it. The Executive is likely to publish a planning bill in May, which might or might not cover the issue—we cannot tell. In the meantime it might be possible for the Executive to take action to enforce a moratorium or issue planning guidance for those who deal with planning to limit the introduction of any power line until a position is established in consultation with the NRPB. There is an interest in rearranging the planning process to ensure that it fits in with genuine public health concerns.

Helen Eadie touched on issues of undergrounding and scenic beauty. I have visited the site myself and can tell the committee that this area of beauty in the Ochil hills crosses near and within sight of the Wallace monument. Developers of various wind turbine projects went to great lengths to show that the turbines could not be seen or cause distress to scenery around the Wallace monument. Now, under these proposals, power lines—no matter whether the power is generated by the wind turbines—will come within sight of historical and environmental attractions. We should be consistent in these matters. I

believe that issues such as undergrounding are very important for Scotland's public health and scenery.

12:15

**The Convener:** Do members have any recommendations about what we should do with the petition?

**Phil Gallie:** I am very sympathetic to what has been said, particularly on health. However, it is not up to the committee to engineer this process. Moreover, as far as undergrounding is concerned, people have mentioned digging a little trench alongside the motorway. We are talking about 400kV cables, three-phase supplies and oil-filled pressurised cables that could be affected by motorway traffic. I do not want to go into any more detail, but the process is not quite as easy as some have suggested.

That said, it is quite reasonable to look urgently at the current health situation. At the very least, the Executive should come up with some immediate answers in that regard or, if not, put the project on hold. Either of those courses of action would be preferable to putting up power lines and finding later that all sorts of difficulties have emerged.

**Ms White:** We must consider the immediate issue of the power line going through this area and the overall issue of the planning process in Scotland, which the petitioners have highlighted. I hope that we deal with the immediate issue first. We have to write to the Executive, highlighting the petitioners' concerns about the timescale for works and the route of the power line. Because of the lack of feedback from power companies to the petitioners' correspondence, they do not know anything about the route. We should also write both to the local authorities that are involved to find out what they know and to Scottish and Southern Energy and ScottishPower. Once we receive those responses, we should refer the petition to the Communities Committee, which will consider the new planning bill when it is introduced in, I believe, the spring.

**The Convener:** I know that you have raised two issues, Sandra, but the committee cannot sit in judgment on any specific planning application. We cannot consider the specific situation outlined in the petition. The petition asks us to address planning and health issues, and that is what we have to ask the Executive about. I take on board members' points that this specific case raises a whole range of environmental, health and planning issues. It is those overall issues that the committee must focus on. I realise that the specific issue in the petition is vital to the petitioners locally, but we have to address it in terms of wider

legislation and the Parliament's powers and look at the bigger picture. That is what we have to ask about if we write to the Executive, because any changes to the planning process will affect the whole of Scotland, not just this particular case.

**Caroline Paterson:** It would be a shame if there were no element of urgency.

**The Convener:** I understand that. Your petition raises very vital concerns that have to be addressed, but we have to do that in the context of planning and health regulations that cover the whole of Scotland.

**Ian Paterson:** Would it be possible to get some independent expert opinion on undergrounding?

**Helen Eadie:** That is the point that I was just about to make.

**Ian Paterson:** The technology beside motorways that I was referring to was high temperature superconductor technology, which is in its relative infancy, but they say that in a few years it will be economic to lay it in a small trench. It would be great for the whole of Scotland if we did not have this eyesore marching from Ullapool to Beaulieu to Denny, degrading our tourism.

**Helen Eadie:** Convener, we should pursue that point vigorously, because I am keen on it. We should look at it from the university perspective and see what research has been undertaken on effective undergrounding. We should also write to the major cabling companies. We can get a cabling company directory from the internet that is as long as your arm. There must be an association for companies that specialise in cabling underground. If we can take the Channel tunnel between France and England, I am sure that we can find ways of getting cable underground at a reasonable cost. We should ask the power companies about the general issues that are raised in the petition, and about the specifics of underground cabling, such as the costs and the work that they have done on it. That would include Scottish and Southern Energy as well as ScottishPower.

**The Convener:** I have examined the issue in my constituency. The University of Bristol has a research unit that looks into these issues—I think it is the human radiation effects group. It would be useful to get its perspective on this, as I know it has done a lot of work on the subject.

**Phil Gallie:** I stick by what I said originally about the importance of the issue and of getting early, swift answers from the Scottish Executive. I recognise that high technology moves on and that perhaps there will be other options, but, right now, the Scottish Executive should have considerable information on undergrounding of cables. In the late 1990s, when the 400kV Northern Ireland

interconnector was proposed by ScottishPower, the Government suggested that sections should be put underground but, after a lot of controversy, it was decided to go for overhead cables, principally for cost reasons. It would be interesting if the costings that the Scottish Executive already has were provided to us. I hasten to add, convener, that that information is probably available under the Freedom of Information (Scotland) Act 2002.

**The Convener:** We have a number of suggestions for the organisations and bodies that we should write to for information. Given the reason for the petition, there is a sense of urgency that we can emphasise in our communication with the Executive. We can request a speedy response. We will collect all the information and, if necessary, find an appropriate committee to send it to for proper consideration. We will not just punt it somewhere. Once we get the information back we will consider it. Obviously, we will try to get the information as speedily as possible.

**Dr Jackson:** May I raise one point? I assume that we all agree that the evidence that is being produced points in the direction of following other countries in having a 400m minimum avoidance distance, although we have yet to see the Draper report. I would have thought that the Scottish ministers could liaise with their counterparts in Westminster to find out more about the progress of the Draper report. Obviously, the stakeholder group that Melanie Johnson is heading up is important and will be seen as a major move.

**The Convener:** We will ask a specific question on that and collate all the information and address it soon. We will let you know the information that we get back.

I thank the petitioners for their petition.

Do members want to have a 10-minute comfort break?

**Members:** No.

**The Convener:** We will press on, because we are running behind schedule.

I ask members of the public who are leaving to do so quietly, because the committee meeting is still under way.

### **Planning Applications (Third-party Right of Appeal) (PE809)**

**The Convener:** Petition PE809, on planning applications, is by Angela and William Flanagan. The petition calls on the Scottish Parliament to legislate to provide third parties with a right of appeal regarding planning applications.

I ask members of the public to be quiet so that we can continue our deliberations. Thank you.

Developers have a right of appeal where a planning authority refuses or grants permission subject to conditions, but third parties currently have no right of appeal against a planning decision. The Scottish Executive held a consultation on planning rights of appeal between 1 April 2004 and 30 July 2004 and it will launch a planning white paper in spring 2005 with a view to introducing a planning bill later in the year. The Executive has not indicated whether any changes to the right of appeal will be included in the white paper.

Do members have any views on the matter?

**Ms White:** I declare an interest in that I proposed a member's bill on third-party right of appeal, which subsequently fell because the Executive brought forward its consultation. Because the Executive will supposedly produce a new proposal on planning in the spring, it would be advantageous for the committee to write and ask whether the Executive intends to introduce a third-party right of appeal.

Paragraph 4 of our briefing note states:

"The results of the consultation were inconclusive."

I will take that up with the clerks, because 86 per cent of respondents said that they wanted a third-party right of appeal—I would not say that that was inconclusive. I recommend that we write to the Executive.

**The Convener:** Are members happy with that?

**Members** *indicated agreement.*

### **Planning Procedures (Playing Field Land) (PE813)**

**The Convener:** Petition PE813, on the loss of playing fields and recreational open space, is by Ronnie McNicol on behalf of Laighdykes residents group. The petition calls on the Scottish Parliament

"to urge the Scottish Executive to review existing planning procedures and guidance to ensure that they are sufficient to prevent local authorities from using playing field land for development purposes."

The Transport and the Environment Committee considered PE422, PE430 and PE454, which also related to playing fields, between March 2002 and March 2003. At its meeting on 5 Oct 2004, the Public Petitions Committee considered PE771, which is a further petition on playing fields. The committee has received responses from the Scottish Executive and sportscotland on that petition and awaits a response from the National Playing Fields Association. As PE771 and PE813 raise similar issues on local authority planning procedures and playing fields, I suggest that the committee may wish to link the petitions and consider what further action should be taken on the issues that they raise.

Are members happy with that?

**Campbell Martin:** I have a slight concern about linking the two petitions. Although they seek a similar outcome, they have been lodged for different reasons, given the effects that planning procedures have on playing field provision in certain areas. There is a big difference between—

**The Convener:** I understand that, but we are looking at the petitions in terms of the outcome, which is the same. I will outline what PE771 asked for, then I will come straight to you.

PE771, by Olena Stewart, called on the Scottish Parliament

"to urge the Scottish Executive to consider whether there is sufficient guidance for local authorities to safeguard the provision of playing fields and recreational open space and to establish whether additional legislation is required to cover conflicts of interest within local authorities on planning matters in relation to the loss of playing fields."

The responses from the Scottish Executive and sportscotland have been circulated to the committee. Despite letters from the clerks dated 6 October 2004 and 21 January 2005, no response has been received from the National Playing Fields Association. Campbell, do you wish to speak in respect of PE813?

**Campbell Martin:** Yes. First, I am delighted that so many people from North Ayrshire have battled through the snow to get to the meeting today. I commend them for doing so. I should probably declare an interest in that I have supported the petitioners and I live in the community that would be adversely affected if the development that the petition relates to goes ahead.

I said that I have concerns about the linking of the two petitions. That is not to diminish the Ayr petition or any other petition that might seek a similar outcome. If the development that the Ayr petitioners mention were to go ahead, it would mean the loss of some playing fields in Ayr. However, the development that North Ayrshire Council proposes, which sparked PE813, would mean the loss of the only sports pitches in the two towns of Ardrossan and Saltcoats.

12:30

I grew up and played football in Ardrossan—the thought of me playing football might seem strange now, but I did. At that point, there were four Ardrossan teams and it was a source of annoyance that teams from Ardrossan had to play their home games in Saltcoats, which is where the Laighdykes playing fields are located—they are located virtually on the border, as it were, between Ardrossan and Saltcoats.

For some time there was another football pitch on Central Avenue in Ardrossan, but the local

authority sold it off and it is now home to a distribution warehouse, which does not help the population to keep fit in any way.

If the proposal were to go ahead, it would mean the serious diminution of available playing fields in Ardrossan and Saltcoats. It would mean that teams not only from Ardrossan, but from Saltcoats, would have to play in the next town along the Ayrshire coast, which is Stevenston. That is what the local authority proposes would happen while it was building the school on the playing fields and that situation would probably continue once the school was built. To put that in political terms, it would mean that teams from Ardrossan and Saltcoats would play their home games in a different parliamentary constituency and region. Stevenston is in the South of Scotland and Ardrossan and Saltcoats are in the West of Scotland, which is the region that I represent. That gives some perspective on how far those teams would be expected to move.

The driving force behind the petition is the fact that the only playing fields in Ardrossan and Saltcoats would be lost. The National Playing Fields Association recommends that there should be 6 acres of open-space playing fields for every 1,000 people. The combined population of Ardrossan and Saltcoats is around 23,000, which would mean that, at the moment, Ardrossan and Saltcoats should have 138 acres of open-space playing fields. As I have said, Laighdykes is the only open-space playing field in Ardrossan and Saltcoats and it constitutes only 36 acres. If North Ayrshire Council's proposed development were to go ahead, it would take up 12 of those 36 acres, which would mean that the available playing fields in Ardrossan and Saltcoats would be reduced to 24 acres. That is why the petitioners have submitted this petition and it is also why this petition is different from the others. Those petitions concern reductions in the size and number of playing fields in certain areas; PE813 concerns a proposal that would completely wipe out the playing fields in Ardrossan and Saltcoats.

The petitioners are asking for a review of the planning legislation and guidance because the proposed developer, the local authority, owns the land on which the development will be built and is also the education authority—which is relevant because it is proposed that a school be built on the site—and the planning authority. Basically, the local authority is seeking to build a school on its own ground and to give itself planning permission for that. We are therefore asking for a review of and a change in the planning law.

We need to consider whether local authorities that are in the position in which North Ayrshire Council has been should, under planning law, have to prove exceptional circumstances before

they can even think about developing playing fields. The onus should not be on the people to have to oppose such proposals; it should be on the local authority to prove that a situation is exceptional and that they must proceed with a development at a certain location.

Planning law should stipulate that developments should not be permitted where the minimum provision of playing fields for the population has not been reached. Under such a condition, as long as the figure of 138 acres had not been reached in Ardrossan and Saltcoats, no planning application could even be considered. That is why the petitioners were motivated to lodge their petition, and I am delighted that they managed to get here today. I hope that the committee will take on board the various aspects of the petition and others that call for a similar outcome.

**The Convener:** I appreciate the points that Campbell Martin makes. I understand that there are specific issues relating to PE813. The similarity with the other relevant petitions relates to exactly what Campbell was describing, with the conflict of interest within local authorities and their different departments. The related petition also asked that that be addressed.

**Campbell Martin:** You could perhaps clarify this for me. You have spoken about linking the two petitions concerned. Would that mean that a determination of the petition relating to Ayr would be exactly the same as for PE813?

**The Convener:** No. If different issues came up, we would have to ask specific questions.

**Campbell Martin:** I will explain why I ask. I think it is written somewhere that, if sportscotland maintains an objection, ministers can call the application in. If sportscotland did not object in the case of Ayr but did object in the case of Saltcoats, would the petition concerning Saltcoats be considered on its own merits?

**The Convener:** As with the petition that we considered earlier, we cannot look at the specific planning application. This committee cannot sit in judgment on whether the planning decision that was made by North Ayrshire Council was right or wrong. The council is the planning authority.

**Campbell Martin:** I accept that.

**The Convener:** This is where the link with the other petitions comes in. I am not talking about only PE771, but about petitions that were considered during the previous parliamentary session, including PE454. They are linked: in each case, the question is whether enough guidance is given to local authorities on planning applications. Is stricter legislation required under planning regulations? What role does sportscotland have in relation to the protection of playing fields? The link

lies in the outcomes and in what is required to address the matters that have arisen.

**Campbell Martin:** On that basis, I would be happy for a link to be made to PE813, as long as we make our position clear and ask the Executive about its position on changing the planning laws so that there might be a presumption against such developments if the required amount of space is not available for playing fields.

**The Convener:** I thank Campbell Martin for the information that he has brought us, which has been very useful. I appreciate the fact that some members of the public have travelled a long way to hear the petition being addressed. We will want to give the matter proper consideration, rather than simply combining our consideration of the various petitions involved just for the sake of convenience. The issues raised in PE813 are specific, and will need to be addressed, but that petition relates to others that we are considering. As the desired outcome is the same, we can address more than one of the petitions at one time. We must focus on the matter of whether planning regulations in Scotland allow the protection that the petitioners are requesting. I would be happy to hear from other members about what we should do about the petition.

**Ms White:** It is wise to link together the Ayr and Saltcoats petitions. They relate to needs in the respective areas as well as to a wider need.

What timescale applies to the issue? Is there an urgency about the application in Saltcoats?

**Campbell Martin:** As with the committee's discussion about the pylons, there is such an urgency, as the application is being processed at the moment. Outline planning permission has been granted for the school to be built on the site of the playing fields, and the development is being progressed by the local authority at the moment.

**Ms White:** Obviously, that is a problem; we will need to get answers quickly. The Executive is looking at new planning legislation for playing fields. Although I cannot remember the exact date, I think that it is due in spring this year, along with the planning consultation. It is important that the Executive and the Communities Committee know that this is happening.

Sportscotland has said that the Executive is looking to review national planning policy guideline 11. It is important that we keep an eye on how it is reviewed. Councils can effectively give themselves planning permission and yet there is a direct conflict of interest between the gain that they make from selling off land that belongs to them and the planning function that they carry out. The Executive should pull in those applications. Perhaps Campbell Martin could take a look at that. In the meantime, I suggest that we write to

sportscotland to check the timescale for the review of NPPG 11.

**The Convener:** In terms of the consultation on the planning bill that Sandra White mentioned, I think that the timescale is for the white paper to be produced in the spring. I think that the bill is to be published in May. We should seek clarification on the review of NPPG 11.

**Helen Eadie:** Perhaps we could write to the Executive along those lines, asking it to respond to the issues and concerns that sportscotland has raised. The concerns that sportscotland has raised are legitimate: they address the principles that lie behind PE771 and PE813.

**The Convener:** I would like to hear the Executive's response to sportscotland's concerns. The response would answer the specific issue that Campbell Martin raised.

**Phil Gallie:** First, like Campbell Martin, I have an interest to declare. I live in the vicinity of the playing field that is the subject of PE771. I also have knowledge of the area that is the subject of PE813, as I was a councillor there for a number of years. That said, it is far too long ago to be of relevance now. I have every sympathy with the points that Campbell Martin made on the subject.

Although I realise that the Public Petitions Committee cannot address individual planning applications and considerations, the point that Campbell Martin made about the targets for playing fields per head of population is a valid one. In view of the circumstances, the proposal for Lightholmes is ludicrous.

From my involvement in the committee from its early days, I can say that petitions are constantly being submitted in which playing field erosion is the name of the game. We listen to debates in the Parliament about problems of obesity and concerns about children's lack of participation in sports, and similar issues. The Executive can do something about the subject of PE771 and PE813. There must not be this constant erosion of playing field areas.

It is staggering that local authorities can give themselves consent to go ahead with these applications against what they agreed in their local and structure plans. That is particularly the case when authorities automatically rule out other applications that cut across their local or structure plans.

The issues that are addressed in PE813 apply right across Scotland; not just in Saltcoats and Ardrossan. The Public Petitions Committee should make the strongest recommendations to the Scottish Executive to put a stop to this practice.

**Campbell Martin:** I have a final point to make, which leads on from what Phil Gallie said. In

answer to a parliamentary question on 5 May 2004, Frank McAveety stated:

“Primary responsibility for the protection of playing fields lies with local authorities”.—[*Official Report, Written Answers*, 5 May 2004; S2W-7718.]

In this case, it is a local authority that wants to build on the land. The Executive needs to give a definitive answer to the question of what it will do to prevent that happening.

**The Convener:** That is a specific question and we would like the Executive to answer it. We also want to raise the question of the timescale for the review of NPPG 11. Are members happy that we take the issue forward to the Executive on that basis? Are members happy that we ask for those clarifications and for a response to the concerns that sportscotland raised?

**Members indicated agreement.**

### **Therapeutic Work Initiatives (Funding) (PE820)**

12:45

**The Convener:** Our next petition, which is by Graham Clark of Shamanic Studios, calls on the Scottish Parliament to urge the Scottish Executive to ensure that adequate funding is provided for therapeutic work initiatives to assist people who have psychotic psychiatric disabilities. Before being formally lodged, the petition was hosted on the e-petitions site, where it attracted 34 signatures between 20 December 2004 and 7 February 2005.

Therapeutic work is used to describe a number of arrangements whereby people who have problems in functioning in a normal labour market are given the opportunity to undertake some form of work-like activity for which they may receive payment. Although employment issues are reserved to the UK Parliament, responsibility for tackling barriers to employment for disabled people is shared between the Scottish Executive and the UK Government. The Executive publication “A Framework for Mental Health Services in Scotland” recognises the importance of purposeful employment in promoting self-esteem, independence, social interaction and a structured day. Another Executive report—“Disability and Employment in Scotland: A Review of the Evidence Base”—highlights the fact that people who have mental health problems have the lowest employment rate of any impairment group, at only 21 per cent.

In June 2004, the Equal Opportunities Committee launched its inquiry into removing barriers and creating opportunities for people who have disabilities. The 18-month inquiry is focusing

on barriers in four main areas: further and higher education; access to work; leisure; and the arts. Phase 1 of the inquiry, which runs from September 2004 to June 2005, involves a series of visits in Scotland to hear from people who are affected by disability, from academics and from service providers. Do members have any comments on the petition?

**Helen Eadie:** Is not this a case of the lottery having to give funding to constituted organisations that have charitable status? In the submission from Shamanic Studios, Graham Clark makes that point. He says:

“we were informed the person who runs the project could not be listed as a possible benefactor”.

If the petitioner is seeking funding, perhaps he has taken an inappropriate route. I do not think that there is a way around that problem, so I accept your view, convener. My understanding is that lottery funding does not enable an organisation to seek other funding for the type of work that is being proposed.

**The Convener:** I am not sure that the committee can consider individual requests for funding. We have considered such petitions before and have found that to be very difficult.

**Helen Eadie:** I am talking about the generality of the principle. No matter who the person is or what the application is for—whether for disabled people or others—they are not allowed to benefit from individual funding in that way.

**The Convener:** I am not sure.

**Helen Eadie:** It might be something—

**The Convener:** You might be right, but the petition is not asking for that. I know that the information in the briefing raises that question, but it is not contained within the requirements of the petition.

**Helen Eadie:** So the petitioner seeks the Scottish Executive’s having a pot of funding for such people.

**The Convener:** That is right. The issue of how the petitioner would be able to access such funding would be a matter for the organisation. Do members agree to write to the Executive to ask for information?

**Mike Watson:** We could also refer the petition to the Equal Opportunities Committee for information.

**The Convener:** Yes. We can do that and we could let the Equal Opportunities Committee know when we receive a reply from the Executive. It might be useful to contact—

**Helen Eadie:** The Disability Rights Commission, Capability Scotland and the Scottish Association for Mental Health.

**The Convener:** Are members happy with that?

**Members** *indicated agreement.*

## Current Petitions

### School Closures and Mergers (Consultation) (PE701)

12:48

**The Convener:** The first of our current petitions is from Frank Mullarkey. It calls on the Scottish Parliament to urge the Scottish Executive to review the consultation arrangements regarding school closures and mergers in order to ensure that the concerns of communities are taken fully into account, that proper risk assessments are conducted and that detailed costings are made.

At its meeting on 26 May 2004, the committee considered a response from the Scottish Executive and agreed to invite the views of the petitioner on the response, and to consider further PE701 alongside PE725.

The clerks wrote to the petitioner on 27 May 2004 and 9 November 2004, but have received no response. On that basis, do we agree to close the petition?

**Members** *indicated agreement.*

### Code of Conduct for Councillors 2003 (PE702)

**The Convener:** Petition PE702, which is by James Milligan on behalf of Helensburgh community council, calls on the Scottish Parliament to review the 2003 code of conduct for councillors, particularly in relation to councillors' role in planning applications.

At its meeting on 10 November 2004, the committee noted from a response by the Deputy Minister for Finance and Public Service Reform:

"The Standards Commission has agreed to revise its Guidance to make clearer that it is right and proper for councillors to be able to hear the concerns of their constituents ... When this revision is made, it should be even clearer just what councillors can and cannot do to represent the views of constituents without compromising their duty to uphold the law. The Commission have indicated that they expect to be able to issue this revised Guidance by ... June."

The committee therefore agreed to ask whether the guidance has been amended and distributed to local authorities. The Standards Commission for Scotland's response is:

"The Standards Commission has revised its guidance relating—amongst other matters—to planning applications and this was issued to all local authorities on 30 July 2004."

What course of action do members wish to take?

**Mike Watson:** Having read the revised guidance, including paragraphs 21 to 33 in the

section entitled "Taking Decisions on Individual Applications", I think that the Standards Commission has set rigorous standards for councillors to abide by. The guidance might not meet all the petitioners' requests, but it provides the basis on which councillors should operate. Given what the Standards Commission has said, we should close the petition.

**The Convener:** Are members happy that the petition has served its purpose?

**Members indicated agreement.**

### Food for Good (PE704)

**The Convener:** Petition PE704, which is by Simon Macfarlane on behalf of Unison Scotland, calls on the Scottish Parliament to urge the Scottish Executive to support Unison Scotland's national health service food for good charter.

At its meeting on 26 May 2004, the committee considered responses from the Scottish Executive and NHS Quality Improvement Scotland and agreed to invite the petitioner to comment on the Executive's response. The committee also agreed to seek further clarification from the Executive on allegations that were made in the "Dispatches" programme, to which motion S2M-1318 refers, and on the Executive's announcement of 25 May 2004 on promoting the use of local produce and the launch of a guidance note for Scottish public purchasers. The committee also agreed to request views on issues in the petition from the NHS Scotland property and environment forum. The committee has received responses from the Minister for Health and Community Care, Unison and the NHS Scotland property and environment forum. How should we deal with the petition?

**Mike Watson:** We should certainly ask the Executive to comment on Unison Scotland's response. The response of 12 August 2004 from the then Minister for Health and Community Care, Malcolm Chisholm, talks about "Dispatches". It is instructive to read that

"when the food contract was put to tender, no Scottish companies submitted bids."

Part of the problem may be that Lothian NHS Board has contracted with Consort Healthcare, which has contracted with Haden Building Management Ltd, which has contracted with Tillery Valley Foods. When a company is three times removed from a health board, it is not surprising that problems arise.

The issue is that no Scottish company submitted a bid. Malcolm Chisholm's letter states:

"The guidelines encourage purchasers to ... remove obstacles to tendering by local suppliers".

I am not sure whether Malcolm Chisholm or his successor is the person to ask what those obstacles are. It is strange that no one in Scotland

tendered for a Lothian NHS Board contract but a company in Wales did. If obstacles exist, it would help to know what they are. Perhaps we should write to the Minister for Health and Community Care, whose officials will no doubt be able to answer the question.

Secondly, we should invite the Executive to comment on the response from NHS Scotland's property and environment forum. The letter from Ian McLuckie, dated 30 July 2004, states:

"While we ... probably agree with much of what is written"—

the reference is to Unison's submission—

"there is one common theme which always seems to emerge and that is the availability of resources, in the material sense and in the financial sense."

Basically, the letter is saying that the NHS would quite like to comply with Unison's suggestions but is often restricted financially. We should invite the Executive to comment on that remark. We should also ask the property and environment forum to clarify the remark; I think that there is more to come out of that. No doubt Ian McLuckie has chosen his words carefully and I can understand why he has done so, given that he is chief executive of the property and environment forum. However, the issues are important for the committee because they are Scotland-wide. I would like to know a bit more about what Ian McLuckie said. For instance, is he saying that the NHS would do more if it had more resources? Are food and how it is provided not as healthy as they might be because of financial constraints?

I am sorry to go on for so long, but the issue is important. Although the petition has been open for some time, there is more to come out of it.

**The Convener:** A number of important questions have been asked. Have members any other points to raise about the responses? Did Mike Watson suggest that we ask the Executive to respond to Unison's response?

**Mike Watson:** Yes—we should ask the Executive to comment just on Unison's response. I know that we have had detailed responses from both sides, but that is not unhelpful. Such detail can open up new issues and it shows that everyone is taking the issue seriously. The question is how the committee can do as much as possible to progress the matter. Further clarification of the Executive's position would be helpful.

**The Convener:** Are members happy with that?

**Members indicated agreement.**



## **Green-belt Land (Legal Protection) (PE712)**

### **Green-belt Sites (Scottish Executive Policy) (PE724)**

**The Convener:** Our next two petitions are PE712 and PE724. The first is from Shirley McGrath on behalf of the Viewpark conservation group. Her petition calls on the Scottish Parliament to urge the Scottish Executive to ensure that green-belt land is given appropriate legal protection. The second, from Grace McNeil, calls on the Scottish Parliament to urge the Scottish Executive to review its policy on green-belt sites.

At its meeting on 12 May 2004, the committee agreed to seek the views of the Scottish Executive on PE724 and to link the petition to PE712. The committee sought confirmation of whether there appears to be an increasing trend in granting planning permission for developments on green-belt sites and, specifically, whether such sites were being sold off by local authorities for financial benefit.

The committee has expressed disappointment that the Executive has failed to meet the deadline for a response on PE712. The clerk wrote to the Scottish Executive on 24 May 2004 and again on 9 November 2004, but no response has been received. The petitions are on today's agenda because we have not had a response. That is an issue.

**Mike Watson:** This is not the first time we have had a lamentable response from the Executive—albeit from a different department—but to have had no response is utterly unacceptable. I hope that committee colleagues will support me in asking the convener to seek a personal meeting with the minister to get to the bottom of the issue. The point needs to be driven home forcibly to the minister and his officials that the situation is just not acceptable. If there is to be another exchange of correspondence, goodness knows how many of us will live long enough to see it. I am sorry to put extra work on the convener, but a meeting with the minister is needed.

**Helen Eadie:** I agree. If we get no reaction, we will need to invite the minister to come before the committee, as we did previously. However, that would not be good politics for any of us. To have to do so would be regrettable, but it should happen if we make no progress.

**The Convener:** I am more than happy to do that on the committee's behalf. I will let members know how I get on.

### **Global Campaign for Education (PE734)**

**The Convener:** The next current petition is PE734 from Angela O'Hagan on behalf of Oxfam

in Scotland. The petition calls on the Scottish Parliament to endorse the aims of the global campaign for education to achieve the millennium development goals and to make the United Nations Convention on the Rights of the Child a reality in Scotland. Furthermore, it asks Parliament to consider practical steps through which it and the Scottish Executive could promote those aims in Scotland.

At its meeting on 28 April 2004, the committee agreed to seek the Executive's comments. We asked the Executive what measures it was taking to promote awareness of, and to advance, the aims of the petition and how the Executive can influence and further world education. We also requested clarification on how the issues that the petition raises fit into the schools curriculum and why modern studies appears to be included in the curriculum of not every secondary school in Scotland. In addition, we asked for details of how the Executive is performing in relation to education in respect of the UN Convention on the Rights of the Child.

The committee asked the Executive for its views on the proposal by a pupil from Monifeith High School in Dundee that people in schools and beyond should be encouraged to set aside one day each year on which to address the aims of the global campaign for education. We also asked the Executive to indicate why the millennium development goal of universal access to basic education cannot be met earlier than 2015. Finally, we also wrote to the commissioner for children and young people to seek her views on the issues that the petition raised. Responses from the Executive and from the commissioner for children and young people have been circulated to members.

13:00

**Helen Eadie:** It is good that we received such a full response from the Executive and from the commissioner for children and young people. Rather than give our own views, it might be better to write to the petitioners to ask for their views on the responses that we have received.

**The Convener:** Are members happy to wait for a response from the petitioners?

**Members indicated agreement.**

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

**The Convener:** Our next petition is PE740 from David Barrie on behalf of Dundee City Council. The petition calls on the Scottish Parliament to amend the Town and Country Planning (Scotland) Act 1997 to the effect that democratically elected planning authorities would be given the final say

on the planning merits of all applications that were competently before them for determination, such that the appeal provisions that currently pertain to the decisions of reporters would be applied to appeals against the decisions of planning authorities.

At its meeting on 9 June 2004, the committee agreed to seek comments on the petition from the Scottish Executive, the Royal Town Planning Institute and Planning Aid for Scotland. The responses from those organisations have been circulated to members. We also agreed to seek comments from the Convention of Scottish Local Authorities, but have received no response from it.

Do members have any suggestions on how we should proceed with the petition?

**Helen Eadie:** Given that the Executive has stated that it will publish a bill on which there will be further consultation, I suggest that we submit the responses from RTPI and Planning Aid for Scotland to that consultation.

**The Convener:** Are members happy to do that?

**Members** *indicated agreement.*

### **Recreational Open Space (Provision and Planning Regulations) (PE771)**

**The Convener:** The final current petition on our list is PE771, which we dealt with earlier when we linked it to petition PE813, on playing fields.

That concludes our consideration of public petitions. We will now consider agenda item 4, which is on the payment of witness expenses. As we agreed, the item will be considered in private.

13:02

*Meeting continued in private until 13:08.*

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