

PUBLIC PETITIONS COMMITTEE

Wednesday 3 May 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

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

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Wednesday 3 May 2006

Col.

NEW PETITIONS	2507
Ship-to-ship Oil Transfers (PE956)	2507
Civil Court Proceedings (Audio Recording) (PE958)	2517
School Buildings Strategy (PE957)	2526
Scottish Executive Inquiry Reporters Unit (PE949)	2531
Housing (Right to Buy) (PE950)	2535
CURRENT PETITIONS	2538
Adults with Learning Difficulties (Provision of Services) (PE743)	2538
“The same as you? A review of services for people with learning disabilities” (Implementation) (PE822).....	2538
“The same as you? A review of services for people with learning disabilities” (Findings) (PE881)	2538
Environmental Protection Act 1990 (PE884)	2550
Neurological Services (Post-polio Syndrome) (PE873)	2551
School Buses (Safety Measures) (PE892)	2552
Mental Health (Care and Treatment) (Scotland) Act 2003 (PE889)	2555
A96 Improvements (Elgin Bypass) (PE558)	2555
Vulnerable Adults (Medication) (PE867)	2556
Medical Negligence (PE866).....	2556
ANNUAL REPORT	2558

PUBLIC PETITIONS COMMITTEE

8th Meeting 2006, 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)

Mr Charlie Gordon (Glasgow Cathcart) (Lab)

*Rosie Kane (Glasgow) (SSP)

Campbell Martin (West of Scotland) (Ind)

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

*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 :

Mary Douglas

Bette Francis (Scottish Executive Health Department)

Marilyn Livingstone (Kirkcaldy) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Margo MacDonald (Lothians) (Ind)

Jean MacLellan (Scottish Executive Health Department)

Brian McKerrow

Alex Neil (Central Scotland) (SNP)

Jenny Pickthall (Scottish Executive Health Department)

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

Stewart Stevenson (Banff and Buchan) (SNP)

William Smith

Peter Stapleton (Scottish Executive Health Department)

CLERK TO THE COMMITTEE

Jim Johnston

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 1

Scottish Parliament

Public Petitions Committee

Wednesday 3 May 2006

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

New Petitions

Ship-to-ship Oil Transfers (PE956)

The Convener (Michael McMahon): Good morning and welcome to this meeting of the Public Petitions Committee. I have received apologies from Campbell Martin, who cannot be with us this morning.

The first new petition is PE956, by Mary Douglas, which calls on the Scottish Parliament to urge the Scottish Executive to ensure that the Conservation (Natural Habitats) Regulations 1994, as amended, are applied in relation to ship-to-ship oil transfers in Scotland.

Mary Douglas will make a brief statement in support of her petition. She is accompanied by Les Douglas. I welcome you both to the committee. You have a few minutes in which to make opening remarks. We will then discuss the issue.

Mary Douglas: I intend to keep my statement simple. We are considering a conflict of interest between two profit-making companies and the environmental haven that is the Firth of Forth. The regeneration of Fife and the Lothians is also at issue. Fife has lost much of its industry and, consequently, there have been job losses. Tourism is filling the gaps. Small businesses are springing up and jobs are being found in sectors that serve our visitors.

The Forth has been resurrecting itself for the past 20 years and it is now a haven for birds and marine life. Salmon and sea trout have returned and last year we added basking shark and minke whale to our regular dolphins and porpoises. The numbers of octopus, squid and squat lobsters are increasing and our seal colonies are thriving. Have committee members seen a puffin, a guillemot, a razor-bill or a gannet covered in oil? I have and it is not a pretty sight—it is a nightmare.

There is no doubt that spills will occur. Human and mechanical error make that inevitable. There is no doubt that marine and bird-life will be affected and will die. Scapa Flow has been ruled out for financial reasons because it costs more to discharge ballast 100 miles out at sea. However, is discharging ballast in the Forth less of a risk in respect of foreign contamination?

Nigg on the Moray firth was ruled out because of draught restrictions, so why did Aquatera in its risk assessment require another 3m of draught clearance to be provided in the Forth? Why were we not told that two anchorages are being considered? We were told of only one mother ship. How will the operation expand?

Ladies and gentlemen, we live with tankers traversing the Forth daily. Ship-to-ship oil transfers are a risk too far.

The Convener: I open the discussion to members.

Helen Eadie (Dunfermline East) (Lab): Good morning and welcome to the committee. You referred to tourism in Fife. What would be the impact on tourism?

Mary Douglas: If you do not mind, I would like Marilyn Livingstone to answer that question, please.

The Convener: That would be a bit difficult; the procedure does not allow for that.

Mary Douglas: I see—I did not understand that.

The Convener: Marilyn Livingstone will be able to speak at the end of our discussion and provide additional information. You can provide us with whatever information you have.

Mary Douglas: VisitScotland supplied the tourism statistics for Fife to us yesterday. Our annual income is £124 million from United Kingdom visitors; £49 million from overseas visitors; and £168 million from leisure-day visitors. The total annual value of tourism is £341 million. The tourism industry accounts for 8 per cent of the workforce and it is projected to grow by 50 per cent in the next 10 years.

Tourism will be bound to fall away, because we will have oil spills. People will not come to our beaches. From an environmental point of view, they will not come to see our birds or our wildlife. We have blue-flag beaches—some of the most beautiful beaches in the whole of Britain. Of course we will lose out, because spills will occur.

Helen Eadie: That is lovely. Thank you.

John Scott (Ayr) (Con): I will ask three questions. How far advanced are the plans? Are you aware of any risk assessment that any organisation has conducted? If so, what was the result?

Mary Douglas: I have taken all my information from Aquatera, which advised Forth Ports and Melbourne Marine Services on the risks. The risk assessment names three risks. The small risk is from localised pollution at sea, which would affect nearby seabirds. The medium risk is from considerable local pollution that spreads to

beaches and sea areas. What the assessment calls tier 3—large spills—would create widespread pollution that affected beaches and other sea areas and would be likely to cause wildlife casualties. That is what may happen. There are three particular dangers: spills, collisions and explosions.

John Scott: I seek information about the assessment of the risks. What is the likelihood, possibility or probability of such incidents happening? Ship-to-ship oil transfers have been taking place in Scapa Flow for 25 years without incident. What are the chances of a catastrophic incident, such as the one that you describe, taking place?

Mary Douglas: The set-up in Scapa Flow is different from the proposed set-up in the Forth. In Scapa Flow, the local council is in overall charge and is in charge of the harbour-master. The council charges more money for the facility than Forth Ports will charge, but provides a much safer and better structure to avoid incidents. The council ensures that the local environment is not contaminated by foreign ballast, which must be dumped at sea before the ships come into Scapa Flow. However, ballast is to be dumped in the Forth, which should not be allowed. In the Forth, a profit-making company will be in charge, not Fife Council or the Lothian councils, which is a considerable difference from the situation in Scapa Flow.

John Scott: That is helpful. You list the potential dangers and threats to tourism and wildlife. Are you aware of any benefits of the transfers?

Mary Douglas: No—there are none whatever. The oil will come from Russia and will be transferred to huge ultra-tankers, which will take the oil to America and the far east. There is nothing whatever for Scotland in the transfers. The profit-making companies will simply make money. We will get no benefit, but we will have all the associated problems.

Ms Sandra White (Glasgow) (SNP): I want to explore the issues about Scapa Flow, Nigg and the Firth of Forth. You mentioned that the use of Scapa Flow and Nigg has been ruled out. Will you expand on that?

Mary Douglas: Scapa Flow has been ruled out because it is too expensive. As I said, it has a fantastic set-up, because the local council will not allow the environment to be endangered in any way. Nigg has been ruled out because, we are told, it is not deep enough. However, when I read the risk assessments that were supplied to Forth Ports and Melbourne Marine Services, I found that 3m will have to be dug out of the Forth.

Two areas are involved, which are called M1 and M2. On one side, there is a huge gas pipe that

feeds Edinburgh and the Lothians, and on the other side there is what local knowledge says is an old ammunition dump from after the war. Local knowledge should be listened to. We know that ammunition was dumped in some areas. The most horrific thought is what would happen if there was an explosion, with a gas pipe on one side and an ammunition dump on the other. Does that answer your question?

Ms White: In other ports, such transfers have been taking place for over 25 years. Have those ports been ruled out because council-imposed controls have affected profitability?

Mary Douglas: That is exactly the case.

Ms White: Apart from the environmental impacts, is the fear that allowing such transfers to proceed will set a precedent?

10:15

Mary Douglas: Yes. I believe that this is the thin end of the wedge. Over the next 10 years, it is proposed that the amount of oil coming from Russia will double or triple. That will cause us nothing but problems.

Ms White: Thank you. That has been very informative.

The Convener: We have been joined by Marilyn Livingstone MSP, who is the local member, and Mark Ruskell MSP. Do they want to add any comments?

Marilyn Livingstone (Kirkcaldy) (Lab): I thank the convener for allowing me the opportunity to address the committee.

When Mary Douglas presented her petition to me in April, she was representing the feelings of one part of my constituency. However, I represent Kirkcaldy constituency, which runs along the Firth of Forth and those feelings extend across the whole of my constituency and, I believe, the entire Firth of Forth.

I think it best to inform the committee that I sent copies of the petition to Rhona Brankin MSP, the Deputy Minister for Environment and Rural Development and to Alistair Darling MP, Secretary of State for the Department for Transport and Secretary of State for Scotland.

I am concerned about the environmental impact that ship-to-ship oil transfers could have on my constituency. As Mary Douglas eloquently explained, the history of coal mining in my constituency meant that our beaches used to have a lot of pollution. However, with coal mining now gone, one of our beaches has received an award for the most improved beach in Scotland. We have seen a huge improvement. The coastline where Mary Douglas organises her beach clean-ups is

now absolutely fantastic. As she said, we have seen a phenomenal return of bird-life and sea life. Over the past 10 years, such has been the improvement that it has led to an increase in tourism. Our concern is that pollution will return to our beaches.

The proposed type of transfer is different from that which happens at Scapa Flow because the ships would only be anchored in the Forth. We believe that the emergency services would not be nearly as good or as comprehensive as those that are available at Scapa Flow.

It must also be pointed out that, whereas the local council owns the harbour at Scapa Flow, that is not the case here, where any profit would go to Forth Ports plc and Melbourne Marine Services, which are the two private companies involved. As MSPs and as a Parliament, we need to ask what benefit the development would bring to the community. It would bring no direct or indirect benefit, but everything that we have read suggests that it would bring great risks. Therefore, we ask the committee to take the habitats directive seriously and to help us in our plea to have the bid for ship-to-ship oil transfers rejected.

The local authority, Fife Council, is totally opposed to the development. Indeed, I have yet to meet anyone, apart from people from Forth Ports, who supports it. I believe that the risks involved in ship-to-ship oil transfers are too great to be acceptable. Like Mary Douglas, I am not convinced by the documents that I have read that there would not be a spillage. Given that a spillage seems certain, an important point is that the systems that it is proposed to put in place would not be good enough. The worry is that the thickest crude oil imaginable will end up coming from Russia and being transferred from one ship to another as the ships sit in the Firth of Forth.

I have tried to explain what would happen. The people in my constituency and throughout the Firth of Forth area are horrified that this proposal could be given the go-ahead. We are asking the Scottish Parliament, the minister and Alistair Darling to do all in their power to have the proposal rejected. In addition, we would like the Public Petitions Committee to consider whether the best way forward for the petition is to refer it to the Environment and Rural Development Committee. Someone must take a real look at the impact that the proposal would have on communities the length of the Firth of Forth.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I echo Marilyn Livingstone's comments. Mary and Les Douglas and the community in Kinghorn have done fantastic work in recent years in keeping their environment in good health. They have made tremendous improvements and done extraordinary work. I agree with Marilyn

Livingstone that the view of people across the Firth of Forth is that ship-to-ship oil transfers present a real risk to the economy and the environment. I have spoken to people from Aberlady in East Lothian right the way up to the East Neuk and there is widespread concern, not just about the specific proposal, but about the regulations and how the legal consent process works for ship-to-ship oil transfers—that is the nub of Mary Douglas's petition.

We have a complete guddle. There is a shipping regulation that is governed by the Marine and Coastguard Agency from Westminster, which consents to ship-to-ship oil transfers. There is no way in that process for such a transfer proposal to be rejected. The only thing that must be considered is an oil spill contingency plan. However, under the European Union habitats directive, Scottish Executive ministers have legal responsibilities, which Mary Douglas's petition lays out, that relate to wildlife in the Firth of Forth and important habitats there. The different sets of regulations and processes do not meet up; they are completely separate. The process in Westminster to consent to ship-to-ship oil transfers pays no recognition at all to the responsibilities of the Scottish ministers. That is a big problem, which I hope will be partly addressed by the Westminster marine bill, but we must address it in Scotland as well. The Environment and Rural Development Committee, of which I am a member, is considering a petition on marine national parks that the Public Petitions Committee referred to it.

We are trying to set up a marine national park in Scotland; communities are behind the proposal and they have petitioned the Parliament. The Executive is keen to push forward the idea, which is in its partnership agreement. However, we come up against a situation in which a private company comes in and says that it wants to put in a ship-to-ship oil transfer operation. The Scottish ministers will have hardly any say in the decision on the proposal and there is concern about who will take the final decision and whether we can, in fact, prevent the transfers from happening. The situation is a mess.

It would be sensible for the Environment and Rural Development Committee to consider Mary Douglas's petition alongside the petition on marine national parks and to consider what changes need to be made to our own laws in the next Parliament. However, it is time now for the Parliament to start to listen to the concerns and aspirations of communities and to work out solutions to the problem. I urge the committee, in addition to writing to the minister, RSPB Scotland and other stakeholders who have expert knowledge of this proposal, to consider forwarding the petition to the Environment and Rural Development Committee

as a case study for us alongside the work that the Public Petitions Committee tasked us to do on marine national parks.

The Convener: I take on board the request from Marilyn Livingstone and Mark Ruskell for the petition to go to the Environment and Rural Development Committee, but that would not normally be our first port of call, if I can use that pun. We would seek a lot of information from interested parties first. I would be interested to know from members which organisations we should contact.

Rosie Kane (Glasgow) (SSP): We have been given a lot of information and I thank the petitioners and the two MSPs for furnishing us with it. I wonder whether any of you can tell me anything about what actually happens in a ship-to-ship oil transfer and who oversees and regulates it on site, particularly when it involves a private company. What is the likelihood of minor or even major spillages being reported if and when they take place?

Mary Douglas: Forth Ports would be in charge of the transfers. It is responsible for safety. There would be 150 transfers a year. Each transfer involves three hoses pumping out oil at a tremendous rate from each ship that comes to the mother ship. That means that 150 hoses a year are used. When errors such as human or mechanical fault are taken into account, there is no chance that there will not be spills. We will definitely have spills. The size of the spill will depend on the size of the error made, but we are all afraid of the consequences. I was puzzled by the fact that although there was a brief mention of birds in the risk assessment, there was no mention anywhere of marine life. Given that we are talking about a great body of water that is coming alive again, why does the assessment not consider what is beneath the surface? The Firth of Forth is being used like a highway; Forth Ports does not realise that it is dealing with a wonderful ecological world that is alive. Of course I am concerned for the birds—I am concerned for everything—but I cannot understand why the marine world has been left out.

The Convener: I seek recommendations on how to take forward the petition.

Helen Eadie: I support the petition fully. I am the MSP for the neighbouring constituency to Marilyn Livingstone's. I have received many representations on the issue from my constituents and from community councils. I live on the banks of the Forth, so I understand and appreciate exactly what the petitioner means. Everyone is perplexed by the fact that we are talking about ship-to-ship oil transfers in the middle of the water; the ships will not be tied up by the side of the harbour. The other issue is that the transfers will

involve the biggest ships that the Forth has ever seen. We have enormous ships at present, but, although it is wonderful to have that spectacle, the transfers threaten us, which is unacceptable.

In the light of what was said earlier, I would like us to seek the views of Forth Ports—we have to listen to what it says—the Maritime and Coastguard Agency; Melbourne Marine Services; Scottish Natural Heritage; RSPB Scotland, which Mark Ruskell mentioned; the UK Offshore Operators Association; Friends of the Earth Scotland; Fife Council; City of Edinburgh Council; East Lothian Council; West Lothian Council; and the Scottish Executive.

The issue of who would clean up any spillage were it to occur angers me most of all. We all know that ship owners change rapidly. Given that the company would be responsible, it would be difficult for us to track down the individuals concerned so that they could clean up the spill. After all, there is no obligation on the local authority or other agencies in that respect. Why should we make the public purse bear the cost of such a clean-up operation?

10:30

People say that this is not likely to happen on the River Forth. However, I was a member of Fife Council when a ship tied up at the Braefoot bay marine terminal broke its moorings. That event, which happened near the Fife natural gas liquefaction plant, was almost a disaster for everyone. As we have all seen, such spillages happen across the world.

I hope that the Scottish Executive rejects this proposal for ship-to-ship oil transfers. I know that it will find it difficult to do so, because the legislation is not in its favour. However, one organisation that members might not have heard of is the North Sea Commission, which is made up of local authorities around the North sea basin. The commission's thematic group on the environment makes representations to Europe on behalf of local authorities and we should seek its support for our concerns on this issue.

John Scott: I was very interested to hear the concerns that Mark Ruskell and Marilyn Livingstone have raised, particularly Mark's comments about the competing interests in different pieces of legislation and the fact that the Environment and Rural Development Committee is carrying out its inquiry. If we do not refer the petition to the committee straight away as requested, would it have to hold back its inquiry? Indeed, does Mr Ruskell speak on the Environment and Rural Development Committee's behalf in making that request? After all, I see little or no point in our taking forward such an inquiry if

we will only duplicate work that your committee is carrying out or wants to carry out.

Mr Ruskell: I am not speaking on behalf of the Environment and Rural Development Committee, although I am its deputy convener. Perhaps your committee could write to our convener, asking us to consider carrying out some work on the matter. I know that our work on the marine environment and marine national parks will begin within the next couple of months. I cannot give the committee the exact date for that, but the clerks could follow up the timescale.

On the issue of stakeholders, John Scott asked about risk assessment. After analysing the risk assessments that have been made as part of the Westminster regulatory process, SNH has made some damning comments. They might answer some questions and, as they are in the public domain, it should be easy to get hold of them. Moreover, RSPB Scotland has been examining the whole regulatory system and, specifically, the proposal's impacts on the Forth.

John Scott: In that case, I agree with Helen Eadie that we should simply follow our normal procedures. The petition will wend its way to you in due course.

I wonder whether we should also write to the insurance broker, Lloyd's of London. After all, if anything dreadful were to happen, the insurer would most likely have to deal with the effects, and it might be worth hearing its views on the risk of such an event happening.

Marilyn Livingstone: Members have referred to the disparity between the different pieces of legislation. In a port such as Scapa Flow, ship-to-ship oil transfers are covered by fixed procedures that ensure that, for example, the necessary equipment is available and that operations can be mounted to deal with on-site spillages. We need to find out how that would fit in with the situation on the Firth of Forth. I hope that the companies will be questioned in depth on procedures for dealing with spillages and whether there are reasons other than financial ones for carrying out such transfers on the Forth. That is a serious question. The only reason that I can see for such transfers taking place on the Forth is financial. I would therefore like us to have more information on what would happen if there were a spillage during a ship-to-ship oil transfer as opposed to during a transfer in a port.

Rosie Kane: Somebody suggested writing to RSPB Scotland, which is a great idea, and I wondered whether we could also write to Greenpeace, which has extensive knowledge of this sort of thing.

Mark Ruskell might be able to answer this question. Is there a marine life equivalent of the RSPB?

Mary Douglas: The Marine Conservation Society.

Rosie Kane: If it has not been suggested already, I suggest that we write to that society.

Mary, can you tell us more about Aquatera?

Mary Douglas: Aquatera is the firm that produced the risk assessment for Forth Ports and Melbourne Marine Services.

Rosie Kane: I would like us to find out more from the bodies that I have mentioned about the biodiversity duty under the Nature Conservation (Scotland) Act 2004, about the European Union directive on new habitats, and about the precautionary principle.

Helen Eadie: If there is a new development in the coal industry—whether opencast or any other kind—the industry is required to put a bond in place for clean-up and restoration purposes. Can we ask whether a bond would be required from the company in this situation?

The Convener: It is worth asking the question.

We now have a substantial list of people to contact. Are members happy with it?

Members indicated agreement.

The Convener: I thank the petitioners for bringing their petition this morning. When we receive responses to our questions, we will send them to you and ask you to comment. Once we have collected all the information, we will consider what further action to take. Mark Ruskell and Marilyn Livingstone may well have the opportunity to consider the information at the Environment and Rural Development Committee, although we will not make that judgment until we have received all the responses. I hope that it will not be long before we can get the petition into the parliamentary system.

Mary Douglas: At the moment, the issue is before the Maritime and Coastguard Agency. It is quite urgent. Discussions between Melbourne Marine Services and Forth Ports first took place in 2004 and we did not find out about them until last year.

The Convener: Obviously, we cannot say how quickly responses will come back to us, but we will try to get them as quickly as we can.

Mary Douglas: A decision from the Maritime and Coastguard Agency is imminent. We are in your hands.

The Convener: What we do will reflect the urgency of the situation but, as I say, how long it takes us to receive information will be up to the people we write to. However, as soon as we have those responses, we will welcome your comments on them.

10:39

Meeting suspended.

10:41

On resuming—

Civil Court Proceedings (Audio Recording) (PE958)

The Convener: Our next new petition is PE958, by William Smith. The petition calls on the Scottish Parliament to urge the Scottish Executive to make mandatory the provision of an audio recording of civil court proceedings to those parties with special needs, such as dyslexia.

William Smith will make a statement to the committee in support of his petition. He is accompanied by Brian McKerrow. I welcome you both to the committee. You have a few minutes for your opening remarks before we discuss the issue.

William Smith: This morning's proceedings are being recorded for the public record. My petition is a request to the committee to make mandatory the right to have digital recordings in the civil court process in Scotland so that we might have the same quality of arms as in England.

Brian McKerrow: I do not know how formal committee meetings are, but may I ask how many committee members are legally trained?

The Convener: It is for members to say.

Brian McKerrow: None of you? I do not know whether that is a good or a bad thing.

I submit a request to the committee that it considers seriously the removal of shorthand notes as a means of recording in the civil court, and commences a bill to ensure the installation of appropriate digital receiving and recording equipment in all courts in all sheriffdoms for the purpose of recording all business at all times in all jurisdictions.

On the basis of due process, and in the light of longstanding technologies that strengthen our case and make it forensically credible, it can be argued that sanctioning a person other than the appointed sheriff or law lord to record proceedings—for example, the clerk, stenographer or other court servant—weakens the principle of the judiciary's independence due to a perceived or real risk of human error or interference.

I accept that there was a time when the current method of recording was a necessary weakness and the best solution. The era in which the judiciary now conducts business avails us of the opportunity to remove such a weakness and meet the goals of the Minister for Justice, Cathy Jamieson. She announced:

"We wish to modernise the judicial system to better serve the needs of those using it and bring in efficiencies, to speed up the processes for the purposes of a more cost-effective service."

The proposed reforms are outlined in "Strengthening Judicial Independence in a Modern Scotland"—I have the document with me, but any of you can get a copy from John Anderson or John Somers at the Justice Department judicial appointments division. Those reforms could inarguably be served if a process were to be put in place during court proceedings, the consequence of which would be to ensure forensically credible recordings. The credibility of the legal process would be strengthened if that option were at least allowed when it is requested. By adopting such a response to the principle of due process, the judiciary would tangibly be seen to carry out due process by all who may have cause to question the execution of their duties.

At present, recording is done as a matter of procedure in the inner house and in certain other proceedings, such as proofs. That is an acknowledgement in part of the benefit that the process brings to the courts' duties. To return to an issue that my colleague William Smith mentioned, at present, the sheriff or the Lord President has discretion in relation to requests for recordings to be made of other court business—William Smith and I have made such requests in the past. We feel that that weakens the sheriffs or Lord President's independence.

I would like to take the opportunity to direct members on issues that we should discuss during the question and answer process. Our proposal would have cost benefits and would result in speedier execution of court business. I would like to explore further aspects of what I mean when I talk about the independence of the judiciary. The storage of evidence is an equally important point. Ultimately, the real question that we must ask is why anyone would not wish for such a reform.

10:45

The Convener: Thank you for your presentation. Before members ask questions, I want to clarify one issue. On, I think, two occasions, Brian McKerrow said that the proposal relates to all court proceedings, but the petition refers specifically to civil court proceedings.

Brian McKerrow: We discussed that with the clerk, Richard Hough, and asked for guidance. I specifically raised my concern about whether mentioning all courts would in any way break the process. I told him that I was coming to support the petition and asked how formal the process is. He basically said that that was okay. It was understood that, in outline, the petition is about the process by which courts have discretion over

recordings. I am speaking in support of and further to the petition. From the committee's point of view, considering all the courts will speed up the process and save valuable time, because other people will not have to come to the committee. I hope that you will not see any objection to other courts being included. William Smith can say what he originally put in the petition.

The Convener: We get a lot of petitions with wording that is not appropriate for the committee's processes, so the words have to be changed. We have before us the text that has been agreed between the petitioner and the committee clerks, which is specifically about civil court proceedings. That is what we can discuss, as that is what was agreed between the petitioner and the clerks.

Brian McKerrow: Fair enough. For the record, I consulted the clerks well in advance. I do not know—

The Convener: You are not the petitioner, Mr McKerrow; Mr Smith is the petitioner and he agreed the text of the petition. We just have to clarify exactly what we are discussing.

Brian McKerrow: Absolutely. I empathise with you, convener. I raised the point with Richard Hough, who is the first point of contact for members of the public who use the Public Petitions Committee. I gave him a letter, for dissemination to members well in advance of the meeting. I have had no objections to my approach. I am not arguing with you, convener; I am saying that I went through the matter with Richard Hough, who said that there was no objection. I leave the matter up to you—I accept any requirements that you have in conducting your business.

Jackie Baillie (Dumbarton) (Lab): I am interested in another element of the petition. The petition talks about civil court proceedings, particularly in relation to people with special needs. Will you outline the impact on somebody with special needs, particularly dyslexia, if they cannot get an audio recording?

William Smith: I have been involved in the court process for the past eight years in different courts. I have real problems in relation to writing and listening to words at speed. I suffer from dyslexia, which is my big problem. I have put motions in to several courts to ask to take recordings, but those motions have been refused. That was discriminatory to me, as I have a right to have the proceedings recorded. Just as the present proceedings are being recorded and are on the public record, the proceedings of the Scottish civil courts should be recorded.

Jackie Baillie: I will pursue the matter so that I understand the process. You said that motions that you have lodged have been refused. Did you lodge them on the ground that you are dyslexic or on other grounds?

William Smith: The last motion that I lodged said that I needed to record proceedings on the ground that I am dyslexic. I had an interest in the case, which involved housing issues, because they are relevant to Govan, from where the local council is removing people by giving them a £2,000 handout. People have already been moved from Moorpark in Govan. We tried to keep the houses, but giant empty letting units have already been built. I had an interest in the last court case that I attended, because I was representing the people of Govan on housing issues. My motion was refused and I thought that the court had discriminated against me and the people of Govan.

Jackie Baillie: You said that you had an interest in the issue. Were you a party to the case?

William Smith: I was not. I should have sisted myself into the case, but I did not. I attended proceedings because someone telephoned me to say that a housing issue was being considered that related to the Scottish Executive and the Housing (Scotland) Act 2006, which gives people the right to apply to a council to have houses renovated rather than demolished. I think that about 400 families in the Govan area have been told to leave their houses because a demolition order that they did not know about was issued two or three years ago.

Jackie Baillie: If, rather than being somebody with just an interest, you had been involved directly in the case—as an appellant, defendant or whatever—would the facility of a recording have been available to you?

William Smith: No. The sheriff refused my motion to record proceedings. I needed to make a recording that I could take back to the people in Govan, to allow them to make a request to the council on the basis of what I had heard. However, I could not even obtain the interlocutor. I have had problems in obtaining the interlocutor, although it is in the public domain. I asked the civil department at the court for a copy of the interlocutor, but it was refused me. I asked why that was refused when the interlocutor is in the public domain, and I was told that it was the last day of the 14 days that are allowed. I had to make a written request for the interlocutor to be sent to me that explained why I wanted it, but I have still not received a copy of it, although I went to court on 6 April.

Jackie Baillie: I will try to pursue the distinction. You were not directly a party to the case.

William Smith: I was not, but I was asked to attend proceedings.

Jackie Baillie: I understand that. If you were a party to a case and you could not follow proceedings because of your disability, I would

definitely want to pursue that situation as a matter of access to justice. However, you were not a party to the proceedings, although I have no doubt that you have a legitimate interest and that you are active in your community and wanted to convey information.

William Smith: People asked me to attend and the sheriff had no right to refuse my motion. The courts are supposed to be open and transparent.

Ms White: Jackie Baillie asked some of the questions that I had meant to ask, but I hope to follow them up. You are right to say that parties with special needs should have access to an audio tape. Are you asking for an appellant with special needs to receive an audio tape or for anyone who requests an audio tape of any proceedings to receive it?

William Smith: We all have a right to due process.

Ms White: I wanted to get to that point, which Jackie Baillie was moving towards. If you were an appellant and you could not understand court proceedings, that would act against justice, but you are asking for anyone to be able to request an audio tape from the court, regardless of whether they are an appellant or have a direct interest in the case. Is that your proposal in a nutshell?

William Smith: Every case in the civil process should be recorded for warranty for the people and the court.

Ms White: The people can then request that record. I just wanted to get that clear.

John Scott: If you had been the appellant, would you have been able to get access to the tape?

William Smith: No. I have been attending court for seven or eight years now. In every case that I have been to, the appellant has been more or less refused. There is no recording of the civil process.

John Scott: So in terms of disabilities and equalities, there is no provision in the court system for people such as you.

William Smith: It is not just me; I have been to court with people who were using crutches and the courts have told them to seek a solicitor. I have been to court for serious cases of MRSA—the first case in Scotland—and the court asked the woman, who was on income support, for £15,000. She had never even seen £15,000. The court denied her right of access to justice and she was there for an inquiry into how her son had died; he was taken into hospital and two days later he was covered in sores. I am talking about something that happened seven years ago, and that has never come out. The fact that the Scottish courts refused access to justice to a woman who had no

representation should have been on the news. That was also a breach of European Union law.

Rosie Kane: I thank both of you for your petition and information.

I, too, wanted to clear up the points that the previous questions clarified. Mr Smith, you sound as if you are an active citizen and you represent the community. I assume that you go into those situations and try to bring back to the community or the concerned body information about what has occurred. Because of your condition, that is very difficult for you; there are barriers to you doing what you do, but you are doing your thing as an active citizen. I can see what you are trying to achieve and where it all goes wrong. You are excluded from the process at that point, even though you have the heart, will and mind to go ahead and do it. I can see all that, and I agree that it is discriminatory.

You gave an example in which you attended court and had problems getting the interlocutor. Did your condition prevent you from being more involved in the court proceedings?

William Smith: Yes. I am going to start studying for a law degree this year. Had I known about the process for having myself sisted as a party to the cause, I would have been able to do that on 6 April and I could have put my case forward. Even then, my request would still have been denied because there is so much prejudice and bias in the Scottish civil court process.

Rosie Kane: I am not a lawyer, but I used to be an adult literacy trainer and I see that people who are visually impaired also benefit from access.

William Smith: Yes. I have no memory as such. I have to have papers everywhere; I have to read things constantly, because I cannot remember them. It is essential that I am able to record things if I am to get any form of university degree. I cannot go into a court and remember everything that has been said; it jumbles up in my mind too much. The system is discriminatory to me and to anyone else who has a similar problem.

Rosie Kane: Are there any organisations for people who have a similar concern to yours? I mentioned people who are visually impaired or blind. Have you managed to gather any support from those areas?

William Smith: The Deaf Society helps people with the courts, and there are those who help the blind as well. Such people have been trying to get audio recordings of civil court proceedings to be made mandatory.

11:00

Brian McKerrow: I can add something that I think goes back to and strengthens my earlier

points. As William Smith pointed out, other organisations have been trying for some time to get our proposal considered so that recordings of court proceedings are made for people with William's disability and other disabilities. As I said, though, a bigger question is involved because it is not just a question of disability, but a question of due process. That is why I asked whether any committee members were learned in law. Irrespective of whether members accept the petition at this stage, the fact is that denying recordings of court proceedings to people, regardless of whether they have a disability, is discrimination with regard to due process.

The bill that will be introduced by the Minister for Justice and the Lord Advocate refers to judicial independence. The present Government, of which some of you might be members, is concerned about the independence of the judiciary. William Smith and I recognised that our concerns were one and the same, because machine recordings—both visual and audio—are a forensically credible way of ensuring that due process is satisfied. Recordings can aid people with disabilities. They can also aid the appeals process and any court business that concerns previous court cases. Recordings could speed up the court process and remove the requirement for shorthand notes to be converted; that alone is a huge cost for the legal aid bill.

I am here to support William Smith's petition and to present points in support of his case, such as the savings and the efficiencies that could be made. The judiciary, the Government, the Scottish justice system and the Minister for Justice have written a lot about the independence of the judiciary, so I have to ask once again why anybody would refuse to record court proceedings. The committee is being recorded and televised just now as part of its policy of being open and inclusive. Why should the judiciary not do something similar to strengthen its independence? That is what it is all about.

My concern is whether any of my points will be considered as part of the case. As I said, I sought clarification on that well in advance from Richard Hough, and I am here at William Smith's request. He feels confident that I should be at his side because we work together.

Ms White: I have a couple of points for clarification. If I may be so bold, have you had legal training?

Brian McKerrow: No.

Ms White: I agree that the legal system should be open, transparent and democratic. Those are the Scottish Parliament's policies. However, you referred to the subject of costs. I asked a question earlier about whether the context of our discussion

was that just an appellant would ask for a court transcript. However, after questions from Jackie Baillie and Rosie Kane we concluded that we were talking about anybody asking for a transcript. You raised the issues of costs and delays. If everybody asked for a transcript of court proceedings, would that speed up the judicial system? Would it be costly?

Brian McKerrow: I sought guidance on the issue of recordings from acoustic engineers and I got advice on courtroom building regulations. I asked the Scottish Court Service why recordings of all court proceedings were not done and was told that they were done. I disagreed with that, but I was told that a sheriff clerk records the proceedings. When I asked what that meant, I was told that the sheriff clerks write down the general points of that day's business and record what was concluded. There is obviously a big gap between my perception of a recording and the SCS's perception. The usual perception of a recording is that someone takes shorthand notes or an audio recording is made. If the question is whether everybody can ask for recordings, the answer is no because proceedings are not always recorded. It can be argued that that is an infringement of due process and the judiciary's right to conduct its business in a judicial fashion, independent of personal views or influence from outside bodies.

Ms White: I am sorry to prolong this slightly, but I am not arguing about the use of shorthand and audiotape. My question is—given that you raised the subjects of cost and speeding up the legal system—would William Smith's request for everybody to be able to access recordings of court proceedings speed up the legal process and would the proposal be cost effective?

Brian McKerrow: I was involved in a two-day proof and, to be honest, not much was said during it, which is why it went to appeal. I won the case eventually after going to the Court of Session. That is why I take an interest in these matters.

That issue is still waiting to be resolved. William Hodge & Pollock are the shorthand writers in the sheriffdom of Glasgow, which has the busiest sheriff courts in Europe—

Ms White: I shall stop you there, because I just wanted answers to the questions I asked. Thank you for that information.

The Convener: All the information that Mr McKerrow provided has been circulated to members. We have copies of the correspondence. The documentation would have been made available whether or not everyone on the committee was a lawyer.

Brian McKerrow: It costs almost £1,200 a day to have shorthand notes converted, but it would cost £700 for one courtroom in the sheriffdom of

Glasgow to have the most fantastic digital recording equipment. That is a cost saving right away. In one clean sweep, you could buy all the recording equipment that you would need for business during the rest of that court's existence.

The Convener: I ask members for recommendations on how we should take the petition forward.

Jackie Baillie: There is policy merit in considering further Mr Smith's petition, which talks about civil court proceedings and about people who suffer from dyslexia, but I wish to make a distinction between those who are directly involved in the case as either one of the two parties and people who have a general interest in the subject. I want to explore with the Executive whether people who are party to a case have certain rights in terms of access to justice that would allow for their disabilities to be considered. We could then explore the more general principles of the issue and write to the Executive, the Scottish Court Service and, I would suggest, Dyslexia Scotland, to get a view on the terms of the petition. I would like us to be able to distinguish between the two different aspects of it that emerged in evidence.

Rosie Kane: I understand what Jackie Baillie is saying, but it is important to recognise that people who might seek access to the judicial system might be prevented from doing so in the first place as a result of barriers such as conditions and disabilities. I mentioned visually impaired and blind people and adult literacy. I am going to do that thing again and ask Jim Johnston who the relevant organisations are. I wonder whether we could seek broader views.

John Scott: To take up Rosie Kane's point, we should write to the Disability Rights Commission, which might well have a view on the petition.

The Convener: I, too, was going to suggest getting an overview from the DRC. We need to ask specifically whether, under the terms of the Disability Discrimination Act 1995, the courts would be acting outwith the legislation if they did not already provide information in the format that has been requested by Mr Smith. We can then ask the general question about provision for society in general to avoid any of the problems that Mr Smith and Mr McKerrow have highlighted.

Rosie Kane: When we receive our responses, will they be made into audio for Mr Smith? Do we assist with that? You will be sent responses from the organisations that we will write to. Can we help you with that or are you able to have that put on to audio?

The Convener: This is a first. We would have to look into what support we could give to ensure that Mr Smith can have that information. All the information that has been recorded this morning

will be available. Once we have received responses from the organisations that we have written to, we will provide the petitioner with those responses and he can comment on them and provide us with any further information before we consider the petition again. If there are difficulties for the petitioner in receiving that information, we will consider whether we can be of assistance to make him as aware as possible of the contents of the responses.

Thank you for your time.

School Buildings Strategy (PE957)

The Convener: Our next petition is from Phyllis French. It calls on the Scottish Parliament to urge the Scottish Executive to review the strategy that is set out in the document "Building our Future: Scotland's School Estate" to ensure that new schools are built in a safe and secure environment and not, for example, on functional flood plains.

Alex Neil has joined us and would like to comment on the petition.

Alex Neil (Central Scotland) (SNP): The experience of constructing a new building for Uddingston grammar school has highlighted a number of policy issues that affect planning and education. The new school building is part of a wider public-private partnership project. South Lanarkshire Council has proposed that the new building be built across the road from the existing building, but the new site is on a functional flood plain, which raises a number of safety issues. For example, the site is 500 times more subject to flooding than the planning division of the Scottish Executive recommends such a site should be. There are a number of other problems with the planning application, but we want to zero in on the school being built on a functional flood plain, which raises issues about the safety and security of the building and the people in it. It also has implications in terms of the Executive's strategy on school buildings.

A second issue relates to the fact that the council was both the proposer of the planning application and the planning authority that made the decision, which means there has been no independent assessment of the situation. Indeed, there are indications from official organisations—the Scottish Environment Protection Agency in particular—that some of the information that was imparted at the planning meeting that agreed to the planning proposal was not accurate and did not properly reflect their views.

Because the decision on the new school building has been made by the council, it must be referred to the Minister for Communities before it is finally approved. However, there is no statutory requirement to take into account the Executive's

strategy on school buildings, so it is unlikely that the minister will refer the matter to a reporter because, under the strict criteria that must be applied, there are no planning grounds for doing so.

The planning proposal has highlighted a major gap in the law when a council is both the proposer and the arbiter of a planning application. It has also highlighted the need for the Executive's strategy on school buildings "Building our Future" to be built in to the planning system.

The petition raises a planning matter and an education matter, but the guts of the issue relate to the fact that it is absurd to build a new school on a functional flood plain.

John Scott: You mentioned the issue of safety. Is this functional flood plain subject to flash flooding?

Alex Neil: Yes, it has experienced flash flooding. The Executive's recommendation is that there should be a presumption against building schools and hospitals on sites that have a possibility of flooding that is greater than 0.001 per cent in any year. The official estimate of the possibility of the new site in Uddingston flooding is 500 times that.

11:15

John Scott: So it has a 0.5 per cent chance of flooding.

Alex Neil: Yes. In years gone by, there has been a lot of flooding in that area and there are photographs to prove it. The site sits adjacent to the River Clyde, beside a railway embankment, so it is extremely susceptible to flooding.

John Scott: My mental arithmetic suggests that the percentage that we are talking about means that there is a one in 200 chance of the site flooding once a year.

Alex Neil: Yes.

John Scott: Do you think that the council is not aware of that? Why do you think that it is proposing to build on the site, given that level of risk, especially if, as you say, people's safety would be compromised?

Alex Neil: As I said, the council has been made aware of the problems. I have written to the council, as have Margaret Mitchell, Michael McMahon—I think—and local objectors. I think that the planning application, which is part of a broader PPP project, has been pushed through for other reasons. The last thing that the council wanted to do was endanger its PPP project and it appears that, to that end, it is prepared to take the risk of building on a flood plain.

Jackie Baillie: I am keen to address the perceived gap in the law, but I am slightly confused about the process. You said that there was consultation with SEPA, but I am not clear whether SEPA advised against building the school in that location or whether it said that the project could carry on, although it had a few reservations. If SEPA advised against the proposal, the matter would have been referred to the Minister for Communities, who would have decided whether to call it in. Therefore, I am curious to know where you see a gap.

Alex Neil: The matter was automatically referred to the minister because it involved a council making a decision on the building of a school. It was not a question of the minister deciding whether to call it in; he was automatically brought in to the process once the council made its decision.

SEPA expressed severe reservations about building on the site and highlighted the risks involved. It did not go as far as saying, "You must not build on this site," but it gave substantial warnings about the risks involved in doing so and said that much more work would need to be done before the proposal could be given a clean bill of health.

A further complication is the fact that a major Transco pipeline runs through the site. The combination of all the factors—the site is next to a river, it is on a flood plain, it is next to a railway embankment and a pipeline runs through it—makes it difficult.

Jackie Baillie: Did SEPA suggest mitigation?

Alex Neil: It did not use the term "mitigation". It suggested that more work had to be done before it could say that the school should be built on the site. It has registered early objections and expressed severe reservations about the site. However, the verbal report to the council by officials was misleading, as it suggested that SEPA was satisfied with regard to all the points that it had raised.

Jackie Baillie: In any case, whether it was because the matter involved a council making a decision on the building of a school or because the proposal involved building a school on a flood plain, it has been sent to ministers. Where, therefore, is the gap in the process?

Alex Neil: The gap relates to the fact that, under planning law, you are not required to take into account the Executive's strategy as outlined in "Building our Future". The matter has not been referred to the Minister for Education and Young People, it has been referred to the Minister for Communities, who can deal with issues that specifically relate only to planning. He can take action only in relation to issues of process,

whereas the problem with the Uddingston proposal is one of substance.

Jackie Baillie: I take a different view.

Helen Eadie: The situation regarding SEPA's policy position is on-going. I understand that "Building our Future" contains best practice information rather than instructions that councils must follow. Are you arguing that local authorities should be required to have regard to the guidance on flooding?

Alex Neil: I am saying two things. First, Scottish planning policy 7 is the relevant planning guideline, but it is only a guideline, not a regulation, so the council can ignore it or suggest that it can be overcome in some way. That must be dealt with. Secondly, the requirement in "Building Our Future"—that schools should be safe and secure—must be defined much more clearly and should be part of the planning process for schools, hospitals and similar public buildings.

Helen Eadie: A risk assessment will be carried out for the school—or any school in Scotland—so I presume that the council will take a balanced view on the general level of risk. When calculating whatever risk there might be, it will also have to have regard to how central the school is in the community. Is there another suitable central location? Education authorities must have regard to a range of matters.

Alex Neil: The problem is that we do not believe the council has taken a balanced view of the risk. It has a vested interest in the PPP and in selling off the existing site for housing, and it has not taken an independent, fair and balanced position. Furthermore, the situation was exacerbated when, at the planning meeting, officials presented misleading information on a number of points relating not only to SEPA but to Transco's comments and other issues.

John Scott: Whom do you say council officials misled? Was it the public?

Alex Neil: In the objectors' view and in mine—having read what I can on the matter—the information that the officials imparted at the meeting in reply to some questions from councillors was misleading. At least one of the agencies that are involved also believes that.

John Scott: Is that SEPA?

Alex Neil: Yes. Scottish Natural Heritage believes that as well.

Ms White: To summarise, the council has gone ahead with the plans although there is a conflict of interest. The application was called in by the Scottish Executive and the minister said that it could go ahead. SEPA was consulted and has grave reservations.

The current school building is across the road from the flood plain. What is happening to the land where the current school building is? Could a new school be built there?

Alex Neil: It will be sold off for housing.

Ms White: I presume that it would not be possible to build housing on the land for the new school because it is a flood plain.

Alex Neil: There is housing adjacent to it, but the site would not be any more suitable for housing than it is for a school.

Ms White: So the school will apparently go there. From what I can gather from the petition and other information that we have received, the planning application has been called in and the minister has given permission for it to go ahead. Perhaps a change in the rules and regulations—the planning laws, I assume—is necessary. Education authorities make decisions on local schools based on local circumstances, but SPP7, which you mentioned, makes it perfectly clear that an application to build on a flood plain should receive planning permission only when it is absolutely necessary, so I would have thought that that point could have been argued.

The Planning etc (Scotland) Bill is being considered at the moment. Perhaps this issue should be raised and considered as part of that process. The Communities Committee is finalising its stage 1 report on the bill, so the petition should be passed to it. SPP7 says that permission to build on a flood plain should be granted only when absolutely necessary, and you have presented evidence from SEPA and others that the site floods, so the regulations as a whole, rather than simply the specific issue of the school, need to be examined.

Alex Neil: Two issues should be considered when policy issues in the Planning etc (Scotland) Bill are being examined. First, when a council takes a planning decision in which it has a vested interest, the process must be much fairer, much more transparent and much more independent than it is at present. Secondly, much more account must be taken of policies that are not strictly planning policies. In the case that we are discussing, the requirements of school buildings in the modern age should be taken into account, but there is no statutory requirement to that effect.

I wonder whether the committee can intervene in this case. The Minister for Communities has still to make up his mind about a response. Before he reaches a final decision on whether to allow the planning decision to go through, it would be helpful if the committee underlined the need for him to take serious account of "Building Our Future", which I, the objectors and others have highlighted.

Jackie Baillie: The strongest argument is a planning argument relating to flooding rather than an argument about guidance on the school environment that local authorities are given. If the minister has not made a decision, it would be a clear departure for the committee to interfere at this stage. The decision is for the minister to take.

Sandra White made an apposite suggestion. We should refer the petition to the Communities Committee, which is considering the Planning etc (Scotland) Bill. I hope that it considers whether the right of notification should be enjoyed not only by local authorities but by communities, as some of us argue should be the case.

Alex Neil: It would be helpful to send a copy of the petition to the Minister for Communities and to remind him of “Building Our Future”, which he might want to consider with any planning application. I understand the committee not wanting to refer specifically to the application that we are discussing.

The Convener: We have taken that approach before. No difficulties would be involved in making the minister aware of this morning’s conversation so that all the information is available to him when he makes a decision. It is entirely appropriate that we do what Alex Neil has suggested for information. Information could also be made available to the Communities Committee, to which we have sent several petitions recently, so that what has been said this morning can be taken into account in its consideration of the Planning etc (Scotland) Bill. Are members happy with that proposal?

Members *indicated agreement.*

Scottish Executive Inquiry Reporters Unit (PE949)

The Convener: PE949, by James Duncan, calls on the Scottish Parliament to urge the Scottish Executive to review the role of the Scottish Executive inquiry reporters unit in the planning process for public works such as sewage plants, and to ensure greater community involvement at the appeals stage.

The petitioner considers that the planning process ignores the views of ordinary people and that legal appeal through the Court of Session against decisions by Scottish Executive reporters is prohibitively expensive. The Planning etc (Scotland) Bill, which is currently before the Parliament, contains a number of provisions that are aimed at improving public involvement in planning decisions, but there are no proposals to introduce community involvement into the planning appeals process, although the bill could be amended at stage 2 or stage 3 to include it.

Jim Mather is here to discuss the petition. We will hear from him first before we deliberate on it.

Jim Mather (Highlands and Islands) (SNP): In essence, the petition is an opportunity for the inquiry reporters unit to harness locally motivated expertise to introduce increased rigour into the planning process; to capture local knowledge and enthusiasm, so that local environments are optimised; and to avoid the injustices, mistakes and inappropriate installations that have taken place, which I will talk about in a moment. Equally, we want to avoid having a process that leaves a distinct impression that approval is based on assertion and little evidence from the reporter, which results in long-term frustration and a feeling that democracy is being sidelined. Worse than that, long-term additional costs are accruing to Scottish Water, for example, and local people. The danger is that the reporter consultation process will fall into further disrepute.

11:30

I am here because of the wider national implications, given that sewage systems are being renovated and installed throughout the country. We are seeing a pattern of system diminution. In the case that led to the petition, the sewage system was initially to provide secondary treatment, but it will now provide only primary treatment. The initial proposal was for a system at the outskirts of a village, but it is now to be 24m away from people’s doors and it will handle surface water. We are seeing a pattern of false economy in Scottish Water and of financial collateral damage to people’s house and business values.

There are also scenic amenity issues. There has been flooding in places such as Campbeltown. In Argyll and Bute alone, issues have arisen in Campbeltown, Strachur and Inveraray. Incidence after incidence of false economy has arisen. In Campbeltown, £8 million of rework was required, businesses have been flooded out and people have not been able to get insurance cover.

I put it to the committee that the petitioner’s requests are reasonable—he makes absolutely solid commonsense points about best practice in the inquiry reporters unit and in Scottish Water. I would go as far as saying that, if we can put wind in the petition’s sails, it will help many communities and it will help Scottish Water and the inquiry reporters unit to do a much better and more satisfying job time after time.

Jackie Baillie: I am conscious that the petition talks about public works. I have great sympathy with the people who are in the situation that you outlined, but I am keen to tease out what the aim of ensuring

“greater community involvement at the appeals stage”

means. There has been a big debate about a third-party right of appeal. I am not sure whether Mr Duncan is alluding to that or to a measure that could be taken before an appeal that he considers would be appropriate in relation to public works.

Jim Mather: With a crisis such as the one that I mentioned, there must be a measure that comes before an appeal. The issue is close to home for people—an installation is to be built 24m away from people’s homes, in a lagoon setting, with a short outflow pipe. The commonsense view of local people is that, if sewage were trapped and captured, it could save Scottish Water the vast amounts of money that will be required for rework and public relations. The aura of false economy can be short-circuited if we involve people at the earliest possible stage.

Jackie Baillie: Sure, but the terms of the petition relate not to Scottish Water directly but to planning. I am therefore interested in communities that have problems with public works of any description. Would a third-party right of appeal be helpful?

Jim Mather: In the sort of situation that I describe it would be helpful. However, my preference is for a much better planning process with an emphasis on the front end. We have the track record of the incidents at Campbeltown, Strachur and Inveraray, which have or will cost people tangible sums of money—we are not talking simply about aesthetic amenity. The post office in Strachur, which serves food, will now have a primary sewage system 100yd from it in the middle of the village. There must be a fix.

Jackie Baillie: I welcome your conversion to a third-party right of appeal.

Ms White: I will not mention third-party right of appeal because everybody knows my views on it, given that I tried to introduce a member’s bill on it. The petition should be handled sensitively, as people’s lives are affected, as Jim Mather said. He will be aware of the Planning etc (Scotland) Bill, which the Communities Committee is considering and which has provisions on, for example, good neighbour agreements and pre-consultation. We might be able to introduce a third-party or community right of appeal by amendment at stage 2.

The petition should go to the Communities Committee before the stage 1 debate on the Planning etc (Scotland) Bill, so that it can be part of its consideration of the bill. The issue is a live one, so the Communities Committee would be interested in the petition. Many people feel that the planning process is not democratic. The Communities Committee will have an opportunity to take on board the public’s evidence that they feel alienated by the planning process.

John Scott: Although I take on board those points, sending the petition to the Communities Committee will not address the current situation for the people involved. The Communities Committee is considering legislation. I am trying to think of a way for us to get the best of both worlds. I seek the convener’s advice on whether we can copy the petition to the Communities Committee for information while keeping it in our hands, so that we can write to Argyll and Bute Council and Scottish Water to get their response to the allegations. In fact, they are not just allegations—communities are suffering enormously, apparently because of how Scottish Water is treating them. I would like to hear Scottish Water’s response to that and its justification for its actions. I presume that Argyll and Bute Council also has a view. I do not know whether we can do all that I have suggested as well as inform the Communities Committee.

The Convener: I am not particularly concerned about whether we contact organisations, but we cannot get involved in individual decisions. We have on numerous occasions written to organisations asking for information about their roles in decisions or their perspectives on legislation under which they operate. I am not uncomfortable about our doing that in this case; my concern is about the purpose of doing it. We cannot influence the decision, but if there is to be any change in legislation—or if there is a problem with it—the Communities Committee will address it and it could benefit from the petition being brought to its attention. I do not have a problem with writing to Scottish Water and Argyll and Bute Council, but I am not sure what purpose it would serve.

Jackie Baillie: I agree with the convener. Given that we have the unique opportunity to influence legislation that comes along once in a generation, we should send the petition to the Communities Committee not for information but for action. I am perfectly comfortable with members wanting to write to Scottish Water and Argyll and Bute Council, but we should do so for their information only. Influencing legislation will be far more important in the long run for many of the communities that we are talking about.

My colleague George Lyon, who represents the bit of Argyll and Bute that I do not represent, is engaged with some of the issues and has set up a group involving the local authority, Scottish Water and SEPA to push the agenda along. We could choose to copy the petition to him, out of courtesy, because I am sure that he would be interested in it.

The Convener: Okay. We will do the reverse of what John Scott suggested and write to the organisations for information, to make them aware

of the concerns that Jim Mather and the petitioner have raised, but we will send the petition to the Communities Committee so that it can address it during its deliberations on the Planning etc (Scotland) Bill.

John Scott: That is not exactly the opposite of what I suggested, but I am happy to go along with what Jackie Baillie suggested.

The Convener: Perhaps "the reverse" is a better way of putting it.

John Scott: I will be interested to hear from Scottish Water why a situation has been allowed to develop with which it appears no one is happy.

The Convener: Okay. We will send the petition to the Communities Committee and to the other bodies for information. Is that agreed?

Members indicated agreement.

Housing (Right to Buy) (PE950)

The Convener: Our next petition is PE950, by Andrew Doak, which calls on the Scottish Parliament to urge the Scottish Executive to review the Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Order 2002 to ensure that tenants retain pre-existing right-to-buy terms if, having been the victim of antisocial behaviour, they are compelled into a new tenancy. There are a limited number of circumstances in which a tenant can retain their right to buy on preserved terms when they transfer to a new tenancy, but they do not include their being the victim of antisocial behaviour.

Jackie Baillie: I hold my hand up to having something to do with the Housing (Scotland) Act 2001. We were particularly exercised about considering people who committed antisocial behaviour rather than those who were the victims of it. Undoubtedly, the legislation focuses on those who are guilty of antisocial behaviour, but I am clear that Mr Doak is not one of those; he has clearly suffered, whether at the hand of neighbours or people in the wider community I am not altogether certain.

However, I have a question about why the local authority did not deal with the perpetrators who committed the antisocial behaviour. Was there a failure on the part of the local authority to tackle the problem? I note from our papers that Mr Doak has taken his case to the Scottish public services ombudsman and that he has complained to the local authority. Mr Doak has a point, but I would be interested in finding out more about whether he was compelled to move and whether the local authority took action.

John Scott: I am interested to hear Jackie Baillie's comments, because I wanted to ask

someone with the information to hand whether the circumstances outlined in the petition were envisaged during the passage of the Housing (Scotland) Act 2001. If they were not considered, the issue must have slipped through the gap, so to speak. I am very much in favour of the principle that the petitioner has suggested. It seems, on the face of it, entirely reasonable that tenants in such situations should be allowed to transfer their right to buy. The regrettable fact is that the number of such situations is growing because of a failure to deal adequately with antisocial behaviour.

Jackie Baillie: The trend in public policy has been to ensure that the perpetrators of antisocial behaviour should suffer the consequences, up to and including removal of their tenancy, if they do not change their offensive behaviour. We envisaged no circumstances in which the victim of antisocial behaviour needed to move. That is why I ask what action the local authority took. Was Mr Doak compelled to leave because of safety fears? I do not concede that the legislation contains a gap, but I agree that Mr Doak has suffered unfortunate consequences and that local authorities have responsibilities in this regard. However, I do not know enough to know whether he was compelled to move or whether there was a failure on the part of the local authority.

John Scott: I am concerned that local authorities are not doing enough in my area and in others to protect the innocent victims of antisocial behaviour. We need to pursue the matter.

Ms White: I share the concerns that have been expressed. I have a constituent who had to be moved due to similar antisocial behaviour and he received the same answer about the housing policy. It is unfair that such people cannot exercise the right to buy that is available to other people.

We should seek the views of the Executive, Communities Scotland, the Chartered Institute of Housing, the Scottish Tenants Organisation and the Convention of Scottish Local Authorities. I have had a similar case, but I suspect that many other cases are waiting to come on board. The anomaly needs to be examined and rectified.

John Scott: I would add Victim Support Scotland to the list. When antisocial behaviour has reached the stage at which the victim needs to move, there is often a good chance that some crime has been committed. Victim Support Scotland might have views on the issue.

The Convener: There is no problem with adding it to the list. Once we receive responses from those organisations we will send them to the petitioner for his comments before we consider the petition again in due course.

That was the last of our new petitions. I suspend the meeting for a couple of minutes to allow our panel from the Scottish Executive to take their seats.

11:43

Meeting suspended.

11:47

On resuming—

Current Petitions

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

“The same as you? A review of services for people with learning disabilities” (Implementation) (PE822)

“The same as you? A review of services for people with learning disabilities” (Findings) (PE881)

The Convener: The first current petitions are PE743, PE822 and PE881, which are on the Scottish Executive's “The same as you?” policy. At its meeting on 21 September 2005, the committee agreed to seek the views of the Deputy Minister for Health and Community Care on PE881 and to link it with PE822 and PE743. The committee also agreed to invite Executive officials to update the committee on the implementation of “The same as you? A review of services for people with learning disabilities” once comments had been received from the petitioners on previous responses.

Peter Stapleton, Bette Francis, Jenny Pickthall and Jean MacLellan from the Scottish Executive Health Department are here to provide an update on the implementation of “The same as you?” and to answer members' questions. Would you like to introduce the subject or do you want to go straight to questions?

Jean MacLellan (Scottish Executive Health Department): The four of us will make a presentation to provide the update.

The Convener: We are more than happy to hear that.

Jean MacLellan: Thank you for the opportunity to provide an update on the progress that is being made to implement “The same as you?” I will introduce the team briefly. I head the adult support and protection unit, which takes the lead on the work; Bette Francis is my deputy; Jenny Pickthall is the policy officer on learning disability; and Peter Stapleton works in the carers branch. We thought that collectively we would cover the territory more effectively.

In previous communication, we have advised the committee on the key themes of partnership in practice, our plans to meet Enable, the NHS Quality Improvement Scotland programme of work and our plans for an updated hospital closures report. We propose to update the committee briefly on those strands of work. We will also take

the opportunity to highlight our action plan for the next two years of work at national level.

The committee may be aware that an early focus of the national implementation group was local area co-ordination, hospital closures and employment. More recently, it has produced reports on day services, work with children and advocacy. Those reports were published only last week and copies are available in the Scottish Parliament information centre. The minister will send all those reports to Jackie Baillie in her capacity as chair of the cross-party group for learning disability.

The Scottish Executive is addressing, in a number of ways, the issues that the petitions raise. For example, we sponsored the Scottish conference on older carers last November and we funded Enable to develop a toolkit to identify the needs of older carers and work with them to plan for the future of their adult children. Peter Stapleton will update the committee on the response to the care 21 report "The Future of Unpaid Care in Scotland".

For children, the changing childhoods programme aims to ensure the planning of children's services. It will take the needs of children with learning disabilities and autism properly into account from the earliest years through to the transition to adult services. Bette Francis, who will speak next, will update the committee on the progress of the hospital closure programme.

We are now past the halfway point of our 10-year programme. The action plan for the next two years will be set out in the national overview of the 2004 to 2007 partnership in practice agreements. It will include a number of issues that will be addressed through seminars, through possible guidance, and through following up on the on-going evaluation of local area co-ordination research. We recognise that what we need to do now is address the balance between mainstream service responsibilities and the development of appropriate specialist services, taking account of wider policy development since "The same as you?" was published in 2000. Jenny Pickthall will describe some current initiatives and will say what we hope to achieve in the next two years.

Monitoring the effectiveness of the policy is critical. Multi-agency inspections of learning disability services will provide part of that information, and our implementation team is working closely with other policy areas on the development of social work and joint improvement performance indicators.

Bette Francis (Scottish Executive Health Department): I will focus initially on the hospital closure programme. The closure of long-stay

hospitals was one of the specific recommendations with a target date in "The same as you?" Early in our hospital re-provision work, we realised that not all boards would meet the target. At the last return of figures from the remaining six health boards, 194 people were still in long-stay hospitals. The Minister for Health and Community Care wrote to national health service boards last year and issued an updated report on hospital closures. At that point, there were 312 long-stay patients, so there has been a shift, although a lot of work remains to be done.

The minister asked officials to visit each of the six boards, and last year we did so. We now review quarterly the progress towards identified targets. There have been delays for a number of reasons that are discussed in the NHS Quality Improvement Scotland overview report that was published recently, which makes a number of further recommendations about service re-provision. We will discuss that at our national implementation group next week. Until we have had that discussion, I cannot say what programme of action we will agree to.

While we were visiting the boards, our NHS and local authority colleagues raised a number of concerns over the definition of "assessment and treatment" and over who should be in assessment and treatment beds. We have responded to those concerns. We will hold a seminar in June to bring people together to consider who should be using NHS beds because of learning disability, how appropriate resources should be provided in the community and what obstacles remain.

We are also following up on last year's consultation on vulnerable adults and the Adult Support and Protection (Scotland) Bill. We asked about additional legislation specifically for people with learning disabilities who have challenging behaviour; we also asked about people who had been detained under mental health legislation. I am convening a group that will specifically consider both existing legislation and how people with learning disabilities can be better supported by mainstream legislation—those were the key issues that came out of the consultation.

Events will be held on health improvement. In June, we are holding a seminar that will focus on the care in general hospitals of people with learning disabilities. The seminar will bring chief executives of NHS boards together with directors of nursing, to consider current plans for improving services for people who have to access general hospital care. The seminar will also consider the role of carers.

As for people who have more profound and multiple disabilities, although the just published day services report, which has been the result of collaborative work with service users, carers and

service providers, does not make many recommendations, its main aim is to raise awareness of the views and interests of all those groups in continuing to develop and improve day services. Of course, that is of great interest to many people, including family carers for those who have profound and multiple disabilities.

As members might be aware, we also fund the profound and multiple impairment service to support people with profound and multiple impairment through developing and maintaining the national information service for parents and professionals referred to in "The same as you?" As our national implementation group is keen in all its future work to focus on the needs of people with the greatest level of disability, it will seek representation from PAMIS in deciding how we target our efforts and meet the needs of all those with learning disabilities.

Jenny Pickthall (Scottish Executive Health Department): I will provide a brief overview of continuing national work. The national implementation group has set up a task group to consider how the implementation of the recommendations of "The same as you?" have been or will be affected by changes in supporting people funding. The task group's work will inform the on-going evaluation of supporting people funding, particularly with regard to the effect on learning disability services. The group aims to take its findings back to the implementation group and relevant ministers.

Implementation of "The same as you?" has informed development in other policy areas. For example, in further education, the guidance document "Partnership Matters: A Guide to Local Authorities, NHS Boards and Voluntary Organisations on Supporting Students with Additional Needs in Further Education", which was published in January 2005, outlines all the agencies' roles and responsibilities in supporting people with additional needs in further education. It was widely disseminated, and there is already evidence of formal and informal partnerships between colleges and local authorities around the country.

Moreover, the recent consultation on "Finding Practical Solutions to Complex Needs" found out more about young people's experiences in accessing further education and arrangements for attending specialist provision in England. The Executive is considering options for changing the current arrangements and hopes to consult on the way forward in the near future.

On employment, the employability framework will take forward the recommendations made in "Working for a change?" with regard to the employment of people with learning disabilities. The Executive has commissioned the Scottish

Union for Supported Employment to develop a blueprint for supported employment and how it relates to the employability framework. The plan will outline quality standards; assess training needs across supported employment organisations; act as a resource for local partnerships; and help to provide more people with learning disabilities the opportunity to take up employment.

Peter Stapleton (Scottish Executive Health Department): I will say a few words about carers policy and the Executive's response to the care 21 report "The Future of Unpaid Care in Scotland", which Rhona Brankin mentioned last year in her letter to the committee on these petitions.

The care 21 report captured views and experiences of unpaid carers and professionals and used economic modelling to predict future pressures. Although its 22 recommendations for action over the next 10 years are directed mainly at the Executive, some are also addressed to the UK Government, the NHS and local authorities.

On 24 April, Lewis Macdonald responded to the report by setting out the Executive's priority actions, including the development of more personalised, preventive respite care—which, as the research underpinning the document discovered, is a key priority for carers. In recognition of the health implications of caring on some carers, the Executive will engage with the NHS and general practitioners in identifying carers and prioritising their needs. It will also develop a consistent framework for carer training, to help carers, particularly new ones, to develop the necessary knowledge and skills to manage their caring roles. Finally, the Executive will prepare an evidence base to allow it to consider in next year's spending review the resources required to meet some of the report's recommendations.

Implementation of the response is now under way, and task groups for early actions on young carers and respite will be convened over the next few weeks.

Jean MacLellan: That concludes our presentation. We are happy to clarify any points and take any questions.

The Convener: Thank you for taking the time to give us that very comprehensive update. I will now open up the discussion to members' questions. We will go first to Jackie Baillie, who is champing at the bit.

12:00

Jackie Baillie: I was going to out myself as the convener of the cross-party group for learning disability, but that was done for me before I could. I am not sure whether I am required to declare my interest formally. If so, consider it done, convener.

What the Scottish Executive has done is tremendous and has been welcomed by people who are learning disabled and by people who represent learning disability organisations. We think that the policy framework is absolutely sound, partly because we involved people with a learning disability in shaping it, so that everyone feels a huge degree of ownership of it and wants it to succeed. Please accept my comments in that context. We feel that we own the policy and know what needs to be done. The reality—not just the perception—in some areas of Scotland where local agencies understand and support this work is that the transformation has been extraordinary, but in other areas, it is as if “The same as you?” had not happened. We want it to happen in every area of Scotland. I do not doubt the work that is being done or the intentions, but the reality is different.

Let me explore with you how we turn the right policy—what you said about working for a change and implementation of “The same as you?”—into reality everywhere in Scotland. I will focus my comments on monitoring. I would like to hear more about multi-agency inspections. You referred to an implementation team.

Jean MacLellan: That is us.

Jackie Baillie: There may be a resource issue. I am interested by the fact that, given that some time ago the cross-party group was shouting about performance indicators, five years in we are only discussing those, if I understand you correctly. What monitoring do you do? How do we ensure that partnership in practice agreements are not variable? We know that at the moment they are, because we have seen some of them. Some are excellent, but some could do with extra work. How do you know that your money is being spent? I can report to you that, irrespective of the supporting people programme, some local authorities are reducing the services that they provide to people with a learning disability, as is the case across the board. That is not anecdote but fact. We want to help you. You can blame us for the situation, but we think that you need a very robust monitoring framework.

Jean MacLellan: I am sure that I speak on behalf of the team when I say that we are gratified by the fact that Jackie Baillie views the policy so positively. Like her, we consider ownership by users of the service to be critical. If we do not have the people who use services alongside us, our policy as a whole will be empty. We recognise what she says about the variation across Scotland in the success of the policy to date. She will acknowledge that, with 32 recommendations, we must prioritise. We have done so in the way that I have described in the reports that we have undertaken to date. We have sent those more detailed reports to all local authorities and health

boards, in the expectation that they will be used as blueprints for implementing policy at a local level. We see that as critical.

In my introductory statement, I spoke about balancing the need for mainstream service with that for specialist service. Increasingly, we recognise that it is not sufficient for us to keep producing reports that are owned by many people but which are essentially written at the centre. We want to get alongside people in local authorities and work with them on what they are doing for people with a learning disability in their mainstream policies. That is why we talked about the employability framework and so on. Jackie Baillie knows that as well as I do.

We carry out monitoring directly through our partnership in practice agreements. Monitoring is conducted on a three-year cycle, because we are mindful of that fact that if we monitor more regularly, people will tell us that we should let them get on with the business and not constantly review what they are doing. The aim is to strike a balance and not to become overly bureaucratic in our expectations of monitoring returns. We have a statistical return that is largely quantitative, rather than qualitative, but we are looking forward positively to what the Social Work Inspection Agency is doing on monitoring and joint inspections.

As Jackie Baillie rightly said, we are five years into the policy. As she will know, the social work services inspectorate was recently made into an agency, so some change has taken place. The Social Work Inspection Agency now has a programme of joint inspection in relation to learning disability. For obvious reasons, some work has been done in the Borders, but the agency is also in the throes of conducting an inspection in Ayrshire.

To summarise, I recognise the points that Jackie Baillie made. I have explained how we currently carry out monitoring, but the national implementation group also provides another barometer of what is happening locally. For example, the users organisation People First keeps us informed. If issues of particular concern are raised at the national implementation group, we make direct contact with local authorities and health boards to clarify the position. However, I am interested to hear what more members think we could do and what mechanisms we might use.

Jackie Baillie: I do not wish to prolong the meeting, but I would be happy to respond to that just now. However, perhaps the convener would like me to respond later.

The Convener: If we have time, I will let Jackie Baillie offer her suggestions at the end.

Helen Eadie: I join my colleagues in welcoming the presentation that we have heard this morning. I associate myself with the positive remarks that Jackie Baillie made about the national implementation group's work, which I believe is important. I believe that the policy direction is absolutely right.

This question is probably for Jenny Pickthall, given that she talked about supporting people funding and the establishment of a national task group. Will she say a little bit more about supporting people funding, which is an issue in the area of Fife that I represent? In February, the committee considered a petition on that issue from Stella Macdonald on behalf of the Citizen's Rights Action Group in Fife. Indeed, I am meeting the minister on that topic this afternoon.

When will a review of the supporting people formula take place? Will such a review take place? Does the current formula take account of the age profile and levels of multiple deprivation in council areas such as Fife? I ask her to bear in mind the background, which is that Fife Council has taken great pride in the provision that it has made in supporting people with special needs across the county. However, I know that funding is an issue not just in Fife. The issue was raised at the big blether conference in Perth and it has also been raised by people from Grampian.

Jean MacLellan: If Helen Eadie does not mind, I think that her question would be better answered by Bette Francis, who has done some direct work on costings.

Bette Francis: The formula for supporting people is not managed by the implementation team, but we work with colleagues in the Executive who take forward the supporting people agenda. Although we have representation on the task group and we are examining costings, I am afraid that I cannot answer questions specifically on the supporting people formula. Obviously, I can ask colleagues from the supporting people team to answer those.

The purpose of the task group is to look at the fear that a loss of service would result from the changes in the supporting people allocations. As part of that work, we are looking at expenditure by local authority social work services on supporting people and expenditure by NHS boards to see what shifts and trends have emerged since supporting people was introduced. We will use that information to inform ministers on whether additional funding is needed in future spending reviews.

Ms White: On monitoring, which Jackie Baillie mentioned, I think that the reason why we have had such good feedback is that people are comfortable. However, there have been concerns

and perhaps even some criticisms. The two main issues on which people gave feedback were that there was no real monitoring of services and that local authority provision can be a postcode lottery.

Jean MacLellan mentioned that monitoring has been carried out every three years. If the most recent monitoring was carried out in 2005, that means that the next one will not take place for another two years. I appreciate the point that people do not want constant interference but, given the concerns that we have heard in feedback from petitioners, is it sufficient to monitor services only every three years?

Jean MacLellan: If that was all that we did, it would not be sufficient, but we do other things as well, such as our work on the national implementation group and the statistical return, which is quantitative rather than qualitative. We take part in a number of activities on our priorities. It would be difficult to ask local authorities and health boards to do monitoring more often than every three years.

Our national implementation group includes representatives from health boards, local authorities and user groups. As well as those strands, there is the joint inspection programme and the work that NHS QIS has been doing with us, so we engage in various elements of monitoring.

As I said to Jackie Baillie, I would be happy to work with the cross-party group on how to tackle those areas in which there is a perception that service has been reduced. We have not received sufficient evidence to indicate that that is the case.

Ms White: I am sure that Jackie Baillie and the cross-party group will bring forward any evidence that comes to light. A number of individuals have come to me about lack of service provision, so perhaps I will pass that information on to the group.

My next question is about people's perception that they are not getting an adequate service—"perception" might be the wrong word because, for the people who come to me and say that the service that they get in their area is not as good as the one that is provided to people who live in another area, that is a real situation, not a perception. Is there a system of checks and balances? Do you go back to the local authority if you get representation from people in an area to the effect that standards are not being met?

Jean MacLellan: In all our policy areas, we do such work routinely when we get representations from members of the public or from voluntary organisations. If we receive correspondence of that nature, we respond to it. If we had sufficient concerns, we would go out to talk to people. Bette Francis mentioned hospital closures. We knew

from the quantitative data that the targets were not going to be met but, in addition, a number of people said that they were not satisfied with the degree of progress in particular areas. As a result of that, the minister asked us to go out on a series of visits. That led to the quarterly returns, which Bette Francis described. We will do further visits to those six areas so that when an issue comes to the fore, we will assess it and address it as appropriate and with the minister's approval.

Ms White: That is comforting. You said that you do not have a great deal to do with the supporting people fund.

Jean MacLellan: A different team in the Executive deals with that.

Ms White: It is handled by employment and education staff. We know that there are cutbacks in the supporting people fund, which is a reserved area of policy. How much input does your team have to the relevant team in the Executive? Can it make an input into Westminster about the moneys that have been allocated? There is a dearth of services and people are extremely worried that they will no longer receive services when the supporting people fund is reduced or stopped.

Jean MacLellan: At the moment, there is one member of that team who is on the group that Bette Francis described, which is examining the different pots of money that are available. She informs us about what the intentions are in relation to supporting people as she becomes aware of what the impact may be for people with a learning disability. Above that level, my division head is in discussion with the division head who heads up the supporting people team on the issue so that we will know at an early stage what the impact will be in each of the coming years.

John Scott: Thank you for the quality of your presentation, which must have taken a long time to put together. Your commitment to the issue is welcome and I am totally behind it. I suspect that you might have just answered my question, but I will try to spell it out in words of one syllable. I am concerned about the long-term affordability of the more complex care packages for the 194 people who, according to you, are still in hospital. From experience in my constituency, I presume that the cases that have not yet been resolved are the more complex ones. Can you assure me that the funding that will be required to resolve those cases will be put in place? I would be happy to take your assurance. I would also like to know about the long-term position.

12:15

The Convener: Before the witnesses answer that, I will come in, because I was going to ask a similar question. We are down to smaller numbers,

as John Scott says. In my constituency, there is a hospital that is closing and has only a handful of service users. If a dispute arises between the advocacy team in the hospital and the service user and their family about the package that the social services department in the area has devised, how can the issue be resolved? It is difficult to use one individual case to highlight a wider problem but, if it can happen in one case, it could happen in others that the social services department is forced to provide an inappropriate care setting because that is more cost efficient. How would you make a policy intervention on such a decision?

Jean MacLellan: We tend not to get involved in individual cases, as you appreciate. Local authorities largely make their own decisions about the use of resources and social services departments tend to lead in decision making about individual cases.

On the 194 patients in long-stay hospitals about whom we know, generally speaking, John Scott's perception that it is those with the most complex needs who remain in hospital is accurate. However, that is not the case in all instances, because different hospital closure programmes operated in different ways; some closure programmes began with those with the most complex needs and then moved to those with less complex needs. That has varied over time and in different parts of Scotland.

The work that Bette Francis described involves acknowledging the point that John Scott makes. We need to get a better handle on the specific needs of the 194 long-stay patients en bloc rather than one by one, which would not be appropriate. Some of those people might require particular services if their behaviours are challenging, whereas others might require to be assessed and treated and then go back into the community for a while and then, possibly, have another period of hospitalisation. We are just beginning to scope that in the depth that would be required to give a concrete answer.

That is the best that I can do on that question for now. We are on to it and are examining it closely. We acknowledge that some of the 194 have high-cost care packages. However, we do not know whether those high-cost care packages are objectively necessary.

John Scott: I agree with the convener, because there is a similar set of circumstances in my area. It is difficult to site a generality on a specific instance, but the convener has said something similar. More and more of the responsibility for providing the care package is being transferred from health authorities to local authorities through their social services departments. With the best will in the world, health authorities apparently have more money than local authorities, which seem to

be short of money throughout Scotland. Is that a long-term problem? You are not intervening at the moment, but do you not have concerns about the long term?

Jean MacLellan: We do not regard it to be a long-term problem, as we have gone from several thousand people being in long-stay hospitals down to 194. We are concentrating on that number through the NHS QIS work that Bette Francis described, which lists the hospitals that currently have people in them and when their closure dates are. We followed that work up with visits to get the lie of the land in each hospital; we now have quarterly returns and will visit again. Through that process, we will better understand the detail in respect of that group of fewer than 200 people. We will continue to focus on that until we resolve the issues for what is a relatively small number of people in comparison to the several thousand people who were in long-stay hospitals five years ago.

The Convener: Before we discuss recommendations on what to do with the petition, I think that Jackie Baillie wants to ask another question.

Jackie Baillie: I do not have another question, but I am happy to start the recommendations, to try to be helpful to you, as I always am. I am conscious that helpful bits of work are going on, including work that the Scottish Consortium for Learning Disability is doing on the impact of "The same as you?" alongside people who have a learning disability. That is helpful and interesting work, although I do not know when the report will be produced. I recommend that we keep all three petitions open. The officials gave an explicit invitation to the cross-party group for learning disability to comment on the monitoring framework and implementation. As the officials may regret making that explicit offer, I will take it up before they can withdraw it.

Jean MacLellan: I do not think that we will regret that—it is partnership working.

Jackie Baillie: I am conscious of the primacy of the parliamentary committee, convener, but would it be possible for the cross-party group to do that work and then report back to the Public Petitions Committee? Perhaps then, if we are successful, which I am sure we will be, we can close the three petitions. Until then, can we keep them on the table?

The Convener: We have written to cross-party groups before to ask for their perspective on issues. Your suggestion is not inappropriate. It would be welcome to hear from the cross-party group as part of our consideration of the petitions. I hope that we will keep the petitions open so that we can continue our dialogue on the issues that they raise.

Helen Eadie: I support Jackie Baillie's proposal, but I have one question for the witnesses. In the Scottish Parliament and the Public Petitions Committee, we are always careful not to suck up power from local authorities and we try not to criticise them, because we acknowledge their decision making and authority. However, I would like to get a feel from the witnesses about the extent to which the funding for local authorities on the issue should be hypothecated. Do you have a sense that local authorities throughout Scotland are not using the funding as it was intended when the Scottish Executive handed it out through the supporting people initiative?

Jean MacLellan: As I am a civil servant, it would not be appropriate for me to comment on that.

Helen Eadie: Okay.

The Convener: We should take up Jackie Baillie's recommendation, but I recommend that we should also send a copy of the *Official Report* of the meeting to the petitioners and invite them to comment on what we have heard this morning, so that we can get as wide a perspective as possible. Do members agree to the recommendations?

Members indicated agreement.

The Convener: I thank Jean MacLellan, Jenny Pickthall, Bette Francis and Peter Stapleton for taking the time to give us that comprehensive update, which the committee appreciated greatly.

Environmental Protection Act 1990 (PE884)

The Convener: Our next current petition is PE884, by Sandra Clarkson, on behalf of Prestwick marine neighbourhood watch. The petition calls on the Scottish Parliament to urge the Scottish Executive to amend the Environmental Protection Act 1990 to ensure that local authorities keep beaches free of litter and refuse throughout the year.

At its meeting on 21 September 2005, the committee agreed to seek the views of the Scottish Executive, SEPA, the Marine Conservation Society, COSLA and South Ayrshire Council. Those responses have been received. As is our practice now, we will advise the petitioner of the responses and ask them to comment. Are members happy with that?

Members indicated agreement.

John Scott: I welcome the positive response from the Minister for Environment and Rural Development. I look forward to hearing the petitioner's views.

Neurological Services (Post-polio Syndrome) (PE873)

The Convener: The next petition is PE873, by Helene MacLean, on behalf of the Scottish Post Polio Network. The petition calls on the Scottish Parliament to urge the Scottish Executive to join the international community in recognising post-polio syndrome and to conduct a much-needed national review of neurological services to take account of the needs of PPS and all other long-term neurological conditions, with a view to establishing multidisciplinary centres of excellence to assess, treat and research such conditions, which affect the lives of many thousands of individuals in Scotland.

At its meeting on 9 November 2005, the committee agreed to seek further comments from NHS QIS and NHS Greater Glasgow. Those responses have been received and circulated. A further response from the petitioner has also been circulated.

Margo MacDonald has joined us to talk about the petition.

Margo MacDonald (Lothians) (Ind): I thank the committee for the opportunity to appear before it again. Although the petitioner will not be participating in the meeting, she is present, so we can act quickly if anybody wants us to set up a multidisciplinary clinic in the foyer.

The prevalence of the condition has been recognised and Greater Glasgow NHS Board has said that it is keen to undertake a study. I suggest that we go right away to stage 2 of what the petition proposes—a study not of prevalence but of models of service delivery. The Kerr report was anxious to promote the idea of a multidisciplinary, one-stop facility, with specialist nurses who direct patients to various people. Sufferers of long-term neurological conditions—such as post-polio syndrome—say that they feel like shuttlecocks being battered about from one consultant to another.

I suggest that we move to what is almost stage 2 and recommend that Greater Glasgow NHS Board considers models of service delivery. As far as I can see, the only question that is left to be answered is who will pay. I do not imagine that the study will cost a huge amount of money, because studies elsewhere in the world can be used as source material. If it will not cost a huge amount, who will pay for it should be tied up pretty quickly.

The Convener: I suggest that we take up Margo MacDonald's proposal and write to ask the Minister for Health and Community Care about the prevalence study and the modelling. It would also be appropriate to write to determine the chief medical officer's perspective. Do members have suggestions?

Helen Eadie: That is fine.

Margo MacDonald: Those people might be pleased to hear from you, because if the study considers models of service delivery, it could be a prototype for all the stuff to which the Kerr report referred.

Ms White: The petition has been a success. I draw members' attention to the additional information on updating the statistics on people who have PPS. Could we forward that information? We have been asked to update a website, but that is not in the committee's power. However, I presume that we could send a copy of the information to the chief medical officer and NHS Health Scotland.

The Convener: We will provide all the available information.

I have just checked my notes and found that I forgot to suggest writing to the chief scientist office.

Margo MacDonald: I should have mentioned that; I always mix up the medical man and the scientist, although they look different.

The Convener: It is worth asking for all opinions.

Margo MacDonald: The scientist would take the lead and the medical man would say okay. If the scientist works out matters, that will be fed into the implementation of care through the medical officer.

The Convener: If we write to all the people who have been suggested, we should receive information that allows us to see whether we are making the progress that we hope to make.

Margo MacDonald: The other big thing is time—the proposal has been kicking around for quite a long time. The two issues are time and money.

The Convener: I thank Margo MacDonald for her input. After we receive the responses, we will address the matter in due course. We hope that you will have another opportunity to see how we are making progress.

Margo MacDonald: Would you like me to mark you out of 10?

The Convener: Not at the moment.

School Buses (Safety Measures) (PE892)

12:30

The Convener: Our next petition is PE892, by Ronnie Beaty. It calls on the Scottish Parliament to urge the Scottish Executive to amend the Education (Scotland) Act 1980 to set down minimum safety standards for school bus

provision, including the provision of certain safety signs; to make regulations under the Road Traffic Regulation Act 1984 requiring the use of certain safety signs and lights on school buses; to make failure to comply with such signs an offence; and to seek the necessary powers to require bus operators to remove such safety signs from school buses when they are not in school use.

At its meeting on 26 October 2005, the committee agreed to seek the views of the Scottish Accident Prevention Council, the Scottish Parent Teacher Council, the Educational Institute of Scotland, Transform Scotland, the Confederation of Passenger Transport and COSLA. Responses have been received and circulated. The committee has received correspondence from John Swinney MSP and Jim Wallace MSP, which has also been circulated. We are joined by Stewart Stevenson, who wants to comment on the petition.

Stewart Stevenson (Banff and Buchan) (SNP): Thank you for your courtesy in allowing me to be present. I know that Mr Beaty and his family are here, although Mr Beaty appears to have popped out for a moment.

In considering whether there was a problem, I was particularly struck by the response from the Scottish Accident Prevention Council, which states:

“there were 431 children killed or seriously injured in road accidents and approximately two thirds of these were pedestrians. 20% of all child road casualties happen on the school journey and the peak time for these accidents is between 3 and 4pm on weekdays.”

It is clear from the statistics provided that Mr Beaty's petition relates to an area in which there is definitely a problem.

The minister acknowledges in his comprehensive reply that existing regulations do not create requirements but are merely enabling. COSLA highlights the fact that there are no legislative requirements; the Scottish Accident Prevention Council suggests that there should be requirements; and the EIS supports the petition.

It appears from where I am sitting—members might take a different view—that there is considerable support for what Mr Beaty is trying to do among people with an interest in education and children's safety, and that some, although not all, of his objectives can be delivered by the Parliament. I hope that the committee will look favourably on the responses that have come in and find a way for the Parliament to take the petition forward.

John Scott: I welcome Stewart Stevenson to the meeting; I also welcome his comments. We should consider referring the petition to the Education Committee. I was particularly struck by

the comment from the Scottish Accident Prevention Council that

“there should be a more consistent national approach to school transport and attendants on school buses”,

which the committee might wish to address—that might be the best way forward.

I am aware of the minister's response that this is a local authority issue. I have to say that that is an entirely reasonable position for him to take. I hope that local authorities will take note of that, because ultimately the buck stops with them. It seems to me that the minister has done all that he reasonably can do.

Rosie Kane: There is outstanding support for the petition among the responses, most of which Stewart Stevenson mentioned. The Scottish Parent Teacher Council quite rightly pointed out that, unfortunately,

“action only appears ... to be taken when children have been seriously injured or killed.”

We have to pay heed to the various submissions that have been made. I agree that it would be best for the petition to go to the Education Committee so that it can see how powerful the petition and the responses to it are.

Jackie Baillie: I do not dissent from anything that has been said. Standards vary among local authorities for no apparent reason. I am pleased that the minister has drawn to local authorities' attention the recommendations from the Scottish Consumer Council's recent study. However, as we saw with our previous petition, implementation is always an issue. We should send the petition to the Education Committee and ask it specifically to consider how regulations are being implemented and whether they need to be changed.

Ms White: I echo everything that has been said. All the responses are positive—even the one from the Minister for Education and Young People. I disagree with him in only one regard. He says that the recommendations should be commended to local authorities, but I think that they should be mandatory. The issue is an important one throughout Scotland, not only in certain regions. I agree that we should send the petition to the Education Committee, drawing special attention to the paragraph that John Scott mentioned.

Has the petitioner seen the responses that we have received?

The Convener: If that has not happened, we will make all the responses available to the petitioner. If he wants to provide any additional information, we will give that to the Education Committee as well.

Stewart Stevenson: I welcome the remarks of the committee members. Might members be

prepared to suggest to the Education Committee that, if it identifies any actions that could be taken by another Parliament, it should express a desire that that happen, so that that can add weight to deliberations that might take place elsewhere?

The Convener: If we were to tell a committee of this Parliament to tell another Parliament what it should do, we would be getting into dangerous territory.

Jackie Baillie: If I may be helpful, convener, I would just point out that the Education Committee will be able to read the entirety of our discussion in the *Official Report*. Therefore, the point has already been made.

The Convener: That is a good way around it. Do we agree to follow the action that has been suggested?

Members indicated agreement.

Mental Health (Care and Treatment) (Scotland) Act 2003 (PE889)

The Convener: Our next petition is PE889, by James A Mackie. It calls on the Scottish Parliament to examine the workings of the Mental Health (Care and Treatment) (Scotland) Act 2003 and, in particular, the making available of legal representation and legal aid to patients detained in psychiatric wards or released to the community who are under the influence of prescribed antipsychotic or brain-altering drugs.

At its meeting on 26 October 2005, the committee agreed to seek the views of the Law Society and the Scottish Association for Mental Health. Responses have been received and circulated to members.

Helen Eadie: Should we invite the petitioner to submit his views?

The Convener: Do we agree to do that?

Members indicated agreement.

A96 Improvements (Elgin Bypass) (PE558)

The Convener: Our next petition is PE558, by Pauline Taylor. It calls on the Scottish Parliament to urge the Scottish Executive to include as a matter of urgency a bypass for Elgin in the programme for improvements to the A96.

At its meeting on 20 April 2005, the committee agreed to ask the Executive to keep it updated on any developments in respect of the strategic transport projects review, particularly with regards the proposed Elgin bypass.

An update has been provided by the Scottish Executive, which states:

“While the Elgin bypass is not included in the current investment programme, we are working closely with the Highlands and Islands Transport Partnership and the North East Scotland Transport Partnership in a multi-modal corridor study to identify the future transport needs of the A96 corridor.”

Helen Eadie: It appears that no further action is required on the petition. However, I just point out that we received the petition in 2002. Were the petitioner a man, he would have grown a very long beard by now. I note that the letter is from the Enterprise, Transport and Lifelong Learning Department. The minister concerned needs to bear in mind the fact that people might ask why it takes such a long time for certain issues to be resolved.

The Convener: That point is worth making.

John Scott: The coalition is obviously failing.

The Convener: Do we agree to take no further action on the petition?

Members indicated agreement.

Vulnerable Adults (Medication) (PE867)

The Convener: The next petition, PE867, is from W Hunter Watson. It calls on the Scottish Parliament to provide adequate safeguards against vulnerable adults being given, by surreptitious means, unwanted, unnecessary and potentially harmful medication.

At its meeting on 7 December 2005, the committee agreed to seek further comments from the Executive and Enable Scotland. Responses have now been received and circulated to members. The Committee has also received a further submission from the petitioner, which has also been circulated.

Jackie Baillie: We are aware that a revised code has been prepared but has not yet been published. Some of the concerns that the petition deals with have been expressed to the Executive as part of its consultation on the code. We should keep the petition open until the code is published, at which time we will be able to see whether the Executive has taken on board the comments that have been made.

The Convener: Do we agree with that suggestion?

Members indicated agreement.

Medical Negligence (PE866)

The Convener: Our final petition is PE866, from James Kelly. It calls on the Scottish Parliament to consider and debate the need for an independent body to be set up to investigate claims of medical negligence.

At its meeting on 22 February 2006, the committee considered responses from the British Medical Association Scotland, Citizen's Advice Scotland, the General Medical Council, the Law Society of Scotland, the Royal College of Physicians of Edinburgh, the Royal College of Physicians and Surgeons of Glasgow, the Royal College of Surgeons of Edinburgh and the Minister for Health and Community Care. The committee agreed to invite the views of both the petitioner and the minister on the responses. Now that those have been received, do members have a view on how we should address the situation?

John Scott: I have the greatest sympathy with the petitioner and acknowledge his perception of how he was treated by NHS Ayrshire and Arran. However, on the basis of the minister's response, I have to say that we must agree with the minister. I do not think that we need any more bodies looking into these matters. There are adequate avenues by which appeals can be made. That has to be our position. Therefore, we must, regrettably, close the petition. There is nothing more that we can do.

The Convener: Do members agree?

Members indicated agreement.

Annual Report

12:42

The Convener: Under item 3, the committee is invited to consider the draft annual report for 2005-06 and agree its publication.

Helen Eadie: It seems awfully short, considering all the work that has been done.

The Convener: There is a standard formula that must be adhered to. The clerks must comply with the word limit and so on.

John Scott: I welcome the fact that it is concise.

The Convener: Do members agree to sign off the draft report?

Members indicated agreement.

Meeting closed at 12:42.

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

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

The deadline for corrections to this edition is:

Tuesday 16 May 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

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

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron