

PUBLIC PETITIONS COMMITTEE

Tuesday 6 October 2009

Session 3

£5.00

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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PUBLIC PETITIONS COMMITTEE

14th Meeting 2009, Session 3

CONVENER

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Marlyn Glen (North East Scotland) (Lab)

*Robin Harper (Lothians) (Green)

*Anne McLaughlin (Glasgow) (SNP)

Nanette Milne (North East Scotland) (Con)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Claire Baker (Mid Scotland and Fife) (Lab)

*Jamie McGrigor (Highlands and Islands) (Con)

Christina McKelvie (Central Scotland) (SNP)

Nicol Stephen (Aberdeen South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED :

Tam Baillie (Scotland's Commissioner for Children and Young People)

Sarah Boyack (Edinburgh Central) (Lab)

Ted Brocklebank (Mid Scotland and Fife) (Con)

Bob Doris (Glasgow) (SNP)

Dr Kenneth Faulds

John Ferguson

Alex Fergusson (Galloway and Upper Nithsdale)

Murdo Fraser (Mid Scotland and Fife) (Con)

Christine Grahame (South of Scotland) (SNP)

Julie Love

Kenny MacAskill (Cabinet Secretary for Justice)

Margo MacDonald (Lothians) (Ind)

Mike Pringle (Edinburgh South) (LD)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

James Strang

Sandra White (Glasgow) (SNP)

CLERK TO THE COMMITTEE

Fergus Cochrane

ASSISTANT CLERKS

Franck David

Linda Smith

LOCATION

Committee Room 2

Scottish Parliament

Public Petitions Committee

Tuesday 6 October 2009

[THE CONVENER *opened the meeting at 14:05*]

Current Petitions

Magazines and Newspapers (Display of Sexually Graphic Material) (PE1169)

The Convener (Mr Frank McAveety): Good afternoon, everyone. I welcome members of the public to the 14th meeting this year of the Public Petitions Committee. I have received apologies on behalf of Nanette Milne, and I welcome her substitute, Jamie McGrigor. All mobile phones and other electronic devices should be switched off.

We have a full agenda today. We will hear from petitioners on two new petitions, but first the Cabinet Secretary for Justice and Scotland's Commissioner for Children and Young People will give evidence on PE1169, which is about the display of sexually graphic magazines and newspapers. I welcome Kenny MacAskill MSP and Tam Baillie to the meeting. It is Tam Baillie's first appearance before this committee in his formal capacity as children's commissioner, although I am sure that he has had opportunities to give evidence to other parliamentary committees.

Tam Baillie (Scotland's Commissioner for Children and Young People): I welcome this opportunity.

The Convener: PE1169, by Margaret Forbes on behalf of Scottish Women Against Pornography, calls on the Scottish Parliament to urge the Government to introduce and enforce measures to ensure that magazines and newspapers with sexually graphic covers are not displayed at or below children's eye-level, or adjacent to children's titles and comics, and are screen sleeved before being placed on the shelf. We have considered the petition on previous occasions, and I know that members have a range of questions to put to the witnesses. Unless the minister or Tam Baillie has any specific remarks to make, I will invite questions.

The Cabinet Secretary for Justice (Kenny MacAskill): I am happy to go straight to questions.

Tam Baillie: Likewise.

Marlyn Glen (North East Scotland) (Lab): How can the voluntary code be more effective and flexible than statutory regulation when the National Federation of Retail Newsagents, which drew up the code, acknowledges that

"we have no means of monitoring or enforcing compliance and our members can abide by the guidance or not, as they choose"?

Kenny MacAskill: We as a society must decide how to proceed on such matters. There is often good reason for having a system of self-regulation. We do that in a variety of circumstances because it is cost effective. Once we bring in regulation, we have to monitor it, enforcement powers have to be provided and there has to be supervision. It is a question of society, Parliament and Government deciding where they wish to set matters.

At present, the code is voluntary. I expect that there are cases in which it is not adhered to. It is for us as a body politic to decide whether we wish to improve the existing system of self-regulation or whether we wish to consider adopting structures that would take us beyond it. The usual reason for going with self-regulation is that it avoids a bureaucracy and the consequent costs. A regulatory regime that did not have enforcement powers or the appeal mechanism that goes with them would not have more worth than a self-regulatory regime.

Tam Baillie: Before we consider regulation, we need to know whether it is accepted that there is a problem. It is difficult to make arguments for or against regulation if there is not a common acceptance that there is a problem with the availability of sexually explicit material to children and young people. We need to establish whether all sides agree that we have a problem. Then it will be easier to consider what to do about it.

I say that because I know that on the back of the petition the Scottish Government has made representations on numerous occasions to the effect that there is no evidence that the voluntary code is not working. I disagree with that. We need acceptance that there is a problem first of all; then we must consider possible ways of dealing with it.

Marlyn Glen: I understand why Tam Baillie is calling for research on the issue. There is certainly evidence from numerous campaigns at national and local level that even leading retailers are not enforcing the code. Do you share the committee's concern that the voluntary approach is not having much effect?

I have a file of material from the petitioners, Scottish Women Against Pornography, which has been carefully researched. Do the cabinet secretary and the commissioner have copies of that material? If not, would they like me to hand over the file on behalf of SWAP?

Tam Baillie: I have no problem with the evidence that has been presented so far, which demonstrates that there is a widespread problem, given that a very few people who have taken an interest in the issue have unearthed numerous examples of floor-level displays of explicit material and of children's comics, toys and videos being placed next to explicit material. That is happening not just in local grocers shops that are not part of any federation but in stations and garages. The problem is widespread, but there must be acceptance of it so that we can start to consider the best course of action. That is key. I think that the extent of the problem is significant, but because surveys have been conducted locally the Scottish Government can always argue that there is insufficient evidence to convince it that it must do something about the problem. In my view there is sufficient evidence, but I think that there is a lot more to unearth. That is why the issue should be properly researched in Scotland.

Marlyn Glen: Cabinet secretary, do you have a copy of the material that SWAP has collected?

Kenny MacAskill: No, I do not have that information; I will be happy to look at it. I echo the commissioner. It would be naive or deluded to suggest that there is 100 per cent adherence to the scheme. If there are breaches of the scheme we need to consider the extent of the problem and the basis of the information that we have—it must be more than anecdotal—and we need to consider whether the solution is to improve the existing scheme or to legislate. We are more than happy to engage with the committee on the matter, which is why we are here as the committee reflects on the petition. I am more than happy to consider the information and discuss what we can do to address the issue.

Bill Butler (Glasgow Anniesland) (Lab): Does the Government accept that there is a problem?

Kenny MacAskill: The short answer is that we do not know. We are not deluding ourselves by saying that there are never breaches of the code. We welcome what the committee is doing. We have not been carrying out research on the issue but we are happy to consider the advice that the committee will doubtless supply when it has considered matters. I agree with the commissioner that we must have clear, sustainable evidence. When we have that, we will be happy to discuss with the committee what we should do.

Bill Butler: On that basis, is the Government willing to initiate national research on the effectiveness of the voluntary code? If such research shows that there is not just an occasional breach but a significant problem, will you consider making the code compulsory?

14:15

Kenny MacAskill: I cannot answer your latter question until we have seen the evidence on the former. A lot would depend on the cost of commissioning research. There are also a variety of other factors. Do we need to undertake the research if the information is available, as the commissioner suggests? That could be verified by you. The Government wants to hear from you. Are we prepared to accept that there are difficulties and problems out there? Yes. What is the extent of those? We would like to hear that from you. If the committee feels that extensive research is required, we will be more than happy to consider that. However, it may be that, after considering the matter, you find that it can be dealt with here. You are pushing at an open door in terms of our being prepared to consider the matter. We accept that there probably are problems and that we must get to the root of them.

Bill Butler: I am glad to hear that we are pushing at an open door. Given the fact that the cost to the Government of initiating a piece of national research would be minimal, even in these straitened times, why not go ahead with that? Only you can draw that together so that we get a clear picture of the national situation to enable you and the committee to take an impartial and objective view of the situation. The social cost of the problem, in terms of the exploitation of women and the harm that is done to women and children, is far higher than the cost of any research. Do you not agree that you should get the ball rolling on this one?

Kenny MacAskill: It is important that we ensure that everyone in our society is respected, not simply those of one particular gender. You will accept that, before we embarked on any research, we would have to define its remit and what outcome we were seeking to achieve. Also, some of the aspects to which you have alluded, relating to consumer protection, are reserved and therefore outwith the control of the Scottish Government.

You are correct to suggest that there are instances—we do not know how many—of material being inappropriately placed in newsagents. There is then the question of what that material that is inappropriately placed is. If it falls within the ambit of the current criminal law, it is dealt with by either the Crown or the police. Equally, however, it may simply be material that is legal but which is viewed by many as inappropriate. That is more a matter of consumer protection that requires to be dealt with by the Westminster authorities until we change the constitutional settlement.

Bill Butler: Let us leave the constitution aside for a minute. If the committee were able to help

you and the Government to establish a framework for research centring on matters that are devolved to the Scottish Parliament, would the Government be willing to initiate that research? Yes or no?

Kenny MacAskill: I would be prepared to consider it, Mr Butler, but you cannot expect me to sign a blank cheque. The Government must have priorities. I attended a meeting earlier at which we discussed research on a variety of things relating to criminal justice, including public attitudes to knife crime and the fear of crime. What we are discussing now is important and must be factored in, but I cannot give you a blank cheque.

Bill Butler: So, you are not against it in principle.

Kenny MacAskill: No. In principle, we accept it. I have come here with a willingness to engage with the committee and discuss the issue. However, as the commissioner said, we need to work out the extent of the problem, what we need to discover and where we want the research to go. You are asking me to commit to research when we do not know what the remit of that research would be, never mind the cost or what we would hope to do with the research when we had it—whether to lobby Westminster or to take action here. We are happy to engage with the subject, but we need to work out what we would be trying to achieve.

Tam Baillie: The focus of the research would be to establish the extent of the problem. The Government has already accepted, in written evidence, that such material should not be displayed at children's eye-level and I am encouraged by that. We have some small-scale surveys that were conducted by a very few people in Scotland and the amount of evidence that they unearthed was disproportionate to the size of their organisation. That makes me believe that there is something much more significant underneath, which is why I think that it is important that we carry out research.

In preparing for the meeting, I bought a copy of the *Daily Sport* at a place that is within easy walking distance of the Parliament and within easy access of nurseries and primary schools. Members will find that they can do the same in almost every community in Scotland. I know that a brief for research cannot be drawn up across a committee table, but the petition is clear about breaches of what seems to be a voluntary code. That code is simply not working.

Jamie McGrigor (Highlands and Islands) (Con): Sometimes parents who are concerned that such magazines are displayed in front of their children take up the problem with individual shopkeepers. That is what they have to do, but it can be daunting and intimidating. Is it fair to put the onus on parents to do that? What measures

can the Scottish Government take to support parents in such situations?

Kenny MacAskill: Obviously, such matters can be raised with the Scottish Grocers Federation. It depends on whether the outlet is small or is a member of any of the federated bodies, such as the Scottish Grocers Federation. Many magazines are sold in the multiple supermarket retail outlets, which have methods of engaging with people.

There is also the issue of consumer power. People can simply walk away and take their business elsewhere. If there are channels or means of access to go through, people should go through them. However, it is up to the individual to exercise their right in relation to whether to buy the *Daily Sport*. Where that paper is displayed is a separate question.

Jamie McGrigor: This is not about the *Daily Sport*, minister; rather, it is about publications—

Kenny MacAskill: Publications that have been displayed which are clearly pornographic and require to be dealt with in a particular way fall within the ambit of the criminal law. Daily papers and other things that are viewed as legitimate are reserved matters. There are two issues: where publications are displayed and whether they should exist in principle. To some extent, matters stand or fall in each separate instance. However, first and foremost, people have an obligation to challenge. If a person thinks that something has been dealt with inappropriately in a shop, it is often correct to challenge the shopkeeper.

Jamie McGrigor: What happens if they challenge the shopkeeper and the shopkeeper becomes intimidating?

Kenny MacAskill: That depends on the level of intimidation. The intimidation could constitute a breach of the peace. However, if the shopkeeper is intimidatory but a criminal offence has not been committed, I would have thought that common sense would dictate that the person concerned should take their business elsewhere and encourage their friends and family not to give the shopkeeper the business that they previously sought. The business will stand or fall on such things.

Anne McLaughlin (Glasgow) (SNP): I want to pick up on something that you said about the existence of such magazines in principle. The Scottish Government has done a lot of work on gender equality and tackling violence against women. Are you concerned that the existence of such magazines—never mind where they are displayed—undermines the messages that the Scottish Government is working hard to get out?

Kenny MacAskill: There are various issues. The question takes us back to the point that the

commissioner made about requiring empirical evidence. The Government is keen to promote a culture of respect. People should respect themselves and one other, behave in a respectful way, respect the rights of others, and portray people in a respectful way, but those issues are broader than that raised in the petition. We are more than happy to engage in any such matters that the committee wants to engage in, because things are not static. After all, many years ago there was a debate about D H Lawrence's "Lady Chatterley's Lover" and how it was perceived. We want to ensure that we have a culture of respect so that people are treated appropriately.

John Wilson (Central Scotland) (SNP): Cabinet secretary, clearly there are major concerns among the public. The petitioners have laid out their concerns and we have heard Tam Baillie speak in his role as Scotland's Commissioner for Children and Young People. There is concern about the type of publication that is displayed openly on shop shelves.

We could have a debate about magazines versus what are perceived to be daily publications or purport to be newspapers, but is the cabinet secretary willing to sit down with interested parties, including the petitioners, the National Federation of Retail Newsagents and the Scottish Grocers Federation to look at what is currently in place—we have been told that the voluntary code is failing to deliver any meaningful control over the display of these publications—and try to work out a way forward? If we are to undertake research, it should be meaningful and all the involved parties should be aware that it will be done. Hopefully we can find a commonsense approach to the problem.

Even under the obscene publications provisions in the Civic Government (Scotland) Act 1982, we can pick up a publication that is displaying graphic obscene images, but is classified as just a newspaper. We need controls that are more hard and fast. I understand the cabinet secretary's concerns about who would enforce a code and how they would do it, but we need to get the ball rolling. I would like to think that the cabinet secretary will be willing to take on that task and bring interested parties around the table to look at how we move this issue forward. It has been going on for far too long and certain newspaper and magazine publishers seem to want to flout any voluntary code because they know that they will not face prosecution.

Kenny MacAskill: The committee is quite correct to examine the issue with interest. My officials have already met a number of trade bodies such as the Scottish Grocers Federation, the National Federation of Retail Newsagents, and the Periodical Publishers Association. We understand that they take any breaches seriously,

but there is obviously evidence, whether anecdotal or otherwise, that the voluntary code is not being adhered to, so we are more than happy to work with those organisations to see what can be done. Presumably such work would have the remit of improving the current voluntary scheme.

If the committee feels that we need to go beyond that, we will be happy to work with you and discuss where you seek to go. However, when you talk about the nature of publications, you are beginning to impinge on issues that are reserved to Westminster. If the committee wishes to enter into those discussions, we will be happy with that, but basically, those are reserved matters.

We are more than happy to look at improving what we have already. If the committee feels that the voluntary scheme is not working and that we should move towards a different scheme, we will be happy to consider that but, as I say, we will have to decide on what the scheme would be, what it would cost and how bureaucratic it would be. We live in a world of finite resources and we have priorities.

On the general respect agenda, it is clear that we need to go further to ensure that we make progress with regards to women in Scotland in the 21st century. We see the shameful statistics about many people's attitudes. Indeed, it was mentioned in passing by a chief constable in some of today's newspapers. We are happy to discuss these matters.

14:30

Tam Baillie: I welcome those comments and the cabinet secretary's commitment. However, I remind everyone that powerful forces are at play here. For instance, the Scottish Retail Consortium stated in written evidence that the retailer must

"respond to consumer demand and offer a choice of products to the consumer."

Evidence has been presented that states that publishers pay a premium so that certain publications can be displayed at eye-level and capture everybody who comes in and out of shops. How seriously we take the problem and how openly we admit that we have a problem will determine how assertive we will be in taking measures beyond the rather weak voluntary code.

John Wilson: I am aware that a number of reserved matters impinge on our discussions, but if the Scottish Parliament, this committee or the Cabinet Secretary for Justice gets clear evidence that the voluntary code is not working, we would expect that the cabinet secretary would present that evidence to the United Kingdom Government and ask it to introduce a code at UK level. That would, I hope, put pressure on the publishers of the material in question to apply the code as we

expect it to be applied. As Tam Baillie said, some publishers pay a premium to have their magazines displayed, because they know that the voluntary code is not working and cannot work in the present circumstances. The code is not enforced in the way that the petitioners or other people in Scotland or the UK would like. If we get clear evidence that the voluntary code is being flouted, we hope that you, cabinet secretary, along with the Parliament and others, would make representations to the UK Government to ensure that a code applied and was in place and that it could be enforced so that publishers, retailers or whoever could be brought to book for what they do with the publications concerned.

Kenny MacAskill: We are more than happy to work with this committee, the Equal Opportunities Committee or whatever. If we can get the clear empirical evidence to which the commissioner alluded, and if there are clear recommendations, we will obviously be more than happy to seek to do what we can to ensure that our children and, indeed, the rights of women are protected in this country.

The Convener: I want to try and pull the discussion together now, so Marlyn Glen and Jamie McGrigor will ask a question each, then the cabinet secretary will respond.

Marlyn Glen: I want to point out some connections. I think that everybody welcomes the Parliament's equality work, the Scottish Government-backed Rape Crisis Scotland campaign and so on, but there are connections to be made that I do not think are obvious from the petition.

Some of the so-called lads' mags are described as harmless fun, and we are talking about covering up the front cover, which would make a big difference, but I will pass on to the cabinet secretary a file from SWAP that shows that there are direct links through adverts in the back pages of some publications to explicit hard-core pornography and prostitution. That goes against all the work that we do to try to protect women.

The idea that an individual has to challenge the display of such publications is fine, and I have done it myself. I have gone into places and said, "Do you realise what's here?" at the front of a garage counter, for instance, which is obviously at quite a low level. In that case, I discovered that the woman at the cash desk had not realised what was in front of the position where she worked. Where the publication is displayed affects not just children coming in, but the people who sell the newspapers and the magazines. I want to ensure that the cabinet secretary is aware of such connections and that he will consider those as well.

Jamie McGrigor: If these magazines are being displayed at children's eye-level, is that compatible with the United Nations Convention on the Rights of the Child or for that matter the Convention on the Elimination of All Forms of Discrimination against Women?

Kenny MacAskill: With such matters, the devil is always in the detail. All individuals, including children, have rights, but we have to strike a balance in that respect. After all, when we talk about a child's eye-level, are we talking about an average child of five or 15? I do not want to be flippant but if we want to legislate for displays at child's eye-level, the fact is that any legislation that we vote on in the chamber will have to define the term, because the courts will require it. I would not want to be the parliamentary draftsman who was charged with that task—indeed, I find the term difficult to define—but if the committee has a view on what constitutes a child's eye-level we will be more than happy to consider it.

We accept that certain material is being located inappropriately and that that impinges on a woman's right to be treated with respect. Scotland is on a journey; things are better than they were, but we still have some distance to travel. However, if you want to legislate on this issue, you will have to be specific. The phrase "eye-level" will not be recognised by any court or parliamentary draftsman and you will be required to say what you mean by such a phrase. Equally, if you talk about a child's eye-level, you will have to be aware that that can cover a variety of ages. That said, we recognise that there is a problem and we are happy to work with the committee to make the situation better.

Tam Baillie: The *Daily Sport* that I purchased was at pram level. The commonly accepted level is 1.2m, which is the average height of a six or seven-year-old.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): A large section of the community would describe these magazines as harmless fun, although there is no doubt that others have directly linked them with hard-core pornography and prostitution through the advertisements in the back pages. The fact is that when they are displayed at children's eye-level or next to comics, they are already easily accessible by children. As the voluntary code is clearly not working, why do we not enforce it or make it compulsory? Surely that would ensure that the provisions work effectively.

Kenny MacAskill: If the committee wishes to go down that route, we are happy to consider it. However, the proposal raises a number of questions. What sanctions will be applied for breaching the code? Who will impose the sanction? How will you recover the penalty? Is the

penalty a criminal or civil one? If it is civil, which organisation will administer it? We are not precluding any approach; all I am saying is that the devil is in the detail. The commissioner might well be right in saying that a child's eye-level is 1.2m to 1.3m, but that will have to be specified. As I have said, parliamentary draftsmen will simply not accept the phrase "child's eye-level".

If, on the other hand, you want the code to be enforced, we will have to work out who will deal with the matter, the nature of the punishment, how the punishment will be enforced and, of course, what system of appeal will be needed. After all, we live in a world with the European convention on human rights and if the Parliament wishes to penalise people for breaking the rules and acting inappropriately, those people will have to be able to appeal such decisions. We are genuinely willing to address a problem that we all accept exists, but we must go forward with the appropriate information and work towards an appropriate solution. The devil is in the detail, and we are happy to discuss that with you and others.

The Convener: I thank the cabinet secretary for attending. Do you have any final comments, Mr Baillie?

Tam Baillie: The Scottish Government has accepted in written evidence that this material should not be available. It is helpful that it has been acknowledged that there is a problem. How assertive we should be in any future action depends on the extent of the problem. We do not really know that, because there is a lack of information. It is pretty tricky to work out what we should do about the issue. There are a number of options, but difficulties are associated with each of them. It will be helpful for us to know the extent of the problem. Common sense tells us that most people know that there is an issue.

The Convener: We have received responses from both the children's commissioner and the Cabinet Secretary for Justice. We will ask for an options paper to be produced for the committee. From the questions that were asked, it is clear that members are genuinely concerned to identify the problem, its scale and whether the existing code is adequate to cover concerns or requires further development. The committee has the option of commissioning its own research, as we have done on a couple of occasions in recent years. We can consider that option, but it might be helpful for the cabinet secretary's department to reflect broadly on the contributions that have been made today. There are many areas of uncertainty. We acknowledge that the legal terminology must be precise, should a different course of action be taken on the issue. In those circumstances, we would seek advice from the cabinet secretary's officials and parliamentary draftspersons.

I thank Tam Baillie and Kenny MacAskill for their time. I hope that we will be able to make progress on the petition.

New Petitions

Judicial Office-holders (Age of Retirement) (PE1276)

14:43

The Convener: We have six new petitions in front of us. We will hear presentations by two petitioners. PE1276, from John Ferguson, calls on the Scottish Parliament to urge the Scottish Government to remove the requirement for judicial office-holders, including justices of the peace, to retire at the age of 70. I welcome Mr Ferguson, who is here today with Mr James Strang. I understand that Mr Strang will make a few opening remarks. I declare for the record that I know both Mr Ferguson and Mr Strang, who have key responsibilities in a local housing association in my parliamentary constituency.

James Strang: Good afternoon, ladies and gentlemen. On behalf of Mr Ferguson, those over 70 and those approaching 70, I thank you for giving me the chance to highlight the inequality that is enshrined in Scotland in the 21st century. That inequality is supported by the Scottish Parliament when it passes and enacts laws that set arbitrary age ceilings.

In our submission, which you have read, we highlight the legislation that the Scottish Parliament passed in which it was decided that, when a person reaches 70, they are no longer capable of understanding, making value judgments and reaching conclusions. It seems that, as soon as we reach 70, which we will all do at some point—looking around the room, I should say that some will reach that age sooner than others—the life skills, experience and common sense that we have gathered over the years are judged to evaporate into thin air and that, when it comes to playing our role in society, we are no longer welcome. That is exactly what happens in this country in the 21st century.

14:45

At 70, a person must stand down from the justice of the peace bench, as Mr Ferguson has had to do. Others before him have had to do that, and others after him will have to do so, too. They must also stand down from a health board and they can no longer take part in the various appeal panels for organisations such as the Department for Work and Pensions and employment tribunals.

When you made the law, how did you come to the conclusion that, at 70, people are incapable of reasoning? What is it in the biochemistry of the human body that means that, at 70, people's brains automatically cease to function? On what

empirical evidence are these age barriers set? The answer is that there is no biological, biochemical, genetic or statistical evidence that you can point to when setting those age barriers. It is a randomly selected age that suits a very outdated and totally irrelevant concept of what age means.

You will be aware that the population is ageing. The life expectancy of a human in this country is rising year on year and, coupled with an overall reduction in the birth rate—this year might be an exception—we will have more older people longer. By 2031—some of us will be around then—there will have been a 40 per cent increase in those aged between 64 and 74, and a staggering 81 per cent increase in those over 75. Are we seriously suggesting that none of those people is capable of making a contribution to the governance of our country?

It would seem that age is not an issue for this building. There is no upper age barrier for standing for election here. What would you do if, at 69 years, you were told that, the minute that you reached 70, you could not participate in this legislature? I am sure that you would seek to change the situation. When doing so, your arguments would include your life experience, the experience that you have gained in politics over the years and the commitment that you have to public service. Mr Ferguson and his peers are exactly the same as you. They have given huge amounts of personal time to public service.

There is no age limit for membership of the House of Commons or the House of Lords, so why should there be one for other essential roles in the governance of our community?

There is no age limit for being a member of a community-based housing association—of one of which I have the privilege of being the chief executive. Of the 243 regulated housing organisations in this country today, the vast majority are governed—I use that word deliberately—by people who are over 60, many of whom are well into their 70s. You will know that to be the case in your constituencies. Those organisations have a combined value of billions of pounds and, even in today's economic climate, are considered blue-chip organisations, yet they are governed and controlled by people of a certain age. The skill, experience, common sense and good judgment of those board members have been demonstrated time and again.

Who would suggest that our head of state—Her Majesty the Queen, who sometimes occupies the building across the road—is, at 80-odd, no longer capable of giving advice to the Prime Minister every second or third Tuesday afternoon?

The law provides another good example. Many of our judges sit well into their 70s, stepping down when physical impairment becomes an issue, or if the Lord Advocate assesses that their judgments have become problematic. That system could be used in the JP courts up and down the land. The new rules could include regular assessment of the JP. That would highlight poor-performing JPs of all ages—the fact that someone is younger does not mean that he or she will perform better than an older person.

As the world moves on, the effects of age are reducing. From personal experience, I know what it is like to turn 50. Indeed, I see 50 as the new 40. At 60, I fully expect to feel the same as I do now. I am sure that everyone in this room, including those in the public gallery, will hope to feel like that too, when they reach that age.

I sense that the committee—and perhaps the Parliament generally—knows that it is right to change the law to remove the age barrier. In the 21st century in Scotland, parliamentarians know that it is morally wrong to deny equal opportunity to all in our society, yet they let that happen when they passed the Criminal Proceedings etc (Reform) (Scotland) Act 2007. However, all is not lost. Parliamentarians in this legislature can do something about that.

Ageism is very high on the public agenda. Earlier this afternoon, the committee discussed equality rights. The age limit is a similar equality issue. Ageism is very high on the public agenda, from the JP courts in Glasgow right the way through to “Strictly Come Dancing”. We in Scotland claim that our Parliament is the best in the world. Let us prove that once and for all by tackling the issue of ageism by amending the 2007 act and any other legislation that similarly imposes an age barrier. Let us ensure that our communities gain from the skills, experience and common sense that people such as John Ferguson have acquired over many years of public service.

The Convener: With age comes the allowance to go well over the time limit. However, I thank James Strang for that presentation.

Anne McLaughlin: When I first read the petition, I was minded to support Mr Strang and Mr Ferguson on a point of principle—although the use of the Queen, MPs and members of the House of Lords as examples does not necessarily push me in that direction—but I want to make three points. First, I do not think that having an upper age limit suggests that people over that age are incapable, although I was interested to hear James Strang’s argument on that. Secondly, I want to ask whether the petitioners would abolish all upper and lower age limits for everything. For example, should 16 and 17-year-olds be allowed to vote, given that they are required to pay taxes if they work?

Thirdly, I note that the petition argues that removing such barriers

“would save the country a fortune in recruitment and training in the next few years”.

I am concerned that that would mean fewer opportunities for younger people who are looking for jobs.

However, we live in ageist society, and I agree with the point of principle that we are guilty of wasting years of experience. The arrogance of the young shines through in most of what we do, not just in this country but in the western world.

John Ferguson: On the issue of ageism, the age of 70 was chosen by the Government some years ago. I do not know why it was felt that people were finished at 70. When I spoke to the president of a tribunal down in London, I was told that in some organisations people can continue in post until 75 if the regional chairman puts up a case for them. If that can be done sometimes, why can it not be done all the time?

For some reason—I do not know why—we have started to move forward because, as folk come to the end of their service, they are now assessed every year. Since the new Scottish Court Service was set up—as one of the biggest courts going, the Glasgow court, where I worked for 14 years, was previously on its own—things have moved on and people are assessed every year. Why can people not continue to be assessed at 71 and 72? If they were then told, “Sorry, you’re past it,” that would be fine. At the moment, people can work in court today but, if they turn 70 tomorrow, they are required to retire because they are considered too old. That just does not make sense. The tribunals do the same thing. People are required to stop at 70. I worked my last day on Friday 3 April—my birthday is on 5 April—and that was me retired. After 14 years, I was required to finish up just like that.

On the issue of age limits for young people, I think that it would be fine if a law came in giving young people the right to vote. Let them vote. They can be sent to war and can get married, so why can they not vote?

The Convener: We will take other questions from members and then we can consider some of those points.

Bill Butler: Just for the record, I should say that Mr Strang is known to me from a previous existence. He is always combative and, when pushing a good argument, persuasive—but sometimes he is prolix.

As the member for Glasgow Anniesland, I am mindful that my constituency has the highest concentration of retired voters in western Europe, I

believe. I am naturally sympathetic to the case that has been put forward.

Should there be no cut-off point at all? If there should be some type of cut-off point, and if it is not age, what should the criterion be for excluding someone from the offices that we are discussing?

James Strang: It would be done by an assessment process. As Mr Ferguson pointed out, assessment processes are in place under the new rules to ensure that the performance of the justice who is sitting on the bench is up to current standard. If that person is not up to current standard, there is training. If that does not work, there will be questions about the future viability of that individual, regardless of age.

In addition, there is a ceiling in the legislation. Think of someone who is 69 years of age, two days before their birthday. When they turn 70, they are the same thinking, logical, upright citizen that they were five minutes previously, yet as from that point they are no longer deemed to be capable. I am indeed suggesting that there need not be an upper limit, and that the assessment process could be used. On the question that has been mentioned about a lower limit, I strongly believe that if someone can become a tenant of mine, can fight for their country or can get married at 16, they should be entitled to vote at 16. However, that is a personal opinion.

On the point about MPs and the Queen, I meant no disrespect to anybody, but I must point out that people are eligible to stand for Parliament at any age. In Glasgow, there was a candidate of 79 years of age—an erudite, sophisticated individual, who put up a good campaign. He was not elected, but he was in the fray. It is important that people with the ability and the skill should be given that chance.

Bill Butler: So you are arguing for a kind of MOT test. Of course, MSPs and MPs—not the Lords—go through an MOT test with about 60,000 electors every four years. Is that what you are arguing for? If so, that would seem reasonable.

You just have to say yes. [*Laughter.*] I know that it is difficult for you, Mr Strang, but on you go.

James Strang: I honestly do not know why Mr Butler is adopting this sort of attitude with me. I am very hurt, I really am.

The Convener: We won't go there, Mr Strang.

James Strang: It is correct that you go through the election process every four years. You might wish to consider the practicalities of having elections to the judiciary and the justice of the peace bench and do some research on that. It might be useful to have elected justices. I understand that that is done in certain parts of America. It might be a way round the problem, and

it is a valuable suggestion. However, to save all the expense, we have some very strong people who have been disfranchised but who can step up to the plate.

Ms McLaughlin raised the question of younger people and the job. Justice of the peace is a non-salaried post, and the work is carried out purely on a voluntary basis.

Robin Harper (Lothians) (Green): If the rules were different for Parliament, I would be declaring an interest. On Mr Strang's observations about not assuming that the brain begins to cease to function at the age of 69, I say that there are days.

I wish to pursue a point that Bill Butler made. Some airlines, for instance, have a cut-off at the age of 60, when pilots are automatically retired. Others are happy for their pilots to carry on until 65. An annual medical check is required whatever the pilot's age and, if they do not pass, they lose their licence.

A medical check is easy, in that a person either passes or fails it. Are you confident that you currently have a set of assessments that cannot easily be challenged? In other words, once the assessment is made, will people accept its conclusion that the individual is no longer fit to be a justice of the peace?

15:00

James Strang: Under the current legislation, a process is set down in the guidelines—it was introduced in 2007. I am not aware of the outcome of the process, because the new system just started towards the tail-end of last year. It will be interesting to see how that assessment process works.

Remember that we are talking about mental faculties and reasoning. Justices of the peace are not similar to pilots, who need certain physical attributes. When lorry drivers reach 60, they have to go through an annual test. The situation for justices of the peace is not quite the same as that, but I take the point that you are making.

I would hope that an evaluation of the current arrangements would bear fruit. However, there is still the arbitrary age limit of 70. Someone can be the fittest person at 70—they can run marathons and have a photographic memory, but they cannot sit on the bench in Scotland.

Robin Harper: I am not saying that I am not sympathetic to your cause.

John Ferguson: We are not just talking about the age limit of 70. If you try to join some organisations at 65, they will not take you, because you will not be there long enough before you are 70. I phoned up the chairman of Greater

Glasgow and Clyde NHS Board, whom I know, and asked whether it was worth my while filling in the application form. His first question was what age I was. When I said 69, he said no. He said that the board might have taken me at 64 or 65, but not at 69. Discrimination starts long before you are 70. We have a list of other public organisations that have positions open but which are the same—they all have an age limit.

James Strang: We have a list of several organisations. One of the arguments is that they would have to go to the expense of training someone who would be able to sit on the bench, or the board, for only a very short time indeed. John Ferguson is right: ageism starts a lot earlier than 70. If we did not have that arbitrary age limit, perhaps we could attract even more talented individuals from the citizenry to participate in these organisations.

John Wilson: You are aware that people under the age of 18 are not allowed to go to war, so the British Government is not allowed to send 16 or 17-year-olds to take up arms to fight in wars.

On the legislation that applies to retirement, are the petitioners aware of the recent decision by the High Court—the Heyday decision—that the UK Government and employers can still set a retirement age of 65? The High Court has supported the UK Government, despite the challenges that were led by a number of organisations, including Age Concern and Help the Aged.

Decisions on whether someone can continue to sit on the bench are arbitrary. John Ferguson said that the regional tribunal chair can arbitrarily decide whether someone of a certain age can continue to sit on tribunals, regardless of whether that is fair or just. James Strang's face might fit at 70, but John Ferguson's face might not fit at 70. We could get into the situation of trying to impose something that might not be as fair as we expect it to be if we do not have a fixed age or period in which people can serve.

I remind the petitioners that the European courts decided that we could not have elected justices. The elected members of local government who were justices of the peace had to step down from the bench two years ago, because the European courts decided that we could not have elected members serving on the bench, because that was seen to be in conflict with the justice system that should prevail, in which there should be no political interference with the decisions of the bench.

John Ferguson: But that was not for age reasons; it was because the justices of the peace were also councillors. The law was changed so that they could not sign warrants and other things.

They can still sign passports and so on, but they cannot sign warrants. That was the difference.

John Wilson: I am aware of that; the point that I was making is that it was because of a desire to separate the judicial system from the political system that local elected members had to step down from doing bench duties in the court system.

James Strang: We are aware of that.

The Convener: You can tell from the questions that members are exploring some of the implications of the present policy and the challenge that would have to be overcome if that policy were changed.

I will now take suggestions on how to progress our consideration of the petition.

Bill Butler: I congratulate Mr Ferguson and Mr Strang on putting forward a compelling case. I am extremely sympathetic, as I suspect other members are, to the point of view expressed in the petition and to the terms of the petition. I think that we should write to the Scottish Government to ask it to review its current practice with a view to changing it. If it is willing to review and change the current practice, which is arbitrary, we should ask it when it will do so and, if it is not willing to do so, we should ask it why not. That would be a reasonable start, but colleagues will have other suggestions to make.

Jamie McGrigor: I concur with that.

The Convener: That is a useful suggestion to explore. We should also write to a range of legal organisations and representatives about the implications of any shift and how it could be facilitated, should there be such a desire. I know that the petition has been passed on to a number of organisations, but it might be useful to get clarity on the views of organisations that represent older people and of the older people's assembly. Mr Strang deployed challenging arguments based on the demographic trend and the changing age profile and so on.

On behalf of the committee, I thank Mr Ferguson, who is already seven years beyond the life expectancy of people in Glasgow Shettleston, for the tremendous commitment to his community that he has shown in coming here. Many of us are fed up of having such statistics thrown back at us. Mr Ferguson is testament to the fact that someone from the east end of Glasgow can do something for their community and still be fully alive and kicking and wanting to make a contribution at the age of 70. We should emphasise that point, because it is missing from much of the narrative on older people and the ageing process in this country.

I think that a few other members have final comments.

John Wilson: I suggest that we write to the Scottish Consumer Council to seek its views on the issue.

John Farquhar Munro: I strongly support the petition because I reached the magic age of 70 and never thought about it until I got a letter from the department saying that I was no longer required as a JP. That was the first time that I realised that age might be catching up with me. It had the decency to send me a wee plaque and to say thank you very much. I very much support the petition.

John Ferguson: The department disnae gie you plaques now; they gie you nothing—you just go.

The Convener: John Farquhar Munro is a demonstration of the fact that the Liberal Democrats do not apply the same rules to elected parliamentarians.

John Farquhar Munro: Just as well.

The Convener: We want to make progress with the petition. We know that it raises some fairly challenging issues, but I give an assurance to Mr Ferguson and Mr Strang that we will try to explore those issues to your satisfaction and, we hope, change things for the better so that you and many others like you across the country can continue to make contributions to your communities. Thank you very much.

Fatal Accident Inquiries (PE1280)

The Convener: Our next new petition is PE1280, by Dr Kenneth Faulds and Julie Love, which calls on the Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently given to people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of a fatal accident inquiry when a person from Scotland dies abroad.

I welcome both Dr Kenneth Faulds and Julie Love to the meeting. I attended the launch of the petition some weeks ago, prior to its submission to the Parliament. Other members have expressed interest both on the petition's website and in asking to speak to the committee today. Bob Doris MSP has come along to speak in support of the petition.

I invite Kenneth or Julie to make some opening remarks.

Dr Kenneth Faulds: Thank you for inviting me along today. You might think that I look too young to be a doctor—that is the opposite of what Mr Strang talked about earlier.

I ask members to bear with me, because I am not going to be all-singing, all-dancing and full of bravado; I am here to discuss an issue that is very close to my heart. I am a young born-and-bred Scottish resident from a working-class background and Julie is a Scottish resident, and you guys are empowered to give us a hand.

Julie will go into more depth about the situation regarding Colin Love. The petition arose because a huge number of issues surround people who die abroad. The sad thing about the situation is that people do not necessarily understand or know about the policies and procedures for protecting Scots abroad unless they are in the horrific situation in which this courageous woman found herself. Unless they are in the same situation regarding their own son or daughter, people might not be aware that a loophole means that the law does not extend to protecting Scots when they are abroad.

Deaths abroad are not investigated here. In some cases, it is possible for the death to be investigated but that does not happen all the time. We are not looking for the committee, the Scottish Government or the Scottish Parliament to say that every death abroad should be investigated. It is realistic to say that we cannot do that because we do not have the money or resources. We simply want the Crown Office to be able to look at the circumstances, and to say either that there was a full and robust fatal accident inquiry or investigation into the death in the country, therefore it would be inappropriate or a waste of resources to replicate that in Scotland, or to take the view that there was no investigation in the country, therefore it has a vital role to play in obtaining the answers that Julie has not received to this day. There are people in the gallery who have found themselves in the horrible predicament in which Julie has found herself. The petition asks the Government to support us as Scottish residents.

The Convener: Julie, do you want to add something to that?

Julie Love: Kenny has said it all. Only when you find yourself in this position do you realise that there is no help out there. Something has got to change so that other Scottish families do not have to go through what I have had to go through.

The Convener: Do you want to add anything, Bob?

Bob Doris (Glasgow) (SNP): If that is possible, convener. In Julie's case, one of the issues is that she wants to ensure that the risks that led to Colin's death do not exist for any other person on Margarita Island. Julie is looking for some simple conclusions that must seem obvious to everyone. Colin passed away by drowning in the waters of

Margarita Island, where there is a notorious drowning spot, with no signs up to warn bathers and no lifeguards.

A fatal accident inquiry or another vehicle could investigate the situation surrounding deaths such as Colin's and make recommendations. For example, it could recommend putting up signs on that beach or having a manned lifeguard station. Such recommendations would not be binding on a foreign jurisdiction, but there is no reason why we cannot work in conjunction with overseas authorities. I know that the legal barrier is that it is technically incompetent to hold a fatal accident inquiry into the death of a Scottish civilian overseas. We are asking for that barrier to be lifted so that such inquiries become a reality.

15:15

The Convener: Do members have any questions?

Dr Faulds: Maybe the fact that there are no questions is a good thing.

The Convener: I would not say that too quickly.

Anne McLaughlin: I have a point of clarification rather than a question, but first I thank Dr Faulds and Julie Love for coming—I will not thank Bob Doris, because he should be here. It must be tough for the petitioners to appear before the committee. I hope that we are making it as easy as we can for you.

The point of clarification is just to check something, although I think that you have covered it. The background information in your petition states that the system in England sometimes leads to wasteful duplication, because an inquiry is carried out in the country where the death occurred and another one is carried out in England. You want the Crown Office to have the power to hold an inquiry if it feels that an inquiry that was held overseas was inadequate, or if there was none.

Dr Faulds: Yes—that is more or less what we are saying. We are not asking for an exact duplication of the English system. I have spoken to a coroner's office in England about the system there. The person I spoke to was very open—they were critical of the system and said that aspects of it need to be changed. In Scotland, it is important that the Crown Office has the option to say that a full and robust inquiry was carried out in the other country, that that provided Julie Love with the answers that she needed, and that there is therefore no need to replicate it. We would stand by that decision. However, in circumstances where that is not the case or an investigation has not been carried out, we should play a vital role in Scotland to ensure that the basics are carried out.

It is important to clarify what coroners do in England. They confirm the time, place and cause of death and consider any investigations that were carried out. If the coroner thinks that anything criminal is attached to that, he or she will adjourn proceedings and contact the authorities in that country. They pass on the information that they have and ask them to investigate, although the coroner has no power to ensure that the issue is investigated. Such a system would provide Julie with answers—she would know what the inquiry had found and that the authorities in the other country had been asked to investigate the issue.

Julie Love: I add that the recommendations that would come out of any inquiry would make a difference.

John Wilson: Dr Faulds, you stated in your petition and you have said that you do not want an inquiry to be held into every fatal accident abroad. You said that an inquiry should not be held if the Crown Office and Procurator Fiscal Service was satisfied that a full investigation was carried out into the circumstances surrounding the death. What should happen if the relatives are not satisfied with the decision not to hold a fatal accident inquiry, after what might be seen as a desktop investigation? What would you say to the relatives of someone who died abroad if a decision not to hold a full fatal accident inquiry was contrary to what they wanted?

Dr Faulds: I take on board what you say: that is a crucial issue, and we cannot avoid the fact that such a situation might arise. However, that is where good policies and procedures come in, with regard to how families go about appealing the decision of the Crown Office in order to ensure that it is not just down to one person saying, "No, we are not investigating it." There is also further accountability, in that families can always come to the Public Petitions Committee if they feel that there is a difficulty or that the Crown Office is not supporting them.

Robin Harper: It strikes me that the advantage of holding an inquiry in this case would have been that it could have established not only the responsibilities of the authorities on Margarita Island but whether the cruise company itself should have been held responsible, as it should have known what the dangers were in that area. If the company did not know, it should have known, and it should have given clear advice to those people who went ashore on where it was safe and not safe to swim.

Dr Faulds: I can say this because I am not a politician: I think that much of the issue comes down to tourism. The cruise liners make a lot of money going to the island, and if they advertise it as a hot spot for deaths, not many people will want to visit. It comes down to money; although since

Colin's death, two shipping companies have pulled out of visiting Margarita Island.

I should mention that there were no lifeguards at Margarita Island. The United States Coast Guard sent a few of its finest to the island to train lifeguards, but they too were drowned. The situation really is horrific. It is not that the waters are very choppy, because it would be possible to see that; it appears to be fine on top of the water, but there is a very serious undertow.

There is an issue in relation to making the Foreign and Commonwealth Office accountable. The FCO has never contacted Julie Love: she was never informed in writing, by telephone or by police at her door that her son had passed away. I feel that much of that is down to the lack of a fatal accident inquiry, although the committee might have a different opinion.

In England, the Foreign and Commonwealth Office knows that it needs to follow everything by the book, because there will be a coroner's inquest, and the coroner can hold the FCO accountable if it has not followed the correct policies and procedures. The FCO knows that we do not have that in Scotland, so it can choose which cases it considers and which it does not. I am not saying that that happens all the time, but certainly in Julie's case, the FCO was able to cut corners, because there was not the same level of accountability as there is in England. The petition is about not just getting answers but ensuring that there is accountability in applying our own policies to protect us abroad.

Bob Doris: I know that for Julie Love, the issue concerns more than just fatal accident inquiries. Dr Faulds makes an excellent point in relation to the Foreign and Commonwealth Office. When someone in your family dies overseas suddenly or unexpectedly, you are not quite sure what to do. While you are dealing with your grief, you have to deal with various questions. How do you get a local death certificate from the relevant foreign country for the person who has passed away? How do you then get a UK death certificate? Do you cremate your relative's body? How do you repatriate the body?

There is a whole series of issues to do with different legal systems, and communication and language barriers. Julie Love felt that there was no single point of contact: no named person at the end of a phone to take the victim's family through the process. Such an individual could be appointed from the Scottish Government or the FCO, but the point is that something has to change—not just at a Scottish level, but at a UK level—to ensure that there is a better system of support when someone passes away overseas. The petition from Dr Faulds and the arguments from Julie Love represent an opportunity to

improve what is currently a difficult and distressing experience for the families of people who pass away overseas.

The Convener: Do the petitioners want to add anything before the committee considers its conclusions?

Dr Faulds: Jim Murphy, the Secretary of State for Scotland, has been very supportive about what we are doing. He has written me a letter in support of the petition and he supports the committee in taking the issue forward. He is concerned that the FCO is not following its own policies and procedures. He will look into Julie Love's case, to ensure that lessons are learned from the situation in which she found herself.

Julie Love: We are aware that Lord Cullen is reviewing the law on fatal accident inquiries. We made a late submission to his review just over a week ago, and we hope that he will take on board what we have passed to him.

Bob Doris: I handed in the submission for Julie. If it is helpful, I can pass a copy to the committee for its consideration.

The Convener: The timescale of the Cullen inquiry is important in the context of the assessment that the committee needs to make. Do members have suggestions about how to proceed with the petition?

Bill Butler: I think that we all want to support the petitioners and advance the petition as appropriately as possible. Given that Lord Cullen is reviewing FAI legislation, as Julie Love said, it might be appropriate, first, formally to forward a copy of the petition to the Scottish Government for information and to ask the Government about its timetable for responding to Lord Cullen's report—when it receives it—and then to suspend further consideration of the petition until we know what Lord Cullen's recommendations are. We can then ask the Scottish Government for a detailed response to the recommendations and consider the implications of the Government's view in relation to the petitioners' request. In particular, we must ask the Government whether it intends to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 in the light of Lord Cullen's report. Such an approach might seem to delay matters, but it would be appropriate to proceed in that way—I do not know what other members think about that.

The Convener: Do other members want to comment? We are caught between processes and we do not want the petitioners to miss the opportunity for their experience to be considered and their concerns to be addressed by the judicial process.

Bill Butler's suggestion is constructive, and would mean that the petition would remain open. The issue would come back to the committee or to the Parliament and we could see whether progress had been made. That might take a number of months, depending on the timing of the Cullen report and the Government's response to it. The committee could ensure that ministers respond to Lord Cullen's suggestions. We hope that the Government's approach will address the issues that the petitioners have raised.

I thank the petitioners. Julie, you have done an incredible amount of work and you have had to cope with all this as a mother. Part of the process is the need to ensure that no other family has to go through what you and your family have had to go through, which was exhibited at the launch of the petition.

I thank Dr Faulds for his support as a friend of Colin Love. The way in which he and others have organised themselves around the petition is a good example of how the Scottish Parliament Public Petitions Committee process can be used. I also thank the members who came to the meeting to talk about the petition.

We will take the recommendations forward and return to the petition in due course. The petitioners should feel free to communicate with our clerks at any time if they think that further information would benefit the petition. Thank you for your time.

I know that members are keen to consider the next petitions, but we will have a brief break.

15:29

Meeting suspended.

15:38

On resuming—

Houses in Multiple Occupation (Regulation) (PE1261 and PE1281)

The Convener: I thank members of the public for their patience during the slight delay. Petitions PE1261 and PE1281 deal with issues that arise from houses in multiple occupation. We will deal with the petitions separately when we discuss recommendations, but will consider them together today, given their similarity.

PE1261, by David Middleton, on behalf of Sustainable Communities (Scotland), calls on Parliament to urge the Scottish Government to promote better regulation of houses in multiple occupation by the following: by giving licensing authorities clear powers to refuse to grant HMO licences where they would affect the amenity of the local area, or would breach planning policy or

the requirement for planning permission; by ensuring that planning permission is a prior condition for all HMO licensing; and by introducing more rigorous enforcement of penalties for illegally operated HMOs, including powers of closure and substantial financial penalties to contribute to the cost of enforcement.

PE1281, by Graham White, on behalf of North Kelvin Residents Group, calls on the Scottish Parliament to do the following: to urge the Scottish Government to make planning permission a prerequisite of the granting of an HMO licence; to amend or enact laws to control the density of HMOs; to give councils full powers of closure in instances of non-compliant multiple occupancy operation and to increase the fines for that; and to deem local residents' multiple objections to an application to be sufficient reason to refuse or refuse to renew an HMO licence.

A number of members whose areas are most directly affected by HMOs have expressed interest in speaking to the committee. I welcome Mike Pringle, Sandra White and Margo MacDonald. Pauline McNeill cannot make it. We also have—I am having a senior moment—Ted Brocklebank. *[Laughter.]* I thank the clerk for helping me out there. Pauline McNeill has had to move on, but she left a written statement, which we can consider later. Sandra White has requested to speak first because she had to be somewhere else 10 minutes ago. I invite her to comment on the petitions.

Sandra White (Glasgow) (SNP): Thank you, convener. It is good of you to hear me first. I am happy to speak in support of both petitions.

First, I put it on the record that Graham White is not related to me, in case anyone thinks that he is, but I have worked closely with the tenants associations and residents group in the area. The situation in Kelvin and the west end of Glasgow is becoming quite horrendous. I do not want to promote nimbysism—I am not against students, migrant workers or others who live in the areas, but they contain a large concentration of HMOs for which planning permission is often granted only retrospectively. Sometimes it is difficult to get planning permission for HMOs even though they have been granted a licence. That is one of the biggest issues. Also, the three sets of legislation on HMOs do not complement one another. I hope that the committee will pick that up and ask the Government to look closely at the legislation.

I mentioned the west end, but the situation has also arisen on the south side of Glasgow. In some cases, residents say that their lives are in great danger because of the types of flats that they have been made to live in. That should not be tolerated any longer. Residents who live in HMOs, particularly students in the west end, move in

thinking that they will have a decent place to live, but sometimes, as I said, their lives are being put in danger because landlords—not all landlords, but a minority—do not look after their properties. They have an HMO licence and they can seek planning permission retrospectively. It is illogical that a licence can be awarded for an HMO even if the premises do not meet the planning criteria. That must be examined.

Another concern is that, when officers are sent out and landlords are caught, the fines are paltry and it takes a long time to get them paid. I know that the Scottish Government will address that in the forthcoming housing bill, but I hope that the committee will raise the matter with the Government as well. We need to introduce much greater fines.

In conclusion, I fully support both petitions because action is long overdue. In certain areas, the problem is private housing. That was not considered in 2006, but the minister has said that he will do so through the forthcoming bill. I ask the committee to consider and flag up the petitioners' concerns and requests and to send the petitions to the minister. People should not be allowed to flout the law in the way that is happening at present. We should also consider the fact that amenities cannot cope with overprovision of HMOs in such areas, which affects everyone in the local community, including those who live in HMOs.

Thank you for letting me have my say.

The Convener: I invite the other visiting members to comment.

Ted Brocklebank (Mid Scotland and Fife) (Con): I concur with Sandra White. It seems to me that the current laws have proved to be ineffective in controlling or remedying the problem. The petitions offer a way forward that respects the interests of all who are involved.

As a member for Mid Scotland and Fife and a resident of St Andrews, I will touch briefly on the specific problems in that community, where students now comprise almost half the population. The town centre is almost entirely given over to student flats, many of which are HMOs. It is difficult to overstate the effect that the concentration of young and exuberant residents has on that part of the town.

We are not being anti-student, and we are certainly not being nimbyistic. Many of the houses in that historic quarter of the town are listed, but as a large proportion are owned by absentee landlords, there is growing concern about the lack of maintenance of buildings and gardens in what is, after all, not only Fife's top tourist centre but one of the most important tourist towns in the whole of Scotland.

15:45

I wrote to the minister in June this year, raising some of the problems, and he was kind enough to include a section on HMOs in the consultation paper on the forthcoming housing bill. We welcome what we see as a possible suitable vehicle for changes that are essential if the serious social effects from the concentration of HMOs are to continue. However, we do not believe that the proposals that we have seen go far enough. We are not convinced that the draft legislation is strong enough to counter the illegal operation of HMOs.

It is right to say that the community's perspective is that the current approach favours the landlord who is prepared to operate illegally. Such landlords can generally do so with little or no fear of detection.

Margo MacDonald (Lothians) (Ind): I think that Mike Pringle is going to speak mainly about the HMO petitions PE1261 and PE1281. The one that I have perhaps more information on is petition PE1249. Do you want me to speak to that now, convener?

The Convener: We will not deal with that one right now.

Margo MacDonald: Apart from just backing up what Ted Brocklebank said just there, I say that the remedies for the malfunction of well-intentioned legislation have proved to be quite ineffective. I think that the matter does have to be revisited.

The Convener: We are considering PE1261 and PE1281. I know that Margo will speak on the other petition later.

Mike Pringle (Edinburgh South) (LD): I am here to speak to the two petitions on behalf of David Middleton, who is the petitioner for PE1261. As I see it, the problem is not that HMOs exist; it is that they become concentrated in certain areas. One such area is the Marchmont and Sciennes community council area, which has a very high concentration of HMOs. I think that Ted Brocklebank alluded to such a situation in Aberdeen, but it also happens in Edinburgh. In Edinburgh, 54 per cent of HMOs are concentrated in two areas, although many other community councils support the petition.

It is slightly paradoxical and it does not serve anyone's sense of rational government to have one arm of a local authority—planning—trying to control density, while the licensing arm refuses to implement the recommendations from planning because the legislation is not clear or is very contradictory. The only alternative, which is obviously very expensive, is for local authorities to go to court on a case-by-case basis in order to test

the interpretation of aspects of the legislation. Moreover, it is also, as we all know, extremely time consuming to go to court, and it does not necessarily solve the problem, or perhaps does so very seldom.

The lack of clarity and confusion have led to serious problems in various areas, as can be seen from the number of community councils that have been affected by the issue right across Scotland. Not only are communities suffering, but responsible landlords, who are the majority—we have heard about lots of irresponsible landlords, but they are the minority—get penalised and lumped in with the irresponsible ones. Should they therefore bother going through planning hoops when it is not compulsory and other landlords do not bother, and particularly when the planning departments often do not have the resources to enforce any breaches? Petition PE1261 is driven by plain common sense and a wish to retain balanced and sustainable communities. There is an element of desperation because community councils cannot make sense of the law and have failed, either by using local arguments or by offering a different interpretation of licensing laws, to find a way to get the protection that they need for their communities.

It is, I suggest, universally accepted that successful communities are mixed, balanced and sustainable. The Scottish Government has an opportunity to resolve the issues here equitably and simply through minor alterations to legislation, particularly to housing legislation that is currently out to consultation. I support both PE1261 and PE1281, and I hope that somebody upstairs in the Scottish Government is listening and will act on the recommendations in the petitions.

The Convener: I thank members for their comments. Pauline McNeill MSP was here, but had to leave because of a pressing commitment in Glasgow. Key points have been identified by members and she has emphasised some of them in a brief note, which I will pass to the clerk. Essentially, she asks for urgent implementation of part 5 of the Housing (Scotland) Act 2006, particularly in relation to targeting HMO operators that are operating illegal HMOs or individuals operating HMOs illegally, to try to get intervention in respect of fines for such activities. She has met some key individuals in Glasgow City Council departments to try to address the issue.

Five elected members have come along today, which demonstrates that there is serious concern. I hope that that is reassuring to the petitioners. I invite questions or comments from committee members about how we wish to address the concerns that the petitioners have raised.

Margo MacDonald: It would be good if you could stretch a point and hear one of the people

who are here from Edinburgh because there may be a difference in emphasis. Pauline McNeill emphasised illegal operators, but there are people in Edinburgh who are operating legally but badly. They are neglectful rather than acting illegally.

The Convener: I do not want to be difficult, but we have clearly defined rules about who is able to make a direct contribution to the meeting. I want to explore the issues that have been raised by the petitioners. I hope that they understand the process and that members who know the areas well can perhaps amplify points in the discussion.

From what we have heard, committee members have a broad awareness of the issue. We want to see whether we can help with the petitions, so comments from committee members about how they want to progress matters may be useful.

Bill Butler: There are obviously serious problems across the country, so it might be helpful to get an overview from the Scottish Government, given its recent consultation and the fact that it issued HMO guidance. In our correspondence with the Government, we might wish to ask a number of questions. Will it reissue its guidance to make it clear to planning authorities that they must adopt policies to manage HMO concentration and protect communities? If not, why not? Will it make prior planning permission a condition for HMO licences? If not, why not? What measures are in place to ensure that HMO accommodation is properly maintained? Those are three issues to start with, but obviously there will be others.

The Convener: Members who have particular issues in their areas may want to raise their concerns.

Margo MacDonald: Bill Butler's last point is the one that I was trying to make. The people in Edinburgh would probably agree that the big issue is landlords who are neglectful and do not maintain their properties. In a common stair, that impacts on all the dwellings. I am not sure whether that is the point that Pauline McNeill was making.

The Convener: A number of us have pockets in our areas—whether it is in a parliamentary constituency, a city, a town or wherever—in which issues are now emerging. My big concern is that, no matter the legislative framework that is in place, the ingenuity of some of the individuals involved in property development and property letting means that they are always ahead of whatever we put in place. Problems will continue unless we pull things together better and drive matters forward through a combination of enforcement, the legislation and perhaps some of the consultation that the minister has undertaken on the provisions of the Housing (Scotland) Act 2006. It is clear that in all our areas in the past four or five years there have been substantial shifts in the way in which properties

are being deployed in our communities, whether as a result of pressure from students or, as in the area of Glasgow that I represent—other members have also raised the issue—as a result of the pressures that new communities emerging unexpectedly in a city can put on the housing stock.

John Wilson: The panel of MSPs who came along to participate in the debate have highlighted the differences that exist in respect of the operation of HMOs. Ted Brocklebank gave the example of St Andrews being taken over by students. In some respects, the fact that we have a large student population in St Andrews is to be welcomed, but the problem is to do with how landlords operate the accommodation and whether they flout the current HMO legislation.

Sandra White and, I believe, Pauline McNeill have raised the issue of landlords flouting the current regulations and not registering themselves as suppliers of HMOs. The convener was also right to make that point; I am sure that he is aware of the number of landlords in his constituency who rent out properties without declaring them as HMOs. To bypass the requirement to register properties that have three or more tenants, they get only two tenants to sign the lease. We must bring together the examples that Ted Brocklebank and Sandra White highlighted in order to address the issue of how landlords are operating.

Reference has been made to the 2006 act. It might be worth our asking the minister when he intends to bring into effect part 5 of the act and to implement the regulations relating to it. We could ask what work will be done with other agencies and which agencies will be involved in monitoring. We must ensure not only that there is proper provision of HMOs and that those who rent the flats are not abused, but that we deal with landlords who flout the regulations through their failure to register flats that should be registered under the HMO legislation. The point has been made that such landlords are putting tenants at risk. The HMO legislation was designed, in part, to stop some of the horrific incidents that had occurred in large cities throughout Scotland. Tenants were in danger of death—and some actually died—because landlords were flouting the regulations for the operation of flats.

Bill Butler: John Wilson has made some important points. When we write to the Scottish Government, we should ask it to include both petitions in the consultation on the proposed housing bill. Furthermore, what recourse is available to tenants who have complaints about HMOs? How effective or ineffective are those mechanisms?

Mike Pringle: I will answer Bill Butler's question immediately. I am not aware of one HMO

application in Edinburgh that has been rejected by the council's regulatory committee, despite the fact that on many occasions large numbers of residents come to the committee with serious concerns, sometimes about HMOs that are properly registered.

John Wilson makes a good point. The City of Edinburgh Council tried on numerous occasions to take to court someone who was operating an illegal HMO, but the court system repeatedly rejected the case because it was not important. Finally, after some persuasion—I will not say from whom—the courts accepted the case and the landlord was fined about £3,000 for running an illegal HMO. The following week, the council received 800 or 900 applications for HMOs, because everyone suddenly thought that the issue was being taken seriously. That was the result of one court case.

The nub of the problem is the relationship between the licensing authority and the planning authority, neither of which knows how to talk to the other. How the law applies to HMOs and, therefore, to planning is a real issue. The Scottish Executive must examine the relationship between the two. If we can sort out that problem, we may sort out many of the problems in HMOs.

16:00

If a week goes by in my constituency without someone complaining about an HMO that is causing a problem for residents, I wonder why. That is how often complaints come in—sometimes more often. The problem of illegal HMOs is massive in some areas, and people's lives can be seriously affected. Indeed, people even complain time after time about residents in recognised HMOs. The licensing authorities receive the same complaints, but I cannot think of one HMO application from my constituency that has been turned down. That is also part of the problem.

The Convener: I am aware of the time, so I will bring in Ted Brocklebank and Margo MacDonald and then try to pull everything together.

Ted Brocklebank: There is much in what Mike Pringle said. The problem is that different local authorities appear to apply the rules in different ways; there is uneven treatment across Scotland. Some streets in St Andrews have eight permanent residents and 35 HMO flats, which means that there could be as many as 140 bed spaces in one street. Those are the levels of density that we are talking about. Dundee City Council's system is entirely different to that which is operated by Fife Council, so we really must grasp the lack of clarity and encourage even dealing by licensing authorities throughout Scotland.

Margo MacDonald: As Mike Pringle has pointed out, there is a contradiction in the approaches of those two council departments. The shortage of accommodation all over is exacerbating the situation, and it is difficult to pursue the law and all the strength that it can muster. For example, if you close down some HMOs on planning grounds, we will find ourselves with all sorts of social problems. No one is willing to take that action. The problem is that there is a housing shortage in Edinburgh and what could be good housing for families goes to students—and, indeed, young single people—simply because they have nowhere else to go.

The Convener: Committee members have raised a number of points that we will want to pursue and explore with the relevant Government officials and departments, so we will keep the petition open. We will also summarise the contributions from the five MSPs from the areas of the country that are affected by the problem. We will respond back in due course and, of course, everyone will receive notice of that.

I thank everyone for their time. I know that members who are not committee members are sticking around for other items. Our meeting is going to be quite long, so I cannot guarantee exactly what time we will get to particular petitions.

Margo MacDonald: I am sticking around for the party flats.

The Convener: Okay. You have often been described as the life and soul of the party, Margo. Some would say that you have also been kicked out of quite a few.

Margo MacDonald: I do not know who you have been talking to, and I remind you that I have only ever been in one party.

Freight Trains (Overnight Running) (PE1273)

The Convener: PE1273, by Anne Massie, calls on the Scottish Parliament to urge the Government to take the necessary action and make representations to the appropriate bodies to stop the overnight running of freight trains on the Stirling-Alloa-Kincardine railway line. Dr Richard Simpson has expressed interest in this petition, and I invite him to say a few words.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I know that the committee is always under pressure, but with regard to this petition you have the benefit of the membership of Bill Butler, who was convener of the committee that oversaw the passage through Parliament of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill.

When the proposal for the railway line was being considered, people fell into three groups: those

who were in favour of it at any price, those who objected to it at any price, and those who thought that it was probably a good thing but wanted the environmental issues to be considered properly. The impact report that was commissioned by Clackmannanshire Council and Transport Scotland and undertaken in 2001 by Scott Wilson did not look at night-time running at all. Indeed, in that lengthy and full report, which focused in particular on noise and vibration, Scott Wilson stated on no less than 17 occasions that there would be no night running of freight trains between 23:00 and 07:00 hours, and that only one passenger train would run between 23:00 and midnight and 06:00 and 07:00.

I was the MSP for Ochil at the time. I attended a number of public meetings at which I heard Transport Scotland give public reassurances to that effect. The middle group of objectors was accommodated on that basis. They thought that they could tolerate a bit of noise during the day and that at least their sleep would not be disturbed.

The Scottish Parliament information centre briefing says that the Stirling-Alloa-Kincardine railway reopened in May 2008. On almost the same date, an application from DB Schenker to run trains at night was approved. An application had not been made previously, and we have no idea why it was made. No more trains run on the line than the number that the impact report stated was manageable between 07:00 and 23:00 hours, but the trains now run during the night. My constituents along the line and constituents in Stirling and Larbert—in Michael Matheson's constituency—who previously had no concerns or worries about living alongside the main railway line are now complaining bitterly about the noise that is created by heavy freight trains with 23 wagons.

Network Rail tells us that it has absolutely no right to bar the night-time running of trains. Under its remit, it must allow trains to operate on the line if it is safe to do so. That is its legislative requirement. There are no environmental considerations of any sort. We can go back to the Government and to Transport Scotland and say, "You commissioned this without considering the impact of night-time running and now we have night-time running. What responsibility do you bear for that?" Transport Scotland totally denies that it has any responsibility in that regard.

We may say that surely the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee had a duty to deal with the matter, but in fact it did not, because the matter was not within the scope of the bill. Although the objectors who appeared before that committee repeatedly stated their environmental concerns, the committee

rightly thought that, because trains would not run during the night-time, there would be no problem.

My constituents have been misled. They are being disturbed, their mental health is being affected, and children are repeatedly up during the night. There is considerable anguish in a relatively small number of households. Probably around 100 households are affected, but they are seriously affected. We do not even know whether they can get compensation, although the minister's answers indicate that they may be entitled to it. They have been grossly misled about the process.

The petitioners have rightly asked the Public Petitions Committee to look into the situation, find out why it has arisen in the way that it has, and seek to get the Government to reconsider the running of trains during the night-time. There are possible long-term solutions. For example, if passenger services were extended to Kincardine and the line between Alloa and Kincardine was dualled, it would be possible to run enough trains during the daytime, even with Network Rail's new restrictions.

In the meantime, my constituents are very angry. There have been public meetings. More than 300 people attended the public meeting in Causewayhead, more than 250 attended the public meeting in Larbert, and a similar number attended the public meeting in Clackmannan. There is considerable anger in those communities. They feel that they have been let down by the Government and the parliamentary process.

John Wilson: I thank Richard Simpson for his presentation.

While the petition specifically refers to the Stirling-Alloa-Kincardine railway line, as Richard Simpson indicated, Michael Matheson raised in a recent members' business debate an issue that constituents from Larbert had raised with him. On a personal note, I live less than 100yd from a level-crossing that the freight service in particular uses. I have lived there for almost 20 years, and I know from personal experience that no freight traffic used to go on that line. Every community from Hunterston right up to Longannet is being affected. Housing estates were built right along the railway line on the basis that there was no freight traffic.

Although it is useful for DB Schenker's freight transport to use the railway, residents from Hunterston right up to Longannet are being inconvenienced and disturbed because of the sort of freight and when it is transported. I assure the committee that the freight trains run every hour during the day and almost every hour during the night. Freight travels past my house at 1 o'clock and 2 o'clock in the morning and at 4 o'clock and 5

o'clock in the morning. Everyone along the line is disturbed by that.

Parameters must be set. As Richard Simpson rightly said, Network Rail must take some responsibility for the impact that reopening the Stirling-Alloa-Kincardine line has had on communities that were assured that freight would not be transported through the night, but Parliament must do so as well, particularly those members who campaigned for the line to be reopened.

I emphasise the fact that the freight vehicles are heavy coal wagons. As Richard Simpson pointed out, 23 wagons at a time are being hauled along the line, which causes a great deal of disturbance. When I sit at the level-crossing outside my house, I can count the freight wagons as they go by.

I point out that not only the residents on the Stirling-Alloa-Kincardine line but the residents up and down the railway line that goes to Hunterston are affected. Families moved into houses thinking that the line would carry a passenger service that would finish at midnight and would not start up again before 7 in the morning. However, the operation of the heavy coal wagons is causing a great deal of disturbance, vibration and noise.

It is worth taking the petition further. As I said in Michael Matheson's members' business debate, many communities along the length of the railway line are affected.

Bill Butler: I listened carefully to Dr Richard Simpson, and it goes without saying that he speaks for his constituents and the constituents of other members along the line.

I was the convener of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee—in fact, the clerk to this committee was the deputy clerk. I feel that the committee would certainly not have agreed to freight trains running through the night. We were told—perhaps 17 times—that that would not happen. I can well understand the huge anger of people along the line. They feel that they were misled, and I feel that my committee and I were misled as well.

We have to try to deal with the situation. We should write to a number of agencies. We must ask the Scottish Government what it is doing to reverse this detriment to the lives of people who live on the Stirling-Alloa-Kincardine line; what representations it has made, if any, to freight operating companies that are causing huge aggravation to constituents; and what help or mitigation is being offered to residents who have been affected.

We are duty bound to ask the Office of Rail Regulation whether it will make it a licence condition that freight trains should not run during

the night in residential areas, including the ones that the petition is concerned with. That might be a way of solving the problem.

We also have to talk to DB Schenker, which is the successor to English Welsh & Scottish Railway—I am reminded of Tom Paine's view that lords change their names more often than rogues or ordinary villains. What DB Schenker is doing approaches the criminal. It is certainly having a severe effect. I think that it should be brought to book. We should at least ask whether it would consider increasing the number of trains to Longannet that run during the day rather than at night. Dr Richard Simpson made that point.

I feel very angry that the committee of which I was convener was, I believe, misled on this issue. We and the Parliament should do all that is in our power to reverse the situation. This is a scandal.

The Convener: That was a good contribution.

16:15

Robin Harper: I also think that there is a strong if not incontrovertible case for compensation, including retrospective sound insulation for the houses along that stretch of the line, and compensation for the misleading, almost duplicitous, way in which people appear to have been treated.

I campaigned for the reopening of that line and I walked along a stretch of it. However, on the general issue of the mixed use of railway track, part of the reason for the policy of reopening and rejuvenating our railways is to get heavy traffic off our roads and on to the rails, which are more efficient, cleaner and generally better for the environment. Also, most of our major rail lines run through our cities and residential districts, and there is simply not enough room during the day for the amount of heavy goods and passenger traffic that we want on our railways for them to operate efficiently. If we restricted rail companies to operating railways during daylight hours only, we would deny them a huge tranche of their income.

There is a difficult balance to be struck across the country, and that certainly cannot be done on the principle that goods traffic should not run in residential areas, because that would bring our railways to a standstill. The petition is a special case, in that people were led to believe one thing but have found themselves in a very different situation, so they are justifiably angry and upset, and they deserve compensation.

John Wilson: Convener, I would also like the committee to write to Network Rail to seek its views on the operation of the rail network. As I said, although the petition deals specifically with the Stirling-Alloa-Kincardine line, there is an issue

about the operation of heavy freight throughout the night. It might also be useful to seek the views of the Department for Transport.

I do not mind freight on the railways. A lot of rail freight comes through the area in which I live, and I welcome the fact that a number of operators are using the rail network to shift freight. However, the issue is the nature of the freight that is trundling through communities overnight, such as the 23 coal wagons at a time. From where I live, I know that there is a vast difference between a 20-carriage freight train carrying normal trucks, and 23 carriages laden with coal. Different noise and vibration levels are created. It is about trying to get Network Rail and the Department for Transport to realise the impact that that is having on many communities throughout Scotland—particularly those who bought houses next to railway tracks that they thought were underutilised and would not be used throughout the night.

The Convener: Okay. I want to pull this together. Members have made a lot of recommendations.

Dr Simpson: There is a difference between the Freightliner wagons and the DB Schenker wagons, which is demonstrated in Falkirk Council's review. Falkirk Council and Clackmannanshire Council have undertaken reviews, which you might wish to consider. In addition, the committee might want to consider the fact that the levels of noise that are regarded as a nuisance are unclear—different groups say different things. In order to determine compensation, we need to have clear rules in Scotland about what constitutes a nuisance and what does not. That is a specific problem.

I have been in correspondence with all the groups and I have got absolutely nowhere, as every one of them denies any responsibility for the mess that we are in. I wish the committee well on our behalf. I hope that the weight of the committee's membership, the fact that it is a committee of the Parliament, and the fact that a previous committee of the Parliament was misled, meaning that the Parliament is held in judgment on the issue, will enable the committee to deal with the matter in a much weightier way than I have managed on my own with the help of Michael Matheson.

The Convener: You have heard members' views. We want to pursue the matter. I share the concerns that you and Mr Butler have raised about commitments that were entered into in good faith and understandings that were approved in the process of the freight line and the line overall not being honoured. We will pursue those matters and return to the petition in due course. I thank Dr Simpson for his contribution.

Overseas Aid (Cessation) (PE1282)

The Convener: The final new petition is PE1282, by Ronald Hunter, which calls on the Scottish Parliament to urge the Scottish Government to cease overseas aid and donations immediately and to apply those funds to the more pressing demands of Scotland. Do members have any suggestions for how to deal with the petition?

Bill Butler: I will be frank and say that I am not sympathetic at all to the petition. I doubt whether any committee member or any member of the Parliament would be. Perhaps the petitioner has not heard—even in trade terms—of enlightened self-interest.

Having said that, we have a duty to ask a few questions of the Scottish Government anyway, in order to get a response that we can convey to the petitioner. For instance, we could ask the Scottish Government whether it will cease overseas aid and donations and apply those funds to what the petition calls “the more pressing demands” at home. I hope that the Government says that it will not, but we must still ask the question. We could also ask how the Government addresses concerns about the level of overseas aid that it is providing during a time of financial crisis. Again, I hope—and I suspect strongly—that the answer from the Government will be objective and will deal with a petition that is wrong-headed, to put it mildly.

Robin Harper: Like Bill Butler, I confess to being entirely unsympathetic to the petition. It is worth reflecting on the fact that the credit crunch is affecting the poorest people in the world far more than it is affecting us, so, if anything, the burden is on us to provide more rather than less aid during this time of difficulties both at home and abroad. Nevertheless, as Bill Butler says, it would be worth putting a few questions to the Government, if only to affirm our commitment to our international responsibilities.

John Wilson: As Bill Butler and Robin Harper have said, there will, I hope, be very little if any sympathy for the petition in the Parliament. However, I understand some of the reasons why the petitioner felt it necessary to lodge it.

I suggest that, as well as writing to the Scottish Government along the lines that Bill Butler proposes, we should ask the Government what the impact would be of withdrawing aid from the countries that we currently support. I suggest that we also write to a number of aid agencies and ask them what the overall impact would be if aid from the Scottish Government or charitable donations collected in Scotland were not utilised to assist the third world. I hope that that will address some of the issues that the petitioner has raised, and that he might realise that, without aid from Scotland, people in many more communities in the third

world could be condemned to a worse lifestyle, or even death. It would be useful to write to a number of organisations, such as Save the Children, Christian Aid, Oxfam, the Scottish Catholic International Aid Fund and any others that the clerks might think relevant. It is incumbent on us to carry out as much of an impact assessment as possible on any withdrawal of that third-world aid.

Anne McLaughlin: I echo everything that has been said, and I will answer a couple of points that are made in the petition. The petitioner speaks about a desire

“to resolve our problems first.”

I strongly argue that problems in the developing world are our problems. We are all global citizens, and it is worth noting that the effects of the damage that we do in the developed world have a greater effect in the developing world. He refers to sorting out

“our immediate and demanding issues”

first. I completely understand that, and I completely sympathise when I look at the list of demands that he has supplied, but there will always be “immediate and demanding issues” that we need to deal with.

He refers to “the wish list” and “the needs list” of politicians. I simply echo what my colleague Robin Harper said: the credit crunch is affecting the developing world far more than it is affecting us. It is not a wish list, it is a needs list—people in those countries need our support to create a sustainable future for themselves, and they need it now more than ever.

Jamie McGrigor: I have two points to make. First, what could possibly be more pressing than people abroad who are starving? I do not think that we have instances of more pressing need than those for which the money is intended. Secondly, it is important to ask the Scottish Government how it ensures that all aid that is targeted on developing countries reaches its intended recipients. Most people would like an answer confirming that aid actually does get to the intended recipients.

The Convener: A broad, consistent view is emerging from members. We should recognise the issues around the petition, and we should explore some answers. Essentially, we are considering the philosophical position on international aid. First, we can relate that to Government agencies and the Government itself. Secondly, the wider social and economic benefits for citizens here, never mind people who are in more acute circumstances, have been identified. Thirdly, there is a reciprocity and an understanding about donations and the obligations on us in the prosperous parts of the world towards people in

the less prosperous parts of the world. Finally, one of the most important, if contested, examples of international economic aid over the past 100 years has been the Marshall recovery plan, which benefited substantial parts of Europe—even if that has been contested with regard to intellectual capital.

In its context, you can understand the petitioner's concern, and we need to explore that. However, members have expressed their views about the overall picture, and we hope that that will be part of the response in exploring the petition.

Current Petitions

16:30

The Convener: Item 3 is current petitions, so we have seen many of these petitions before. I am conscious of the time, and I recognise that we have given substantial time to some of, if not all, these petitions in the past, so let us try to address specific points. I urge members to make tight comments or observations, tempting as it may be to speak for longer.

Protection from Wind Farm Developments (PE1095)

The Convener: PE1095, by Sybil Simpson, on behalf of the save your regional parks campaign, calls on the Scottish Parliament to urge the Government to provide greater protection to the national and regional parks of Scotland from industrialisation, including wind farms and their associated quarries, roads, cable trenches and sub-stations. Do members have any comments on how to deal with the petition?

Bill Butler: I suppose that we could hold a round-table discussion on the large number of issues raised in the petition. We could invite the petitioner, our colleague Kenneth Gibson MSP and Scottish Government officials to attend. That might be a way of progressing the extensive number of issues in the petition.

The Convener: Are other members okay with that? We can ask the clerks to come back with suggestions about how to deal with that.

Cancer Treatment (Cetuximab) (PE1108)

The Convener: We have majored on PE1108 over the past year or so. It was lodged by Tina McGeever, on behalf of Mike Gray, and calls on the Parliament to urge the Government to consider the provision of more appropriate cancer treatment drugs and better accessibility to particular drugs on the national health service and to ensure equity of access across health board areas in that regard. Committee members have a copy of Tina McGeever's response to issues that have been raised since the publication of our report and the announcement of the position taken by the health department and the Cabinet Secretary for Health and Wellbeing. How do members wish to take the petition forward, given its position as possibly the key petition that we addressed last year?

Bill Butler: I talked to Tina McGeever, and she wished me to say to the committee that she really wanted to attend today but that work commitments precluded that. However, I think that the paper that she provided is very helpful indeed. I state for the record that I think that the Scottish Government

has done a significant amount to progress the large number of issues that were raised in the original petition by Tina McGeever, on behalf of the now late Mike Gray.

Although the issues have been addressed to an extent, I think that we need to go into more detail and ask more specific questions on, for instance, exceptional prescribing and local liaison officers in each health board. We have not really touched on those issues. Tina McGeever raises a number of other relevant issues in her paper. I ask members to consider inviting the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, to come before the committee so that we can explore all the issues in as much detail as possible. That would be one way in which to proceed.

Robin Harper: I suggest that we look at question xiii in our briefing paper, which is one of the questions that we sent to the Government and which reads:

“Will a patient still have to pay to prove that a drug is working before going to an exceptional prescribing meeting?”

The answer from the Government is, in short:

“The SMC facilitated a meeting of Exceptional Prescribing Leads and the Chairs of Area Drugs and Therapeutic Committees ... This was considered to be a successful event”.

That was not an answer to the question, and it is all too typical of the general flavour of the responses that we have had so far. It is very important that we keep the petition open and that we dig further.

The Convener: Bill Butler has made a specific proposal. Are members comfortable with it? We will pull together all the questions to which we still want answers following our report. It is worth putting on record that we think that extremely constructive engagement on the petition has taken place with the relevant Scottish Government minister and with Scottish Government officials. We hope to continue that process. Inviting the minister and officials to appear before the committee might produce further benefits. Do members accept that recommendation?

Members indicated agreement.

Young Offenders (PE1155)

The Convener: We have considered PE1155 on two previous occasions. On both occasions, the elected member for the relevant parliamentary constituency addressed the committee directly. She is unable to be present today because of other commitments. The petition, which is by Elizabeth Cooper, requests that consideration be given to the proposal that young people between the ages of 10 and 18 who are charged with

serious offences should be tried by the criminal justice system rather than the children's hearings system. The issue has been discussed in detail. The petitioner and the constituency member have had opportunities to discuss their concerns with officials, and I understand that those concerns will be taken into consideration by the children's hearings bill team before it proposes any changes to the children's hearings system. On those grounds, I think that we should close the petition, unless members are minded to do otherwise.

War Veterans (Health Care) (PE1159)

The Convener: PE1159, by Mrs Kozak, calls on the Parliament to urge the Government to provide NHS Scotland and other relevant organisations and individuals with all necessary information relating to veterans who were exposed to nerve agents in the Gulf war of 1991 or any subsequent conflict. It asks that they be advised and treated appropriately, that preventive medications be assessed and that fatalities be prevented.

We discussed the petition directly with the petitioner. A number of outstanding issues of concern remain, which we need to address. Do members have suggestions on how to do that?

Bill Butler: We could write to the Scottish Government to ask what the outcome was of the veterans programme Scottish steering group meeting that took place in September and what bearing that will have on the petition. We could also ask the Scottish Government whether it will reflect on the outcome of the tribunal to which the petitioner refers and consider whether it requires to provide updated guidance or an alert to each NHS board.

The Convener: There are also a number of outstanding issues that it would be worth exploring in questions to the Ministry of Defence. We need to assess how far on it is in providing information to veterans on their health and to raise other issues, such as the introduction of the proposed veterans card. I know that the cross-party group in the Scottish Parliament on supporting veterans in Scotland might wish to address such issues, but I think that we should pursue them with great vigour, given the sacrifice and commitment of those who serve our country.

National Concessionary Travel Scheme (PE1162)

The Convener: PE1162 is about the national concessionary travel scheme. We have heard from the petitioner, Sally Ann Elfverson. We raised directly with the Government the issue of which categories of people should be considered for free bus transport. In its response, it indicated that there would be no change in relation to people

who receive the lower level of disability living allowance. Do members have any comments?

John Wilson: I express my disappointment at the Scottish Government's decision on people who receive the lower level of DLA, but given that it has made that decision, we have no option other than to close the petition.

The Convener: I think that we should accept that suggestion. We will ask the Government to contact the petitioner to provide her with information on what is being done to ensure that those who receive the lower level of DLA are not excluded from work or from socialising because of high travel costs.

Historic Building Listing (PE1176)

The Convener: PE1176, by Thomas Ewing and Gordon Prestoungrange, calls on the Scottish Parliament to urge the Scottish Government to provide a right of appeal against decisions by Scottish ministers, following advice from Historic Scotland, not to list an historic building, and to review the criteria for listing.

The issue has been before us on at least two previous occasions.

Bill Butler: We are informed that Historic Scotland is starting a project to improve the transparency of its decision making. We also have information that the Scottish Public Services Ombudsman looked at the individual case and found no evidence of maladministration or service failure in Historic Scotland's actions. I cannot see what else the committee can do. If colleagues are so minded, we should close the petition.

The Convener: As there are no other comments on that, we will close the petition.

Acquired Brain Injury Services (PE1179)

The Convener: PE1179 has been in front of us on at least two occasions, but there are still outstanding issues. The petition is from Helen Moran, on behalf of the Brain Injury Awareness Campaign, and is about giving individuals with acquired brain injury proper support, advice and assessment. Members have raised concerns about the issue in the past. I think that there are still some outstanding issues that we might want to explore. Perhaps we should ask the Government to meet the petitioner specifically to discuss those outstanding issues and to report back. Does the committee accept that recommendation?

Members indicated agreement.

Further Education (Students with Complex Needs) (PE1180)

The Convener: PE1180, in the name of Tom and Josie Wallace, calls on the Scottish Parliament to urge the Scottish Government to ensure that students with complex needs are supported in achieving further education placements, and that appropriate funding mechanisms are provided to enable such placements to be taken up. Alex Fergusson is here as constituency member to speak to the petition.

Alex Fergusson (Galloway and Upper Nithsdale): I understand that you have had a busy agenda and I will not keep the committee longer than is absolutely necessary. However, I want to speak to the petition; members will recall that I spoke to it on 19 May, after which the committee wrote to the Government to ask for responses on the various issues that have been raised in the petition. My constituents intended to be here today but they have been unable to come because of various other commitments.

As members are aware, the Government responded in a letter dated 4 August. I imagine that members have that in front of them. It is a fulsome response, and bits of it can be welcomed. However, from my constituents' point of view, it is effectively four and a half pages of whitewash, with a final paragraph that takes us back to exactly where the petition started. That paragraph says that the petitioner's case

"we must repeat ... is a matter for the local authority in Dumfries and Galloway."

Of course, that is true. However, I remind the committee that Thomas Wallace is the subject of the petition. His parents made enormous sacrifices to raise £55,000 to send him for one year to the residential facility that everyone agreed was the right place for that young adult to flourish. However, one can borrow £55,000 only once in a while, and they were unable to do so again, so they have had to take Thomas away from that facility. There is no residential facility in Dumfries and Galloway, and there are precious few in Scotland. The result is that Thomas has had to come home.

I want to read a tiny bit from an e-mail that the Wallaces sent to me:

"Meantime he has been at home all summer since he left college. The only option which would go in any way towards meeting his needs is the local Adult Resource Centre in Newton Stewart, but unfortunately it is full. Our social worker recommends that he get 5 days but just now is working hard to enable him to have one day a week—this might happen sometime in the future".

However, the social worker has to take hours from other adult resource centre service users to make

the necessary hours available for that one day for Thomas.

Whatever the committee's thoughts on the petition, I find the situation absolutely unacceptable. I know that there are other adults with similar support needs in my constituency who are not getting the support that experts believe they need.

I do not know what action it is recommended that the committee take in relation to the petition, but I cannot think other than that someone needs to hold an inquiry into the position in Scotland of these wonderful people. I would love to think that the committee might be the catalyst for such an inquiry.

16:45

The Convener: Thank you. Are there any comments or questions from members?

Robin Harper: I have previously mentioned a similar case—I meant to draw the committee's attention to the details but I am afraid that I do not have them with me. There are other people in the same position in Scotland. We do not have enough by way of a response. I would feel distinctly uncomfortable if we closed the petition at this stage—I would rather keep it open until we can decide on the best way forward. We perhaps need to get more answers than those we have at the moment, because it is clear that not enough is being done.

Nigel Don (North East Scotland) (SNP): The petition brings to a head an issue that we all face as we approach the budget. Although we all periodically say, "Something must be done", we all know that doing something involves spending money. Even the public are beginning to understand that we cannot spend money twice. If we do this, we cannot do that, and if we do that, we cannot do the other. As a Parliament, we need to get our minds around provision for the disadvantaged members of our society. I am talking about not only the example in front of us but the huge number of people who suffer from all manner of sensory deprivation, such as the deaf and the blind. There will not be an easy answer, but it is a subject that we need to address—I hope that we will address it—in our budget debate. I cannot put the challenge back to the Presiding Officer, because he will preside over that debate, but the challenge for us is to ask ourselves what we as a society are doing for our disadvantaged and whether we are going to ensure that they get a fair share of the resources that are available to our public services.

The question will always be, "What do we take the resources away from?" We cannot say to Dumfries and Galloway, "You must do enough," or

to voluntary organisations, "You should do more." Certainly, we must not point at the individuals who are trying to do something and who are struggling for resources. We must recognise that the buck stops in the Parliament and ask ourselves what we are going to do about the situation.

The Convener: A proposal has been made to keep the petition open. Is anyone otherwise minded? We have had the testimony of the constituency member, and the family was present at a previous meeting. Because the petition concerns a young individual who wants to do the best he can but who has come up against financial and bureaucratic restrictions, and because it involves bodies that lack the capacity to think more imaginatively and move beyond the boundaries that are set down in the legislative framework, it is one of those petitions that we do not want to close the door on.

Although I want to keep the petition open, I am troubled by the issue of how we can pursue matters. Perhaps Alex Fergusson would like to come back in on that point.

Alex Fergusson: Mr and Mrs Wallace are the last people who would want the committee to keep the petition open just for the sake of keeping it open. There is no point in doing that. However, if the petition can be kept open with a purpose, there is every point in doing so. Nigel Don may have hit on something when he referred to Dumfries and Galloway, because I do not think that the situation applies only to that area. The responses from councils throughout Scotland seem diverse.

We have the famous postcode lottery to which I referred when I last spoke to the committee about the petition. If there is work to be done, it is surely to discover the extent of that postcode lottery, how other council areas react and if they are able to take action, how they are able to do so. This is an expensive business—there are no cheap answers. A statistical base is required to move the debate forward. I would love to think that the committee could be the catalyst for that.

Marlyn Glen: This year an equalities statement has been issued along with the budget. That is what the petition is about. We cannot use the fact that budgets are difficult as an excuse not to protect the most vulnerable in society. We should turn the argument around—equalities should be considered first. We should ensure that we meet the needs of people such as the young person to whose case the petition relates before we do anything else. It is a matter of priorities. This is only one example—there are many more—but it is a test of the Parliament's ability to consider equalities properly. We talk about the importance of mainstreaming, but this is the kind of test case that we should address first.

The Convener: I suggest that we ask the clerks to go through the evidence that we have gathered so far and to produce a paper for our next meeting that specifically maps out a course of action by keeping the petition open and exploring specific areas to assist the petitioners.

John Wilson: I suggest that we write to the Government again. As other members have said, the response that we received from a civil servant in relation to the matter was not helpful in many respects, but it was helpful in one respect. The response compares what the Scottish Government is doing with what the Welsh Assembly is trying to deliver. It would be difficult for any college to deliver the level of service that we are seeking in this instance, but it is incumbent on us to ask the Scottish Government whether it would be preferable to consider establishing within our current college establishments a centre of excellence for the delivery of education to students such as Thomas. We are not saying that every college in every area should provide that level of service, but one or two colleges could select themselves for delivery of education to those with additional support needs.

We should not allow the Scottish Government to get away with the civil service response that it is up to individual colleges to deliver such education and to decide whether they can accept students with additional support needs. It is incumbent on the Government to review the situation and to examine it in the round. While respecting colleges' autonomy, the Government should accept the need for something to be done to deliver services to people with additional support needs. It may not be down to local authorities to do that—the Government must take on some responsibility for delivering the service.

Marlyn Glen: In the previous session, the Equal Opportunities Committee held an inquiry into disability. Access to education was one of the issues that the committee considered. It might be useful for us to revisit the recommendations from that inquiry.

Robin Harper: I should have declared an interest as the vice-convenor of the cross-party group on learning disability, which is chaired by Jackie Baillie. Would it be possible for us to look at the revised version of "Partnership Matters: A Guide to Local Authorities, NHS Boards and Voluntary Organisations on Supporting Students with Additional Needs in Further Education" when that appears?

The Convener: Does the committee agree to take on board members' comments and Alex Fergusson's suggestion? A paper will be produced for our next meeting, at which we will pursue the issues that have been raised.

Members indicated agreement.

Road Bonds (Sewers and Drains) (PE1185)

The Convener: PE1185, by Andrew Kaye, on behalf of the Coopersknowe residents association, relates to the amendment of relevant legislation to ensure that any road bonds that are drawn up for new developments give local authorities enforcement powers in that regard. The petition has been in the system for a considerable period. I invite members' comments.

Christine Grahame (South of Scotland) (SNP): I am beginning to feel as if I am a usurping committee member.

The Convener: We will be the judge of that—do not worry.

Christine Grahame: I know, but I am sure that you have a better word than "usurping".

The issue, if I remember rightly, has been quite a tough one for the people concerned. The housing development in question is incomplete, and the residents have been left in a situation in which the construction company is going out of business and another company is coming in. Their roads, facilities and pathways are incomplete. There has been no binding, legal compulsion on the original construction company or any subsequent company to complete the work. The same situation must arise fairly regularly in connection with building sites, and I am interested to see where the committee has got to with the matter. There has been an injustice to people who have paid for their homes but who are living in a half-built area.

Margo MacDonald: I think that there is a gap in the law. The residents could approach the local council under health and safety and other regulations, and get it to pursue the companies concerned.

The Convener: The petition has been with us for some time and, bearing in mind how far we have taken it, our concern is that we do not know whether the Public Petitions Committee has any greater powers to influence its direction of travel. I seek guidance from members about whether to keep the petition open.

Margo MacDonald: The committee should investigate the law.

The Convener: We have been trying to do that, and we have had some comments back from Scottish Water and the Scottish Government.

Bill Butler: I do not know whether there is any way forward for the committee. I think that we have exhausted what the committee can do. Our information is that the issue has become focused on one particular development, and that the

petition is not about a national or general issue. If that is the case—I think it is—I do not think that there is a locus for the committee to take it further, unfortunately. The matter might go forward in other ways but, unless some other committee member can come up with an ingenious way forward, which we are always open to, I honestly do not see any way forward.

Margo MacDonald: I appreciate that what you say is probably right, but for the folk who have petitioned, this is the Scottish Parliament, and we will have let them down. Everybody else has let them down, and now the Scottish Parliament is letting them down. Perhaps that is not fair, but the committee's decision could still be interpreted in that way. All I am suggesting is that somebody should be leaned on to see what legal highways and byways can be investigated. I would have thought that the local authority had some sort of duty of care towards the folk living on the development.

Bill Butler: Why do we not try one more time? We could write to the Scottish Government to ask whether there is any other legal recourse. I suspect that we will get a "No", but if colleagues are so minded, I think that we can ask the question again—although we might get the same answer.

Christine Grahame: Convener, may I—

The Convener: I had better defer to members of the committee.

17:00

John Wilson: I am disappointed by the responses of both Scottish Water and Waterwatch Scotland. Coopersknowe is not the only development in Scotland that has been affected by a developer not delivering what was scheduled and planned for, and what was supposed to be installed. If we are going to keep the petition open, we should write to Waterwatch Scotland and ask how many complaints it has received from residents or others about contractors failing to deliver the planned installation of sewerage or other services that were supposed to be provided as part of a development.

We are told by Waterwatch Scotland and Scottish Water that such occurrences are very rare. I am sure that many members around the table can say that such occurrences are not, in fact, rare and that the same thing has been happening in other areas. We need to get to the root of the problem and ascertain whether legal or other enforcement action can be taken by Scottish Water or Waterwatch Scotland.

Robin Harper: It might also be worth checking whether building control or another organisation

has responsibility for inspecting the work that has been carried out.

The Convener: That is a wee victory for members. I think that we—

Christine Grahame: Is there any route by which we could investigate the planning at the beginning? When developers get planning consent, is something put in place for other facilities on a development? The petitioners have been pursuing a bond, but some other kind of security could be put in place. I am not simply talking about sewerage and water; services such as laying roads, finishing play parks or planting trees could be involved. In the present climate, developers might not complete such work, and people will be left living on a partly completed development.

The Convener: We have asked a number of questions, and we have had some responses. We will pull them all together, taking on board members' positive suggestions. We will have one final climb up the hill and we will see what happens. Okay?

Members indicated agreement.

The Convener: There is no need to look at me like that when I use that metaphor, Margo.

Athletes (Rural Areas) (PE1219)

The Convener: PE1219, from Christina Raeburn, is on the issue of adequate funding to allow young talented athletes in rural areas to travel to sporting competitions at regional and national levels, and on the provision of coaching support. As we are aware, the Health and Sport Committee, which is convened by Christine Grahame, has inquired into the subject and written a very substantial report entitled "Pathways into sport and physical activity", which addresses some of the issues that are raised in the petition.

I think that we would wish to continue the petition. We could write to sportscotland, seeking a specific response on the guidance that is available to individual sports clubs and associations in relation to how they can access funding for young sportspeople with talent, not just in rural Scotland but in Scotland as a whole. Is that okay?

Members indicated agreement.

Scottish Courts (McKenzie Friends) (PE1247)

The Convener: PE1247, from Stewart Mackenzie, calls on the Scottish Parliament to urge the Government to introduce a McKenzie friend facility in Scottish courts as a matter of urgency.

Margo MacDonald: The petitioner is asking about a system of support for litigants in courts that has been running successfully in England for a long time. I do not care where the good idea comes from—I will pinch it. The McKenzie friend system seems to offer a greater level of support, and a feeling of security, for many people going into court to plead for themselves. They can often be bamboozled by the things that go on. The McKenzie friend does not plead directly for them; the McKenzie friend quietly offers advice and might hand over the relevant papers at the relevant time—it is back-up work that they do.

I have looked at the response from Lord Gill. The petition was referred to the Faculty of Advocates, which basically said, “We will wait to see what Lord Gill’s review says.” He is not all that keen on the idea. Then again, most parts of the Scottish legal establishment are not all that keen on having lay people in court. They are very careful about that sort of thing. That is for reasons that I approve of, in that they want to maintain the very high standards of advocacy, of protection of the client in Scottish courts and so on. In this case, however, I think that we could take a leaf out of the book of what happens in the English courts and add a greater level of support for litigants who might be overawed by court procedure.

The Convener: I understand that Murdo Fraser is interested in the issue. I invite him to comment before we hear from committee members.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you, convener. Mr Mackenzie is a constituent of mine, and I am happy to support his petition.

I agree with everything that Margo MacDonald has just said. It is refreshing and particularly welcome to hear a nationalist suggest that we should follow good practice from south of the border.

Margo MacDonald: I will take suggestions from across anyone’s border.

The Convener: Given the political affiliations around the table, the committee has been incredibly consensual in the past number of years. We may want that to continue in the next few moments.

Christine Grahame: Murdo Fraser should rewind and start again.

Murdo Fraser: I should have left the pin in my hand grenade.

Mr Mackenzie’s proposal is reasonable and sensible. A McKenzie friend is meant to provide assistance to a party litigant. It was interesting to read the response to the civil courts review, which majored on whether a McKenzie friend should be given the right to be heard in court. However, I

understand from Mr Mackenzie that that is not the issue. He is not seeking the right of a McKenzie friend to be heard in court; all that he is seeking is the right of a party litigant to bring somebody with them to sit beside them and provide assistance. Nothing that I read in the representations argued strongly against that approach. The proposal is supported by Which?, the Scottish Consumer Council and Money Advice Scotland. I think that it would be fairly simple to introduce and that it would benefit party litigants and improve the justice system.

Nigel Don: The distinction has been made between a person who is with somebody as a friend and a person who has a right of audience—I wanted to ensure that we covered that.

From what I have heard, it seems to me that courts could introduce McKenzie friends themselves. I do not think that it takes Lord Gill saying that they would be a good idea—indeed, I think that he went beyond the idea of a McKenzie friend—for that to happen.

I wonder whether we should write first to the Lord President of the Court of Session, as he presides over and runs the courts. We could ask him whether there are any plans in the court system to alter practice. The Government does not deal with the matter, but we could also write to it to ask about its view of the proposal. However, we should start by asking the Lord President whether there is something that he can do—I think that he can do something, but he is the judge of that—and whether he is minded to do so.

Margo MacDonald: For information, I should have said that a precedent has perhaps been established in the Scottish Land Court.

Bill Butler: I agree with everything that has been said. Committee members have a note that contains quotes from Lord Gill’s review. Lord Gill is careful with the phraseology that he employs, but he does not seem to be agin the proposal; indeed, he seems to be for it, and even for a person being able to address the court on behalf of a party litigant in certain circumstances. We should follow Nigel Don’s suggestions and write to the Government to ask whether it will come on board as well.

Margo MacDonald: There is one other thing. I think that Lord Gill suggested that it should be up to the sheriff to determine whether a McKenzie friend should be allowed to be alongside the litigant. However, I think that in England a person has a right to be there. Perhaps that needs to be squared up.

The Convener: I detect from the issues that have been raised that there is broad support for exploring the option. We will take on board the suggestions of members who have spoken in

support of the petition and committee members who have expressed views on how to progress it, pull those suggestions together, keep the petition open and explore the specific issues that have been raised about the terminology relating to participation in court and the role that individuals can play.

Holiday and Party Flats (Regulation) (PE1249)

The Convener: This has been a long meeting, and members have been waiting to discuss PE1249. Margo MacDonald and Sarah Boyack in particular have expressed interest in speaking to it.

PE1249, from Stanley Player, relates to landlords who offer short-term holiday and party flat leases. The issue is not dissimilar to the issue of houses in multiple occupation, which we discussed earlier, but it is distinct from it.

I invite Sarah Boyack to speak to the petition, as Margo MacDonald has had good opportunities to speak in the past half hour or so.

Margo MacDonald: She is the party girl.

Sarah Boyack (Edinburgh Central) (Lab): Yes, but ably supported by my good colleague. I will not go down the route that Murdo Fraser took with Margo MacDonald earlier.

The issue that is raised in the petition is still a problem. Recently, a group of constituents who live beside party flats came to see me with an on-going issue. During the summer, I had a meeting with Scottish Government officials, council officials and police to get people round the table to work out what we can do to help people who experience this horrendous problem. The council offered to hold round-table meetings between owners and residents to try not so much to mediate but to make owners aware of what the problem is and the impact that it has on people's quality of life. To my knowledge there have not been any such meetings.

Formerly, I asked for a meeting about the flat of which I have been aware for longest. I went out to that flat a couple of weeks ago with my little video camera to record the noise that can be heard in the street and the stairwell at 6 o'clock, when things are just warming up and before the party gets going. I interviewed the neighbours who live in the stairwell and took photographs of the several bunk beds that were around. I picked just one of the flats that I have known about for months.

I hope that members will consider what more can be done. The Scottish Government response does not engage with the impact on residential communities. There are still issues of

overcrowding, noise, vandalism, water leaks and safety. I have written to the chief firemaster in my area to ask what action he intends to take because of the safety issues. We come back to the point that although such flats fall into a holiday-let category, they are a bad-neighbour development because most holiday lets co-exist with normal residential properties. HMO legislation does not apply, antisocial behaviour legislation is not effective and we cannot expect the police to come out every half hour to all those flats. We have now reached the point at which, although the issue is proven, there is reluctance to act. Perhaps Margo MacDonald has other insights to add.

Margo MacDonald: I notice that the people concerned are in Lothian and Strathclyde. Everybody else said that such flats were not a problem in their area. I began to wonder whether, instead of looking at the matter from a national point of view, we should consider having regulations, guidance or byelaws—are you allowed to have byelaws now?—that are particular to the cities concerned, which are Glasgow and Edinburgh. I do not know whether there is a device that measures noise levels, but using legislation relating to noise is the way to catch such people. If all these party flats were required to be fitted with such a device and it then went off—[*Interruption.*] I am serious. The cops would know that they could and should go to the flat and then they could have them under legislation. It is only a thought. Everybody has tried to find a way round the problem, which, although there are safety issues, is about behaviour more than anything.

Robin Harper: Judging by Sarah Boyack's description, people do not need an alarm to tell them that too much noise is coming from a party flat. I ask Sarah Boyack whether there is any evidence that the spread of such party flats is connected to the growth of the stag-party culture, in which people travel to Edinburgh, Glasgow and Dublin or other parts of the country.

Margo MacDonald: They come here.

Sarah Boyack: I have seen pictures taken by constituents of small buses arriving with lots of people piling out dressed up and ready for the weekend. Not all the flats used are holiday lets so we do not want to go down that route, but it is clear that a category of flats is let to people who come for the weekend and they are coming to party. Whether it is stag or party weekends, that is the market. If you look on the internet, you will find advertised lots of those flats in Edinburgh.

Margo MacDonald: Even in the new developments.

Sarah Boyack: Yes, we have had issues in the Western Harbour as well as in the city centre.

Marlyn Glen: Did Margo MacDonald say that Dublin has sorted the problem and if so, how? Is there something that we can learn from Dublin?

17:15

Margo MacDonald: Dublin just said that it did not want a growth of the stag and hen party. Now Prague is saying the same thing. The European cities to which there are cheap flights are all saying the same thing; they are all trying to meet the challenge in their own way. The market in Edinburgh is wide open just now, because there is tremendous pressure on property that is built but not let.

Marlyn Glen: How could we get that message across?

Sarah Boyack: I am keen to explore what it would be possible to do in the housing legislation that I am aware will be introduced in the next few months. Margo MacDonald has asked whether the council could use byelaws, but the council's view is that it does not currently have the powers to address the issue. I would like someone to look at what is doable legally and at whether the next housing bill would be a vehicle to address this issue.

The Convener: I want to pull all this together.

Bill Butler: It is worth exploring the putative housing legislation, as Sarah Boyack suggested. We should also write to the Scottish Government to ask what specific measures it is taking to resolve the issue. I believe that there was a meeting in August. We should ask what powers are open to the Scottish Government to compel landlords to ensure that people using their party flats do not engage in antisocial behaviour. If there are powers that need to be amended, why not amend the Antisocial Behaviour etc (Scotland) Act 2004 to give local authorities the appropriate powers to apply and enforce antisocial behaviour notices in these circumstances? If we just sit back and wait, this problem ain't going to be solved. Perhaps we can find out whether international examples can inform our discussion about this serious problem.

The Convener: Okay. We will pursue all those points. Perhaps that will assist Government officials' consideration of the matter. Is that agreed?

Members indicated agreement.

Scottish Prisoners (Microchip Implants) (PE1251)

The Convener: PE1251, from Raymond Bell, calls on the Scottish Parliament to urge the Scottish Government to issue a clear statement that it will not introduce, for tracking, surveillance

or identification purposes, microchip implanting of prisoners in Scotland.

The Scottish Government made it clear to us that it has no plans to introduce or consider introducing microchip implanting of prisoners. I would have thought that we could close the petition on that ground. Is that okay?

Members indicated agreement.

The Convener: Bill Butler has to leave now. Thank you for your contribution this afternoon, Bill.

Police Officers (Convictions) (PE1252)

The Convener: PE1252, from Angus Grant, calls on the Scottish Parliament to urge the Scottish Government to review all legislation and guidelines that give chief constables discretion to retain police officers despite any convictions that they have. Do members have any questions about the petition?

Nigel Don: As I read the petition, it struck me that the petitioner does not understand something that some councillors in Aberdeenshire do not understand either—the connection might not be obvious at this stage—which is that when someone has a power to consider something and a statutory authority to do so, they have to make their decision on the basis of the evidence that is in front of them; they cannot decide beforehand any other basis on which they are going to operate. The law of the land comes in books that have administrative law in them. Put simply, you cannot fetter your discretion. That means that it simply is not legally acceptable for people to decide beforehand on what grounds they are going to dismiss a police officer, or any other public servant.

In exactly the same way, it would be quite incompetent for local councillors to decide on arbitrary distinctions about compulsory purchase orders—which is where my point about Aberdeenshire Council comes in. That is the advice that every one of us who has been a councillor will have received at some stage in relation to the discretions that we have. We could take the opportunity to point that out to the petitioner somehow or other—perhaps what I am saying now is the way to do it. What the petitioner is seeking is simply not lawful.

Having said that, I do not think that that is the end of the petition. There is a real issue here about why there are police officers with criminal convictions, what criminal convictions they have and whether the right judgments have been made. There is a public interest issue there. The public are entitled to have some confidence in what is going on. We might continue to explore the issue, but let us be clear that the remedy of stating that

no police officer may have any kind of criminal conviction simply would not be lawful, unless Parliament decided that it should be.

The Convener: The suggestion is that we continue the petition to explore issues to do with gathering information on convictions and the ways in which chief constables and police boards deal with those. Half the concern of the petition is about a procedure to prevent or minimise such occurrences in future. Do members agree that we should keep the petition open and explore the issue of the number of members of the police force who have been reinstated to the force in the past five years and several other issues relating to the petition?

Members indicated agreement.

The Convener: We will keep the petition open and come back to it in the near future.

Medical Negligence (Pre-NHS Treatment) (PE1253)

The Convener: PE1253, from James McNeill, calls on the Scottish Parliament to urge the Government to establish a discretionary compensation scheme to provide redress to persons who suffered injury as a result of negligent medical treatment prior to the establishment of the NHS. There are several outstanding issues on which we have not received full responses. I suggest that we continue the petition and explore those issues.

Christine Grahame: I will certainly never be promoted after saying this but, frankly, the Government's response is a bit grim, terse and unbending. One point that the Government makes is that

"The passage of time, the absence of records and detailed information on what may or may not have happened means this would not be appropriate."

That is true of many issues. In some cases, the evidence will be difficult to find, but that is not a reason to reject the petition. The committee asked whether the expert group on no-fault compensation might consider circumstances such as the petitioner's. The Government response on that is also interesting. We are told that the group will not consider the issue, as any scheme will not be retrospective.

I just want to plant an idea in the committee's head. At present, the petitioner has no legal remedy because the triennium has expired. Once somebody becomes aware that they might have a claim for negligence, they must make a claim, or at least start proceedings, within three years. The judiciary has slight discretion to extend that in certain circumstances, but I wonder whether we ought to consider that triennium, which is a bit

curt. Perhaps in extreme circumstances, we could just not have the triennium ruling. Sometimes, the evidence of the injury will exemplify itself as a person becomes elderly, as has happened with Mr McNeill. His difficulty is with the manipulation of one hand, and the other hand is becoming worse as the years pass. That issue might be of interest to the committee. It is not really the responsibility of the Cabinet Secretary for Health and Wellbeing to consider the rules regarding the triennium—that is for the Cabinet Secretary for Justice to do.

The Convener: We will take on board that comment. We wish to explore issues relating to compensation schemes with various other bodies, such as the Scotland Patients Association. We also have questions for Government officials. I concur with Christine Grahame that the initial Government response was terse and perhaps not too revealing—those are the best euphemisms that I can find. We should keep the petition open and pursue those issues. The clerks will bring back the petition in due course.

Fire (Scotland) Act 2005 (PE1254)

The Convener: Christine Grahame has also expressed an interest in PE1254, from Mark Laidlaw, which calls on the Parliament to urge the Government to amend section 51 of the Fire (Scotland) Act 2005 to allow flexibility so that an employee of a fire and rescue authority can also be employed as a special constable.

Christine Grahame: Again, the Government is taking a solid position. I might be wrong, but I think that the petition was lodged under the previous Administration. There are interesting responses from the Fire Officers Association and the Association of Chief Police Officers in Scotland. ACPOS is considering a memorandum of understanding. The Fire Officers Association takes the view that the bar is not necessary. As I understand it, the bar works both ways—a constable cannot be a retained firefighter and a firefighter cannot be a special constable. It is a bit like throwing out the baby with the bath water. There must be ways round it.

I appreciate the Government's point that there might be a conflict of role for someone who was a special constable but who attended a fire as a firefighter. Perhaps this does not help, but one point that strikes me in the papers is that a special constable who is off duty has exactly the same status as a constable has. Maybe that is the issue that, under the police legislation, makes it difficult for a firefighter to become a special constable. Without that provision—if that status was not retained throughout—there would be no conflict for full-time firefighters who wanted to be special constables. When they took off their full-time firefighter uniform and became a special

constable, they would be a special constable for that period, but when they took off that uniform they would no longer have the status of special constable. I do not know whether the committee has explored that, but I saw that point buried in the papers. That might be a way of resolving the issue.

The Convener: Several other points that we need to explore further have arisen in the responses, so we will keep the petition open. There are issues to do with practicalities, such as the scenario that Christine Grahame identified, or issues to do with whether discretion might be applied locally. There might be reasons why the police and fire authorities in certain areas have to recruit from the same pool of individuals to do different jobs, because of the demography there. There is also a general issue of experience and flexibility. We will pursue those issues and take on board the points that Christine Grahame has raised.

New Petitions (Notification)

17:27

The Convener: The final item is notification of new petitions. Do members agree to note the new petitions and accept that we will address them at the next relevant meeting?

Members *indicated agreement.*

Meeting closed at 17:27.

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