



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 26 March 2013

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JUSTICE COMMITTEE
10th Meeting 2013, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Colin Keir (Edinburgh Western) (SNP)

*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 26 March 2013

[The Convener *opened the meeting at 10:00*]

Decisions on Taking Business in Private

The Convener (Christine Grahame): I welcome everybody to the Justice Committee's 10th meeting in 2013. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system, even when switched to silent. We have received apologies from David McLetchie, and John Lamont is here as a substitute.

Agenda item 1 is a decision on taking business in private. We must decide whether to take three items in private, so I will go through them one at a time.

Item 3 is consideration of our next steps following the evidence that we have taken in our inquiry into the Title Conditions (Scotland) Act 2003. It is proposed that we take the item in private to allow us to consider the evidence that has been received and possible conclusions to draw. However, I am relaxed—my goodness; am I?—if members would prefer to have the discussion in public. Do members want to take it in private or in public?

Jenny Marra (North East Scotland) (Lab): If there is no good reason to take it in private and you are relaxed about it, maybe we should just take it in public.

The Convener: I am relaxed, but is everybody else relaxed?

Roderick Campbell (North East Fife) (SNP): I am relaxed, but there is something that I would not say in public.

The Convener: I do not want to inhibit the discussion. That is the problem. I want you to say stuff.

Roderick Campbell: Actually, this is making too much of a deal of it. It is to do with something in the briefing from Angus Evans that I did not quite agree with. Maybe it is best if I talk to him about the issue at a suitable point.

The Convener: If you like.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I am happy to take the item in public.

The Convener: Right. We will do it in public.

Agenda item 4 is our continued consideration of research undertaken by the University of Dundee in relation to fatal road accidents. We have previously considered the issue in private, as it relates to our work programme. Are members content to take that item in private?

Jenny Marra: I would like to take the item in public because if we are discussing the reasons for pursuing the issue—or not—it would be good to have those on the record.

The Convener: I see Graeme Pearson nodding. My feeling is that there are sensitive issues to be discussed and I want members to be free to discuss them. It would be much better if we took the item in private. Can I have other views?

Graeme Pearson (South Scotland) (Lab): At the end of our private discussions, can we put something on the record about our deductions from the conversation?

The Convener: We can put something in the minutes. We can discuss in private what we would like to put in the minutes.

Graeme Pearson: As Jenny Marra said, people will be interested in the way forward. We should ensure that the public are aware of how we have discussed the matter.

The Convener: The reason for taking the item in private is because we take the issue seriously and it is a sensitive area. That is the only reason for taking the item in private—it is not for any other reason whatsoever. We can then discuss what we put in our public minutes. Do members agree to that approach?

Members indicated agreement.

The Convener: Item 5 is continued consideration of our draft report on the Public Bodies Act 2011 consent memorandum on the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013. Do members agree to take that item in private?

Members indicated agreement.

The Convener: Last week, the committee agreed to consider item 6 in private, because it is a draft report.

Subordinate Legislation

10:03

The Convener: We have six negative instruments to consider: five are the final tranche of instruments that will come into effect in advance of the implementation of the Police and Fire Reform (Scotland) Act 2012; there is also one other instrument.

The Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 will be considered at next week's meeting and not at today's as was originally intended. The Subordinate Legislation Committee is considering those regulations this morning, so that is appropriate.

Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61)

The Convener: The regulations aim to transfer the existing procedures relating to the poor performance of constables below the rank of assistant chief constable to the new single force and establish a new requirement on the Scottish Police Authority to establish procedures relating to poor performance of constables at or above the rank of assistant chief constable. The Subordinate Legislation Committee raised a concern about defective drafting—breaking news, eh?—in relation to the appeals procedure, and the Scottish Government has undertaken to correct that. Do members have any comments to make on SSI 2013/61? Please can I have something, even just a sound, out of you?

Graeme Pearson: I do not have any comments to make.

The Convener: Thank you. It is good that someone spoke. If members are silent, I do not know whether they agree or disagree.

Are members content to make no recommendations on the regulations?

Members indicated agreement.

Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63)

The Convener: The rules update procedures in relation to appeals to reflect the provisions of the Police and Fire Reform (Scotland) Act 2012 and the SPA's role. The Subordinate Legislation Committee has drawn the rules to the Parliament's attention on the basis of an unexpected or unusual use of powers. It feels that the constitution of police appeals tribunals should have been addressed through the relevant schedule to the 2012 act rather than through subordinate

legislation. The Scottish Government has argued that, as this is a supplementary provision, "there is vires for" it.

If members have no comments, is the committee content not to make any recommendations on the rules?

Members indicated agreement.

Scottish Police Authority (Provision of Goods and Services) Order 2013 (SSI 2013/73)

The Convener: The Subordinate Legislation Committee agreed to draw the order, which makes provision in relation to goods and services provided in connection with the SPA's functions, to the Parliament's attention on the basis that its form or meaning could have been clearer. Further information is set out on page 25 of paper J/S4/13/10/1.

Do members have any comments?

Jenny Marra: I have concerns about the order. The *Official Report* shows that when, during the evidence taking on the Police and Fire Reform (Scotland) Bill, I asked the cabinet secretary about "back-door privatisation" he assured me that

"there will be no back-door privatisation"—[*Official Report, Justice Committee, 27 March 2012; c 1239.*]

as a result of the bill. However, I believe that the order throws open that possibility and wonder whether we can invite the cabinet secretary to give evidence on the matter.

The Convener: Before I say any more, I must point out that the order comes into force on 1 April and that this is the last opportunity for a member to seek to annul it without things becoming very complicated. [*Interruption.*] The clerk is giving me some information, but I will let the debate continue before we decide on the process.

John Finnie (Highlands and Islands) (Ind): I wonder whether Jenny Marra can explain her interesting assertion. After all, we heard an unequivocal assurance that there would be no privatisation.

Jenny Marra: Convener, can I respond?

The Convener: Of course. You have been challenged, so you should respond.

Jenny Marra: The *Official Report* shows that when I asked the cabinet secretary about what could be contracted out he mentioned information technology services. However, if my reading of the order is correct, it opens up more possibilities, including forensic services.

Sandra White (Glasgow Kelvin) (SNP): John Finnie has asked one of my questions but I note

that, according to page 22 of paper 1, ministers want the police to be able to “honour contracts with organisations” that will exist on 1 April. I think that that should allay Jenny Marra’s fears in that respect—I certainly did not pick up anything about privatisation in the cabinet secretary’s response.

Graeme Pearson: I think that the Scottish Government’s comment in paragraph 12 on page 23 of paper 1 could be clearer in specifying types of persons and services, as outlined in the schedules to the order, which I found extremely vague. I think that the order could be made to apply in many circumstances, and it would be useful to get an additional comment from the cabinet secretary to confirm that we are not going to get even inadvertent policy creep. There is a worry about the problems that have arisen in forensic science in England and Wales—where some parts of the service are bankrupt—and we do not want matters to sneak in that direction by mistake.

Roderick Campbell: As paragraph 10 on page 23 of paper 1—it is in annex F—makes clear, the order seems to cover more than information technology; indeed, the order itself refers to

“inspection, testing, maintenance or repair of vehicles”.

However, should that really cause us so much concern?

The Convener: Given the situation, it would be useful if a letter was sent to the cabinet secretary—with the committee’s leave—indicating the nature of our exchanges via the *Official Report* and asking him to comment and respond. If we send him our exchanges, that will take us forward.

On that basis, are members content to make no recommendations in relation to the order?

Members indicated agreement.

The Convener: We will have the *Official Report*, and we will get something back from the cabinet secretary.

Police Service of Scotland (Temporary Service) Regulations 2013 (SSI 2013/76)

The Convener: The regulations make provision for temporary service outwith the police service of Scotland. The Subordinate Legislation Committee did not have any comments to make on the regulations. As members have no comments to make, is the committee content to make no recommendations in relation to the regulations?

Members indicated agreement.

Police Federation (Scotland) Regulations 2013 (SSI 2013/86)

The Convener: This fifth and final instrument that we must consider before 1 April provides for the restructuring of the Scottish Police Federation in the context of the new single service. The Subordinate Legislation Committee did not have any comments to make on the regulations. As members have no comments, is the committee content to make no recommendations on the regulations?

Members indicated agreement.

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/92)

The Convener: Our final instrument for consideration today provides that, in certain circumstances, a solicitor will no longer receive fixed payments for work done in connection with a grant of assistance by way of representation, but will instead receive a payment based on time spent and work done. The Scottish Government has consulted the Scottish Legal Aid Board and the Law Society of Scotland, both of which are content with the proposal. The Subordinate Legislation Committee did not have any comments to make on the regulations. As members have no comments to make, is the committee content to make no recommendations in relation to the regulations? Are members awake?

Members indicated agreement.

The Convener: Thank you.

Title Conditions (Scotland) Act 2003

10:12

The Convener: We now move to item 3, which we agreed to take in public, on our inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003. The purpose is to consider the main issues arising from our inquiry. Members will see that the Scottish Parliament information centre has provided a short summary of the key issues.

Before we start, I will just trail something, and members can tell me if they are content. *[Interruption.]* Sorry, Rod?

Roderick Campbell: I was just going to request some information.

The Convener: Shall I proceed—or what do you want?

Roderick Campbell: You proceed, convener.

The Convener: How very kind—very very kind.

The committee has two main options. We could write to the Minister for Community Safety and Legal Affairs to ask for the Scottish Government's response to the issues that were raised during the inquiry. Do we feel that the issues are such that it would be appropriate to report? It is a matter of the form that our comments take. If we report to Parliament, should we do that now, or should we wait until the Glasgow factoring commission has reported after 17 April? What do you feel? Perhaps we should have a discussion first; then we can decide whether just to write or to report after a delay.

Roderick Campbell: Let us deal with section 53 on its own first. There seemed to be a fairly universal view that that section needs to be looked at. The recommendation from the academics was to refer it to the Scottish Law Commission. Does the committee have power to write to the Scottish Law Commission about it? Do we have to go through other processes in order to do that?

The Convener: It depends what form it takes, but if we are doing a report, we will make a recommendation in relation to those comments. We had no resolution from the two professors concerned about section 53.

Roderick Campbell: We had their agreement, I think, that the Scottish Law Commission should—

The Convener: Yes, we did have that. They both agreed that the provisions were pretty well rubbish. One thought that we should delete that section entirely; the other did not quite have a solution. We could make a recommendation that

the matter be referred to the Law Commission for it to resolve the issue.

Jenny Marra: Would we need to—

Roderick Campbell: Do we do that directly, or do we have to do it via the Parliament?

The Convener: We can make a recommendation, although we cannot instruct. It is up to the Law Commission whether it picks it up.

If we are talking about just writing, that is a different matter. We would be writing to the minister, telling her what we have found and asking for her comments. We would be writing separately to the Law Commission. It would be a different matter to take that route. If we wrote a report, we would recommend that the Government seek the views of the Law Commission. That is another route.

Perhaps it is better to decide to write a report before we get into the issue, so that we know how we will be resolving those matters.

10:15

Graeme Pearson: When does the Glasgow factoring commission report?

The Convener: The factoring commission reports after 17 April.

Sandra White: I would like to wait until we get the factoring commission report. I was going to ask for clarification, but you have already given us it. I have concerns regarding the accessibility of the Lands Tribunal for people, not just developers, to put forward their ideas. There was concern about the two-thirds majority. Some factors seemed to suggest that you do not need a two-thirds majority and yet the legislation says that you do. I would like to seek clarification on that as well. I take it that we can put that in a report.

The Convener: That is what I am asking. My personal view is that I would like us to do a report. It is also worth seeking a debate on the issues at some point. There are real issues about this legislation now. Somebody here is on the bureau. Are there slots for committee debates, Alison? A short debate on our report would be quite useful.

Alison McInnes (North East Scotland) (LD): Yes.

Jenny Marra: In the evidence that we took, it seemed like we were dealing with two broadly separate issues: section 53 and the property factoring issue. Could we write to the Law Commission asking it to look at section 53 and could we write a report on the property factoring issue? I think that that is the issue that people would be interested in debating in the chamber.

The Convener: I think that we would draw all that out in the recommendations in our report. You are highlighting the issues. The report is public. The Law Commission might want to respond to a recommendation.

There is another issue here—it is not just about separating out section 53. I thought that land maintenance and ownership was a completely distinct issue from factoring. Therefore, there are those two separate issues and there is also a particular problem with a particular section. There are two categories that raise very different issues. I do not know whether you agree.

John Finnie: I agree with what has been said. Does the report lay out what we see as the frailties of the legislation? Is there scope for us to suggest some remedies or alternatives?

The Convener: It is up to us.

John Finnie: The community buyout option is one that appeals to me, but perhaps we have not heard enough about that. The Convention of Scottish Local Authorities has been discussing it. Yesterday I passed the clerk some information on that, which was drawn to my attention. There is a growing debate.

The Convener: I take it that we are going down the route of a report, which is fine.

Graeme Pearson: I do not know what evidence we would get from the Glasgow factoring commission, but is it feasible that we could begin drafting the report and write to the minister to ask for her views? By the time we get a reply, we would hopefully have the commission's report, so we could then conclude our report, taking account of those two additional elements. Is that too complex?

The Convener: I am being advised—just in case anyone wonders why I am leaning over to the clerk all the time—that we could report, have the minister respond and then maybe have as an addendum to the report the issues raised by the property factors commission. Would that be appropriate? Is “addendum” the wrong word? The clerk is giving me a look. The problem with doing this in public is that I cannot let the clerk speak on this.

Let me start again. We can do our report and incorporate the factoring commission's report into it. That would mean that we would have to delay it, but not by very long. Having settled our report, we would have it published, have the minister respond and then, if we wish, have a debate.

Graeme Pearson: It sounds like a plan.

The Convener: It sounds like a plan to me. I am quite happy now.

Roderick Campbell: The question of the 2011 consultation, which is really about the land maintenance company issues, seems to have got kicked into the long grass. I see that Mark Griffin has lodged a general question for answer this week on that consultation. I do not know what the minister will say.

There are a variety of issues. I do not want it to be assumed that that is the only issue that we are talking about. Things such as the section 53 issue could be moved quite quickly without our getting bogged down in the politics of the consultation.

The Convener: That is fine. We have resolved that section 53 stands alone as a particularly troublesome section. However, there is no doubt but that, from our overview of the act, there are two lines of discussion.

There was an issue—quite a legal issue, actually, as I think you will recall—about whether land maintenance companies that also own the land have a legal right to enforce burdens on it. That is a separate issue from the one with property factors who do not own the property. In that case, the issues were more pragmatic than legal. Am I correct in my understanding of that?

If we were to do a report, we would look at section 53 solemnly on its own. Then we would have two separate sections in our report distinguishing between the issues on property factoring and land maintenance ownership.

What do members want to say about the issues? We have dealt with section 53: we will ask the Scottish Law Commission to give us its views on how to resolve the matter, which is obviously troublesome. Can I have your comments on land maintenance ownership?

John Finnie: I have asked a number of questions about the role of local authorities and tried to understand at what point that changed. The issue of bonds comes up. As I understand it following some inquiries that I made yesterday, with interest rates being as they are, a bond that would have been anticipated to provide 14 years' worth of maintenance might run out much sooner because the level of return on the sum that the local authority invested is not sufficient. I hope that I have picked that up right.

There is a potential connection with planning conditions that can be imposed as part of planning permission and the encouragement of community ownership. There are examples of community ownership working satisfactorily.

The Convener: Does anyone want to comment on bonds and community ownership?

Alison McInnes: I agree with John Finnie that it is worth highlighting that there is a role for local authorities to find a solution. They used to do it

really well. We should not assume that public open space belongs only to the people who live around about it. It helps to create communities, and local authorities therefore need to be drawn back into that role.

Colin Keir (Edinburgh Western) (SNP): I agree with what has been said. There is a similar issue in the council ward that I used to represent—I suppose that I still represent it, because it is in my constituency. I do not want to get into the issue, but it concerned the ownership of the grounds. There was a debate about who owned them: was it still the developer or was it the people who thought that they had the deal to carry on the maintenance? It all gets very murky.

The Convener: That would be in the title deeds.

Colin Keir: You would think so but, oddly enough, it has been the subject of a long-running legal case. It is really murky ground. Anything that we can do to tidy up the matter would be really good for people who are suffering with a rather large area at the side of a nice estate.

The Convener: Do you want to include the business of the legality of the position? Do you want to question the legality of land maintenance ownership enforcing payment in terms of the operations? The two academics whom we heard last week had a reasonable discussion about that. There is also the issue of the practicalities.

Sandra White: It was more the practicalities. I asked the academics last week how feasible community buyout would be in the instance of a landowning company. They said, “Well, that’s a good question. We don’t know.” Is community buyout feasible? The law seems to say that it would be pretty difficult, even if there was a willing seller. We should look at that.

The other issue that I wanted to raise concerns the Lands Tribunal.

The Convener: Before you get to that, can we keep to community buyout? There were issues: it is not just about cutting the grass and pruning shrubs; if I recall rightly, it involves the maintenance of utilities. Does that not raise more complex issues about community buyout? People suddenly become liable for the pipes and whatever running under the ground.

Alison McInnes: The two things that need to be maintained are play equipment and sustainable urban drainage systems—SUDS. Those are important pieces of infrastructure, although they look nice and green. If they do not work, the whole community will be affected. It is important to highlight that as well.

Sandra White: I was going to mention that. I think that we have all had to deal with that issue in our areas, and people are having to get indemnity.

There is also what was said about lawyers giving advice to clients when they are buying. It is certainly not in statute that they have to give advice. The answer that we got back from the academics was basically, “Well, they should do so,” but they did not say that they have to.

The Convener: I am not saying this because I was in practice, but someone would be sued for negligence if they did not at least draw attention to the obligations that there would be. There would then be a very good case for a complaint.

Sandra White: It was the Scottish Law Commission that said that, though.

Roderick Campbell: Speaking with a vested interest as a member of the Faculty of Advocates, I think that we are straying into professional negligence matters on which we did not take full evidence. I do not think that we should have that in the report.

The Convener: We had nobody from the lawyers to rebut that, and I would take that approach with anybody. Some of us would be concerned about starting to blame where we do not have other evidence.

Sandra White: I am not blaming. The requirement is not in statute. The answer that we got back was basically that it is not. The issue is the advice that people are given—that point is in the *Official Report*.

The Convener: I had better not say anything.

Graeme Pearson: On what Sandra White has just said, there were a number of comments from witnesses about a lack of culture in Scotland for the maintenance of property generally. That is an introductory remark in the whole area. We seem to have the view that we will not be responsible for maintaining common land.

The other issue, which connects to John Finnie’s comments, is acknowledging that the issues are expensive. It might be easy enough to identify somebody to take responsibility for them, but a budget needs to be identified, as substantial costs are involved. That obviously caused many of the frictions that we noticed in evidence in previous sessions.

The Convener: That is a very good point and a good introduction to both issues, as the same applies to property factoring. We understand that people do not want to pay to get a roof repaired if they are on the ground floor. That is a very good overview of the culture. People should know what their obligations are on shared ownership or shared services.

Colin Keir: There also appeared to be a bit of a problem with identifying what an acceptable level of service is. Everything is fine when people start

off—the grass is cut, the fences are mended and whatever other maintenance has to be done is done—but over a period of time the person who has been doing the work starts to ease off on some of it and there is a lesser level of service. That seemed to come across in our first evidence session with Greenbelt. It seemed to contradict itself to a certain extent.

The Convener: I think that you are asking how residents can call to account such providers, because if residents simply withhold payment, they will find that they get horrible letters and so on. I think that that was the issue.

Colin Keir: Who makes the decision on what is an acceptable level of service at the beginning?

Alison McInnes: The point is that there is no dispute resolution at all in the system at the moment.

The Convener: Yes. We have talked about that.

Jenny Marra: On the introductory point about the culture or lack of it with respect to the maintenance of common property, I am worried that we do not have any proposed solutions to that. I have seen that issue personally and in case work. On opening up the report with that, perhaps as we write the report, we should discuss proposed solutions and whether there should be more of a duty on conveyancing solicitors to explain. I do not know. Perhaps we should take evidence on that matter. It seems to me that, rather than simply say that we need to improve the culture, we should discuss how we do that.

The Convener: I think that we should mention that how we can change the culture has been talked about in evidence, but I am hesitant because nobody, whoever they are—I will try not to sound like a former solicitor—has had the right of reply to rebut anything that we took in evidence.

The inquiry was brief, so we have to be measured. However, I am happy for it to be mentioned that solicitors should perhaps be firmer with clients—I was going to say that they should make more of a song and dance about it—and say, “This is something you will continue to pay,” rather than people who are purchasing tending to think just about their Ikea furniture and curtains and the lovely house, without perhaps wanting to face up to the fact that they will have a continuing payment. We know about that, as we heard about it in evidence, and I understand it; indeed, I would be in the same position myself.

Jenny Marra: That is what Lionel Most said—that people are just keen to get the keys—but putting the burden on solicitors to educate people was the first thing that sprang to my mind. We should perhaps take a further look at what could

be done to improve the situation, because it is a pretty important issue.

10:30

The Convener: Yes, it is important—we will put that down as a recommendation. The fact that we have undertaken an inquiry into the issue and will—we hope—hold a debate on it should alert the public to what lies ahead for them if they move into a property that is under common ownership or serviced by a land maintenance company that owns the land. I do not mean that in a horrible way, because it can be a good experience, but people need to know what it entails.

We know what the problems are, and we are now talking about solutions. We have mentioned the need for education, and we discussed suggestions for a bond and for community ownership, although—as Graeme Pearson said—asking people to pay more for their house in a recession to cover a bond or a community buyout means asking for money that people just do not have. We can discuss those suggestions, but we must appreciate the current background.

We will recommend that the Scottish Law Commission looks at section 53. Are there any other recommendations? I think that we all know what the problems are.

Roderick Campbell: Moving on from the issues regarding factors, I note that the level of the fees that are charged is not covered by the Property Factors (Scotland) Act 2011. We could say in the report that some type of mechanism to challenge the level of fees would be a step forward.

We should also flag up, if we are considering community ownership and ownership of land in general, the implications of the European convention on human rights in that regard, as Greenbelt Group is very upset about any suggestion that it might lose land. That will have to be in the report somewhere.

The Convener: To expand on the point about ECHR—

Roderick Campbell: I am talking about protocol 1 on the protection of ownership rights. That is a human right, but we have not really dwelt on it in any detail.

The Convener: But we should flag it up.

Roderick Campbell: Yes.

The Convener: Thank you very much.

John Lamont: My point is similar to the one that Roderick Campbell made. Professors Rennie and Reid suggested a possible solution: for cases in which residents want to change their management company, we need to create a right

that covers a change in ownership of the land too, as such a right does not currently exist. That was a possible solution on which both professors agreed, so I wonder whether we can capture it in some way.

The Convener: Thank you.

John Finnie: On a point of information—although I do not know if this relates exactly to the specific points that have been raised—the issue of ECHR and land ownership featured in a recent court case that involved an absentee laird in Harris who felt that his human rights were being infringed. The court made it very clear that the people of Harris have rights that take precedence over those of any absentee landlords.

The Convener: Yes—it would be nice to put that on the record, but we have never taken evidence on it. You should remember that reports are based on evidence, not on your lovely thoughts and background information.

Alison McInnes: I would like us to include a recommendation that, with regard to new developments, the Government encourages COSLA to find a way to take them back into the fold.

The Convener: Are you talking about enforceability?

Alison McInnes: The link is that locally elected members would be able to monitor what is happening.

The Convener: You have had the first go at discussing that, but what about enforceability from the residents' point of view? Have you any issues to raise on the way in which that works just now with regard to enforceability or getting out of contracts?

John Lamont: Does that relate to my point about whether title conditions could be enforced? Both professors mentioned that issue, although Professor Rennie was more robust on it. Is that the point that you are making, convener?

The Convener: No, I am making another point. Let us imagine that the conditions are enforceable—the professors did not agree completely on that point, so let us take one of the arguments. If the conditions are enforceable, what happens under the current system? There must be a residents' association and a certain percentage of the vote to change to a different provider, but that provider will not own the land. If A is the management company and owns the land, and the residents want B to take over, that is not a very enticing prospect. Do we want to say something about the mechanism and the practicalities of that?

Roderick Campbell: We could flag up that the evidence that we have had on that point gets quite technical. What we are proposing to say—

The Convener: The legislation apparently gives residents a process whereby, if they are not happy with the land maintenance company, they can get shot of it and bring in another land maintenance company. That does not seem to me to be possible or to work. If the legislation is supposed to allow residents to do that and it does not, something is slightly amiss with the legislation—that is a fact. What recommendations do members want to make to the Government? Does silence mean that we dinna ken?

Graeme Pearson: We would like to clarify the method by which those decisions can be taken, including what a majority means—is it 60 per cent or 50 per cent plus one?

Sandra White: It is a two-thirds majority situation again.

The Convener: Is it the same thing with property factoring? You know more about that than there is in the evidence.

Sandra White: It says a two-thirds majority, but some property factors have said, "No, it just means a majority." However, if you ask anyone who has tried to change their factor, they will say that it is not as simple as just saying that it is a majority. It is stipulated that you have to have at least more than 50 per cent.

Graeme Pearson: There should be clarity about these things.

The Convener: This is really a first run at the report. We will consider property factors, land maintenance and section 53. We will have a general overview of the issues that have been raised including people being unaware of maintenance responsibilities, the educational aspect, and the fact that it does not appear to be terribly easy to change the factor or the land maintenance company—perhaps more so with regard to land maintenance. We have some general points to make. Then we can divide the report into those two issues and then deal with section 53 on its own. Is that structure all right? I am content if we just leave it there.

Graeme Pearson: I have one final proposal for a solution. Quite naturally, we have rehearsed a bit about whether solicitors tell clients about the maintenance responsibilities, but clients are obviously concentrating on other issues at that point. Can we encourage the Government to create a higher profile within property schedules for responsibilities in relation to maintenance, in connection with any house or other property that someone is purchasing? I am sure that there will be a mention of those responsibilities, but they

seem not to be highlighted enough to ensure that purchasers understand those responsibilities.

Roderick Campbell: I come back to the same point that I made previously. We did not take enough evidence on that point to be able to make such recommendations. I am speaking as a lawyer—

Graeme Pearson: No, but we are talking about a culture. You are quite right that it should not be merely for solicitors to be responsible for informing buyers if the information is within the schedule. There is a duty on the purchaser to read such things properly.

The Convener: I am uneasy because I do not know whether that information is in the schedule. I do not have a clue about that and that is why it is not a good idea for us to say something. Our discussion is on the record, but because we did not ask about that point I do not know whether it is a requirement under the sale of goods legislation.

Roderick Campbell: I do not think that the Law Society will be very happy that we are dabbling in things that we did not even ask the Law Society to comment on.

Graeme Pearson: Indeed.

The Convener: So having put it on the record—

Sandra White: A number of issues were to do with poor information. We will not play the name-and-blame game—whether the information should come through the lawyers or whatever—but surely we can say that we had evidence that poor information was given to potential buyers. The information could be in the home report or it could be that estate agents are responsible for that information—surely we could put something like that in the report.

The Convener: I really do not know whether the information is in the home report. That is the problem. I do not want us to speculate. We will put something in the draft report that deals with the need to make people more aware of the issue. If we have a debate, it will be possible to raise all these issues then, having perhaps pursued them further on the basis of the report or—Colin, you are looking peeved.

Colin Keir: No.

The Convener: Is that your normal expression then? Do you want to say something?

Colin Keir: No, I will wait for the debating points to come along.

The Convener: I am running a bit behind schedule, so—

Roderick Campbell: I have a final point on the two-thirds majority issue. The point that was made

by the professors last week was that it applies only when the title deeds are silent. I think that we also heard—or I may have read it somewhere else—that it is fairly extraordinary for modern property transactions not to have some kind of stipulated figure in them, probably 50 per cent plus one, so when we say that we want further clarity I am not sure that we should overemphasise that.

The Convener: I will stop there. This discussion is about the first draft of the report and we have gone back over things. Basically, we cannot say things if we have not taken evidence on them—that is the end of that. Thank you all for your contributions. We will go on to item 4 in private.

10:40

Meeting continued in private until 11:34.

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