The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 12 March 2013

Session 4

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JUSTICE COMMITTEE
8th 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:

Kyla Brand (Office of Fair Trading)
Jean Charsley (Glasgow Factoring Commission)
Roseanna Cunningham (Minister for Community Safety and Legal Affairs)
Darren Eade (Office of Fair Trading)
Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)
Kenny MacAskill (Cabinet Secretary for Justice)
Mike Marriott (Greenbelt Group Action)
Christie Smith (Scottish Government)
Stephanie Virlogeux (Scottish Government)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 4

Scottish Parliament

Justice Committee

Tuesday 12 March 2013

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

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the eighth meeting in 2013 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system, even when they are switched to silent.

Apologies have been received from David McLetchie and Jenny Marra. I welcome to the meeting John Lamont, who is attending as David McLetchie's substitute. I know that Patricia Ferguson will join us later, when we come to the Title Conditions (Scotland) Act 2003.

Agenda item 1 is a decision on taking item 7 in private. It has been proposed that we take that item in private because it involves consideration of possible witnesses and options for fact-finding visits in relation to the Victims and Witnesses (Scotland) Bill. Do members agree to take item 7 in private?

Members *indicated agreement.*

The Convener: Phew! Battles are over.

Perhaps I should not have said that.

Subordinate Legislation

Police and Fire Reform (Scotland) Act 2012 (Supplementary, Transitional, Transitory and Saving Provisions) Order 2013 [Draft]

Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 [Draft]

Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 [Draft]

10:00

The Convener: Agenda item 2 is subordinate legislation. We will take evidence from the Cabinet Secretary for Justice on three instruments that are subject to the affirmative procedure. I welcome the cabinet secretary and the Scottish Government officials. Christie Smith is head of the police and fire reform division, Stephanie Virlogeux is a senior policy manager, Jean Waddie is a policy analyst and Andrew Campbell is a solicitor.

I invite the cabinet secretary to make an opening statement on all three instruments.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener.

I am pleased to be here to discuss the three statutory instruments, which are among the last remaining pieces in the legislative jigsaw that will enable the police service of Scotland and the Scottish fire and rescue service to go live on 1 April this year.

The Police and Fire Reform (Scotland) Act 2012 (Supplementary, Transitional, Transitory and Saving Provisions) Order 2013 is key to achieving a smooth transition to the new services. It will ensure that everything that is done before 1 April will continue on and after that date. Warrants and licences will continue to be valid, notices and directions will still be enforceable, legal proceedings can continue without interruption, and any reference in any document to the old services will be read as a reference to the new services. The order also makes arrangements for completion of the final accounts of joint boards, which will be abolished on 1 April.

The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 is the final part of the exercise of identifying amendments that are consequential to police and fire services reform. More than 400 separate acts and instruments have been considered, and

around 250 have been amended to reflect the new names and structures of the single services.

The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 are the final step in the process to deliver independent scrutiny of the most serious incidents involving the police from 1 April. That is a crucial part of providing assurance to the public and of maintaining confidence in Scottish policing.

The police investigations and review commissioner and his team are well prepared to take on that role. The commissioner has worked closely with partners, including the Association of Chief Police Officers in Scotland and the Crown Office and Procurator Fiscal Service, to establish what capacity and capability will be needed to deal with investigations. Investigations staff who have the skills and expertise that are needed to carry out effective investigations have been recruited and are now in place. The commissioner will have agreements in place on 1 April with key partners, such as the police service, so that they can work together effectively.

The PIRC's having been set up, it is important to ensure that serious incidents involving the police are referred by the chief constable or the Scottish Police Authority for investigation, and that the commissioner's investigators can carry out their role with the full co-operation of the police service and the SPA. That is the main purpose of the regulations. They will also allow the commissioner to decide whether to carry out an investigation, except in cases in which a death is involved—investigation of such incidents is compulsory. Giving the commissioner that discretion will ensure that the PIRC's resources are focused on the most serious cases.

The Convener: Thank you very much, cabinet secretary. Do members have any questions?

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Good morning, cabinet secretary. I have a question about the third instrument. Can you expand on what options or avenues are available to a complainer where the police investigations and review commissioner refuses to investigate his complaint?

Kenny MacAskill: The complainer could go to the Lord Advocate if the matter related to a criminal offence. Otherwise he would be able to write to me or raise the issue with any other member of the Scottish Parliament. The formal structure of PIRC has been set up to replace the Police Complaints Commissioner for Scotland, which is the independent body that considers such matters, and after that there is the world of political lobbying and holding me accountable in Parliament.

Graeme Pearson (South Scotland) (Lab): I have a couple of questions about the detail of the legislation, one of which is cosmetic, to some extent. In the newspapers, we see that the new service will be called "Police Scotland" but it has different nomenclature in the act. Will there be any difficulty for the service in the future if it has a different public title, or is that not a consideration?

Kenny MacAskill: I do not think that it is a consideration. How the body refers to itself is not a contractual matter. I have been asked whether local names—police Perth or whatever—could be used, and I am perfectly relaxed about that. The formal name will be the "Police Service of Scotland" but it will be portrayed as "Police Scotland" on its insignia and so on. I see no legal impediment to use of localised names, nor do I have any opposition to it.

Graeme Pearson: Will arrangements to deal with complaints about former police bodies, constables and staff also extend to chief officers? I raised a similar point earlier.

Kenny MacAskill: Yes, there are specific arrangements for that. Further discussions will have to be held with the chief constable, but arrangements exist to cover chief officers.

Graeme Pearson: To go back to a point that John Lamont raised, the policy document mentions that, when a crime is suspected, the PIRC will become involved. It is still not clear in my mind who will decide about and who will be in charge of the investigation. Will it be PIRC staff and members or will it be the Crown Office and Procurator Fiscal Service? How will that system work in practice?

Christie Smith (Scottish Government): What will happen will be essentially the same as with any other investigation. The Crown has primacy and it is envisaged that there will be a number of circumstances in which the Crown will find it convenient to instruct the PIRC to carry out the investigation. There might be circumstances in which the Crown instructs another police force or some other kind of investigator, but the PIRC will be there to carry out the majority of such investigations. However, on criminal matters, it will report back to the Crown—as would any other investigative agency.

Graeme Pearson: If a police officer or a member of staff commits a crime, would the police be expected to deal with that as they would normally through arrest, production of evidence and a report to the procurator fiscal, or as the policy note indicates, by sending for the PIRC, which would do the investigation and report?

Christie Smith: If anyone suspects that an offence has been committed, they would follow all the normal procedures through the procurator

fiscal and so on. If there is a serious incident, which might not necessarily be seen as a criminal offence on the face of it, but the PIRC or the police authority think that it might involve criminality, it will be referred to the procurator fiscal.

Graeme Pearson: Joint boards will come to an end at the end of March. Does that have any implications in terms of redundancies for councillors who are currently on those boards? Is there a financial implication?

Kenny MacAskill: There is not, as far as I am aware.

Christie Smith: That would not count as redundancy. It is the same situation as when a council decides to abolish one committee and create another. The end of joint boards will have implications for individual councillors, but membership of the boards is not a form of employment and it does not bring with it redundancy provisions.

Graeme Pearson: I have one other point to make.

The Convener: Can we come back to you, Graeme? I have John Finnie now.

Graeme Pearson: Yes—please.

John Finnie (Highlands and Islands) (Ind): I seek clarification of a point from Mr Smith, and then I have another general question.

In response to a question from Mr Pearson you mentioned how another police force could carry out an investigation. What other police force could investigate crime in Scotland?

Christie Smith: Any other police force could investigate crime in Scotland. The Crown can ask anyone to investigate, so that would be perfectly possible, although it would be unusual. We do not envisage circumstances in which it would happen but, ultimately, the Crown decides how crime is investigated in Scotland.

John Finnie: There would be significant challenges for police officers who were not trained in Scots law undertaking any investigation.

Christie Smith: I am sure that the Crown would take that into account in deciding who was best placed to investigate.

John Finnie: With regard to the police investigations and review commissioner, when other bodies have been set up in the past, people have sought to revisit issues. Is there an expectation that that will happen with the new set-up? What level of retrospection could be applied to any investigation that could be initiated?

Kenny MacAskill: I have had discussions with the Police Complaints Commissioner for Scotland, because we have continuity with Mr McNeill agreeing to stay on, and with the Lord Advocate. I am not aware of the Lord Advocate having any intention ever to instruct a force outwith Scotland but, as Christie Smith says, that right remains.

The Police Complaints Commissioner for Scotland has already run a well-balanced operation. We can anticipate that, as he moves into his new role and title, he will continue to exercise good judgment and balance to sift out cases that he views as being vexatious or lacking in any significant basis. Whether they are historic or contemporary, I think that he will continue to operate the same procedures.

John Finnie: I suspect that this is just a continuation of previous arrangements, but was any consideration given to discontinuing the system whereby a chief constable can

"pay rewards for exceptional diligence by constables and staff from former police services"?

In many respects, that is a highly divisive payment regime.

Stephanie Virlogeux (Scottish Government): The approach that we have taken with the regulations is to carry forward existing terms and conditions of service for constables. The ability to pay rewards is part of those terms and conditions, so we have not sought to change it.

Kenny MacAskill: I take the view that those are matters between the chief constable and the representatives of the force, whether they are from the Association of Scottish Police Superintendents or the Scottish Police Federation. We have not sought to intervene in any way and have, therefore, simply continued the arrangements. Doubtless they will be the subject of the discussions that take place regularly between officers, their representatives and their employer, whether that is the chief constable or the authority.

Graeme Pearson: On page 15 of our briefing, we are told that regulation 6 provides that the use by a police officer of

"any item to cause or attempt to cause injury to a member of the public can be treated as a serious incident."

The briefing goes on to describe the type of situation that is in mind: one in which the officer does not have access to his or her own protective equipment and uses some other device to protect themselves. Would the PIRC be involved every time an officer was involved in such circumstances or would it be sufficient that the procurator fiscal received a report, considered the circumstances and made a judgment about whether further inquiries were necessary? It looks from the briefing as though the PIRC would almost automatically be involved if an instrument other than a baton was used.

Christie Smith: Your description of the situation is correct, Mr Pearson. That kind of incident would count as a serious incident, which is something that the PIRC may, but not must, investigate.

Graeme Pearson: The committee has received correspondence—as it does all the time—from members of the public who are concerned about the openness of investigations of the police and the ability of such investigations to be seen to be accountable. The concern has been expressed that it will, because we will now have a single police force, be difficult for the authorities to show fairness and openness in investigating complaints.

Among the evidence that was provided was the fact that many former police officers are now employed by the Police Complaints Commissioner for Scotland. What view do you take of that? Is that a long-term policy or would you like the PIRC to become more and more independent as it gains experience?

10:15

Kenny MacAskill: First of all, people should rest assured that any malfeasance or actions that are unacceptable or illegal will be dealt with by the police. The Crown and the PIRC, as a successor to the Police Complaints Commissioner for Scotland, will deal with any failings. We must also remember that the PIRC can investigate matters, including sudden death, involving police officers.

Professor John McNeill has a good balance of people coming into the PIRC from a variety of trades, including trading standards, and other investigatory agencies. How that develops will depend on the culture that will grow under the PIRC. Professor McNeill and his predecessor got the right balance in PCCS by having a culture of being firm and hard when necessary but, equally, of not suffering complaints that could be viewed as being more malevolent towards individual serving officers.

He has the right balance in the PIRC; there are sufficient people with experience to do the job from 1 April and continue with what was being dealt with before. He has also brought in other expertise to deal with the new challenges in a single police force to address, as I mentioned, allegations of impropriety. Such matters will develop as the body evolves, but there is an appropriate balance of non-police people and police officers with the necessary skills.

The Convener: There are no more questions for the minister. Item 3 is the debate on the motions to approve the three affirmative instruments considered under the previous item.

No members wish to speak in the debate, so I invite the minister to move motions S4M-05847, S4M-05848 and S4M-05849.

Motions moved,

That the Justice Committee recommends that the Police and Fire Reform (Scotland) Act 2012 (Supplementary, Transitional, Transitory and Saving Provisions) Order 2013 [draft] be approved.

That the Justice Committee recommends that the Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 [draft] be approved.

That the Justice Committee recommends that the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 [draft] be approved.—[*Kenny MacAskill.*]

Motions agreed to.

The Convener: Cabinet secretary, I thank you and your officials for attending.

10:17

Meeting suspended.

10:18

On resuming—

Public Bodies Consent Memorandum

Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

The Convener: Item 4 is consideration of the consent memorandum on the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, which relates to the Public Bodies Act 2011. Members will recall that we agreed last week to take evidence from the Minister for Community Safety and Legal Affairs on the memorandum and, in advance of that session, to seek her views on submissions that have been made to the United Kingdom Justice Committee by the Scottish Committee of the Administrative Justice and Tribunals Council and the Law Society of Scotland. The minister's response is at annex D of paper J/S4/13/8/2. The views from the petitioners of petition PE1449, which urges the Scottish Government to preserve an independent Scottish administrative justice council when the AJTC is abolished. are included at annex E.

I welcome to this evidence session the Minister for Community Safety and Legal Affairs, Roseanna Cunningham, and Scottish Government officials Linda Pollock, who is head of policy on tribunals and administrative justice, and Michael Gilmartin, who is a solicitor.

Minister, do you wish to make an opening statement?

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): Yes. Thank you, convener. As you said, we are here to debate the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, which was laid before the United Kingdom Parliament on 18 December with the intention to abolish the Administrative Justice and Tribunals Council, including its Scottish committee. I want to update the committee on the Scottish Government's intentions on how we will support the work of administrative justice and tribunals in Scotland post abolition.

As you know, the UK Government announced its intention to abolish the AJTC in 2010. The Scottish Government was consulted at that time, and although we appreciated the useful work that the AJTC and the Scottish committee in particular had done, we recognised that we are in a time of reform in Scotland. For example, the Scottish Government had just established the Scottish Tribunals Service and we were in discussions with the UK Government about its commitment to transfer functions from reserved tribunals to Scotland. It therefore felt timely to have a new structure in Scotland to support the changing landscape.

Clearly, some time has passed since the original proposal by the UK Government to abolish the AJTC was announced. The prolonged delay in abolition has created some uncertainty, which is why I confirmed last year that my intention post abolition would be to maintain some of the functions of the Scottish committee through an independent advisory committee. At that point, I asked the Scottish committee to provide recommendations on what it thought would be necessary to support administrative justice and tribunals in Scotland.

The Scottish committee convened an expert working group and undertook a consultation, and it provided a report to me on 30 January. Having considered the report, I am clear that my decision to continue with an independent advisory committee on administrative justice and tribunals post abolition is the correct one. My intention is that the new advisory committee should have the remit of championing the needs of users of administrative justice. That should be done through its keeping a strategic overview of the whole of the administrative justice system in Scotland, identifying to the Scottish ministers any issues that affect the administrative justice system in Scotland that might require Government attention, ensuring that users of the system are listened to and their interests are represented, and encouraging networks and the sharing of good practice among practitioners.

We are at an important stage of reform of tribunals and administrative justice in Scotland. Although the Scottish Tribunals Service has been established, it is still relatively new. The tribunals bill that is to be introduced shortly will propose a new structure for the leadership of tribunals in Scotland. I know that members of the committee were involved in a debate last year on that.

We still await confirmation from the UK Government on its timing for the transfer of the functions of reserved tribunals to Scotland, and we are starting to develop a strategy for administrative justice in Scotland. That is why I want there still to be expert independent advice and scrutiny of administrative justice and tribunals here.

I recognise that with so much reform, needs might change, which is why I am keen that the advisory committee be set up on an interim basis at this stage. That will allow us to consider changing needs and to adapt appropriately.

I hope that I have outlined why I support the UK Government's intention to abolish the AJTC. The timing is right to set up appropriate mechanisms and advice in Scotland, for Scotland. Should the Scottish Parliament indicate its approval of the intended abolition, which in turn would allow the UK Parliament to make the abolition order, my next step will be to formalise the plans for the interim committee.

I know that the committee is also keen to consider the petition by Accountability Scotland today. I hope that our plans will reassure you and the petitioners that independent advice will remain and that the needs of the user will be paramount.

I am happy to answer questions.

The Convener: Thank you, minister. I nearly said "cabinet secretary" there. I was promoting you. Well—you never know. Do members have questions?

Graeme Pearson: Good morning. I note that the paper that we received from the Scottish committee, which is dated February 2013, mentions the absence of a plan for the future of the administrative justice advisory group. The paper comments on the fact that AJAG has met only twice since its inception, and it expresses doubt that the proposal for AJAG has sufficient capacity to deliver for the future. Have you read the comments and do you have a response that will give the Scottish committee some comfort?

Roseanna Cunningham: I have read the comments, but note that they relate to UK Government arrangements, over which we have minimal—

Graeme Pearson: What about the replacement for Scotland?

Roseanna Cunningham: One of the reasons for going ahead with this is to ensure that what we have in place in Scotland is robust. We know that the UK Government has already agreed to have Scottish representation on the advisory group; we have now received that confirmation, but we did not have it before and I am not quite sure that it would have been in place when the original—

The Convener: That is not in our notes.

Roseanna Cunningham: This is new information. We have now received confirmation that the advisory group will have Scottish representation, which is helpful.

This is an on-going conversation that we are having with Ministry of Justice officials; indeed, later this month, Ministry of Justice officials will come up to meet Scottish Government officials and discuss the matter further. We are concerned to ensure not only that the UK arrangements give due regard to the Scottish situation but that, separately, we can go ahead with the proposed replacement for Scotland in connection with, and having reflected on, what is planned for Scotland over the next few years.

Graeme Pearson: Will you ensure that, if and when that replacement comes along, its arrangements reflect the need for independence? After all, many of those who have commented have expressed the fear that independence is what the oversight arrangements for Scotland might lack.

Roseanna Cunningham: We are proposing the establishment of an expert advisory group that will, by its very nature, be independent. There would be no point in having it if it did not provide advice, so I am not entirely certain why people have expressed such concern. People will put themselves forward as members; of course, such decisions will be made by ministers, but that would be the case regardless of whatever set-up we have.

Graeme Pearson: Do you acknowledge the sensitivities that have been expressed in those comments and will you take the matter on board?

Roseanna Cunningham: We acknowledge the sensitivities. We have looked at other advisory groups that are already in place and members around the table who have been connected with some of them will know how independent they are and how robust they can be—and frequently are, even when it is not necessarily to the Government's advantage.

The Convener: That is not always a bad thing.

Roseanna Cunningham: Absolutely not.

Roderick Campbell (North East Fife) (SNP): I do not want to put words in the mouths of the Law Society of Scotland or the Scottish committee, but I sense from submissions a concern that some reserved areas might slip through the net. You say that you are having discussions with the Ministry of Justice, but how else can we ensure that certain areas do not go simply by—for want of a better word—default?

Roseanna Cunningham: There are two issues here, and I want to clarify which of them we are talking about. First of all, there is the original proposal that the MOJ has put on the table, which in effect is to give over to Scotland the administrative function of reserved tribunals. There is a conversation in progress about that.

Secondly, the UK Government is putting in place its own arrangements post-abolition, and we want to ensure that there is Scottish representation on its group and that we have appropriate input. The detail of the issue that I think Roderick Campbell has raised is ultimately a matter for the Ministry of Justice and the UK

Government. Although we can continue to monitor the situation, it is difficult for us to step in and insist on something different happening with regard to reserved tribunals.

Two sets of conversations that are close but not the same are on-going and they concern at least one unresolved issue about the administration of the reserved tribunals which, in a sense, would solve the problem. However, that conversation has not yet come to an end—there is still a process. The other conversation is about the arrangements that the UK Government is putting in place for reserved tribunals in the meantime, and how they will work. The two conversations are close, but they are not the same, and until one issue is resolved it is difficult for us to be definitive about the other—if that makes sense. I am sorry if that sounded a bit convoluted; I did not mean it to do so.

10:30

Roderick Campbell: Would you advise the Law Society of Scotland to make representations to the MOJ?

Roseanna Cunningham: If I know the Law Society of Scotland, vigorous representations are already being made to the MOJ. Of course, we are in constant contact with the MOJ. As I said, MOJ officials will be up here in just a couple of weeks. The conversation will include concerns that we have, and we will reflect directly to the officials concerns that have been put on the record at today's meeting. These are important issues, and we do not want the UK Government, by default, to overlook an issue that might have inadvertently fallen through the cracks.

Roderick Campbell: Thank you.

The Convener: If there are no further questions, I thank the cabinet secretary—

Roseanna Cunningham: You are promoting me again—

The Convener: Och! I've done it again. Perhaps there is something in the runes that I do not know about. I thank the minister.

Are members content to recommend that the draft motion that is set out in the memorandum, which is in annex A of your paper, be agreed to?

Members *indicated agreement.*

The Convener: Thank you. We are required to report our views on the memorandum to Parliament. We will consider the report at next week's meeting, because Parliament must agree to the motion before the Easter recess.

Does the committee wish to send a copy of the *Official Report* of this meeting to the Scottish committee of the AJTC and the Law Society of Scotland, for their information? I have no doubt that those people are paying attention anyway.

Members *indicated agreement.*

The Convener: Does the committee agree that we should formally consider petition PE1449 at a later date?

Members *indicated agreement.*

The Convener: Do you want to seek the petitioners' views on the minister's latest proposals relating to the petition, in advance of our formally considering it? We would do that in writing.

Members *indicated agreement.*

The Convener: Minister, I thank you and your officials for your attendance.

10:32

Meeting suspended.

10:35

On resuming—

Title Conditions (Scotland) Act 2003

The Convener: Item 5 is our inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003. This is our second evidence session. We will hear from only one panel of witnesses today. I welcome to the meeting Jean Charsley, chair of the Glasgow factoring commission; Mike Marriott of Greenbelt Group Action; and Kyla Brand and Darren Eade from the Office of Fair Trading. Jean Charsley's written submission was emailed to members on Friday and hard copies have been placed on their desks. We will go straight to questions from members. If members of the panel want to answer, they should indicate so by looking at me appropriately or whatever. I will then call them and their microphone will go on—they do not need to press the buttons on their console.

John Finnie: My question is for Mr Marriott. What was the initial impetus for setting up your group?

Mike Marriott (Greenbelt Group Action): Part of it was a problem with the developers. When we bought our homes, we were not told anything about the arrangement that was made until after about 12 months, when we got a letter from Greenbelt Group saying that it was going to take ownership of the land and manage it for the life of the estate. It said, "You've got to pay us what we want when we want it and you can't dismiss us and you can't sack us because it's a legally binding contract." I thought that there was something wrong with that and looked into it, which led me to look at the Title Conditions (Scotland) Act 2003 and some consumer regulations. It all mushroomed from there.

The Convener: Are you saying that no solicitor advised you that there would be a management fee or anything of that kind? You were never told about it.

Mike Marriott: Never. In the sales office, we were told that there was a one-off up-front fee of £150 for the maintenance of the landscaping. I received a copy of the missives and there was nothing whatsoever about the agreement in them. When it came to moving into the house, my solicitor did not contact me at all with any such information. I went back to the law firm that did the conveyancing for me and was told that it was a standard arrangement, but the firm did not get a copy of the title deeds until two weeks before I moved in. I had signed the missives, which are the contract of sale, in November 2004, and the firm did not get a copy of the deeds and the details of the arrangement until March 2005 for a move-in date of April 2005.

The Convener: I will leave that there. Up until the date of entry, matters can change. The missives are a contract, but it is not concluded until the money is exchanged and entry is taken. I just wanted to give you the opportunity to say whether a solicitor had advised you. It is your position that you were not advised that there would be any such obligations. That is a matter for you and your solicitors.

John Finnie: That was going to be my second question, so I am glad that that has been clarified. Where do you think the responsibility lies for sharing that information with you?

Mike Marriott: The sales office that was selling the homes should have advised me. I gather that the arrangement had been agreed between the developer and Greenbelt long before the homes were built. The developer knew what the costs were likely to be and what the arrangement was and had no right to withhold that information from us when we were considering buying the home. At the very least, it should have been in the missives, because that is the contract of sale. By the time our solicitor got the information, even if he had told me and I wanted to back out of the sale, it was too late because I had sold my previous house and was living in temporary accommodation.

John Finnie: Presumably your first action was not to set up a group. Did you follow a complaints procedure against any of the people you dealt with?

Mike Marriott: I wrote to Greenbelt and said, "This isn't right. There's something wrong here." Greenbelt told me that I was under a legal obligation to pay it. It did not respond to any of my queries. It was a case of, "You've agreed to this arrangement through the title deeds. It's a legally binding contract. Just pay up." I got the views of various neighbours and put out a flyer to see what other people on the estate thought. A group of us got together, said, "This isn't right," and started looking into it.

John Finnie: Did you tender a formal complaint to the Law Society of Scotland about the conduct of the solicitor who had transacted the business for you?

Mike Marriott: No, I did not, because at the time I was unaware that I could. A lot of people are quite ignorant of the law relating to the whole affair, including me when I first came up here. I still talk to people who do not know about consumer law, title conditions in Scotland and even suing solicitors. I found that people were extremely

reluctant to tackle their solicitors. Some of them are personal friends of their solicitors and did not want to take it any further.

The Convener: Perhaps John Lamont would like to come in while we are on this tack.

John Lamont: My point is for the Office of Fair Trading. Is what we have just heard quite normal practice? I should probably declare an interest as a former solicitor. When I was advising clients, I would expect to report to my client any obligation that they would undertake as a consequence of this type of deal. It strikes me, given my experience of this type of problem in my constituency, that a large part of it is due to solicitors not reporting accurately to their clients the burdens that they are taking on as a consequence of buying a particular home.

Kyla Brand (Office of Fair Trading): The work that we did in relation to land maintenance companies and property factors was in 2008-09. There have been a number of developments since, not least the passage of the Property Factors (Scotland) Act 2011 and the introduction of the new code of conduct, which have clarified some of these issues about the kind of information that should be made available.

Before the property factors work, which was unique to Scotland, we did a UK-wide home-building study. In that study, we found that as many as 12 per cent of salespeople did not discuss maintenance fees that were payable, even after prompting. There is a history of that kind of information not being provided.

The OFT would certainly expect that that kind of information should be made available. People need to make the biggest choices of their lives—about house purchases—furnished with adequate information. We know that the new code of conduct on property factors covers issues such as the up-front disclosure of information.

We are involved in various discussions about the handling of complaints against solicitors and questions of legal capabilities. On the point about people's awareness of their rights and so on, we fully recognise that there needs to be further improvement. There is a combination of effects here. However, the answer to John Lamont's question about whether solicitors should be giving this information is that they certainly should.

The Convener: If John Lamont is doing it, I, too, should declare an interest as a former solicitor. For the majority of solicitors, good practice would certainly involve advising purchasing clients of the obligations that would be coming down the road to them. Whether the clients listen to that is another matter. It is understandable that, in their keenness to purchase something, they may sweep that advice to the side. I am not suggesting that you did that, Mr Marriott. However, it can happen that clients make a purchase and say, "That doesn't matter; I don't care about paying that," only for reality to strike home once they are into a contract.

Darren Eade (Office of Fair Trading): That is absolutely right. In the study to which Kyla Brand referred, we found that the property itself and its location were much more important drivers of consumer choice, although the other factors are very important and consumers should know about them.

10:45

The Convener: I am sorry—I chopped John Finnie off there.

John Finnie: I am trying to understand the background and have one final question. Was the experience of your neighbours similar, or largely similar?

Mike Marriott: Yes, it was largely similar. Only two weeks ago, I spoke to someone on our estate who had just moved into the property and still had not been told.

Roderick Campbell: Good morning. I want to follow up on the OFT's written submission, which refers to the possibility of removing land maintenance companies as factors or managers. However, a number of other submissions suggest that that is only part of the problem. For example, if the Greenbelt land maintenance company retains ownership, we have only a partial solution. Has anyone at the OFT thought about this further in recent times? Has anyone looked at Greenbelt's consumer choice documentation, which indicates terms on which it might be prepared to transfer ownership to a residents association? Can anyone from the OFT comment on that?

Kyla Brand: Yes. As I said, we did a market study in 2008, which was published in 2009. While we have been following the developments after that, we have not done a further piece of work in the area. The answer to your question is no, we have not looked in the recent past at how the Greenbelt consumer choice model is playing out. However, like everyone else, we are aware that it is not being taken up by groups of home owners. Therefore, that is at least some evidence that it is not hitting the spot in terms of the gap that you identified, where a land-owning land maintenance company exists.

Roderick Campbell: Indeed, we heard evidence that some of the companies in Greenbelt Group do not consider themselves to be property factors and are therefore not registered under the 2011 act anyway. We have quite a complex problem.

Kyla Brand: Yes. I presume that those responsible for the registration scheme will look into those areas of potential concern.

Roderick Campbell: I have raised that issue with the Scottish Government and am still waiting for a response.

Mike Marriott: I have one comment on Greenbelt Group's options. There were originally three options, all heavily in favour of Greenbelt. A few years ago, the Scottish Government's property law division wrote to Greenbelt and said that two of those options were not compliant with the Title Conditions (Scotland) Act 2003. They have since disappeared and we are left with option 1, which states that before residents can take up that option, all past debt must be paid. When people withhold payment because services have not been delivered, the maintenance company calls that "debt". In that situation Greenbelt turns round and says, "We can't activate option 1." It is a no-brainer.

The Convener: In fairness, it may be a disputed debt, but it is still a debt.

Mike Marriott: Yes, but Greenbelt can control option 1 if it wants to.

The Convener: I am not taking sides—I am just clarifying that it is still a debt, notwithstanding that it is disputed.

Mike Marriott: Yes.

Jean Charsley (Glasgow Factoring Commission): Mr Marriott raises an issue that echoes some of what has come before the factoring commission—the importance of people understanding their rights and responsibilities before they purchase a property, which should be reinforced at the point of sale. It has been suggested that sales agents and mortgage lenders, for example, should have some input as well as solicitors, before the decision to buy the property is made.

Kyla Brand: In our report, one of the recommendations for property factors in general was that there should be a mechanism for a much broader distribution of information about the responsibilities that a person takes on when they buy a house, particularly when that involves shared ownership of any kind. The Scottish Government took the view that it was not timely to take that recommendation up and that there were other initiatives in hand. Our observation is that that information is not made available regularly enough and people regularly do not understand their continuing responsibilities or the choices that they may have. I would commend that recommendation again.

The Convener: Can you recall the other initiatives that were in hand? I do not know what those were.

Kyla Brand: I must confess that I cannot recall them in great detail. There were certainly initiatives to inform social housing tenants. There was a feeling that there was a question of scale, and of how to identify the kind of platform that private home owners would naturally look to for information. It was left in the ensuing conversations about the code of conduct and was not pursued.

Darren Eade: There were also some points about the complexity of the information and the law in this area. We advocated simplification and clearer information for consumers. In particular, the 2003 act is quite a complex piece of legislation that even lawyers have difficulties with. Some exposition for laypeople so that they readily understand the legislation would be good as well.

The Convener: I do not understand why you say that it is complex. A person is told that someone owns the land around a development and that they will be charged for the maintenance and will have to pay for a long, long time, as it appears difficult for people who form that settlement to have sufficient numbers to change the management. That does not sound complex to me; it sounds quite straightforward. Why is it so complex to tell people that?

Darren Eade: On the consumer side, there can be quite a lot of inertia in engaging with the issues. Explaining it in simple terms and motivating—

The Convener: That is inertia, not complexity. That is my point.

Darren Eade: It is complex to organise that sort of thing.

The Convener: Ah, I see. I think Patricia Ferguson wants to comment on that point about information.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Thank you, convener, for allowing me the opportunity to be here today.

If a property is not new build and there is a home report, the existence of a factor has to be flagged up in the home report. I want to ask whether the witnesses from the OFT agree that that is helpful, although it is not necessarily something that the eye would immediately go to. That is part of the problem, because people are often enticed by the prospect of a new home and think about how much the mortgage will be and what new furniture they will buy. They become very excited about all of that, and only appreciate that there will be the other charge, from Greenbelt or any other property factor, at the point at which the bills start to arrive. To break that information

gap down and make the existence of a factor of any description known is important, but it is quite difficult as well.

Darren Eade: Thank you. You made that point much more eloquently than I did.

The Convener: In an evidence session, that is all right—I do not mind. Does anybody else on the witness panel want to comment?

Mike Marriott: If you say to a prospective home owner that there will be a factor, they will understand factoring in relation to the communal spaces in a building that are partly owned by the home owner, but there is a vast difference between that and the land maintenance model in which the land maintenance company owns the land. It is because of land ownership that we have encountered the problems that we have. That does not come across clearly in any home report.

The Convener: Putting something in home reports is extremely interesting.

Sandra White (Glasgow Kelvin) (SNP): Good morning, panel. I have a general question and one about a particular area that Jean Charsley mentioned in her submission. The factors and developers say that the 2003 act strikes the right balance between home owners and managers. What are the panel's thoughts on that? Jean Charsley referred in her submission to the issue of the two-thirds majority that is required to change factors, although there can be absentee landlords and so on. Could you comment on that as well? Does the requirement for a two-thirds majority prevent people from changing factors or managers because of their bad service?

Mike Marriott: I will take that one because we have gone through that process. There is a slight mistake in our submission. I said that we undertook the process in March 2007, but in fact we did it in March 2008. I have in my hand the paper that is proof of delivery of our petition.

We went through the process of asking the views of people on our estate. We sent out flyers and set up a website and I gave out my email address so that people could send comments to me. We had an initial meeting with a few interested parties, and then we had a few public meetings at which we engaged with our MP, our MSP and one of our lawyers at the time. It was decided that if we wanted to exercise our rights, we must have a two-thirds majority, which on an estate of 300 is quite a tall order. Within a week, we had people going round the estate asking people whether they would like to sign the petition to get rid of Greenbelt. We got 251 signatures out of 300. People had prior warning of the petition through leafleting.

It was not an easy job, because of the size of the estate. However, it would be easier on smaller estates. We subsequently submitted our petition but were told by Greenbelt that it could not be dismissed, because it was not a manager. Greenbelt said that it was not a manager but had been appointed to manage.

Sandra White: I ask Jean Charsley, who mentioned the issue of the two-thirds majority in her submission, whether that is a difficulty, perhaps because of absentee landlords and so on.

Jean Charsley: The main difficulty is when there is a mix of owners and a lot of them are absentees. The law, as stated by factors, does not allow other people access to the contact details of such people. I think that it is generally considered that the two-thirds majority requirement is fair. Only a simple majority is required in order to make improvements, but a two-thirds majority is required for decisions affecting common responsibilities, which seems to be fair. However, the difficulty is contacting everyone who has a vote on whether something happens. There have been several cases in which repairs were essential but people could not be contacted to get agreement to put the repairs in hand. I do not think that a simple majority in such cases would be effective, because there are often more absentee owners than resident owner-occupiers.

Sandra White: I have a follow-up question for all the panel, but perhaps it is particularly for Jean Charsley, who is proficient and experienced in this area. Do managers, factors or developers tell you that they cannot give you access to information about people because of data protection issues? Surely managers or factors have details about absentee landlords and could write to them on other residents' behalf.

Jean Charsley: There are two points here. First, factors usually say that they cannot give out details about people. I think that it is generally considered that that issue needs to be addressed. I made specific recommendations on that in the report, which were based on the evidence that was presented.

I have forgotten the other one.

The Convener: You are thinking.

Jean Charsley: No. I am trying to answer the second part of Sandra White's question, but I have forgotten it.

The Convener: That is what I meant. You were thinking and trying to work out what the second part was.

Jean Charsley: That is right.

The Convener: That does not matter. It happens to us all. It happens to me every time.

Sandra White: Jean Charsley has said that factors will say that there are data protection issues, but surely in the case of a huge repair being required—if, for example, the roof caved in—factors must have the details of the owners, and they would be responsible for contacting them. However, they do not tend to do that.

11:00

Jean Charsley: One problem is that not everyone has a factor. The assumption of a lot of the arguments that have been put forward is that everyone has a factor, but that is certainly not the case.

Factors also have problems with getting the money for repairs and will withdraw from a building altogether if they are not paid or cannot get the money. There is a real problem about accessing information in order to talk to the people you need to speak to in order to organise repairs.

The Convener: I hear mumbling from Patricia Ferguson. Do you want to ask a question or give more evidence, Patricia? I am not bothered which.

Patricia Ferguson: This is one of those situations in which I would be happier being at the witnesses' end of the table. I have been trying to think about how creative I can be in framing questions.

Jean Charsley and I have discussed this matter before at the Glasgow factoring commission. There can be a problem with accessing information about who the owners are, particularly when the owner is not the person who is living in the property. Would I be right in thinking that one way round that would be to consider the landlord registration that takes place and to go to the Registers of Scotland, which has information about all owners? There are options that can be followed. They might take a little effort, but they can perhaps be pursued.

The Convener: Brilliantly done.

Jean Charsley: Not all people who refuse to pay are absentees. That is a serious problem for people who are expected to fund that missing amount, which can be considerable. If the factors will not tell them who has not paid, because they say that that information is protected by data protection, how is the issue going to be resolved, even by discussion?

I do not think that people understand what routes exist already for finding the information. It is difficult for home owners who have no experience in this field to know where to go. There seems to be no advice offered to enable people to access the information. Registers of Scotland might have the information, but it might not necessarily allow you the information that you need to contact the people. It does not give out people's current address or contact details.

Kyla Brand: Part of the difficulty around the sharing of information comes from the fact that individual home owners often act individually in relation to the factor. Our research showed that, where there is some kind of residents association or a collective group, people are far more effective in their management of the relationship with the factor or in dealing with a situation in which they have chosen not to have a factor and to manage any contracts for maintenance and so on themselves. That is a critical point. If you have some kind of corporate body, you have a different opportunity for gathering, sharing and holding that kind of information, even about those who might not be active in the association.

Graeme Pearson: The committee has been supplied with a document called, "Creating Great Outdoors", which is Greenbelt's customer care charter for contractors and their staff. You might be familiar with the document.

Mike Marriott: I have seen numerous documents, which change constantly.

Graeme Pearson: Whether or not you have a disagreement with the company, do you find that it acts contrary to the guidance that it sets out in the document? Is the guidance fulfilled in reality?

Mike Marriott: No.

Graeme Pearson: I just wanted to get your reaction to that.

My second point is about common areas and public ground. It is evident that some of the dissatisfaction that we have heard about is accounted for by witnesses' experience of the fact that there is no transparency around the costs that are involved. Various repairs might or might not be carried out but the cost of them seems to be beyond description or understanding. Is that still a common experience for those operating in these circumstances?

Mike Marriott: Yes. We commissioned a number of landscape audits to prove that the maintenance had not been done to the specification that had been written into the title deeds. I and other residents have tackled Greenbelt Group on that issue on numerous occasions; indeed, I have with me a letter from a resident who, when they quite rightly tackled the company on its standards of maintenance, received this response from the head of customer services:

"Contents noted, completely disagree as most of what you write is nonsense."

That is what we are dealing with.

The Convener: That is fine but, in fairness to Greenbelt Group, I should make it plain that this is your evidence.

Mike Marriott: I also point out that the deeds set out a quite detailed maintenance specification. Under the property factors legislation, I wrote to Greenbelt Group with 24 points; it responded to only a few of them but one of the questions concerned the Menstrie Mains development service agreement, in which it emerged that all the maintenance items that were standard in the maintenance charge had been separated out and were being charged as extras. The fact is that the maintenance on our estate has never matched the requirement in the deeds.

Graeme Pearson: Are you suggesting that that is a common experience, or is it mostly people's experience of Greenbelt Group?

Mike Marriott: As the committee is dealing only with Scotland, I will talk about only Scottish estates. Having spoken to more than 50 estates in Scotland, we have found that they are all experiencing the same thing.

The Convener: From other companies, not just Greenbelt?

Mike Marriott: It is mainly Greenbelt, but only two weeks ago someone phoned me up about Ethical Maintenance. On the question of prices, when we decided to dismiss Greenbelt Group, we showed other companies the spec and asked them to give us a price; we then discovered that Greenbelt was charging us three times more than what those companies were quoting.

Graeme Pearson: I wonder whether our OFT witness wishes to comment.

The Convener: People usually indicate whether they wish to respond to a question. You can respond if you wish, but you do not have to.

Furthermore, I am not taking any sides or disputing the evidence, but I simply note that Greenbelt will have a chance to respond to these statements. That is only appropriate.

Kyla Brand: We do not have experience of the document that you are discussing, but I can say that this kind of issue is precisely the target of the code of conduct. It has been in place for only a few months, but we expect that the really interesting issue will be the extent to which it begins to bite and changes, say, the exchange of information. If the costs that are being incurred after a transparent tendering process for contracting services turn out to be very high, there might be questions about how those potential service providers have been chosen.

Graeme Pearson: Mr Marriott said that his journey began in 2004, so let me set that as a benchmark for all the witnesses. From both of the evidence sessions that we have had, I get the sense that we are to an extent marking time on this problem and I do not get the impression that there has been any improvement in the intervening nine years. Am I misleading myself or have I hit the nail on the head?

Mike Marriott: I think that you have hit the nail on the head. As I said in my written submission, we are in a stalemate. A lot of us do not even communicate with Greenbelt Group any more.

Kyla Brand: Obviously there are different potential stages for development. One issue that is pertinent to the land-owning and land maintenance model is the difficulty faced by anyone who owns a home of changing their current situation. We would all say that the best thing is to have a good relationship with one's factor, whatever the context, and to have a good service, so that there is no need to make dramatic changes, which take up too much of people's time, when mostly they are not bothered.

However, given that the issue has been underlying matters throughout, it is clear that there has not been progress. Even though there is a code of conduct that applies to land maintenance companies as well as other property factors, there remains the simple—in a sense, but also complex—question about how we deal with the fact that land ownership is at the heart of the relationship. That is why we suggested that testing the 2003 act would provide at least some means of ascertaining whether it is fit for purpose.

There has certainly not been the kind of progress that we would have wanted on the front that we are talking about. One can understand the associated litigation risk, but I agree that the issue has stood still.

The Convener: We will hear from academics, I think next week, who might offer some solutions. Do you want to ask a supplementary question, Sandra? I see that Sandra White is pleading with me to let her in. I give in to her.

Sandra White: My question is supplementary to Graeme Pearson's question, and it is for the OFT. It has been claimed that factors use preferred contractors and build a premium into the contract, from which they make a profit, although doing so leads to more expensive bills for tenants and residents. Has the OFT received submissions about such practice?

Kyla Brand: I do not think that the issue that you described—in that sort of detail—was the subject of submissions that were made to us when we were doing our report, but the whole question of the transparency with which a factor tenders for services is key.

Another relationship, which we tried to expose in our report, is the one between the developer and the initial land maintenance arrangement. There certainly seemed to be a clear preference for those who are known—that is, people who have a track record—over those who are not known. In the market that we are considering, we see a single, dominant supplier and then some others who supply services and indeed own land—that tends to apply to smaller estates and smaller numbers. What we do not see, apart from one or two examples of which I am aware, is other suppliers coming into the arena and providing the sort of competition that we would expect to have a constraining effect on the price and the price premium to which you referred.

Sandra White: Is it up to individual residents to raise the issue with the OFT if, like Mr Marriott, they have information that suggests that their bills are much higher than they would be if they had another supplier? That is evidence of price hiking, I presume.

Kyla Brand: In some circumstances that kind of experience would become an issue for the OFT. We do not have the power to take up individual issues, so I would not want people to be distracted in our direction only to find that we could not take their case forward. I think that the context would be the new registration regime, in particular, and the home owner housing panel.

Sandra White: Thank you.

Patricia Ferguson: I have a question that is supplementary to Mr Pearson's question and Ms White's questions to the OFT. Do you agree that it is important to differentiate between land-owning maintenance companies that act as factors and factors per se, as most of us normally understand them?

It was always recognised that land-owning maintenance companies were a particularly hard nut to crack. They were included in the Property Factors (Scotland) Act 2011, as far as was possible at the time, but it was always recognised that they could not come within the scope of the 2011 act in exactly the same way as traditional factors would do. It is important to differentiate between the two types of factors, which throw up different problems in different situations.

The Convener: Forgive me, but I think that we explored that issue last week. We appreciate that there is something of a relationship—to put it tactfully—between developers and land-owning management companies, which can lock everyone into the system. We explored that.

Alison McInnes has been very patient.

11:15

Alison McInnes: Thank you, convener. I want to stick with the land-owning and maintenance issue, which has caused significant problems in my constituency. I know that Consumer Focus Scotland did some research on it. There is a high level of dissatisfaction about it.

We have heard quite a lot about a lack of knowledge of the arrangements and charges at the outset, but I am particularly interested in the standard of the maintenance and how we resolve the problems that residents have with it, given their inability to control it. Previously, local authorities carried out all this sort of maintenance by charging a capitalised maintenance fee. It was developers trying to drive that down that led to the setting up of Greenbelt.

Could any measures within the planning process be used to stop such problems happening in the future? Perhaps the panel members are not in a position to say, but would it be possible for local authorities to insert planning conditions around how the land should be maintained? Would that be a sensible way forward?

Mike Marriott: Councils have a hand in the maintenance specifications. In our deeds, the specifications are quite clear and exact. In terms of the planning process, I think that councils have been particularly lax in this area—that is certainly true of when our estate was built.

I have been working closely with our MP, Gordon Banks, who has been dealing with the council on this issue. It appears that if the developer did not want to pay the commuted sum, all it had to do was prove that it had an alternative. All it had to say was, "Yes, we've got an alternative. Here it is." The council then just signed everything off without looking at whether the arrangements were fit for purpose. I had a meeting with Gordon Banks last week and he informed me that the council will now make it very difficult for future developments to be put into private ownership. That is an area in which the planning authorities can take the initiative.

As our colleague from the OFT has said, the key to all this is land ownership. Greenbelt owns the land. It has every entitlement to own the land, just as we have every right to own the land. The problem is the link between the landowner and us, the residents.

The Convener: Does anyone else wish to comment on whether there are opportunities in the planning process to address that issue?

Kyla Brand: We would refer the committee to the part of our report that looks at that relationship—it is paragraphs 6.39 to 6.47. When we carried out our investigation, we found that

local authorities were quite nervous about the responsibilities that would come back to them. Therefore, the whole issue of how they set the commuted sum and how they ensure that responsibility is transferred effectively and does not come back to them was quite a strong driver for many of them. Obviously, the picture is variable, with different local authorities taking rather different positions. That was at the heart of their inhibition from being too demanding in terms of those relationships. I suspect that that will not have changed.

Alison McInnes: That is extremely unfortunate, because local councillors provide residents with a really close link. If the local authority is maintaining the land, residents have a democratic connection with how the maintenance is being carried out.

You said that you felt that the way forward was for the 2003 act to be tested. Clearly it is very expensive for an individual to try to do that. Is there not a public interest case here? Should someone in the public sector not take this forward and test the act for the people?

Kyla Brand: Our recommendation was that Consumer Focus Scotland would take that on. I think that it was willing to attempt that, but there was a high litigation risk. Of course Consumer Focus Scotland no longer has those responsibilities. I am afraid that it is not obvious to me who would have that kind of handle on this issue at the moment. Things may have moved on in the sense that, rather than just worries about being able to ascertain how the act should work, there is a real demand for an alternative.

The Convener: I am surprised that a man or woman of straw has not come forward to test the legislation. Perhaps there are problems with getting civil legal aid for that. Is that the case?

Kyla Brand: I do not know. Some of those who have been more active in the field might know of attempts to bring such a case. However, we should be aware that a counter-case is likely to be made in favour of the current arrangements and that a lengthy and costly legal process could be opened up.

The Convener: One of the tests for legal aid, apart from showing cause, is that there is some public interest in pursuing the case. I am surprised that no one has gone down that route, but perhaps we will hear something later if somebody who is listening to our evidence has tried it.

I call Roderick Campbell, to be followed by John Finnie. You are on my list, John.

John Finnie: My question is a supplementary, convener.

The Convener: Ah. Roderick, do you mind if he leapfrogs you?

Roderick Campbell: Er—no.

The Convener: Well, that was very hesitant. [*Laughter*.] John, on you go.

John Finnie: Thank you, convener. Thank you, Roderick.

Alison McInnes asked the series of questions that I was going to ask, but I want to follow up on one aspect. Ms Brand said that local authorities were "quite nervous", but I do not think that that nervousness extends to recouping the council tax from residents. Like Alison McInnes, I would encourage greater use of local authorities.

We have a submission from the property law committee of the Law Society of Scotland, and it touches on community right to buy as a way of addressing the specific issue of land ownership. That is not a preferred option for me, as I want more local authority involvement. For the sake of completeness in our evidence, however, do members of the panel have views on that?

Kyla Brand: Tangentially. We have a sense that, where home owners collectively take an interest and are motivated to deal with the issue as a group, the success of their maintenance arrangements is hugely enhanced. If someone is able to motivate a group of home owners to exercise a community right to buy, they will be a long way towards identifying and capturing that community interest, and it would seem to be quite a strong contender for a successful long-term arrangement. However, there are undoubtedly other aspects of community right to buy that we are not experts on.

The Convener: Mr Marriott, that question is perhaps more in your field. Have you had thoughts about the right to buy?

Mike Marriott: I think that we face a couple of problems. Unlike 40 years ago, when people moved to estates and stayed there, people now move on after a couple of years, so it is difficult to get continuity. I know that there have been a couple of estates—including one in Ellon, I think—on which Greenbelt had quite a lot of resistance from residents and it offered to sell the land to them, but it put in a ridiculous price and the residents said, "No chance." Greenbelt owns the land, so it can control what price it goes for.

John Finnie: Following on from the issues that Alison McInnes raised, do you have a view on whether specific planning conditions would have assisted, or is the ownership of the land always the issue?

Mike Marriott: If land was given over to the community by developers, rather than being put into private hands, half of the problems would not exist. We can compare the arrangements for blocks of flats in which the community owns the

open spaces. In such cases, there is a common interest, but where there is a landowner, all the control is with them and no one else has any.

The Convener: That was all your questions, John. You slipped your other one in as well, you naughty person. Roderick, you are next.

Roderick Campbell: John Finnie jumped in and asked about something that I was going to raise. In relation to the community right to buy, the cost of acquiring land from land maintenance companies is an issue. Obviously, the costs will depend on individual circumstances. Can you perceive that creating difficulties for occupiers? Without public assistance, it would not necessarily improve matters. What is your view on that? The question is for Mr Marriott in particular. How would you raise the funds to acquire land?

Mike Marriott: Especially on big estates such as ours, the difficulty would be getting everyone to agree to fund such a move. Communities are more transient nowadays. People have moved into our estate and been gone—they have sold on—two years later. There is a big shift of people. We do not build communities that last any length of time now. Therefore, a community buyout, or purchasing the land from another, is fraught with problems. It would be a little bit easier if the planning system conveyed the land to the community in the first place.

Kyla Brand: There was some concern as to who the community would be in such a situation. If it was the group of home owners on the estate and the matter concerned facilities such as play parks, there would be a public interest in the wider public being able to access those facilities, which could equally become privately owned, but by a slightly wider group than is currently the case. There is a balance of interests that needs to be sorted.

Mike Marriott: When I first started in the campaign, one of my initial fears concerned going down the route of gated communities. On our estate and, I think, one other, we have had problems with children from the villages being told to get off the play park because we pay for it. I do not agree with that, but the fear about communities owning land that should be in the public domain was that such things would happen.

The same applies to sustainable urban drainage systems. The SUDS on our estate is for the benefit of not only our estate, but the entire village. However, the maintenance burden rests with one little part of the community.

My fear is that, if private land ownership carries on as it is, we could get to the stage of gated communities.

The Convener: I have a question for the witnesses from the OFT. Section 3(7) of the 2003 act says:

"Except in so far as expressly permitted by this Act, a real burden must not have the effect of creating a monopoly (as for example, by providing for a particular person to be or to appoint—

(a) the manager of property; or

(b) the supplier of any services in relation to property)."

Are we talking about real burdens, in which case is there not an

"effect of creating a monopoly"

in the current system if the developer pretty well sells to the land management and owning company and it is extremely difficult to do anything about it?

I will let Mr Marriott in first unless the witnesses from the OFT want to come in.

Mike Marriott: That is an important point. We have constantly tackled Greenbelt over the monopoly. In the early years, it came back to us with the reply that it is not possible to have a monopoly on land ownership. However, the argument is not about land ownership; it is about the relationship that we, as residents, have with the landowner or the person who does the maintenance.

The Convener: We are talking about a burden, which is a duty to do something on land.

Mike Marriott: Yes. I have a number of statements from Greenbelt on headed paper, such as:

"Greenbelt is obliged to manage and maintain the amenity areas for so long as it is owner of the areas in question and the residential development exists (given funding for that management comes from the residents)".

That was back in 2009 but, this year, we got a statement with the property factor's bill, under the Property Factors (Scotland) Act 2011. Under the heading "Authority to Act—Estate Management Arrangement" it says:

"All Home Owners pay an annual fee for Greenbelt looking after this Land; Greenbelt is obliged to manage and maintain the Land for so long as we are owner of the Land in question and the residential development exists (given funding for that management comes from the residents)".

If that is not a monopoly, I do not know what is.

The Convener: Do the witnesses from the OFT wish to comment? If one could find somebody to test the 2003 act, might that be something to be tested?

11:30

Kyla Brand: That is certainly one of those questions to which we found that we could not

provide a categorical answer. If there are real burdens, it becomes an issue for us that the unfair terms of contract regulations, for which we have responsibility, would not bite. That would be another route of consumer protection in the arena.

The question about how the ostensible monopoly situation is introduced into a land ownership situation has clearly not been bottomed by any of the experience to date.

The Convener: That is a contractual matter, is it not?

Kyla Brand: If a burden is introduced, that supersedes the contractual relationship.

The Convener: I understand that, but I am saying that your role is where the matter is contractual between a developer and a land management owner or company. That is a contractual arrangement, is it not?

Kyla Brand: That is not quite the case. We are involved with unfair terms of consumer contracts. We are involved where there is a contract with the consumer or, in this case the home owner, rather than with business-to-business contracts.

The Convener: Yes. That is a contractual matter with which you are not engaged, but it is a contractual matter.

Does Sandra White want to pop in again?

Sandra White: It is all right.

The Convener: Do members want to ask final questions? We are finished with our questions. I thank everyone—[*Interruption*.] I beg your pardon. We have finished our questions, but we have not finished with the evidence.

Jean Charsley: This month, the Glasgow factoring commission is looking at whether the law as it stands enables the problems that we have discovered to be addressed or whether additional measures are required. The commission will present proposals to the Government to try to address those. I am not talking about the social and economic aspects, but about the aspects that affect property law as a whole.

The Convener: Do you have any timescale for that? We may do a report on this brief inquiry. I have put you on the spot, but you could let us know about that. If we could have a look at your proposals before we produce our report, that would be useful. If we cannot, they could be an addendum.

Jean Charsley: The report will go to the council before the recess, and it will then be distributed among other people to comment on. The finished report will be produced sometime in the summer. However, if you have a timetable, perhaps we could see whether the commission could produce something for you. Can you tell me what your timetable is?

The Convener: We will come back to you on that. The committee will have another evidence session next week and we will have to consider our way forward. We will get back to you when we have a timescale for producing a report. I think that we considered producing an interim report. Am I dreaming again or was that suggested? We will discuss that next week.

Jean Charsley: One plea that I make is that, when you are considering title and condition, you consider the common interest of people in keeping their buildings repaired. I make the plea that you consider not just individuals, but the property.

The Convener: I think that we are aware of that.

Jean Charsley: I am sure that you are.

The Convener: It should not be just the people on the top floor who see that the roof is repaired.

Mike Marriott: I would like to make one more point. To tag on to the convener's question about section 3 and a monopoly, that section also states:

"A real burden ... must not be repugnant with ownership".

That should be strongly taken into account.

The Convener: Okay. Thank you for bringing that to our attention.

I thank you all for your evidence. We will now have a brief suspension.

11:33

Meeting suspended.

11:33

On resuming—

Petition

Victims of Crime (Support and Assistance) (PE1403)

The Convener: Item 6 is consideration of PE1403, by Peter Morris, on improving support and assistance to victims of crime and their families. The petition was referred to us by the Public Petitions Committee for further consideration as part of our scrutiny of the Victims and Witnesses (Scotland) Bill.

Do members wish to make any comments on the petition, or are they content to consider the issues that are raised in it as part of our scrutiny of the Victims and Witnesses (Scotland) Bill? I think that that would be a good way forward. Many of the points seem to be taken up in the bill.

Members *indicated agreement.*

The Convener: We will now move into private session.

11:34

Meeting continued in private until 12:08.

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