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Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 25 June 2013

Session 4

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PUBLIC PETITIONS COMMITTEE

13th Meeting 2013, Session 4

CONVENER

David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Chic Brodie (South Scotland) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West Scotland) (Con)
Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*John Wilson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)
Malcolm Chisholm (Edinburgh Northern and Leith) (Lab) (Committee Substitute)
Alison Di Rollo (Crown Office and Procurator Fiscal Service)
Jim Eadie (Edinburgh Southern) (SNP) (Committee Substitute)
Dr Steve Gilbert (Healthcare Improvement Scotland)
Assistant Chief Constable Malcolm Graham (Police Scotland)
Lesley Holdsworth (Healthcare Improvement Scotland)
Alpana Mair (Scottish Government)
Michael Matheson (Minister for Public Health)
Lesley Metcalfe (Scottish Government)
The Lord Advocate (Frank Mulholland)
The Cabinet Secretary for Health and Wellbeing (Alex Neil)
Robbie Pearson (Healthcare Improvement Scotland)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

Committee Room 2

Scottish Parliament

Public Petitions Committee

Tuesday 25 June 2013

[The Deputy Convener *opened the meeting at 09:31*]

Decision on Taking Business in Private

The Deputy Convener (Chic Brodie): Good morning, ladies and gentlemen, and welcome to the Public Petitions Committee. I remind everyone to switch off their mobile phones, please.

We have received apologies from the convener of the committee, David Stewart, and from Adam Ingram. Malcolm Chisholm is standing in for David Stewart, and Jim Eadie is Adam Ingram's substitute.

Agenda item 1 is to decide whether to take items 6 and 7 in private. Do members agree to do so?

Members *indicated agreement.*

Current Petition

Thyroid and Adrenal Testing and Treatment (PE1463)

09:32

The Deputy Convener: Agenda item 2 is on PE1463, on effective thyroid and adrenal testing, diagnosis and treatment. I welcome the Cabinet Secretary for Health and Wellbeing and Ms Metcalfe and Ms Mair, who are here to give evidence.

I ask the cabinet secretary to say something briefly; we will then get into brief—I hope—questions. I will try to close down the discussion in half an hour.

The Cabinet Secretary for Health and Wellbeing (Alex Neil): Thank you, convener. I will be brief.

Thank you for inviting me to give evidence on the concerns over thyroid and adrenal disorder patients' access to medication.

The committee will be aware that there has been a recent interruption in the supply of liothyronine, which is one of the medicines that are used to treat thyroid conditions. I understand that the supply has now returned to normal and that new stock is now available. I also understand that such interruptions to the supply chain can be very distressing for patients, particularly when no alternative licensed source for the medicine is available in the United Kingdom. Unfortunately, such medicine shortages arise from time to time.

The Department of Health in England has responsibility for UK medicine shortages and acts on behalf of all UK health departments on those matters. Scottish Government officials keep in regular contact with it to consider any UK-wide implications, and will continue to do so. The Scottish Government is also in regular dialogue with the pharmaceutical industry, pharmaceutical wholesalers and pharmacists to minimise the impact of any supply-chain problems both on patients and on the national health service.

I am happy to answer questions.

The Deputy Convener: Thank you, cabinet secretary.

Is there any evidence that drug companies are restricting supplies on the basis that that might help to force up prices?

Alex Neil: No—certainly not in this case. One issue is that the number of patients in Scotland who are prescribed the drug in question is of the order of 420 to 450. The number for the UK is probably around the 5,000 mark. We need to bear

in mind the relatively small size of the market, the very expensive raw material and the expensive and complicated manufacturing process for the drug. I believe that the source of the recent problems and shortage was the shortage of raw material for the drug. There was no sign or evidence at all of profiteering or deliberate manipulation of the market by any of the people in the supply chain.

The Deputy Convener: How soon were you made aware of the problem?

Alex Neil: Such things tend to percolate through the system reasonably quickly. We are in regular contact with the Department of Health and have discussed with it different ways of addressing the problem. Obviously, the priority was to get the supply reconnected as quickly as possible, so every action was taken to do that.

We also considered what alternative medicines could be supplied. In this case, the only real alternatives for some patients were medicines that are licensed in continental Europe but have not been licensed by the Medicines and Healthcare products Regulatory Agency in the UK. However, I believe that the MHRA issued guidance allowing interim use of those medicines until the supply of the original medicine was reconnected.

The Deputy Convener: Thank you.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Those comments have been very useful. I have actually written to you about another medicine that is currently not available, and your reply to the previous question will be relevant to your reply on my query.

I am, of course, coming a bit late to this petition, but I understand that the petitioner has also highlighted the issue of single licensed drugs. That raises an interesting question. Does a single licensed drug come up through a conscious decision of the MHRA, because manufacturers have not applied for a licence for an alternative drug or because they have applied but have been turned down? I suppose that there is no general answer to that question, but I wonder whether you can reply with reference to thyroid deficiency drugs.

Alex Neil: To be quite blunt about it, because of the small number of patients who benefit from these drugs, the number of suppliers is very small indeed; it is simply not a big part of the market, and pharmaceutical companies concentrate their efforts where they think the greatest need for supply will be. In this case, only a small cohort of patients require and benefit from the drug, and I think that I am right in saying that there is only one supplier of this particular drug in the UK.

Malcolm Chisholm: One of the petitioners, I believe, has provided a note to say that she uses a different drug that she finds to be more effective. I do not know, but I imagine that she pays for that herself. Her situation reminds me of a constituent of mine who came to me about Armour Thyroid, which has also figured in the committee's debates, and it raises a lot of interesting questions. That drug is the only one that works for my constituent, but because it is not licensed she has to pay for it. What is the position for general practitioners who prescribe unlicensed drugs? In the case in question, I do not think that the GP said that the drug was not effective for her, but I understand that there is a lot of risk in a GP taking such an approach. I can see it from the petitioner's point of view—after all, she knows that a drug that she has to pay for works for her—and I imagine that the situation will be the same for other patients in other circumstances.

Alex Neil: The MHRA has issued very clear guidance to clinicians about what is and is not licensed. Prescribing an unlicensed drug might have implications with regard to liabilities if anything goes wrong, and the MHRA guidance in all such areas is quite detailed.

On the wider issue that the petitioners have raised, my understanding is that there are related issues about the effectiveness of some people's overall treatment for thyroid and related conditions. I believe that the committee is planning to hold a round-table meeting on some of the wider issues after the recess. Michael Matheson and our officials will certainly offer to participate in that meeting because we want to get to the bottom of the petitioners' concerns—not just about the supply of drugs but about the wider question whether the treatment that is prescribed for them, particularly by GPs, is what it should be. We want to get evidence on that, find out what the problem appears to be and see whether we can address it.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, cabinet secretary. Your evidence has been helpful in painting a picture of where we are, but I want a fuller understanding of the situation. You said, if I heard you correctly, that during the period of disruption to the supply chain a medicine that is not licensed in the UK was made available on an interim basis. Do you have any understanding, from discussions with the MHRA, why only one such medicine has been licensed in the UK and why only one manufacturer has applied for a marketing authorisation for it?

Alex Neil: Alpana Mair will give you more detail on that.

Alpana Mair (Scottish Government): The cabinet secretary alluded earlier to the fact that not many patients are affected, so it is up to the pharmaceutical company to decide whether to

manufacture the medicine. At the moment, only one is doing so. It is a complicated process to manufacture that particular product, so it would not be in many companies' interests to go into what is very much a niche market. That is really why—

Jim Eadie: Is the medicine that is not licensed in the UK but was made available on an interim basis licensed in other countries?

Alpana Mair: It is. It is liothyronine, which is manufactured for supply in various countries. For example, a company in Germany has the licence for production in Germany. However, it is not licensed for—

Jim Eadie: So, for commercial reasons that company has decided not to apply for a licence in the UK.

Alpana Mair: Yes.

Jim Eadie: Okay. Thank you.

Anne McTaggart (Glasgow) (Lab): Good morning, cabinet secretary. What part did you play in the work that was undertaken by MHRA and the Department of Health to try to rectify this situation?

Alex Neil: The work was done mainly at official level; such matters do not necessarily always involve ministers, north or south of the border. My job is to ensure that the necessary action has been taken. Certainly, when I was alerted to the issue, my job was to ensure that we were doing everything that we could in co-operation with our colleagues and friends down south to reconnect the supply as quickly as possible and, in the meantime, to ensure with the MHRA that our clinicians in Scotland were aware of the interim arrangements. That was the role of the Scottish Government.

Anne McTaggart: Thanks.

John Wilson (Central Scotland) (SNP): Good morning, cabinet secretary. The bulk of the question that I was going to ask has been covered by Malcolm Chisholm. However, there is an issue about security of supply. We welcome the decision that was made to bring in an unlicensed medicine when there was a shortage. What can be done to increase security of supply? Have there been any discussions at Scotland or UK level about licensing in the UK of drugs that are licensed on the continent? We have heard from witnesses and in written evidence that some people feel that the drugs that are available on the continent are better than the drugs that are available in the UK and Scotland.

Alex Neil: I think that there are two questions there. First, on contingency arrangements, we are working with our colleagues south of the border and in the other devolved Administrations to get more robust contingency arrangements in place so that any future disruption to supply can be dealt with differently and more speedily than perhaps has been the case in the past. I do not want to go into too much detail about that, because it involves commercial negotiations with the companies involved. You will understand that I would not want to disclose too much that might be to their advantage, and that we would rather keep certain bargaining chips up our sleeve.

We and our colleagues in London are very conscious of the need to have more robust contingency arrangements in place for shortages, not just in relation to liothyronine but more generally, although it has tended to be the worst in terms of shortages—in recent times, anyway. The general principle of contingency arrangements is absolutely agreed and we are working on that.

09:45

On the second point about encouraging companies that have products that are available on the continent to apply for licences in the United Kingdom, that has to be done through London, at the moment. It is a reserved matter.

I would have thought that, compared to the likes of Germany, the UK is not an insubstantial market. The German population is just over 80 million and the UK population is more than 60 million, so from a commercial point of view, those companies should be looking at the UK market as an area for expansion. We cannot, however, force them to apply for licences. If they were to do so and thereby make alternative medicines available, that would be all to the good, as far as I can see.

John Wilson: The petitioners have raised with the committee the cost of some of the medicines that are being made available and have done a price comparison. I have not analysed it fully, but they seem to be saying that the drugs that are available on the continent are a lot cheaper than those that are available in the UK. I know that you will not be able to comment too much on that, but could you inquire, with your department, into pricing regimes? That might, as you said, involve discussions with UK officials, but we should check out the pricing regimes. If the price of a licensed drug is based on some of the prices that we have in front of us, there is a major issue because some of the drugs are being charged at 10 times what health authorities on the continent are being charged.

Alex Neil: Pricing is also a reserved matter, but we are very keen to reduce the price of drugs when we can. This year, the national health service will spend on prescription drugs just short of £1.4 billion out of our total £12 billion budget. That is a lot of money, so when we can identify savings, which we are doing in a number of ways,

we are delighted to do so. Again, it is an issue that we are discussing with our colleagues in London.

Angus MacDonald (Falkirk East) (SNP): I am certainly pleased to hear that the supply of liothyronine has returned to normal. Part of the point that I was going to raise has been covered, but I am keen to hear what the Scottish Government does routinely to monitor potential problems with supplies of medicines. Are there supply problems in respect of any other medicines at the moment?

Alex Neil: I think that, at the moment, we do not have any shortages. Is that right?

Alpana Mair: Some products are affected, but the Department of Health monitors shortages that might cause problems and tries to avert them by suggesting alternative products or advising pharmacists how they can access alternative products. It also advises clinicians on how they can deal with potential shortages. From time to time shortages arise, but there is usually a mechanism in place to pick them up before they affect patients, and to put in place contingency arrangements to avert them, or to provide guidance when they cannot be avoided.

Angus MacDonald: Clearly we would have an issue if there was a similar situation to that with liothyronine, when an alternative is not available.

Alpana Mair: There could be an issue, but in most cases there are alternatives. In recent shortages alternatives have been available for prescribers. Shortages tend to be formulation issues; one formulation might be out of stock, but clinicians could supply an alternative formulation instead.

The Deputy Convener: Would clinicians recommend an unlicensed product?

Alex Neil: The MHRA has issued guidance to allow on an interim basis the use of products that are licensed elsewhere but not licensed in the UK.

Jackson Carlaw (West Scotland) (Con): Good morning, cabinet secretary. Can I take you back to something that you said earlier in relation to the general point about diagnosis? I am concerned when we talk about a “niche market”. It has been established that 3.7 per cent of patients—103,000 people—have been diagnosed, which in many people’s minds elevates it above a niche market. Part of the concern is about the ability of GPs properly to diagnose the disorder. You said that you would try to investigate that deeper part of the petition. How will that investigation proceed?

Alex Neil: First, on the niche market, I was referring specifically to that particular drug. We reckon that no more than about 450 patients in Scotland receive the drug. Of course, there is an argument about whether it should be prescribed to more patients. However, even in the general scheme of things, it is still a very small part of the overall pharmaceutical dispensary market in Scotland and the UK.

On the wider issues, we have already been looking at what the petitioners have said. As I said earlier, we hope also to participate in the round-table discussion with the committee. We want to get to the bottom of why some people, such as the petitioners, believe that the service that they are getting in primary care is not always what they should expect. The petitioners have made it clear that the care falls short of the service that they would anticipate receiving. Although we have not found evidence of that, we want to find out from the petitioners and others what their evidence is. We can then investigate that. Our clinical priorities team is trying to gather evidence of whether there is an issue that we need to address by way of future guidance or other means. Lesley Metcalfe will give the committee more detail on the work that we have already done.

Lesley Metcalfe (Scottish Government): We are undertaking three main streams of work at the moment, one of which is to consult the British Thyroid Association. We have asked for its views on the petition, and on the points that were made and so on. We have asked Health Improvement Scotland, through its Scottish health technologies group, to provide an evidence note on all the available published clinical evidence.

I understand from previous meetings that the petitioners do not feel that the research to date has been particularly supportive of their position or that enough clinical trials have been undertaken to prove their position. Again, by looking at all the published clinical evidence it may be that the conclusion is that further research needs to be done, potentially in liaison with the chief scientist office and so on.

We are also liaising with the diagnostic steering group at the Scottish Government to reach the diagnostic managed clinical networks in order to deal with issues around testing, and around the idea that the thyroid stimulating hormone test is not sufficient on its own and further testing is required. We have tried to consider what has perhaps not been raised around the committee table and will gather evidence from the MCNs. We are also very interested in what the petitioners have to say; we want to take all that into account in the round when we report back to the committee.

Alex Neil: I stress that we are taking the petition and what the petitioners are saying very seriously. We want to get to the bottom of the problem, and to try to ensure that we go forward in a way that is acceptable to everybody, and that people are getting the health service that they wish for.

John Wilson: I was interested in Ms Mair's comments about clinicians and primary services being made aware if there are going to be drug shortages. One of the issues that was raised by the petitioners is that the individual patients were not aware, so it was not until they went to fill a prescription that they found out from the pharmacist that the drug was not being manufactured at the time and no supplies were available.

The petitioner described a trawl around pharmacies around Scotland trying to get the prescription filled. Can we expect more consultation of patients on the lack of, or shortages of, particular drugs that they are used to taking? One of the issues that was raised by the petitioners is that they are confident about a particular drug and if that drug is not available, they feel less confident about the alternatives.

Alex Neil: There is no doubt that we need to look at the communications in such cases. We have no direct contact with patients—that takes place through the GPs and the pharmacies. We will consider how to ensure that the information not only gets to patients, but tells them what to do in the event of a shortage. We try our best to ensure that such information is passed on. Clearly, the process has not been robust enough in some cases, so we will seek to improve that. We want to notify patients as early as possible when or if there may be a problem and, more important, what they should do in the event of a problem.

Anne McTaggart: I have a constituency inquiry. I will not go into the details other than to say that a pharmacy has said that there is a shortage and, consequently, has given only half a prescription to my constituent. How should I advise that person?

Alex Neil: It may be that the other half of the prescription is expected fairly soon. I do not know the circumstances, but if you want to write to me with the details I will have the matter investigated.

Anne McTaggart: Thank you.

The Deputy Convener: John Wilson alluded to the pricing mechanism. We have an example in which the price of the product from one source is double the price from another. What influence does the Government have with regard to MHRA licensing and contracts and, consequently, pricing?

Alex Neil: Our influence is whatever can be exerted collectively on the Department of Health in London by the devolved Administrations. One reason why I am in favour of a yes vote is that we would have substantially more influence in such situations.

The Deputy Convener: We have recommendations, which include—the cabinet secretary alluded to this—the possibility of a round-table meeting shortly after the summer recess. Paper PPC/S4/13/13/1 includes a list of the organisations that could be invited. Are there any other bodies that we could invite? Is there any other action that the committee wants to take?

John Wilson: Given that the cabinet secretary volunteered the Minister for Public Health to attend, I suggest that we invite him to the round-table discussion.

Alex Neil: With officials.

John Wilson: With relevant officials.

The Deputy Convener: Do members agree to hold a round-table discussion shortly after summer recess to include the Minister for Public Health and officials?

Members *indicated agreement.*

The Deputy Convener: I thank the cabinet secretary, Ms Metcalfe and Ms Mair for attending and for giving clear answers.

09:58

Meeting suspended.

09:59

On resuming—

Tackling Child Sexual Exploitation in Scotland

The Deputy Convener: The next item of business is evidence in our significant inquiry into tackling child sexual exploitation in Scotland. I welcome the panel: the Lord Advocate, the Rt Hon Frank Mulholland; Alison Di Rollo, head of the national sexual crimes unit of the Crown Office and Procurator Fiscal Service; and Assistant Chief Constable Malcolm Graham of Police Scotland.

We have questions that we wish to address to individual members of the panel, but that does not preclude the questions being extended to other members. We have a lot of questions, and it may well be—in fact, it is almost certain—that we will not cover all of them in our verbal exchanges today, so it is our intention to write to panel members with some of the questions and to receive the answers at the appropriate time.

As we have a substantial number of questions, I ask for brevity in both questions and answers. Do the witnesses have anything to say briefly at the beginning of their evidence?

The Lord Advocate (Frank Mulholland): I have some brief opening remarks, as does Malcolm Graham, so I shall just get on with it. First, thank you for inviting me to give evidence to the committee. I have with me Alison Di Rollo, who is senior Crown counsel leading the national sexual crimes unit, which was set up in June 2010. We hope to answer your questions, and if there is anything that has not been covered, we will be happy to deal with it later in writing.

Sexual abuse and exploitation are a key priority for the Crown Office and Procurator Fiscal Service. Having served as Crown counsel for a lengthy period of time, and having prosecuted many such cases over the years—many of them involving children—I came to the realisation that specialist prosecutors and investigators are required in this challenging area. That is why the national sexual crimes unit was set up in 2010, with the aim of bringing knowledge, expertise and experience to a challenging area of criminality.

The national sexual crimes unit stands at the head of a matrix of sexual offence teams in three federations—east, west and north. All members of those teams are trained in dealing with sexual offences involving children and understand the dynamics at play, such as delayed reporting, grooming, empathy and loyalty towards the perpetrator even after the exploitation and abuse have been discovered, peer pressure, and victims' lack of understanding that they are victims. The members of the teams are skilled at interviewing and leading evidence from vulnerable and damaged children whose vulnerability has been exploited, often leading to the most horrific of circumstances.

Alison Di Rollo is also lead for Scotland in human trafficking, bringing a consistency of approach and an understanding of the issues in that area.

Before I conclude my opening remarks, I will raise a couple of matters for your consideration. First, we recognise that victims in this area are often targeted for their vulnerability. It is not uncommon to find that victims are very damaged; they may have drug and alcohol issues and chaotic lifestyles. It is a huge challenge. However, the focus for prosecutors must be on the credibility of the allegation that is being made, rather than failing to bring cases because of perceived weaknesses in the victim. That is why the approach of the national sexual crimes unit is to build strong cases by linking evidence, working at an early stage with police, prosecutors and procurators fiscal.

Secondly, sexual grooming and exploitation of children happen in the shadows, outwith the gaze of responsible adults and law enforcement. It is often difficult to obtain sufficient corroboration of a victim's evidence. By the time the abuse is discovered or reported, forensic and medical opportunities may have been lost, and a skilled abuser will not say anything incriminating, on the advice of his lawyer. In those circumstances, prosecutors will, with a heavy heart, have no option but to instruct no proceedings, despite the quality of the evidence being above the prosecution test threshold of reasonable prospect of conviction. For example, in cases that were reported to procurators fiscal between 2010 and 2013 under the Sexual Offences (Scotland) Act 2009, where the victim was a child, 569 charges were not proceeded with, 321 as a result of insufficient evidence.

That concludes my opening remarks. I think that Malcolm Graham wishes to make a few opening remarks, after which I would be delighted to answer your questions.

Assistant Chief Constable Malcolm Graham (Police Scotland): I echo Mr Mulholland, and I thank the committee for the opportunity to provide evidence on what is a key priority for Police Scotland. As anyone who has listened to the media and read reports about the very simple objective of Police Scotland will know, it is about keeping people safe. Children, particularly those who are vulnerable, are top of the list. The prevention and investigation of child abuse have been a high priority for the police and partners in

Scotland for some time. Child sexual exploitation is a recognised strand of child abuse.

In some instances, new technologies and behaviours have created significant challenges for policy makers and practitioners, and not just in policing. Child sexual exploitation is a form of child abuse that is currently receiving high levels of public and media scrutiny, largely due to a widespread interest and perceived shortcomings in some recent high-profile investigations in England and Wales.

Police Scotland continues to work closely with local partners through participation in child protection committees and adult protection committees to develop multi-agency guidance and protocols in a variety of business areas that overlap with child sexual exploitation. Each of the local child protection committees in Scotland is at a different stage of progress in developing specific child sexual exploitation protocols, which Police Scotland is driving through the country.

Difficulties can be and have been encountered in developing a shared understanding of the issue among statutory partners and third sector providers at a national level. It is considered that there is a need for national co-ordination and oversight to drive local CPC and other activity, to ensure that children are kept safe.

The creation of Police Scotland provides a fantastic opportunity to enhance national policy, co-ordination and operational responses to child sexual exploitation. I wish specifically to highlight several things that have happened since 1 April, which have provided an enhanced response in this area.

The formation of a national rape task force and structure, locally delivered in 14 local police divisions, with a national co-ordination centre, a national rape investigation team and a national rape review team working with the national sexual crimes unit in the Crown Office and Procurator Fiscal Service, ensures a local response to the large and increasing number of sexual crime reports that are being received. Most importantly, it has allowed us better to understand the nature of the problem across Scotland and to ensure that the quality of investigations and interactions with victims and other witnesses is consistently being driven up through a review process and rigorous quality assurance measures.

Alongside the national rape task force is a national human trafficking unit. Those are, in effect, part of the same department, although they each have dedicated staff. There is a clear focus on identifying and safeguarding any children or young people who might be victims of trafficking. There have already been some results with the identification of victims of trafficking who, we believe, would otherwise not have been identified.

As we continue to evolve and develop Police Scotland, we are in the process of implementing a national child abuse investigation unit. It will build on the structure of the rape task force and the human trafficking unit, in that it will be a relatively small but specialist national unit. It will provide co-ordination and investigation into the most high-profile, complex investigations that cross boundaries. The national child abuse investigation unit will be responsible for ensuring quality and driving up standards in each of the 14 divisional public protection units, which are responsible for working with local partners on a day-to-day basis.

I return to where I started. Tackling child abuse is a high priority for Police Scotland. I welcome the opportunity to answer questions about how we continue to improve our response to the specific issues relating to child sexual exploitation.

The Deputy Convener: Assistant Chief Constable Graham, you have highlighted some of the action that has been taken, and I am sure that it is very welcome. How are you relating that work to the work that we are currently doing or to the work that the Government is doing? It seems that the police is doing a lot of independent work, but how is that being collated with the work that will hopefully come from our inquiry and with some of the work that the Government is doing?

Assistant Chief Constable Graham: I was at pains to express that policing in partnership is the only way that we will safeguard children and other vulnerable people. That is particularly true when it comes to child sexual exploitation. I believe strongly that the increase in the reporting of sexual crime in recent years is down in large part to the increased confidence of victims to come forward. The victims of child sexual exploitation are perhaps the least likely to come forward because, as has been said, they are likely not to perceive themselves as being victims. Working in partnership at both local and national level is therefore the only way that we will improve our responses.

On the specific point about working with the Scottish Government, the police have been key stakeholders for some time in developing the various strands of what I believe to be an extremely strong child protection network and system of protecting children across Scotland. The Association of Chief Police Officers in Scotland and the eight legacy forces were previously engaged with the Scottish Government in all aspects of that work.

More recently, since the creation of Police Scotland I have sat on the ministerial working group on child sexual exploitation, which is led by

Children in Scotland but is supported by the Scottish Government. In taking part in the process today, we are happy to share our views on where we believe policy needs to go and to work with others to ensure that we are making the best of opportunities that we have to identify victims and safeguard people.

The Deputy Convener: That is very important and welcome.

My next question is to Ms Di Rollo. The submission from the Crown Office and Procurator Fiscal Service mentions section 10 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, which is about

"causing a person under 18 to become a provider of sexual services or to be involved in pornography".

That offence is not even mentioned in the facts in the appendix. Is that because there have been no prosecutions? Why have there been no prosecutions? There have surely been some situations in which a person might have been prosecuted under that provision.

Alison Di Rollo (Crown Office and Procurator Fiscal Service): There may have been reports, but it is important to recognise—as we tried to convey in our submission and I hope to explain further today—that the activity involved in child sexual exploitation in Scotland does not fit into neat categories. We have an extensive toolkit of statutory offences and also some common-law offences that we apply to the facts and circumstances of each case that is reported to us. The need, and our professional objective, is to prosecute, on the evidence that we are given, in the best and most appropriate way possible to secure convictions.

For example, we have used the section on grooming in the 2005 act more often. That provision raised expectations and people may look to its use as a signpost to how well we are doing. However, the committee has to be aware that that section covers a relatively limited snapshot of the sexual activity that we are talking about. It reflects activity that has gone beyond preparation but not quite achieved perpetration. We have taken proceedings against those who have contacted the child and made arrangements to travel with the intention of having sexual activity. However, when those people have gone on to have sex with vulnerable children, a whole different panoply of crimes comes into play. I stress that, when we get reports from the police, our job as specialist prosecutors in the NSCU is to look at the whole range of statutory options that are available to us. We will always prosecute the most appropriate offence.

The Lord Advocate: I will build on what Alison Di Rollo said and set out the technicalities. If we receive a report from the police that alleges grooming and there is a continuum into sexual abuse and sexual intercourse, the charge will always be libelled as the most serious charge, so that would be libelled as rape and the grooming aspect would be part of the evidence to support the charge of rape. If the accused is convicted, Disclosure Scotland or the court will record it as a conviction for rape, not a conviction under section 1 of the 2005 act. You should bear it in mind that prosecutors will always libel the highest or the most serious charge and use less serious charges as part of the narrative to support and prove the most serious charge.

10:15

The Deputy Convener: I understand. I am just looking at the facts and seeing the number of prosecutions, and there is section 9 as well. Clearly, we need a better understanding of the technicalities, and I hope that we will get that from today.

John Wilson: Before I ask my main question, I seek clarification from the Lord Advocate. Are you saying that section 1 of the 2005 act needs to be strengthened in some way because prosecutions are taking place under other offences rather than under the legislation that was intended to catch perpetrators?

The Lord Advocate: The legislation is catching perpetrators. To build on what I said earlier, I note that, if the conduct that is reported to the police is grooming, we will libel section 1 of the 2005 act. If it is grooming leading to sexual intercourse that is without consent or underage, we will libel the most appropriate charge for that. It is not the case that we are trying to bypass section 1. That is just the way in which charges have always been libelled in relation to the criminal law in Scotland.

I will give another common-law example. If there is a physical assault as part of a rape, on conviction the charge will be recorded as rape. That is just the way in which the courts record these crimes. It is not a case of trying to avoid prosecuting under section 1 of the 2005 act.

John Wilson: The Crown Office and Procurator Fiscal Service says that it will prosecute all CSE offences

"where there is sufficient reliable and credible evidence".

Will you define what you mean by "reliable and credible evidence"? I might have picked this up wrongly, but I think that you said in your opening statement that, of the 569 cases that have been reported since 2010, 321 have been subsequently dropped due to insufficient evidence. That equates to approximately 60 per cent of cases being dropped. How can we increase the figures and

ensure that the evidence that vulnerable young people provide is seen to be more reliable and credible?

The Lord Advocate: In those statistics, 569 is the total number of charges that could not be taken up. In other words, they were marked as no proceedings. The figure does not include charges that were taken up, if you see what I mean, as it only includes no-proceedings charges. For that reason, 60 per cent is not the percentage of the overall number of charges reported to procurators fiscal involving allegations of child sexual abuse. It is a percentage of the number of cases that could not be taken up, for whatever reason.

I will try to answer your question directly. What happens when a report is received from the police involving allegations of child sexual abuse? Direction will be given to the procurator fiscal as to how they should go about preparing or investigating the case for a decision by Crown counsel. That will involve an analysis and assessment of statements, supporting evidence, any forensic evidence and any medical evidence. It will also involve a process known as precognition, whereby the child victim is seen by the local procurator fiscal. They have an opportunity to go over their statement, questions are asked and an assessment is made of vulnerability and whether there should be special measures to aid the child's evidence giving.

At the end of that whole process, the case is put together, a narrative is prepared and, most important, an analysis of the case is prepared and sent to Crown counsel to consider. That goes to the NSCU, which has long and lengthy experience of such cases.

A number of tests are then applied. The first is sufficiency. There has to be sufficient evidence in law. Regardless of whether the case involves the most credible victim in Scotland, if there is insufficient evidence and we cannot do anything about that, we cannot take up the case. The fiscal may be instructed to undertake further inquiries to try to achieve sufficiency but, at the end of the day, if there is insufficient evidence, that is the end of the process. At that stage, we will decide whether to intimate that decision to the accused and his legal advisers. That has a consequence because, if we intimate the decision to the accused and his legal advisers, we are barred from reraising the case if further evidence comes to light. Our practice is always to advise the victim sensitively of the decision and the reasons for it. Again, a skill set is required for that.

If there is sufficient evidence in law, the next stage is to assess the credibility and reliability of the allegation. We look at the case as a whole and apply our judgment, based on experience, as to whether the case is likely to prove. The prosecutorial test to which I referred is whether there is a reasonable prospect of conviction. Essentially, that test involves an assessment of whether, on balance, a conviction is more likely than not if the case proceeds. If the answer to that is yes, we will indict the case or prosecute it summarily, but the majority of such cases are indicted.

That is the process that is involved.

John Wilson: Lord Advocate, thank you for the correction about the 569 cases that did not proceed. What was the total number of cases presented?

The Lord Advocate: I do not have that figure, but I will provide it in writing.

John Wilson: It would be useful to be able to do a comparison of the numbers.

Further to the evidence that you have given, I want to compare that with what is happening south of the border. We know that Keir Starmer, the director of public prosecutions in England, has issued guidance on how the Crown Prosecution Service intends to take forward cases, particularly in light of the Savile inquiry and other high-profile cases. Are the Lord Advocate and his officials minded to review, or to make any recommendations to review, how we proceed in Scotland with cases of child sexual exploitation?

The Lord Advocate: We continually review our processes. One procedure that I encourage is that case reviews are conducted after successful or unsuccessful prosecutions. That is how we can learn lessons and adjust our approach to these matters.

I am aware that the CPS has issued guidance fairly recently on an approach centring on the credibility of the allegation as opposed to the credibility or reliability of the victim. For some time now in Scotland, we have looked at the credibility of the allegation, as we are well aware of the difficulties. If people seek to groom a child for sexual exploitation, it is a well-known dynamic that they pick vulnerable individuals. In many cases, the complainer may be involved in a raft of difficulties, such as drug abuse, alcohol abuse, running away from home or being in trouble with the police, so we cannot judge a case just on the victim's lifestyle. We need to judge the allegation itself in looking at credibility and reliability.

However, I am not precious about how we do things in Scotland and I am not suggesting that we have the answer to everything. We will continually review how we do things as we go along. The NSCU has more than three years of experience. I think that it is a good thing to review and to ask ourselves searching questions, and we will continue to do that.

Angus MacDonald: Good morning. Police Scotland's submission mentions that an interim national vulnerable persons database—VPD—that has been developed to record all child and adult concerns includes a CSE category. We know that such a move will help to standardise police recording of CSE and that a national training package is planned to commence in a few weeks' time. Although all of that is welcome, how will it be possible to capture the range of young people who are at risk when so little is still known about the scale of CSE? Would a database of suspected adult offenders not be equally valuable?

Assistant Chief Constable Graham: I am grateful for the recognition of the developments in information technology, which have been a challenge. Some of the committee's questions that were directed at the police focused quite rightly on co-ordination difficulties when we had eight police forces under the ACPOS and Scottish Police Services Authority structure. With Police Scotland's establishment, there has been fairly rapid progress not only on strategic plans but in moving towards delivery and having systems on the ground. As for having IT systems for vulnerable people and potential victims, it has been difficult to draw child sexual exploitation data from national systems because there has been no common way of marking it; indeed, I think that that has been an issue across the UK with regard to understanding the scale and nature of the problems that we are seeking to resolve.

Notwithstanding that and the fact that we have invested in trying to get everyone in Police Scotland up to the same standard as we move towards a national system, I agree that there is value in recording information on perpetrators. Indeed, national systems for doing that are already in place. There is, for example, the Scottish intelligence database, on which intelligence on perpetrators is recorded; if, through investigation, that intelligence becomes evidence, it not only remains recorded on the database but is held on national crime reporting systems and systems for reporting to the Crown Office and Procurator Fiscal Service.

We still face challenges in making links beyond Scotland; after all, this issue does not manifest itself only in Scotland. We have seen evidence of locally and geographically based models of grooming. The perpetrators in question might use IT, but they will also reside in a geographical community and might well know each other. Indeed, as has already been said, there might be different people who are targeting vulnerable young people because of their vulnerability and who might be part of a collective in a particular place. We need to do more work on joining these things up across the UK.

Angus MacDonald: The interim VPD has been put in place, but do you have a timescale for implementing the full-scale VPD?

Assistant Chief Constable Graham: I do not have a timescale at the moment. As members might be aware, a number of proposals for a national ICT system for Police Scotland are in development and have yet to be approved. I understand that the proposal for a national IT system is in its very final stages—indeed, I believe that it is being considered as early as this week—but I am not in a position to make any announcements about its approval.

Angus MacDonald: That system will be welcome once it is in place.

Anne McTaggart: I have two or perhaps even three questions for Assistant Chief Constable Graham that bring us back to third sector involvement. First, Police Scotland has called for the sector's increasing involvement, but why do you think that that is so important?

Assistant Chief Constable Graham: Are you asking why I think it important for the police to be involved with the third sector?

Anne McTaggart: Yes.

Assistant Chief Constable Graham: There are a number of reasons, the first of which is that the people in the third sector often hear that child sexual exploitation might be happening. When the Lord Advocate was asked earlier about the reporting of grooming offences, it struck me that such offences get reported to the police only rarely, for the very reason that the perpetrators specifically target people knowing that the likelihood of their being reported is very low. As a result, we have to proactively seek out such activity. There are ways in which the police can do that, but there are different ways in which other agencies can do it.

In our experience, some third sector organisations that work day in, day out with young people and children are more likely to get a feel for something that is not right and to be in a position to draw that information to our attention and to share it with other agencies. I hope that they would come to the police at a very early stage—there is evidence of strong relationships across the country in that regard. We should be able to act on that information.

10:30

Anne McTaggart: What needs to happen for that to take place? What structures do you foresee?

Assistant Chief Constable Graham: A number of things can be done. My experience of local

partnership working is that the third sector does not always get an equal seat at the table alongside statutory partners. More could be done to facilitate greater consistency in third sector provision. There are some fantastic pockets of work, but they are generally done by small programmes or pilots that we would like to be rolled out. I am sad to say that the funding for some pilots and programmes that we have worked with, which are specifically to do with young runaways, has not continued. There could therefore be a gap in some third sector agencies' ability to identify victims and share that information with agencies that can take action.

Anne McTaggart: Last but not least, we have taken evidence from third sector agencies that have said to us that they have felt left out in the cold in relation to multi-agency meetings.

Assistant Chief Constable Graham: That probably echoes the point that I have already made. My experience of local partnership working is that the third sector does not always get an equal seat at the table. In some cases, that is because it does not have the same range of statutory duties; in others, it is because of local history and a dynamic that needs to develop. The creation of Police Scotland certainly gives us an opportunity to direct and co-ordinate across the whole country the level and nature of engagement with the third sector to ensure not only that we say that it is a key ally in safeguarding children but demonstrate that in every local community across the country. I know that some of the evidence that is coming forward from the third sector supports that.

Anne McTaggart: Thank you.

The Deputy Convener: Malcolm Chisholm has questions for the Lord Advocate and Alison Di Rollo.

Malcolm Chisholm: We are in the middle of dealing with the Victims and Witnesses (Scotland) Bill. As you know, there is the issue of the extension of standard special measures to victims of sexual offences, domestic abuse, trafficking and stalking. That is one side of it. Concerns have been expressed that there would also be a right of appeal against the granting of such measures, which would potentially include appeals against the granting of special measures to children. On balance, how will the changes contribute to the prosecution of cases that involve child sexual exploitation?

The Lord Advocate: Having led evidence from child victims and victims of different ages in the witness box, through closed-circuit television and screens and at remote sites, and having dealt with evidence by commission, I think that the issue is very important. As you know, the measures came in a number of years ago. My initial feeling was that something would be lost if a victim gave evidence by CCTV from a remote site, for example. However, through experience, I have changed my mind. I do not think that we lose anything, and I think that it is very important that victims feel comfortable when they give evidence and that the criminal justice process aids witnesses who give evidence in our courts. It is absolutely right that we must ensure that there is a fair trial and that, if the accused has concerns about evidence being given by alternative means, they should have a right to be heard. It is about ensuring that there is always a balance of fairness in the trial process. I support the Victims and Witnesses (Scotland) Bill and what is being done on means of giving evidence.

It might be worth while for the committee to hear about Alison di Rollo's experience of the development whereby child victims give evidence in chief through a recorded prior statement, and are then cross-examined. That has been done in a number of cases recently, with some success.

Alison Di Rollo: A great strength of the NSCU is that with that specialism comes the confidence to use the discretionary measures that have been in place for a number of years, as the Lord Advocate said. We have learned through experience that the best way of taking evidence from a child or vulnerable person is to ensure that they are properly prepared and supported. For example, the child will have met the advocate depute at least once, if not a number of times, by the time he or she goes into the CCTV room and is questioned by them.

We are now more skilled in adducing evidence in a variety of ways. I have very positive personal experience of convictions resulting from the use of existing statutory provisions on leading the child's prior statement as their evidence in chief—so it is there as the evidence—with the process then moving on to cross-examination. Years ago, that would have been quite daunting and we would have been very uncertain about it, but experience and convictions have shown that that is the way forward in appropriate cases.

With the confidence and the expertise in the NSCU, I can happily assure the committee that we are pushing the boundaries of existing provisions in the best way possible for victims to ensure that we get the best result possible in those cases. That extends beyond special measures. For example, we are in the appeal court arguing for the extension of the doctrine of mutual corroboration—for as long as that is applicable. It is from the experience of victims of child sexual exploitation and, indeed, victims of a raft of sexual offences that we bring the confidence to use more imaginative, more positive and more constructive ways of taking evidence.

Malcolm Chisholm: Thanks. That is very helpful.

Training in general terms has come up with reference to the bill, but I want to ask more specifically about training for COPFS staff that is oriented towards child sexual exploitation issues. I think that you refer to training in your paper but not to specific training on child sexual exploitation issues. That therefore seems to be a big area for development.

Alison Di Rollo: Child sexual exploitation is a subset of child sexual abuse, as has been pointed out, and it will form part of the discussions and the training, particularly because we have the bespoke legislative requirements, to which the convener referred, which we must be familiar with and be prepared to use, where the evidence supports that. Rather than its being ring fenced as a separate issue on which training is delivered, child sexual exploitation is very much part of the continuum, as ACC Graham described it, of child sexual abuse, which we in the Crown Office must respond to and prosecute effectively.

The Lord Advocate: I have a point on training. In preparing for this meeting, I noted a reference to training the police, prosecutors, teachers, judges and so on. I support that, but the one thing that seemed to me to be missing was the public's role. There are two aspects to training the public. First, we must educate them to look out for the signs of abuse. Secondly, our fact-finders in serious cases—the jury—are members of the public, and we have thought long and hard about how we go about educating them.

We are introducing expert evidence in certain types of criminal trial, such as rape cases, to educate the jury. It is a common phenomenon that victims of rape do not immediately report to law enforcement, and in many cases there is no physical resistance during the commission of the crime. Some members of the public might be surprised by that evidence, and it is always raised as a point in favour of accused persons during a trial. However, from speaking to experts in the field, we know that there can be counterintuitive behaviour, so we need to educate the jury that such evidence is not significant. We are doing that through expert evidence. Jurors are hearing explanations for such behaviour.

It is the same with children who are victims of sexual abuse. We have to look at the circumstances. When preparing for trial, we have to anticipate the lines of defence and do what we can to deal with them and educate the fact-finders. That is all part of our training. It is not just about technical training and the need to prove the essential facts; it is also about training in presenting evidence and explaining it to jurors.

Malcolm Chisholm: That is really interesting, and I could probably ask a lot more about it.

I think that I wrote to you recently about the selection of juries. Selection is one issue, but the members of a jury that has been selected are not familiar with these issues. I have a constituent who is an expert in this area and she said that when she was on a jury, she was appalled that the other members did not have any of the background awareness that she had. I do not know what we can do about that.

The Lord Advocate: It is a very good point. In Scotland—and indeed down south—there is no jury research because of the Contempt of Court Act 1981. After a trial, a juror cannot be asked what they thought about the trial, what they considered significant and what they did not consider significant. There is therefore very little empirical research on juries in Scotland.

I am aware that, about eight or nine years ago, Lord Bonomy was allowed to do some research into the jury in a drug importation trial. The results were very interesting, and he found the process interesting.

There is a lot of research in Australia into how jurors go about things. Research into rape cases in Australia found that a significant proportion of jurors thought that delayed reporting was very significant and very much a point in favour of saying that the victim should not be believed.

We need to be careful because members of the public are being brought to the court to decide cases and we need to make the experience comfortable for them. We need to make sure that there is no fear of ridicule—and that there will be no research that intends to ridicule a particular jury. The principle of finality applies in Scotland as it does across most jurisdictions in the world, so we must always be aware of that.

If Malcolm Chisholm fancies a coffee, I could speak for an hour and longer about juries, because I am very interested in the subject.

Malcolm Chisholm: I have a final general question that moves us on to something different. What powers, actions and resources are necessary to identify and combat those networks of perpetrators that operate not just locally but over wide areas of Scotland and possibly further afield?

The Lord Advocate: That is probably a question for Malcolm Graham, if he wants to comment. Then I can talk about prosecutorial resources.

Assistant Chief Constable Graham: The question leads on from the previous point. We found upon juries being a flawed system but one that is better than all the rest for the very reason

that they represent the communities that we are all here to serve. The wider point about training in its widest sense is that we need to raise awareness across all the communities that I serve, where people work and live and from where juries are drawn. In some respects, awareness has developed so far through media reporting, which is not always directed at the audience that might need it and does not necessarily get across the key messages that we think are important in educating people and raising awareness.

10:45

If I go back some 20 years, to when I first joined the police, I can see that the journey that we have been on has been astronomically quick and successful in its impact in dealing with domestic abuse and recognising domestic abuse as something that happens, that communities and society need to face up to, and that the police and other agencies need to deal with robustly to make it unacceptable in today's society. On sexual crime, we have come a long way from the position in which it was considered unbelievable that somebody in a child's family would abuse them—if it was spoken about, it certainly would not be reported to agencies, and if it was reported to agencies, the information would not be shared and action might not have been taken. In relation to child sexual exploitation, we have also come from a position in which there was a sense of disbelief about some of these unspeakable crimes, where what bound the individuals who were committing them was their lack of empathy for the victims and the families that they impacted upon, their deviance and their ability to avoid detection and identification.

When we consider all of that and recognise that we have senior leaders and men in senior places standing up and speaking about issues that predominantly affect women in society—rape and child sexual exploitation predominantly affect women—we can see the substantial progress that has been made.

In response to the question, there is a need for a more co-ordinated communications campaign that draws out the evidence that we have about the nature of the problem, recognises the journey that I have described in terms of the dynamics in society, which in the past have sometimes been resistant to understanding the evidence, and uses that as a means of changing societal views on what is acceptable, which generally precipitates reporting to the police. We must also ensure that we understand that the world is changing and that there are different means by which people offend; people can use the internet and online means, which can also be part of the co-ordinated marketing and communications campaign that I would recommend.

Jim Eadie: Assistant Chief Constable Graham said in his opening remarks that the priority is to keep people safe and that the legislation is there to ensure that that happens. What is the role of the risk of sexual harm orders—the RSHOs—in protecting people at risk from harm in cases in which the perpetrator has not been charged or convicted? There appears to be some evidence that they are not being widely used as yet but, given your earlier statement that the new police structure is an opportunity to improve operational effectiveness, how do you see their use developing over time?

Assistant Chief Constable Graham: Risk of sexual harm orders are part of a suite of statutory measures for managing perpetrators. I emphasise that, although prevention through identifying vulnerable victims is key to addressing child sexual exploitation, we must ensure that we are addressing and identifying perpetrators and intervening in a way that safeguards children, and that intervention may have to come at a point where we do not have sufficient evidence to make a report to the Crown Office and Procurator Fiscal Service.

It is always difficult to strike the balance because, if we do not have sufficient evidence to report somebody for a crime, invariably we do not have sufficient evidence to take something forward by one of the other statutory means. To some extent, the risk of sexual harm orders were intended as a means of filling that gap, and they have perhaps not been developed or used as much as they could have been under the eight legacy police forces. There are 17 risk of sexual harm orders in place at the moment.

The Deputy Convener: Why is that? According to our information, Lothian and Borders, Strathclyde and Central Scotland police forces each made only two orders.

Assistant Chief Constable Graham: That relates to an earlier point about the 2005 act. Our experience is that, in cases in which sufficient evidence is gathered for a risk of sexual harm order, a report to the Crown Office and Procurator Fiscal Service for a prosecution can be made. In those circumstances, it would not be appropriate to go for the lesser measure.

It is a discrete and unusual set of circumstances that fit the criteria. That does not mean that the RSHO is not a useful tool. Indeed, there are many pieces of legislation that we use infrequently but, when they are used, they are essential.

Sexual harm orders must be seen in the broader scheme of statutory measures. Scotland has 4,251 registered sex offenders who have been

convicted, of whom 3,299 are in the community. There are 213 SOPOs, which, by my calculation, cover about 6.5 per cent of the population not in custody.

Jim Eadie: What is a SOPO?

Assistant Chief Constable Graham: A SOPO is a sexual offences prevention order. It is a statutory measure that allows the police, through the court, to set conditions that require a convicted or registered sex offender to do or not do certain things. The legislation is onerous with regard to how the police monitor such orders to ensure compliance. Indeed, if there is not compliance, offenders are arrested and brought back before a court. That is considered to be a grave matter.

The risk of sexual harm orders must be seen in the light of the circumstances in which we gather evidence, which will often lead us to getting sufficient evidence to report, and the suite of the other statutory measures by which we manage risk.

The Lord Advocate: To build on Malcolm Graham's point, I think that it is important not to look at the issue in silos. First, proceeds of crime legislation should be used where appropriate to disrupt and deter crime, so that any profit is not reinvested.

Secondly, NSCU has made developments with regard to the traffic commissioner. The Crown Office and Procurator Fiscal Service and the traffic commissioner's office have entered into an information-sharing protocol. On conviction, information is shared with the traffic commissioner, who has powers to withdraw licences. That power could be used if, for example, someone convicted of child sexual abuse also turned out to hold a public service vehicle licence and was driving children to school. The power has been used in at least one case that I know of.

It is important that everything at our disposal is used.

Jackson Carlaw: We have received expressions of concern from child protection agencies that have made submissions to us about the leniency of sentencing for possessing and sharing abusive images of children. They feel that the sentencing is far from exemplary.

A case, with which I am sure you will be familiar, was drawn to our attention recently in which a man was convicted of sharing hundreds of images and films, but the sheriff was able to impose only a maximum one-year custodial sentence because it had been decided to prosecute him under summary procedure. What is the process involved in deciding whether to prosecute someone under summary or solemn procedure? What is your view on sentencing in that regard?

The Lord Advocate: There are detailed prosecutorial guidelines—they are referred to as instructions—that procurators fiscal and Crown counsel must follow when deciding whether to mark such cases for indictment or summary.

The instructions are kept up to date and under consideration. We do not get everything right; sometimes, the odd marking decision is wrong in relation to forum, which is why we always take into account any comments made by the bench on that. If there is criticism that we have the marking wrong, we will look at that to try to learn the lessons and ensure that it does not happen again.

One thing that I have learned as Lord Advocate is not to comment on sentences imposed by the courts, which are entirely a matter for the court. However, if we take the view that a court has got a sentence wrong, we have the option, which we have exercised from time to time, to appeal on the basis that the sentence is unduly lenient.

There is also the option of the sentencing guidelines issued by the courts. I think that the courts have fairly recently issued such guidelines on child pornography. That horrific crime is not, as some people say, victimless; they might not be Scots or live in this country—they might be Thai or whatever—but they are still victims and we always take a very serious view of the matter. I can look out the figures after this morning's meeting, but my understanding is that a significant proportion of such cases are prosecuted on indictment.

Jackson Carlaw: Assistant Chief Constable Graham talked about attitudes in recent years. Is sentencing reflecting the change in public attitude and the efforts that have been made to prosecute the individuals who have been identified?

Assistant Chief Constable Graham: Again, I should say that sentencing is a matter for the courts, but I can say that there has been a steady increase in the number of cases that have been identified by the police involving indecent photographs of children.

As with my comments about grooming legislation, I make it clear that, whatever the widely held perception might be, such cases are not often reported to the police. Indeed, the cases are rarely identified as a result of a third party coming forward as a witness; they are almost exclusively identified through the police's proactive and targeted efforts, working with other law enforcement agencies.

In 2010-11, we identified 225 cases in Scotland; in 2011-12, we identified 375; and last year, we identified 595. That work will be taken on by the national child abuse investigation unit that I mentioned earlier, and it will be co-ordinated across the country. We certainly take very seriously the proactive nature of our duty to target

offenders who make, distribute or possess indecent images of children.

Notwithstanding the Lord Advocate's comments, with which I agree, about every image representing a victim of a serious crime, I note that, although there is no agreement in the large body of academic evidence about the percentage of offenders who will go on or intend to commit contact abuse, there is agreement that it is a high percentage of the people who are involved in making or sharing indecent images. It is not only the children in the images who are being victimised; our experience is that other children are at risk and need to be safeguarded as a result of our proactive work.

The Deputy Convener: We will draw this session to a close in a couple of minutes, but I want to ask one final question. Several organisations have told us that criminal proceedings should not rely solely on young people giving an account of their abuse. In the past, they felt unable to speak to the police. The sense was that nothing could be done, and staff were left trying to work with young people while the risk continued. Are police and prosecutors seeking to use other forms of evidence in cases where CSE has been identified?

Alison Di Rollo: Absolutely. An important message that should be taken away from today's meeting is that we need to build strong cases and not leave the victim out to dry. As the Lord Advocate has made clear at the outset, we want to support the credibility of the allegation, and NSCU takes any forensic and medical opportunities that might arise. Of course, the window for such opportunities is limited, and we are increasingly looking at social networking sites and mobile phone evidence for surrounding adminicles to support objectively what we have heard and understood from the victim.

Ultimately, everything comes back to the jury. We must support it and give it confidence about the allegation's credibility. I repeat that building strong cases and using other sources of evidence are at the heart of what we at NSCU are doing in conjunction with the police.

The Lord Advocate: I would endorse that. I believe strongly that there is a need for better education in schools. Alison Di Rollo attended a conference in America where the Federal Bureau of Investigation demonstrated how it had put a 12-year-old girl on social media, looking for friends. The board lit up like a Christmas tree, and the FBI was able to say, "He has a conviction." There were people pretending to be 12-year-olds to become that girl's friend. It is important that that message gets out to schools.

11:00

I would be grateful if the committee would consider one other thing, which is the law in relation to grooming. If someone grooms in Scotland and abuses in France, we can prosecute, in Scotland, the abuse in France and the grooming in Scotland. However, if they groom in Scotland and abuse in England and Wales, we can prosecute only the grooming in Scotland; we cannot prosecute the abuse in England and Wales. That is an issue with which we have had difficulties in the past.

There is extraterritoriality, which I proposed in relation to terrorist offences in the United Kingdom. It goes back to our experience of the Glasgow airport bombing, in which Scottish allegations were tried at Manchester Crown Court. Law enforcement in the United Kingdom as a whole should work together to do the best for the case and prosecute allegations in the most appropriate place.

I just flag that up as an issue. I know that it is not a direct response to your question but—

The Deputy Convener: Notwithstanding that, it is a very important point.

Assistant Chief Constable Graham: The testimony or evidence of a witness is often the starting point, when a report of criminality has been made. However, as I have described, it is our duty to ensure that we proactively target perpetrators when no report has been made. Indeed, the very nature of the subject that we are speaking about means that such a report is unlikely to be made.

There has never been a time when we have used so many different tactics for identification, applied in a proportionate way the covert methodology that we may apply to organised crime groups, and brought to bear the skills, expertise and competence of people who work on homicide and rape inquiries to deal with the specific dynamics of child sexual exploitation. We recognise that it is an area in which expertise is required.

The Deputy Convener: I finish the session by thanking the Lord Advocate, Ms Di Rollo and ACC Graham for attending and being so clear in their answers to questions. There may be still be some questions—we will write to you with those.

I will allow for a few moments for the witnesses to leave and for the witnesses for the next session to come to the table.

11:03

Meeting suspended.

11:06

On resuming—

Current Petitions

Chronic Pain Services (PE1460)

The Deputy Convener: Under agenda item 4, we consider PE1460, on the improvement of services and resources to tackle chronic pain. The committee will take evidence from the Minister for Public Health and from Healthcare Improvement Scotland. I welcome the minister and the HIS witnesses: Robbie Pearson, the director of scrutiny and assurance; Lesley Holdsworth, the programme lead; and Dr Steve Gilbert, the national clinical lead for chronic pain. I also welcome to the evidence session Jackie Baillie MSP.

We will go immediately into questions. Any of the witnesses may answer any of the questions.

This whole issue has not been handled very well. Can the minister or HIS give an early indication of how HIS will start to capture relevant data and ensure that a clean reporting mechanism is in place going forward?

Robbie Pearson (Healthcare Improvement Scotland): Healthcare Improvement Scotland certainly has lessons to learn on transparency, and that point was very much acknowledged in the letter to the committee from the chief executive, Mr Glennie. Indeed, it was very much accepted in the 30 April meeting with the cabinet secretary.

Data is a fundamental part of understanding the patient's journey—how they access care, how they are managed within primary care and how they are subsequently moved into other more specialist services. As we take this forward over the next six to 12 months, capturing data in a robust, transparent and understandable way will be a key issue for us, which goes beyond waiting times into understanding the whole patient experience. Dr Holdsworth will pick up on that point.

Lesley Holdsworth (Healthcare Improvement Scotland): I have recently taken over as programme lead for this work. We have been working very closely on exactly that issue with our steering group, our partners and so on and, by the end of this year, we will have some really robust data that will give a better reflection of patient experience, which is obviously very important, as well as an outcome perspective. We are working with a number of partners on that and we will have a report available.

The Deputy Convener: So we have an assurance that there will be no more comments about data being sparse and of poor quality, about it having been construed as misleading or about the documentation not being public facing, and instead will have openness, transparency and robustness.

Lesley Holdsworth: I assure you of that.

The Deputy Convener: Thank you.

John Wilson: I declare a particular interest in this issue. As some of the panel will be aware, I am one of the co-conveners of the cross-party group on chronic pain, along with Jackie Baillie and my colleague Jackson Carlaw.

This is about the amount of data that is collected and recorded and how that data is presented. A number of the individuals who have made submissions and who are very interested in the delivery of chronic pain services are concerned that the data that is being collected or pulled together is not sufficient to record what is actually happening in the various health boards.

Through the work of the cross-party group, we know that individuals have raised a number of issues. They have spoken about things happening in one health board area but not in others. There seems to be a discrepancy around what is happening and how people are being dealt with, either at a primary level or by consultants. Does the minister or anyone else on the panel wish to comment on that?

The Minister for Public Health (Michael Matheson): There is no doubt that there has been patchiness in how services have been delivered across different health boards. Different health boards have been moving at different rates on this issue.

HIS has taken on board the points that were made about the process that it went through to collate the data and publish its report. There is a need for that to be done much more transparently and for the data that is being used to be much more robust, as Robbie Pearson and his colleagues have recognised. They will seek to address that and do it more effectively, and I am confident that they will. The data provides an important resource for us to evaluate the progress that boards are making on the issue.

Achieving a more consistent approach does not mean exactly the same thing happening uniformly in every board area. There will be different responses, depending on a board's situation. Therefore, we have asked all our boards to have in place a service improvement group, which will be responsible for producing the service improvement plan, and that plan will be submitted to the Scottish Government by the end of this month.

The work will then be taken forward and built into local delivery plans. In 2014, part of the plan will clearly set out the progress that each territorial

board plans to make in the coming year on improving services around chronic pain. That will allow us to consider the proposed planning and services in local board areas and ensure that those are built into the local delivery plans.

The local delivery plans are very clear. They show what the boards say, what they intend to do and how they intend to go about it, so we will see that for chronic pain services. That approach of using the local delivery plans, along with addressing how the data is captured and the service improvement groups, will allow us to measure the data more effectively and to achieve a greater degree of consistency in how boards are dealing with the whole issue.

Robbie Pearson: I wish to echo that point. The service improvement groups are fundamental in embedding the improvements on the ground. Over the past six months, there has been a positive uptake from NHS boards. Data will become increasingly important in capturing the patient's journey so that we understand the progress that has been made against the original report five or six years ago.

John Wilson: One of the issues that some of the individuals involved have raised is the financial reporting by health boards of the budgets that are available for the service. Should the committee be aware of any issues with how boards are identifying and reporting on budgetary constraints in the delivery of chronic pain services throughout Scotland?

Michael Matheson: On the budgetary aspect, chronic pain services would be viewed as a core part of an NHS board's service delivery. They should be funded within the board's overall budget for whatever services they need to provide.

We have provided boards with some pump-prime funding to help them to establish some of the arrangements that are needed to improve services at a local level. Some of that will help to support the work that boards are taking forward around the service improvement groups. The specific delivery of chronic pain services is funded through the boards' overall budgets, but we are providing them with some additional pump-prime funding to assist them in taking forward some of the early work.

11:15

Anne McTaggart: I have a question on the social care model. In the debate in the chamber on 29 May, the Cabinet Secretary for Health and Wellbeing stated that the Scottish Government is "very committed" to the principle that services for sufferers of chronic pain should be delivered through not just a medical health model but a social model. How does the Scottish Government intend to achieve a social model of care for sufferers of chronic pain?

Michael Matheson: A key part of delivering the social model is taking a much more holistic approach to the needs of people with chronic pain. That does not just involve looking at the medical aspect, which is what has traditionally been done under the medical model. Rather than just looking at what treatment people require and what types of clinical intervention might be appropriate, the social model involves looking at the impact that the condition can have on other aspects of people's lives, such as their daily activities, their lifestyle, their home environment and their employment. That is a much wider and more holistic approach.

The chronic pain service model that we are taking forward in Scotland involves a tiered approach. Services can be delivered at a local level and supported through voluntary groups, and there is a range of different services to help to support individuals and give them advice and information. More clinical interventions are made at the primary or secondary level as and when they are necessary. I see the chronic pain service model as a key part of that holistic approach to supporting people.

Another aspect is that a number of our boards have established chronic pain programmes and others have pain management multidisciplinary teams. In the past, a patient who presented with chronic pain could see only a doctor to try to get that addressed, but that approach does not necessarily fit in with delivery of the social model. The multidisciplinary approach is important. Occupational therapists, physiotherapists and others can help to support people in addressing effectively some of the other consequences of chronic pain.

We try to deal with things at different levels, and alongside that there is a multidisciplinary approach involving different professionals, all of whom have a contribution to make to delivering the intended outcomes under the social model.

Anne McTaggart: Thank you, minister.

Malcolm Chisholm: Patient participation is an important part of this. What steps is the Scottish Government taking to ensure that there is a greater level of patient participation in the continuing development of services?

Michael Matheson: I mentioned the service improvement groups. All 14 of our territorial boards will have such groups in place, and they will have patient participation on those groups. Alongside that, we have the national chronic pain steering group, which is looking to increase the level of patient participation in its programme and involve a greater number of patients. Therefore,

there is patient involvement both at a local level through the service improvement groups and at the national level through the national steering group.

Malcolm Chisholm: How does that relate to the HIS work? Perhaps Dr Holdsworth could say something about the work that HIS is doing, or is it all part of the same thing?

Michael Matheson: HIS is leading on the national group. With the creation of the service improvement groups, we need to look at how we can ensure that they feed in more effectively to the national steering group. I understand that, at its meeting in May, it discussed how it can ensure that the leads for the service improvement groups at a local level can feed in more effectively to the national steering group and how they can also increase patient participation in the process. That will help to ensure that the link from the national to the local level is much more consistent.

I ask Robbie Pearson and his colleagues whether they want to add to that.

Robbie Pearson: To reiterate the point, Healthcare Improvement Scotland has a legal responsibility to ensure that we comply with the duty of user focus. Given the concerns raised by the petition about the level of public involvement in the chronic pain steering group, perhaps Dr Holdsworth can elaborate a little on the thinking behind the relationship between the chronic pain steering group at national level and the work that is under way at local level through the service improvement groups.

Lesley Holdsworth: I reiterate what the minister has said. We are currently working on putting in place strong public participation in the service improvement groups, which will collectively have a much stronger and more robust link with the national steering group. At our meeting of the national steering group in May, membership was discussed as an agenda item, so we recognise the need to have much stronger and reinforced patient participation. Work is in hand to take that forward.

The Deputy Convener: The next question is from Angus MacDonald.

Angus MacDonald: Convener, my question on patient consultation has been covered.

The Deputy Convener: We move on to Jim Eadie.

Jim Eadie: Good morning, panel. We have already heard evidence this morning about the importance of capturing data in a robust and transparent way. Mr Pearson has illustrated the need to do that so that we can understand better the patient's journey. The minister has said that it is important to evaluate the progress that NHS boards are making. That will no doubt be of increasing importance as we seek to roll out the delivery of the local plans that you mentioned. In Healthcare Improvement Scotland's "Update Report on Scottish Pain Management Services", a range of factors are mentioned in the data spreadsheet that were presumably part of the audit but are not covered in the "Detailed findings" section of the update report. Can you explain why that was the case?

Robbie Pearson: As I said at the start, on reflection it would have been preferable to have all the data not only on the website but accessible within the report. That is a point of learning for us in Healthcare Improvement Scotland. In producing the document, a balance had to be struck in providing something that is accessible to the public, but we perhaps pitched the balance in the wrong way in not making the data readily available. The need to ensure that the facts and findings are available is a point of learning for us. We have taken that point from the petition and from other feedback.

Dr Holdsworth might want to elaborate on that.

Lesley Holdsworth: I reiterate what our chief executive said at the cross-party group about this not being our finest hour, but we have taken those issues on board. Do you have a specific question in relation to that?

Jim Eadie: The question that I posed was about the reason why information on issues such as referral to spinal cord stimulation and waiting list initiatives was not included. Was that because you had insufficient data, or was it because you had sufficient data but chose not to include the information?

Dr Steve Gilbert (Healthcare Improvement Scotland): The number of people being referred for spinal cord stimulation or residential pain management programmes was very small. Some boards did not refer any patients and some referred one or two, so we felt that we could not draw a conclusion from that. However, it was useful for us to look at how many people were referred and to discuss with boards why some boards sent a lot more patients, so we looked at the variation there.

In the tertiary part of the service model, which deals with intensive pain management options such as residential programmes or spinal cord stimulation, we are organising for the centres that perform such procedures to draw up their own referral and treatment guidelines. We want the outcome measures to be more tied down so that there is collaboration between the centres that carry out those more interventional procedures.

Jim Eadie: I think that you are saying that there was a lack of information available rather than—

Dr Gilbert: There was only a little bit—

Jim Eadie: Excuse me, sorry. Are you saying that there was a lack of information available rather than a deliberate exclusion of information from the report?

Dr Gilbert: Yes, we felt that it was not something that we could report on.

Jim Eadie: I have an additional question for the minister, on the development of an intensive pain management service. The Government has made a commitment to that, which has been widely welcomed, drawing on the experience of patients who have had to access the service south of the border. Where are we with that?

Michael Matheson: NHS National Services Scotland is presently in the final stages of drafting the consultation order, and has also established a specialist group that is helping to inform us in that process, and we hope to publish the consultation next week.

Jim Eadie: Thank you.

Jackson Carlaw: I have already been outed by my colleague as one of the co-conveners of the cross-party group on chronic pain. There are two or three things that I want to ask about, and I shall try to be concise. You have entered into a bit of mea culpa and contrition over the report, but when we are talking about the importance of patient participation, who actually decides who the patient representatives will be? I would have expected them to be a bit more vocal. I would not necessarily want to characterise them as friends of the establishment, but who is responsible for ensuring that the patient representatives are thoroughly independent and are asking the questions that might have led to all this information being available publicly sooner? How do we ensure, going forward, that we have the right patient representatives and ones who will genuinely ensure the independent voice of the patients?

Robbie Pearson: To pick up on your point about patient involvement, we need to learn lessons from this experience, particularly by ensuring that there is an active voice for the service improvement groups and that that voice plays into the national steering group. It is particularly important that that voice is heard as we design local or national services. Dr Holdsworth might want to pick up on your point about the actual involvement.

Lesley Holdsworth: We are working closely with the major patient representative bodies—the Pain Association Scotland, Pain Concern and the Health and Social Care Alliance Scotland—and we are also looking to build on the service improvement groups and to get more local representation. We are trying to cast a wide net to get those groups who are active advocates for patients as well as pain sufferers themselves at local level.

Jackson Carlaw: I will be full of anticipation to see who the patient representatives are.

As a general consequence of the report, there was an underappreciation of where we had progressed to on chronic pain services delivery, and I listened to what you had to say about that, minister. You were with us recently to discuss health boards' lack of application of the strategy on insulin pumps, and you put a robust requirement on health boards to update you on a regular basis on the progress that they were making towards the plan, which in many respects they had failed on. How would you compare the reporting process that you are requiring in relation to the provision of chronic pain services to that which you put in place for achieving the insulin pump targets?

Michael Matheson: The requirement for reporting on chronic pain is more robust now than it has been in the past. For example, the service improvement groups for each of our boards have to submit their plans for us to consider. We will have that completed by the end of this month, and we will then look at how to build those plans into their local development plans for 2014. The Scottish Government receives a draft copy of the local development plans for each of our boards, so that we can compare them against what was set out by the service improvement groups and look at how they intend to deliver those plans in the coming year. We have a robust mechanism that allows us to establish a clear pattern of how boards are taking work forward, and also to see which boards are making more progress than others. We must then ensure that, at national level, the steering group continues to monitor progress at local level through the service improvement groups. A combination of factors, including the local development plan, the plans that have to be submitted by the service improvement groups and the national steering group, give us a robust architecture for monitoring how we take this forward and for addressing any issues that might come up in due course.

Jackson Carlaw: Finally, in the debate in the chamber, the cabinet secretary announced the consultation to which you have referred. I believe that there are three principal options on which you seek to consult. One is the original intention of the petition, which is a pain management centre equivalent to that at Bath. A second option is some sort of mobile resource, and a third is improved services within local environments.

Obviously, in terms of the investment that would be required, the easiest of the three options to

quantify is the first, because an equivalent exists and one can understand what it would cost to set up a centre. Is it the Government's intention that a parallel level of investment would follow each of those three options? Have you quantified what you think the level of investment in chronic pain management would be as a result of whatever option is considered best after the consultation? Could it be a mix of those, or is that wishful thinking, given the level of resource that you have available?

11:30

Michael Matheson: You appear to be ahead of me, because I have not seen the consultation document yet.

Jackson Carlaw: I thought that the cabinet secretary announced those options.

Michael Matheson: The situation will broadly be in that frame.

During the debate, some members thought that we were considering consulting on whether we should have a residential service in Scotland or not. That is not the case. We have given a commitment that there will be a residential service of some form in Scotland. We now need to consult on the model for delivering that service in Scotland and we will launch a consultation next week. During the consultation period, we will see what the views are; if views come back around a particular option and if that option is, for example, for a single site which has an in-bed facility and can also provide an out-patient facility, we will consider the resource implications of that for us and how we will fund that particular service.

I do not want to get into a situation where I say, "We've decided that we're going to go with option X, because that's what the budget is." Let us see the outcome of the consultation and from that point assess what the options are in terms of cost.

We have to be mindful that we need to try to provide a service in Scotland that can meet the needs of patients across the country. During the debate, the cabinet secretary referred to the fact that we need to think about how, if we have a single-site option in Scotland, we can ensure that we also provide the necessary support and advice in other parts of the country, such as Grampian, the Highlands or the islands, where that option might not be successful for those patients. We have to find a service option that allows us to provide a special service that may be residential, but also provide support and assistance in remote areas in which people may not be able to access that service as readily.

Jackie Baillie (Dumbarton) (Lab): Given that we come now to the third and final co-convener of the cross-party group on chronic pain, most of the subject has been covered. The consultation on the specialist centre is very welcome. Currently, we think it acceptable to send people from all parts of Scotland to Bath, so what is proposed would be a vast improvement, whether we have a one-site centre or whether other mechanisms of delivery are explored.

I acknowledge, too, the acceptance of the lack of clarity and transparency in the report. That allows us to move on and to welcome the very helpful momentum injected by the minister and the cabinet secretary.

That said, may I pursue a little bit the question of what will be done with the data? If I understood correctly, we can expect that at the end of December. I am assuming that it will be in published form. Will that include not just a measurement of patient experience and outcomes—important though those are—but the numbers in whole-time equivalents of clinicians, nurses, physiotherapists, psychologists and occupational therapists? When a multidisciplinary team was described, a box was simply ticked to say that there was one. However, clearly there is a difference between a fifth of a consultant and a whole consultant. Transparency on those figures would be particularly welcome.

Equally, the minister mentioned that there would be transparency on waiting times. I take it that that applies to the first and second appointment as well.

Robbie Pearson: On those points, the data is important. It is also important that we can demonstrate the mix of services on the ground and the range of staff involved. We will certainly pick up the point about waiting times and the journey in respect of the AHP advanced practice musculoskeletal project.

Jackie Baillie: That was very helpful.

My final question goes back to Jackson Carlaw's point, which I do not think you addressed, of who currently decides the patient representatives on the national steering group.

Secondly, I hear a lot of discussion about involving people in the service groups. Admirable as that might be, it does not replace direct representation on the national steering group. Are there plans to increase the number of patient representatives on the national steering group?

Robbie Pearson: Answering the second question first, I have to say yes. Indeed, that is fundamental to our statutory responsibilities and user focus duty. We have not necessarily always got that right in the past, but we are learning from what we have done and will ensure that representation on the group is broadened.

Jackie Baillie: With respect, I did not get an answer to my first question, which was a repeat of Jackson Carlaw's. On the basis of my persistence, I seek leave to ask it again.

Robbie Pearson: Obviously, decisions have been made in Healthcare Improvement Scotland about who should be involved. We and Scottish Government colleagues will learn from that and need to ensure that there is broader representation on the group.

Jackie Baillie: So it was this huge organisation—Healthcare Improvement Scotland—that made the decision. Was there no one person who decided the national steering group's make-up?

Robbie Pearson: That was before my time in Healthcare Improvement Scotland, but I am happy to come back to the committee on the process of making those decisions and the engagement with individuals.

The Deputy Convener: That would be helpful. I always like it when members say that they have a final question and then ask another three.

We have had a very helpful evidence session. I am happy to say that things have moved on and hope that with the assurances of openness, transparency and robustness that we have received we do not have the cabinet secretary or, indeed, the minister turning up at meetings and not knowing what the situation is. We will no doubt keep an eye on what happens.

The committee now has several options; indeed, members might wish to suggest options of their own. We can close the petition under rule 15.7 on the basis that the chamber debate on chronic pain took place on 29 May, that the cabinet secretary—and, indeed, the minister today—has committed to establishing an intensive pain management service in Scotland and that the Government has set out its aims for implementing the Scottish service model over the two years for which funding has been provided. Secondly—and this might be the more sensible option—we could defer further consideration until November, when we could seek an update from the Government on its short-term commitments such as the delivery of the intensive pain management service.

Jackson Carlaw: On the basis that I have ordered a cooked breakfast from time to time and the waitress has forgotten to bring it, I am in favour of deferring further consideration of the petition until November, when we can see the outcome of the consultation and what we are going to receive.

The Deputy Convener: I have to say, Jackson, that it does not show.

John Wilson: It might just be because he is Jackson Carlaw that his breakfast is not getting delivered—but that is another story.

I agree with Mr Carlaw that we should defer consideration until November, not just to ensure that the consultation period is over and the cabinet secretary and the minister have deliberated and made decisions on the matter but to allow us to hear again from Healthcare Improvement Scotland about its reporting mechanisms and structures and how it has improved on what was seen as a disaster when it previously tried to report on what was happening out there.

The Deputy Convener: Is that the committee's verdict?

Members *indicated agreement.*

The Deputy Convener: I thank the minister; his Government officials, Mark O'Donnell, Rachael Dunk and Gillian Gunn; and, from Healthcare Improvement Scotland, Robbie Pearson, Lesley Holdsworth and Dr Steve Gilbert. I suspend the meeting to allow the witnesses to leave.

11:39

Meeting suspended.

11:41

On resuming—

Free Methanol (Ban) (PE1376)

The Deputy Convener: Agenda item 5 is consideration of current petitions. The first is PE1376, which was lodged in November 2010 by James McDonald, calling on the Government to take the necessary action to bring about a ban on the use of free methanol released by aspartame. As members will see from the briefing paper, the European Food Safety Authority is re-evaluating its analysis of aspartame, but that will not be ready until November 2013. It is recommended that we continue the petition to await the results of the Food Standards Agency's research and EFSA's work. Is that agreed?

Members *indicated agreement.*

Flood Insurance (PE1441)

The Deputy Convener: PE1441, by David Crichton, is on flood insurance problems. As members will recall, the issue was the subject of a debate in the chamber in May 2013. There are several recommendations on the petition, one of which is to write to the Minister for Environment and Climate Change to seek an update on the negotiations between the Department for Environment, Food and Rural Affairs and the United Kingdom insurance industry, which were

supposed to have crystallised at the end of June. However, that has now been pushed back a month, although the statement of principles is due to expire at the end of July.

The briefing paper suggests that we write to the Minister for Environment and Climate Change to ask what action he is taking to ensure that the Scottish Environment Protection Agency develops a new commercial licence as quickly as possible so that we can secure the appropriate insurance. It also suggests that we write to SEPA to ask it what steps it is taking.

John Wilson: I agree with the suggestion that we write to the minister and to SEPA, but I suggest that we also write to DEFRA to remind it of our particular interest in the matter and seek assurances that it will reach an early conclusion so that people who might be affected by floods are safeguarded in future insurance policies.

Angus MacDonald: I am very concerned that the issue has not yet been resolved through negotiations between DEFRA and the UK insurance industry, so I think that it would be sensible to write to the Minister for Environment and Climate Change to seek an update on the negotiations. I agree, too, that we should send a letter to SEPA to ensure that a new commercial licence is developed as soon as possible and to seek its views on that issue.

11:45

Jackson Carlaw: The suggestion was forcibly put in the evidence that we took and in the debate that there would be no extension beyond the end of June. We should welcome the fact there has been an extension to the end of July, but it would be sensible to say in our letter that, having established the principle of extending by a month in anticipation of an agreement, we would very much welcome the minister and the industry reassuring people that there will be pro tem extensions until an agreement is arrived at. As there has been an extension for a month, I do not see that any great principle is at stake in offering people such reassurance.

The Deputy Convener: That is a very good point.

Do members agree that we will write to the minister in the terms that I expounded, and to SEPA and DEFRA?

Members *indicated agreement.*

Miscarriage (Causes) (PE1443)

The Deputy Convener: PE1443, which was lodged by Maureen Sharkey on behalf of Scottish Care and Information on Miscarriage, calls on the Parliament to urge the Government to offer all women who have suffered miscarriage investigations following one loss and to review NHS Scotland's policy.

There is a comprehensive response from the Royal College of General Practitioners Scotland in members' documents. What action does the committee wish to take on the petition now that we have that information? We could seek further information, refer the petition to the Health and Sport Committee, or close it on the basis that the Scottish Government has stated its clear support for the current Royal College of Obstetricians and Gynaecologists guidelines. Do members have views?

Jackson Carlaw: I suggest that we close the petition, as the Scottish Government has expressed its view, which it says is based on the evidence that it has received, and there has been support for the current practice and position from all the parties from which we have sought to obtain evidence.

Malcolm Chisholm: It is hard to argue with the clinical advice on that, but I was concerned about what the petitioner said about the service that is available. In particular, the Royal College of General Practitioners Scotland said:

"GPs should be prepared to offer counselling to women".

I think that the petitioner suggested that that was not widely available. I wonder whether it is worth taking up that point, as there is obviously an issue from the petitioner's point of view, some of which may well relate to that side of things.

Anne McTaggart: I agree with Malcolm Chisholm. The sporadic nature of counselling should be tightened up. Most parents do not know that it is available to them. I thought that the petition was great, but I am not sure where we should go from here.

The Deputy Convener: Shall we write to the Royal College of General Practitioners Scotland and state that we wish to see counselling meaningfully incorporated by GPs for patients who are in this situation? I have sympathy with the view that, having done that, we close the petition. Do members agree with that proposal?

Members *indicated agreement.*

Congenital Heart Disease Patients (Care) (PE1446)

The Deputy Convener: PE1446, which was lodged in October 2012, is on congenital heart disease patients and how we track adults who suffer from that condition. We are asked to consider what action we wish to take based on the evidence that we have received and subsequent correspondence.

We can close the petition, on the basis that the Scottish Government has stated that the first task of the Scottish congenital cardiac network is to look at the standards that are appropriate for the Scottish service and that funding for the Scottish adult congenital cardiac service has increased by 60 per cent in recent years; we can defer consideration of the petition until the beginning of 2014 and seek an update from the SCCN; or we can refer the petition to the Health and Sport Committee for consideration as part of its remit.

Malcolm Chisholm: I have taken an interest in this petition and have asked some questions in Parliament about it. Although I support deferring it, the petitioner has raised a particular point that we should raise with the minister. In her paper, the petitioner notes that the Scottish Government's response said:

"The adult congenital population includes a large cohort of patients with minor lesions, who do not need to be urgently followed up."

However, the petitioner goes on to quote a 2006 recommendation that

"All adults with congenital heart disease **whatever the level of complexity** are seen by an 'expert' from a specialist centre at least once and receive a written care plan."

One of the concerns is the number of adults who, as it were, get lost and are not identified by health services as having a problem. I probably should take that up with the minister, but in general I support deferring consideration.

It is good that we have the Scottish congenital cardiac network, but the answer tends to be that the network will deal with this issue and that issue. We need to keep a watching brief on that.

Given the issues that we raised with the panel on PE1460, the question is to what extent there is patient involvement with the network.

John Wilson: As well as deferring the petition to see what happens and writing to the Government, it is important that we allow the petitioner the opportunity to examine and comment on the national standards that the SCCN will draw up. It would be useful if the petitioner was somehow involved in the discussions—

The Deputy Convener: That marries with Malcolm Chisholm's suggestion.

John Wilson: It ties up with Malcolm Chisholm's suggestion about how patients interact with the review. I would particularly draw the SCCN's attention to the petitioner and her work on this issue.

The Deputy Convener: Does the committee agree to write to the minister and defer consideration until the beginning of 2014?

Members *indicated agreement.*

Organ Transplantation (Cancer Risk) (PE1448)

The Deputy Convener: PE1448, by Grant Thomson, calls on the Parliament to urge the Government to raise awareness of the links between organ transplantation and cancer. We could write to the Government to ask what more can be done to make sure that all clinicians are aware of the potential risks in this area and that knowledge is up to date—which seems immensely sensible—in order to ensure that there is consistency across all NHS boards and that the quality of information that is given to transplant recipients does not vary. Alternatively, we could refer the petition to the Health and Sport Committee, or, on the basis that the three Scottish transplant units and the Newcastle unit have implemented the Scottish transplant group's recommendations, we could close the petition. What is the committee's view?

Angus MacDonald: The first option—to write to the Scottish Government to ask what more can be done to make sure that all clinicians are aware of the potential risks and that knowledge is up to date—is my preference.

Anne McTaggart: I totally agree. It is important that we continue the petition, to ensure that the information is disseminated. We must ask the Scottish Government about that before we can consider closing the petition.

The Deputy Convener: Is that agreed?

Members *indicated agreement.*

Hyperemesis Specialist Nurses (PE1454)

The Deputy Convener: PE1454, by Natalie Robb, calls on the Parliament to urge the Scottish Government to consider placing hyperemesis specialist nurses in hospitals, for consideration of serious vomiting in early stages of pregnancy. The recommended options are to refer the petition under rule 15.6.2 to the Health and Sport Committee; to write to Dr MacLean, from whom we have had information in a letter, to support the proposal to form a Scottish hyperemesis network and ask that interested parties, such as the petitioner, are included in taking that forward; or to take any other action that the committee considers to be appropriate.

I consider that the setting up of a network, involving the petitioners and those who are affected or interested, might be the way forward. Are we agreed?

Members *indicated agreement.*

The Deputy Convener: I will take PE1458 at the end, because I think that we will have more commentary on that.

Evictions Due to Underoccupancy Deductions (PE1468)

The Deputy Convener: Petition PE1468 was lodged on behalf of Govan Law Centre and calls on the Parliament to amend section 16 of the Housing (Scotland) Act 2001. We have been asked to consider—[*Interruption*.]

I remind members of the public in the gallery—[*Interruption*.]

Excuse me. I remind members of the public who are in the gallery that they must be silent and not demonstrate either vocally or by pictorial means when proceedings are under way, but should behave in an orderly manner. If they fail to do so, I will suspend the meeting, they will be asked to leave, and we will continue with our business. The dignity of this Parliament will be protected.

As I was saying, PE1468 is on behalf of Govan Law Centre and the committee is invited to consider what action it wishes to take. We could refer the petition to the Welfare Reform Committee under rule 15.6.2 for further consideration as part of that committee's remit, or we could take other action that the committee considers to be appropriate.

Malcolm Chisholm: I support the petition; it would be good if it were to go to the Welfare Reform Committee because it has been addressing the subject of the petition, which is clearly a key issue for that committee. That would be the best procedure and action to take.

Jackson Carlaw: I suggest that we close the petition on the basis that the cabinet secretary has made it clear that the Government does not intend to act on the petition, which is also the view of the Convention of Scottish Local Authorities and the various other organisations that have responded to it. I am thinking particularly of the legal point about hypothecating the issue in terms of law.

John Wilson: I support Malcolm Chisholm's proposal that we send the petition to the Welfare Reform Committee, along with the evidence that we have gathered to date. We have managed to get some further evidence and responses, and the Welfare Reform Committee is dealing with the range of welfare reforms that are currently being implemented by the UK Government and which impact very harshly on many residents in Scotland and elsewhere.

Jackie Baillie: I support the view that has been expressed by Malcolm Chisholm and John Wilson. Members of the committee will know about my support for the petition and for protecting people from eviction that might result from the bedroom tax. I do not believe that the Scottish Government has issued any guidance that would help local government to deal with the problem, so if the committee is minded to send the petition to the Welfare Reform Committee, that would be helpful. The Welfare Reform Committee might be minded to invite the petitioner along. There were certainly some questions that the committee wanted to ask him, but he was not present.

The Deputy Convener: If we send the petition to the Welfare Reform Committee, that will be a matter for that committee. Are there any other views?

Anne McTaggart: I entirely agree with Jackie Baillie. It is important that we refer the petition to the Welfare Reform Committee.

Angus MacDonald: We all have constituents who are paying the price of this UK Government initiative. However, there are a number of salient points in the Scottish Government's response that should be noted. In particular, it states:

"The rationale for the measure is not of Scotland's making",

that

"The measure runs roughshod over devolved policy making, taking no account of Scotland's housing and homelessness policies"

and that

"The Scottish allocation of the DWP Discretionary Housing Payment (DHP) fund is entirely insufficient."

It is worth making those points at this stage, prior to the petition going to the Welfare Reform Committee.

The Deputy Convener: Are you in favour of that action?

Angus MacDonald: I am.

Jim Eadie: I fully endorse and support the comments of colleagues who wish to refer the petition to the Welfare Reform Committee. It is very important that we do not dismiss the issue and that it is properly considered.

The Deputy Convener: So are we agreed, by a majority, that the petition will be sent to the Welfare Reform Committee?

Members *indicated agreement.*

Wind Turbine Applications (Neighbour Notification Distances) (PE1469)

12:00

The Deputy Convener: We come to PE1469, by Aileen Jackson, calling for a change in planning regulations to enable an increase in the current

neighbour notification distance of 20m in relation to wind turbine planning applications. I know from experience that that distance has created difficulties in cross-council-boundary applications.

Our options are: to look for further information; to refer the petition, under rule 15.6.2, to the Local Government and Regeneration Committee for consideration as part of its work on the third national planning framework and the Scottish planning policy; and to close the petition under rule 15.7, on the basis that the Scottish Government has

"no plans ... for a further review of neighbour notification or other publicity requirements for planning applications."

Jackson Carlaw: I would like to advocate none of those, and to suggest that we defer consideration of the petition until the autumn. I note that the response from the Scottish Government states:

"While some amendments to the general publicity requirements are about to be laid in Parliament as part of consolidated planning regulations, we have no plans at present for a further review of neighbour notification or other publicity requirements for planning applications. We will, however, consider further the issues raised by the petition and the Committee's discussion and update the Committee in the autumn."

We have a commitment from the Government to come back to us to say how it intends to take forward these issues. I would like to remind the Government of that commitment and to defer further consideration of the petition until we receive a report about what the Government intends to do.

The Deputy Convener: That is sensible. Do members agree to that suggestion?

Members *indicated agreement.*

Judiciary (Register of Interests) (PE1458)

The Deputy Convener: PE1458 is on a register of interests for members of the judiciary. Recommendations for action that the committee might wish to take are included in the papers. One is to invite Moi Ali, the Judicial Complaints Reviewer, to give evidence to the committee at a future meeting. We could also take any other action that we consider appropriate.

Before I make any personal comment, I seek the views of members of the committee.

Previously, the committee decided that there was no further purpose in pursuing the Lord President. I pointed out that the Government-appointed JCR had particularly strong views on the matter and said that, although the Lord President wants to talk only about the constitutional principle, that principle needs to be seen in the light of potential constitutional changes. The view was that we should seek to close off the petition with the Lord President. However, I certainly recommend that we get Moi Ali in here to hear her views.

Jackson Carlaw: I agree. I thought that we had reached something of an impasse. When I saw the support for the proposal from the Judicial Complaints Reviewer—an appointment that was established under the Judiciary and Courts (Scotland) Act 2008—I felt that, given that the weight of evidence so far from the establishment has been of one colour, it would be interesting to hear why the Judicial Complaints Reviewer takes a different view.

Malcolm Chisholm: I have not been involved in the petition, so I would really like to ask a question. I have read Lord Gill's view of judicial independence in relation to attending the committee and answering questions. Are his and others' objections to the register based on the same principle of judicial independence, or are they not really to do with that at all? I do not know whether anyone can answer that, but it seems to me that the petition raises interesting general questions about the line between judicial independence and accountability and political oversight. In part, that relates to an issue about judicial independence that I raised in last week's debate in Parliament on the Victims and Witnesses (Scotland) Bill. I am curious about the issue.

The Deputy Convener: The view that was taken was that there are other mechanisms and checks and balances, such as recusal, that secure the independence of the judiciary without exposing judges to what would be seen as a breach of the Scotland Act 1998 in performing their role.

Malcolm Chisholm: So the issue is about a register that would affect judicial independence, rather than just about the Lord President appearing here to answer questions. Is that what you are saying?

The Deputy Convener: That is the difficulty and the reason why we are struggling. We are looking for openness and transparency, but the Lord President has chosen not to attend to explain why there should not be a register of interests for judges, as there is for members of Parliament, members of the Scottish Police Authority and so on. That is his view.

Jackson Carlaw: Lord Gill's response, which took us to something of an impasse from our point of view, was, "It's not happening down south, and neither I nor anybody else has any intention of doing it, so get your tanks off my vested-interest lawn." We were unable to find a way to break through that, but the information that we have received from the Judicial Complaints Reviewer

potentially offers us an interesting extension of the discussion. However, I do not think that the issue that the petitioner raised has ever been properly and fully addressed, beyond the Lord President saying that he does not think that a register is necessary and, surprisingly, neither does anybody else who is currently employed in the profession.

John Wilson: I agree with Jackson Carlaw. Given the interesting comments in the response from the Judicial Complaints Reviewer, it would serve a purpose to invite her to give evidence to the committee. I hope that, once we have heard that evidence, Lord Gill might reconsider his position in relation to section 23(7) of the Scotland Act 1998. Basically, my interpretation is that Parliament and its committees cannot call judges or sheriffs to give evidence on and to be accountable for judicial decisions that they have made, but the petitioner's main point is that we should hear from Lord Gill in his role as the Lord President, which involves overseeing the judiciary.

I hope that Lord Gill might reconsider his position in the light of the fact that we are to take further evidence. I hope that that evidence will draw out other issues that are relevant to our deliberations. I support Jackson Carlaw's suggestion to take evidence from the Judicial Complaints Reviewer.

The Deputy Convener: Okay. We will invite Moi Ali to give evidence.

I recently attended the Justice Committee to talk about changes to the Scottish Court Service; it is somewhat paradoxical that the Lord President was happy to go along to that committee to explain—or not to explain, as the case may be—the rationale behind those changes.

Do members have any other comments?

Jim Eadie: I just want to reinforce Mr Carlaw's and Mr Wilson's points. Notwithstanding the points that the Lord President made in his letter to the convener that judges cannot be compelled under the Scotland Act 1998 to appear before committees of the Parliament, I note the statement in that letter that

"a register of interests for the judiciary is both unnecessary and unworkable."

It would have been beneficial if the committee had been able to hear oral evidence from the Lord President about why he thinks that that is the case. Like John Wilson, I hope that the Lord President will reconsider that. However, I certainly endorse the view that we should hear further evidence from other expert witnesses.

Angus MacDonald: I draw the committee's attention to the petitioner's letter, in which he asks the committee to approach a Green Party member of the New Zealand Parliament, Dr Kennedy Graham, who is currently putting his Register of Pecuniary Interests of Judges Bill through that Parliament. We could approach Dr Graham to ask for his views.

The Deputy Convener: We can e-mail Dr Graham, but we will need to ask him very specific questions. I do not think that there is any harm in that but, as the clerk has just pointed out to me and as the correspondence makes clear, the suggestion is that the New Zealand Government is intending to move in the direction of recusal. Should I formulate some questions and just zap them around everyone?

Angus MacDonald: That would be fine, convener.

Jim Eadie: I do not think that we should rule out a future evidence session involving experts from furth of Scotland. When the Health and Sport Committee considered minimum unit pricing of alcohol, it benefited greatly from evidence from Canadian experts—notwithstanding the time difference between the two countries.

The Deputy Convener: I thought that you were going to suggest that we go out there to speak to them.

We have covered the position and, as agreed in agenda item 1, we move into private session for the final two agenda items.

12:12

Meeting continued in private until 12:33.

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