The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 6 May 2014

Session 4

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PUBLIC PETITIONS COMMITTEE
9th Meeting 2014, Session 4

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Chic Brodie (South Scotland) (SNP)

COMMITTEE MEMBERS

Jackson Carlaw (West Scotland) (Con)
*Angus MacDonald (Falkirk East) (SNP)
*Anne McTaggart (Glasgow) (Lab)
David Torrance (Kirkcaldy) (SNP)
*John Wilson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Rosemary Agnew (Scottish Information Commissioner)
Norman Bonney
Cameron Buchanan (Lothian) (Con) (Committee Substitute)
Jim Eadie (Edinburgh Southern) (SNP) (Committee Substitute)
Sarah Hutchison (Office of the Scottish Information Commissioner)
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)
Mrs Margaret Park

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Public Petitions Committee

Tuesday 6 May 2014

[The Convener *opened the meeting at 10:05*]

Current Petition

Freedom of Information (Scotland) Act 2002 (Amendment) (PE1512)

The Convener (David Stewart): Good morning, ladies and gentlemen. I welcome you all to today's meeting of the Public Petitions Committee. As always, I ask everyone to turn off their mobile phones and other electronic devices, which interfere with our sound system.

Apologies have been received from Jackson Carlaw, who is attending the Health and Sport Committee. Cameron Buchanan is attending as his substitute. Apologies have also been received from David Torrance; Jim Eadie is attending in his absence. I am sure that all committee members wish to pass on condolences to David Torrance on the loss of his father.

Item 1 is consideration of PE1512, by Bill Chisholm, on amendments to the Freedom of Information (Scotland) Act (2002). As previously agreed, the committee will take evidence from the Scottish Information Commissioner. Members have a note by the clerk and submissions from the commissioner and the petitioner. I welcome the Scottish Information Commissioner, Rosemary Agnew, and Sarah Hutchison, who is head of policy and information in the office of the Scottish Information Commissioner. Thank you for coming along.

I invite Rosemary Agnew to make an opening statement of about five minutes, after which I will move to questions.

Rosemary Agnew (Scottish Information Commissioner): Good morning, and thank you for the opportunity to speak to the committee about the petition.

Ultimately, I respect that it is Parliament's role to legislate; what I aim to do is simply to inform members in order to aid that legislative process. I emphasise that there is more common ground between me and Mr Chisholm than might immediately be apparent. I am grateful to him for raising the issue because it has brought an issue to the fore.

I believe that Mr Chisholm and I are starting from the same point: we want Scottish public authorities to be open, transparent and honest in their communication, and we want citizens to be confident that they are being told the whole and accurate story, within the law. Where Mr Chisholm and I have differing perspectives is that I take the view that the current legislative framework—that is, FOISA and beyond—largely provides for that.

The main focus of the petition is that the law does not specify that authorities must provide accurate and up-to-date information; it specifies that they must provide the information that they hold. My understanding is that Mr Chisholm requested information from the Scottish Borders Council and was given information that he had good reason to believe was wrong—information that was factually incorrect.

Mr Chisholm challenged the information and the council gave him further information. He was understandably unhappy that the council did not, on the first pass, give him all the information that it held. He appears to have interpreted that as being dishonest behaviour, which resulted in his getting what he sees as inaccurate information.

I can only assume—because he did not take up his right to appeal to me—that Mr Chisholm was content that ultimately, he received all the information that the council held in relation to his request. In that context, I can only speak hypothetically from what I understand of his experience through the petition process. I cannot know for certain whether there was dishonest behaviour, but I can conclude with some confidence that the council did not get it right first time. Had it done so, Mr Chisholm would have received all the information—information that I assume he was ultimately happy with—on the first time of asking.

The evidence last week emphasised Mr Chisholm's concern that authorities do not have to behave in an honest and truthful way. I think that they do, but FOISA is only one part of the framework that aims to ensure that that is the case. It could be potentially damaging to consider FOISA in isolation from other legislation relating to a range of subjects, which include conduct in public life, public record keeping and how public authorities report.

It might also be helpful to consider a couple of conceptual points. First, there is the nature of accuracy in the context of the debate. My take on Mr Chisholm's case is that it appears that it was the application of FOISA that was inaccurate, in the sense that had the authority applied FOISA accurately in the first place, all the information that was held would have been given to Mr Chisholm. When that is not the case, FOISA has a remedy.

Another way of looking at the concept of accuracy is to refer to the accuracy of the information on the page. To put it crudely, were

the numbers on the page the real ones or the right ones? That fundamentally changes the nature of the accuracy debate in relation to FOISA, because it moves FOISA away from being a measure for challenging access to information to being one in which we are potentially having to check that documents are right before they are issued, in order to determine whether they should even be disclosed.

The second conceptual point that I want to consider is the nature of honesty in the context of this debate. We could ask the hypothetical question: did the council act honestly but mistakenly when it gave out partial information, or did it act dishonestly by knowingly not giving out information the first time round? We cannot know the answer, but an investigation under FOISA could have reached a view on that.

We then come to whether information is correct or right when it is disclosed. What FOISA adds in that context is that it can ensure that the information is disclosed, thus making it public and enabling wider scrutiny in relation to its accuracy or truthfulness. The issue comes up in appeals to me. Sometimes a requester gets access to information to test the probity of a decision by an authority, for example. The requester might want facts or analysis that the authority considered, and if they can prove that the fact or analysis was wrong, they could challenge the authority's decision. They are holding the authority accountable and enabling that sort of scrutiny. There have been notable cases in which the approach has worked.

The important point is that FOI gives a right to see the information that the authority holds. If we get the information and then find that it is inaccurate, we can challenge appropriately, through the appropriate legislation.

FOISA can also help in that if such scrutiny suggests that what was disclosed was inaccurate because it was altered or information was deliberately withheld, there is provision to investigate the matter further as a criminal matter. I think that my most recent briefing covered that in more detail.

We have a strong law in Scotland. It is recognised internationally, and one of the strongest aspects of the regime is its enforcement provisions. We can enforce every step of the way, and a commissioner's decision is binding.

Our FOI law is also stringent in ways that might not be immediately apparent. It is not often appreciated that I am obliged by law to accept all valid appeals. That means that I have to issue a decision notice; I cannot choose which cases I look at. Therefore, the citizen has the right, if they make a valid appeal, to get a decision from me. There is always that scrutiny.

The rights are legally enforceable. A good indication of our enforcement powers is that, to date, no Scottish public authority has failed to comply with a commissioner decision. They might have challenged a few through the Court of Session, but they have not failed to apply them.

If I find that an authority has acted unlawfully—that is, that it has not followed the provisions of the Freedom of Information (Scotland) Act 2002—that is reflected in a decision notice. Decision notices can be reported on and used by other people in various ways, but I think that they constitute the public reprimand for which the petitioner is calling.

You will have seen, in my previous briefing, information on section 65 of FOISA, which enables us to challenge and potentially to investigate as a criminal matter the deliberate changing of information. Ultimately, if that is found to be the case, there could be a fine of up to £5,000.

One thing that I emphasise about section 65 is that it was recently updated by the Freedom of Information (Scotland) Amendment Act 2013, which put right what we saw as being a flaw in relation to when cases on the sort of allegations that I am talking about could be brought.

10:15

It is also probably worth sharing with the committee that the one section 65 case in which I have been personally involved did not end in a prosecution. It was investigated, but the important point was that it resulted in accurate information being disclosed to the requester. The original information was inaccurate and what the requester ended up with was accurate.

In summary, my concern with the proposal in the petition that relates to public bodies being

"duty bound to provide accurate information"

is that that would fundamentally change the nature of FOISA and could impose a significant resource burden for something that can already be addressed.

The Convener: Thank you very much for your detailed presentation. I have a couple of questions; I will then ask my colleagues to get involved. First, what merits do you see in Mr Chisholm's petition?

Rosemary Agnew: The very fact that it was lodged is a merit in itself, because it has enabled us—me in particular—to look at the information and guidance that I give out. One thing that I will do is see whether the concept of "accuracy" can be built in as a piece of guidance. The petition has raised the profile of that.

I think that the petition's main merit is that it has raised the much wider issue that public bodies should be held to account. FOISA is one way of doing that. There is the issue that FOISA is one way, but the fact that somebody has called for an amendment means that the world is watching, and we want to see authorities behaving properly.

The Convener: Thank you for that. I think that you have partly answered my next question. Do you think that the 2002 act needs to be strengthened? If so, in what ways?

Rosemary Agnew: I think that, if you ask a commissioner whether the legislation needs to be strengthened, they will always say yes, because we always find some things. For me, the strengthening of FOISA is not related to enforcement. The bits that need to be strengthened are more related to proactive publication. The ideal would be authorities giving out information without being asked. Currently, enforceability is in some ways not as strong as it might be.

The Convener: Finally, I understand that you have the power to refer to the Court of Session if you think that the act has been breached. If that is correct, how many times have you done that since you have been in office?

Rosemary Agnew: I have not done that since I have been the commissioner. I have certainly not done that with any decisions; all my decisions have been complied with.

I also have powers to issue information notices. If authorities are not giving me information that I think is necessary for my statutory function, I can serve a notice on them. I have come close to getting to the Court of Session with a couple of those, but ultimately I have not had to take that final enforcement step. Authorities have complied.

The Convener: In what circumstances would you refer to the Court of Session?

Rosemary Agnew: I would refer to the Court of Session if I had issued a decision that called for an authority to take action that it refused point blank to take, and there were no other circumstances relating to that. Going to the Court of Session is a very expensive step. If I was considering that, I would certainly first try to have a dialogue with all the parties. However, if they did not comply, I would go to the Court of Session.

The Convener: That is the ultimate sanction.

Rosemary Agnew: Yes.

The Convener: Thank you for that.

Chic Brodie (South Scotland) (SNP): Good morning. I refer to the evidence that we heard from Mr Chisholm. My interpretation of it is that he perhaps accepts that the process was not followed. Will you enlighten me on whether you have had similar cases involving questionable accuracy? I am not sure that that is what you meant when you said that the petition had brought certain issues "to the fore". What are they? Have you dealt with similar circumstances?

Rosemary Agnew: Yes. The basic process that FOISA provides for is that, if a person cannot find information that an authority holds because the information is not on its website or elsewhere, they can request it and they have a statutory right in law to receive within 20 days either the information or an explanation for why it is not going to be disclosed. If they do not receive that, or are dissatisfied with what they get or with the service and the way in which the request has been handled, they can then ask the authority for a review. The review stage is the one at which authorities have the chance to put things right—they can get it right second time, if you like.

Ultimately, if the requester is dissatisfied with anything about that stage, they can appeal to us. When appeals end up with us, it is not uncommon for us, as part of our investigation or sometimes as a final decision, to tell the authority to conduct further searches. We often say to them, "Please search under these terms" or "Have you looked for what you might hold here?" Often, what happens is not a deliberate thing on the part of authorities, but just a reflection of the fact that they do not always get right the search for and locating of their information. I do not know whether that applied in Mr Chisholm's case, obviously, because we did not investigate, but it is a fairly common element of the appeals that come to me.

The other thing that I would add about appeals is that for the past year we have been collating national statistics on FOI from authorities, and we believe that more than 60,000 freedom of information requests were recorded in Scotland in the past year, just under 1 per cent of which ended up in appeals. That puts the matter in context, and shows that just over 99 per cent did not end up in appeals to the commissioner.

Chic Brodie: With that point, you pre-empted a question that I was going to ask about how many complaints are referred to you.

You have a key position—in fact, a critical one—in ensuring that there is transparency in the body politic in Scotland. Do you believe that within public authorities—I should know this, but perhaps you could tell me which public authorities and which areas you cover—there is a real understanding of the need to meet the requirements of people who file freedom of information requests? Are there pockets of authorities that are not doing what they should be doing?

Rosemary Agnew: That is an easy question with a very complex answer, I think. We cover Government, executive agencies, local councils, other public bodies, higher education—

Chic Brodie: Do you cover the judiciary?

Rosemary Agnew: No. We cover the Crown Office in a limited sense, but not in relation to its investigation-of-crime functions.

I would not say that, by sector or authority type, there are

"pockets of authorities that are not doing what they should be doing".

My experience over the past two years has been that, generally, public bodies in Scotland try to be open. There is always the Bell curve and there are extremes, but I would say that the extremes where we do not always find compliance are more to do with individual cases or an individual authority than a particular type of authority.

As for whether there are consistent themes, the problem is not in respect of desire to be open or of understanding that FOISA is here and that authorities have a statutory duty; it is more about how some freedom of information requests are handled. One of my observations about how freedom of information is reported is that often the process is reported, rather than the information. For example, if you look in the press, it might be reported that an authority is accused of being secretive. The authority is probably not being secretive; it probably just did not handle a request well. In our guidance, we increasingly refer to the need to take a more customer-focused approach and we ask authorities to think about that not just as a statutory duty, but as a way of engaging with requesters, because if we communicate better, we are more likely to comply with the legislation.

Cameron Buchanan (Lothian) (Con): Good morning. Are you satisfied by the amount of inaccurate information provided in response to freedom of information requests? There seems to be an awful lot of it; the percentage is high.

Rosemary Agnew: It comes back to what we mean by "inaccurate". If the question is whether the numbers on the page are accurate, I would say that we would all struggle to know whether those are accurate to the nth degree. For example, if someone says that the published minutes of a meeting are inaccurate, the only way of knowing whether they are truly accurate would be to interview everyone who was there and ask them whether the minutes reflect their recollection of the meeting. FOISA gets the information out there so that those best equipped to challenge an issue can do so.

However, the question may be whether there is inaccuracy in how the Freedom of Information (Scotland) Act 2002 is applied. My take on Mr Chisholm's experience is that the inaccuracy relates to how the request was handled. It is highly likely that the first time he was given information, it was inaccurate in the sense that it did not answer the whole question. By the time he received all the information that the authority held, I can only assume that he was content that it was accurate. I probably see more of that element whereby the authority has not disclosed everything that it holds in relation to a particular request. Sometimes, that is down to things not being found or searched for properly; occasionally, it is down to a difference in view about how an exemption is applied. However, it would too sweeping a statement to say that widespread inaccuracy exists. If we think of the millions of documents that go out, can any of us hand on heart say that the documents that we issue are 100 per cent accurate all the time?

Angus MacDonald (Falkirk East) (SNP): I want to pick up on Mr Chisholm's situation. Mr Chisholm's salient point is that, had he not been aware that the initial information was inaccurate, he would have taken that information as gospel, to coin a phrase, and the matter would have been done and dusted. In his response to your previous letter, he said:

"I would suggest that I should have been able to ask for a SIC investigation as soon as I could provide evidence of the council's 'inaccurate' response".

Rosemary Agnew: This is where we are probably getting into a difficulty with semantics. Mr Chisholm could have come to us to say that he was dissatisfied with how the authority had handled his request. The result of that approach is likely to have been that we would have made the authority disclose all the information that it held, so ultimately he would have got the accurate information. However, even in that context—I think that the matter related to legal expenses—we could not know that every number on the page was correct without doing a lot of research and asking for the invoices, which theoretically we could do, and by going to the law firm and asking it to confirm the amount that it charged. The point about objective accuracy on the page applies to anything.

As soon as information is made public through a freedom of information request, that information is not just given to that individual person; it is public information that is there for everyone. Sometimes, it is not the requester who challenges the information—sometimes, other people look at it and say that it cannot be right, and so challenge it. The difficulty with this case is that it went only part of the way through the freedom of information process, so we can really only speculate.

10:30

John Wilson (Central Scotland) (SNP): You said that your research shows that, in the past year, there have been 60,000 FOI requests to public bodies, only 1 per cent of which have resulted in issues being raised. Given Mr Chisholm's petition, that begs the question about accuracy. You say that there were 60,000 requests but, potentially, in 59,000 of them, the full information might not have been given. The issue is about confidence in the FOI system in Scotland and ensuring that people get the accurate information the first time round, rather than having to go through the appeals process.

We are fortunate that people such as Mr Chisholm and, as we know from the decision on 1 May, other individuals have been particularly diligent and knew that information was available. They were then able to follow that up and challenge the authority, because they knew that information was there that the authority had not released in response to the FOI request. How can you say that the other 59,000 FOI requests are being so diligently followed through and that 99 per cent of FOI requests are being answered accurately with all the information that is requested at the time of the request?

Rosemary Agnew: The short answer is that it would be humanly impossible to know that with 100 per cent certainty. However, I can say that I have a degree of confidence, which comes from a range of sources. The statistical information gives an indication of the sorts of exemptions and the reasons that authorities give. We ourselves receive information requests, and I know with absolute certainty that 50 per cent of them are not about me—they ask me for information that other bodies hold. Some types of requests do not result in any information, so you can be confident about those.

There are many requests that result in a partial disclosure of information. From looking at the cases that come to me, I find that authorities give out what they hold. The key thing about FOISA is that it is about giving out what is held. If we were to say that the information had to be checked for accuracy before it went out, that could result in an authority changing what it held if it decided that it had made a mistake on a spreadsheet and had not added up the figures correctly. We would then get into difficult waters of considering what a public record is and whether the authority would then hold both. Some authorities might notice such things and provide the information that they hold while saying that, actually, it should be something else. I do not think that we can characterise one type of behaviour.

As to whether we have other ways of knowing whether the figure is accurate, the confidence element comes from other parts of my statutory duties, particularly those relating to good practice by authorities. We give a lot of guidance and we hold events and briefings. From the types of questions and responses that I get, I am confident that authorities try to give out what they hold, although they might not achieve that 100 per cent. Authorities are not required to give specific explanations, but we encourage them to communicate and give advice and assistance to help the requester understand it.

When campaigns make FOI requests, the information that they get is not the only information that they look at. If they are campaigning on or researching an issue, they will have information from lots of places. As with any other piece of research, analysis and evaluation, they will look at all the information and compare and contrast it.

As to whether it would make a difference to change the law so that accurate information must be given out, we would still be in the same place if somebody was not happy with the information that they had been given. If the law stated that accurate information must be given, would that mean that people could rely 100 per cent on the information when they got it? Would they still think that the authority might not have given them accurate information? At the moment, people can challenge what they get by saying that they do not think that the authority has given out all the information that it holds.

John Wilson: You raise an interesting point about people's confidence in the accuracy of the information that is provided. However, should anyone who makes an FOI request not expect it to be 100 per cent accurate?

Rosemary Agnew: That is difficult, because it would depend on the information. If the question was something like, "Can you tell me how much money you have spent on X?", the person making the request should expect to get entirely accurate information on that. If there was any inkling that it was not accurate, it might be because not all the information had been given, so the person could challenge the information on that basis.

Other types of information are trickier, however. For example, an economic report on the evaluation of option B of the next phase of a town development would be, by its very nature, subjective, as it is about opinions. At what point do we stop judging whether something is or is not accurate? That is why I think that the balance that we have at the moment, which is that public authorities must disclose what they hold to enable a wider public scrutiny, is working effectively.

John Wilson: Interestingly, your example of a report on plan B for the latest town centre development also raises the issue of the minutes

of meetings, to which you referred earlier. I have seen the minutes of meetings of public bodies that could mean anything to anybody because they are so vague about how a decision was made and who participated in it. Have you had any discussions with public bodies about how they record their decision-making processes? For example, a major decision about a multimillion-pound expenditure programme can be reported by one line that states, "Members agreed, on division, to go forward with this development." There is no accurate information in that on who voted and when, where and on what, or on whether there was a plan B, for example. How does someone get that type of information through an FOI request, given that your reference was to information that is held by an authority?

Rosemary Agnew: That is an area that takes us into other legislative frameworks rather than just freedom of information. For example, the Public Records (Scotland) Act 2011 is about how records are to be kept and organised. It involves issues of conduct and whether someone is carrying out their function properly. Ultimately, though, I do not think that it is my place to say to an authority that it must record its minutes in a particular way. What I can do is say that it is good practice to ensure that the information that it proactively publishes sets out its decision making and holds it accountable to scrutiny. However, if we got into the territory of a commissioner telling a council how it must record its minutes, would that mean that, on the basis that the policy must apply to all public bodies, the commissioner must tell the Government and the Parliament how to record minutes?

There must be provision for authorities managing themselves, and FOISA gives us access to information that allows others to challenge how they do that. If the public record is not what the public are looking for, then they are at least able to challenge it on the basis that they think that it is inadequate. Others can then take up the cause, too.

John Wilson: You indicated earlier that you give guidance in briefing sessions to public bodies. Can members of the public attend such events?

Rosemary Agnew: Yes. For example, in the past couple of months, we have conducted two regional roadshows—one in Aberdeen and one in Ayr—in which we have provided guidance and briefing sessions for public bodies. We have met people from the local press, voluntary groups and as many local MSPs and other elected members as possible. We also run events and issue guidance for requesters, particularly through our website, which has, for example, tips for making information requests that are most likely to result in a solid response. We try to cover the advice and guidance for all parties as much as we can within our limited budget.

Anne McTaggart (Glasgow) (Lab): How much does the appeals process cost?

Rosemary Agnew: In broad terms, I have a budget of around £1.5 million, and I deal with the appeals within that. I also use that budget to do all the advice and guidance work. However, that is really only the end point of it.

I am really interested in the issue of the costs of dealing with freedom of information requests. Bear in mind the fact that, even if there were no freedom of information legislation, people would still ask questions of public bodies; they just would not have an enforceable right behind their request. The most effective way of dealing with freedom of information requests is for the information to be there for people to look at. We therefore need to encourage public bodies to see that it is worth investing in getting their records out there in the first place.

We very much promote the concept of getting it right first time. I get frustrated when I get appeals that concern a failure to respond, because I think that it is disrespectful on the part of authorities not to respond. They could deal with the requests and get it right first time. Many authorities do well at that—we know that from feedback that we get. Once you have gone beyond that, if you engage the internal right to appeal—the costs of which vary between authorities—you are then ramping up the costs, because internal reviews tend to be dealt with by more senior people, as they require someone in authority to revisit the case in its entirety. Evidence suggests that most authorities deal with the issue at that point. The real cost of appeals comes not when the appeals reach me but when my investigations are responded to, because my investigations are thorough and ask probing questions, and they often require authorities to carry out more work. I hope that they learn from that that, if they want to keep FOI costs down, they should invest at the front end and get it right first time.

Anne McTaggart: Obviously, 1 per cent is extremely low, but could the cost possibly be a deterrent to people going through the process?

Rosemary Agnew: It costs the requester nothing in financial terms—I do not think that it is ever true to say that these things cost nothing, but it is not like taking a court action; it is a free process. It involves an investment of time. Investigations have to be impartial and fair so, when it reaches me, we have to ensure that both parties are asked questions and get the chance to respond.

Without extensive research, I do not know what might put people off coming to me. If anything

does, it is more likely to be the wider issue of complainer fatigue—people saying, "I've just been waiting so long and I can't get to that point." I do not think that it is a big issue, but I do not know.

10:45

Jim Eadie (Edinburgh Southern) (SNP): Good morning. I would like to stay with the theme of public confidence in the regime that exists in Scotland and what you referred to as the concept of getting it right first time.

Has any independent research—either quantitative or qualitative—been undertaken that would allow us to understand, when a request is made by a member of the public, whether the public authority is being deliberately obstructive in not making available all the information that it holds or whether in fact it is simply that a junior member of staff is handling the request and they have not interrogated the information to the extent that they should have? How do we distinguish between those two possibilities, for example? Has there been any independent research that would allow us to get below the surface of some of the issues so that we can understand what is happening when requests are made?

Sarah Hutchison (Office of the Scottish Information Commissioner): There is one piece of research that we commissioned jointly with the University of Strathclyde about three or four years ago, which looked at the experience of voluntary sector organisations in making FOI requests. I do not have the figures with me, but the findings are available on our website. The fact that most of the people who made requests received the information that they wanted is very promising.

The key finding of that research was that there was some concern among voluntary sector organisations that making requests for review—in other words, taking FOI to the second step—or making appeals to the commissioner might be seen as a negative behaviour as far as their relationships with public authorities were concerned. We would certainly have liked to investigate that further, but we have very limited means of doing so. We are hoping—but it has not come to fruition yet—that somebody might be able to pick that up as an area of further study; it is one that is worth looking at.

Rosemary Agnew: The appeals that come to me are a pretty good indicator of people's perceptions. They come to me for a range of reasons but, increasingly, they are coming to me because people are dissatisfied with the handling of their information requests. I do not think that that is an accuracy issue; it is more a customer service and respect issue.

Jim Eadie: My colleague Mr Wilson asked about the information on minutes that is held by public authorities and you mentioned good practice in that context. I will give you a specific example in a moment, but as a general principle, for how long should a public authority—be it a local authority or any other public authority—hold information?

The example that I have in mind is private finance initiative contracts. A number of PFI contracts involving health boards and local authorities have a particular time limit—they might be of 25 or 30 years in duration. I would be concerned if a member of the public could not request information during the period of a contract, for example, and was denied information on the basis that the public authority no longer held it. Do you have a view on that?

Rosemary Agnew: That is a very good example of a situation in which FOISA is not the only piece of legislation that counts. If we look at the work that the keeper of the records of Scotland is doing in relation to public record keeping, authorities are now required, on a rolling basis, to have a records management plan. A key element of a records management plan is a retention schedule that sets out what sort of documents will be held at various times and when they will be destroyed. That is the sort of document that we would expect an authority to publish—we publish our own.

Jim Eadie: Would it be an expectation of good practice that if there was a PFI contract, an information management plan would be attached to that contract?

Rosemary Agnew: A plan might not necessarily be attached to the specific contract, but I would expect a good retention schedule to refer to that type of document and to say that such documents will be kept for the duration of the contract and for X months after it ends or whatever is appropriate. I am not trying to be evasive; it is just that legally, different documents have to be kept for different lengths of time. In addition, with PFI and contractual-type documents, there may be impacts in relation to procurement legislation, which might involve other information requirements.

I cannot say that the period should be a particular number of months or days, but my strong view is that an authority should be up front about how long it keeps types of documents so that, if we think that that length of time is incorrect, we can challenge it on record keeping grounds rather than through FOISA.

I will describe the flip-side. If an appeal came to me in which I thought that the requester had a reasonable expectation that the authority would

hold a document but was told that it had been destroyed, we could look at the authority's retention schedule and say, "You say that you will keep this type of information for six months, so why do you claim that it has been destroyed three and a half months in?" That would be the way to check whether the authority was doing what it publicly said that it would do.

Jim Eadie: That is helpful. What about information that is denied to a member of the public on the basis of commercial confidentiality? Do you have any case studies or examples in which you have challenged such a decision?

Rosemary Agnew: How long have you got? We have challenged that in a couple of decisions. I am thinking of the Clatto landscape protection group decision, which concerned a wind farm in Fife and in which that very position was challenged. My perception is that commercial in confidence is often not the same as commercially sensitive. Through our guidance, we encourage authorities to use the correct exemption if they are trying to withhold information. Things are not often commercially sensitive, although they might be commercially confidential, which means that disclosing them could be challenged under a legal process.

The exemption that we are discussing is probably the most difficult for authorities to apply. We get lots of requests for advice and guidance about it, which we always give authorities. We cannot tell them how to deal with a case, because we cannot prejudice our position, but we issue briefings on the exemption. I have to say that it is not used overly well.

Jim Eadie: I could continue, but I think that it is best to stop there.

Chic Brodie: I will return to openness and transparency. There are 60,000 requests to you, which is a fair number, and goodness knows how many do not go to you because they are answered.

I have two associated questions. Currently, there are superior bodies that are not Scottish public authorities. There might be an issue with a freedom of information request that is to a Scottish public body but which has to go to a body elsewhere. How do you handle that?

You talked about a fine of £5,000. The Scottish Parliament information centre briefing says that

"Section 65 of FOISA makes it a criminal offence to '... alter"—

alteration should be reasonably easy to discover—or to

"deface, ... erase, destroy or conceal ...' information".

What happens when a public body blocks the release of information or tells someone to find the information themselves?

Rosemary Agnew: You raise a heap of things. I apologise if I misled the committee—the 60,000 requests are to all public bodies in Scotland. Of them, 572 or 573 came to me in the previous financial year.

Chic Brodie: That is my fault—I misunderstood.

Rosemary Agnew: When information is held not by a public authority but by a contractor, if it is held on the public body's behalf or if it is part of the contractual arrangements—there is quite a lot on that in the Government's guidance, which is the code of practice under section 60—and if it is the authority's information, the authority should make arrangements to get it to us.

If there is information that is not held by a public authority but which it thinks might be helpful, it cannot tell the other organisation to give the information to it to send to the requester, but it can signpost the requester and give them advice and assistance on how to get to the information.

We then come to whether all the bodies that should be covered by FOI in Scotland are covered. That is covered under section 5 of FOISA, which is on the designation of new bodies. Ministers have recently made an order to make culture and leisure trusts subject to FOI. I have more concern in that area, because if we are not careful, there will be an erosion of the enforceable right because things are outsourced or moved to the private sector. We are currently conducting research on the issue, because we want to lay a special report before Parliament on how we think section 5 duties are being exercised and how we think we can make FOI applicable to more bodies and different types of bodies.

Ultimately, if the authority's information is held by a third party, the authority must take steps to get the information within the statutory timescales and to disclose it as appropriate to the requester.

Chic Brodie: What about the issue of blocking?

Rosemary Agnew: Basically, blocking is withholding information that should be disclosed; that is how I would interpret it. That is the very thing that someone can come to the commissioner on.

The question then becomes whether it is simply the case that the information has been mistakenly withheld, or whether there has been a deliberate attempt to block that information to prevent the request from being responded to. You can know the answer to that only when the facts of an investigation are in front of you. To raise the issue, under section 65 of FOISA, of a deliberate attempt to block, I do not have to be convinced lock, stock

and barrel that a definite attempt to block has been made, but there has to be sufficient grounds for me or others to think that the issue should be investigated as a criminal matter. I see very, very few such cases, and I think that the reason why I see so few of them is that section 65 is very often related to the conduct of an individual rather than to that of a body corporate—I would say that most organisations try to respond to information requests as best they can.

John Wilson: I ask Ms Agnew to clarify her last statement about the individual and the corporate body or corporate entity that they represent.

Rosemary Agnew: What I mean by that is that, when it comes to criminal charges, the wording of section 65 refers to any individual who is employed by or who is acting on behalf of the authority. There may be a suspicion that an authority has blocked information, but I am suggesting that the decision to do so, if it were a deliberate decision, would be made by individuals or groups of individuals and would not be representative of an organisation as a whole always behaving in that way.

John Wilson: I am sorry, convener, but I want to get clarity. If you were to take to the Court of Session proceedings against a public body for not providing the information as requested by either the person who made the FOI request or yourself as the commissioner, who would you be taking to the Court of Session?

11:00

Rosemary Agnew: My apologies. There are two types of enforcement going on. Under section 65, which relates to a deliberate attempt to deface or block information, I would not take people to the Court of Session; that matter would be turned over to and investigated by the police and, ultimately, the Crown Office and Procurator Fiscal Service would decide whether to prosecute.

If, after investigating an appeal to me, I decided that an authority had not disclosed all the information that it held and I had no reason to believe that it was for any other reason than that it simply did not do it—if I was not suspicious that it was a deliberate attempt to block information as addressed in section 65—I would go to the Court of Session only if the authority refused to take the action that my decision said that it must take. I have never had to take that action as commissioner and neither did the previous commissioner, because authorities have always complied with decisions so far.

John Wilson: Thank you for that clarification.

The Convener: Thank you very much, Ms Agnew and Ms Hutchison. We will now consider the next steps. Your evidence has been excellent. I have enjoyed your insights into the issue.

As the committee knows, we have written to the Scottish Government about the issue and still await some feedback from it. I suggest to the committee that we continue the petition until we have had the information that we have asked for and that we give the petitioner the opportunity to comment on the evidence that we receive. That is the normal procedure. Do members agree?

Members *indicated agreement.*

The Convener: I thank both of our witnesses for coming along. I will suspend the meeting for two minutes to allow them to leave.

11:01

Meeting suspended.

11:03

On resuming—

New Petitions

Time for Reflection (PE1514)

The Convener: I restart the meeting and will, with the committee's agreement, swap agenda items around.

PE1514, by Norman Bonney, is on making time for reflection representative of all beliefs. Members have a note by the clerk, the SPICe briefing and the petition.

I welcome Norman Bonney to the meeting and invite him to make a short statement of around five minutes, after which we will go to questions. Thank you very much for agreeing to come in a different order, Mr Bonney.

Norman Bonney: Convener, I thank you and your colleagues very much for giving me the opportunity to address the petition that I have submitted, which proposes that the Parliament attempt to make its weekly time for reflection more representative of the diversity of belief in Scotland.

Many people whom I have come across in the circles in which I mix have said to me that they cannot support the petition because they believe that religion and politics should be kept separate and that the Scottish Parliament should not have religious time. However, we should recognise that there is an existing practice of time for reflection in the Scottish Parliament and I will try to explore ways in which it can be more representative of the range and diversity of belief in Scotland.

People have also asked me why the Parliament has a special item on religion. It is the only item that is open to outsiders. Why does the Parliament not have time for artists, scientists or others to address it?

The argument goes that the Parliament should focus on governing the country instead of engaging in such activities. However, time for reflection is a reality at the present time, and it is unlikely that the Scottish Parliament will drop it, at least this side of the referendum.

The petition is an attempt to find common ground between the religious and the non-religious. It proposes an equal opportunities approach and suggests a way in which that common ground can be developed. Equal opportunities was an original ambition of the Scottish Parliament and continues to be one of its orienting features, but I would argue that the Parliament is falling down in its equal opportunities ambitions in relation to time for reflection.

The original debate in 1999 showed that some MSPs had concerns that organised religion would have disproportionate weight in time for reflection. Indeed, Alasdair Morgan, a Scottish National Party MSP, expressed that very concern in the debate. Mike Russell, also an MSP but not a Government minister at that time, reassured him that groups such as humanists would also get opportunities. Perhaps it is by sheer chance that time for reflection today is to be conducted by a humanist. However, one swallow does not make a spring. By my reckoning, it is the third—some of the publicity material says that it is the fourth—time for reflection that a humanist has led out of the 450 times for reflection that we have had.

According to the statistics, which I have worked on and which the Parliament also reports on, 87 per cent of contributions in the current parliamentary session—in other words, since 2011—have been made by religious contributors, even though in the 2011 census only 56 per cent of Scots said that they were religious. More recent survey information, which I have made available to the committee, points out that 49 per cent of Scots today say:

"I would not describe myself, or my values and beliefs, as spiritual or religious".

Organised religion has come to dominate time for reflection although the original intention was that TFR should cover the diversity of beliefs. Tom McCabe, the business manager at the time of the 1999 debate, said that time for reflection should be a time for

"all the main beliefs held in Scotland ... to reflect the diversity of our country".—[*Official Report*, 9 September 1999; c 372.]

However, we cannot say that that is the case if 87 per cent of contributions are religious.

I would argue that, in some ways, there are deficiencies in parliamentary practice in relation to time for reflection. Parliament has allowed itself to be influenced by outside bodies. On its website, the Scottish churches parliamentary office claims to advise the Parliament on who should appear at time for reflection. It also claims that time for reflection is like "Thought for the Day", but that is not my understanding of what time for reflection was originally meant to be. "Thought for the Day" on the BBC is exclusively for religious contributors but, from the beginning, time for reflection has been for the diversity of belief in Scotland.

It also appears from the statistics that, over the years, Parliament has in practice operated quotas that have determined that, every year, the Church of Scotland makes the most contributions to TFR and the Roman Catholic Church the second most. Other Christian denominations are also greatly overrepresented, as are non-Christian religious

denominations. If we look at consecutive sessions of the Scottish Parliament from 1999, we find that non-Christian religious denominations have made 13 per cent, 16 per cent, 12 per cent and 17 per cent of all contributions to time for reflection. However, according to the 2011 census, non-Christian denominations composed only 2.1 per cent of the Scottish population.

I am suggesting that TFR needs to get its contributions more in accordance with population proportions. In particular, it needs to give much greater prominence to contributions from atheists. The latest survey data, which I have also made available to the committee, suggest that firm atheists—people who have no belief in God or any higher spiritual power—make up something like 25 per cent of the Scottish population. Therefore, I argue that the Parliament should make 25 per cent of the time for reflection opportunities available to atheists.

Only a handful of explicit atheists have made contributions to time for reflection in the 15 years of the Scottish Parliament. I would hazard a guess that quite a significant proportion of MSPs are atheists but they do not admit as much publicly. We know from public records that about one in three MSPs has declared a religious—mostly Christian—affiliation. If MSPs are representative of the whole population, at least 25 per cent of them will be atheist—and I suspect the figure is more than that.

What about the gender aspects of time for reflection? We know that women are more religious than men, and yet most religious denominations are dominated by men. Women are excluded from the priesthood in at least three of the denominations that make contributions to time for reflection. Surely Parliament needs to think more about that issue, especially in light of the recent Scottish Cabinet decision to make 40 per cent of places available to women. Should not time for reflection have a quota for female contributors to balance the dominance of men in religious denominations? Why not set a quota of 40 per cent of TFR places for female contributors rather than the 30 per cent we have seen in the current parliamentary session? That quota could be set even higher to encourage denominations to think more about the way in which women are often second-class citizens in time for reflection.

Broad guidance was developed in 1999 for the way in which time for reflection was practised in the Scottish Parliament. SPICe says that the Parliamentary Bureau plans to look at census figures in the near future. Given that the census was three years ago, that is not a very positive commitment. The Parliament needs to take a much more active stance in evaluating its current practice in relation to time for reflection. There has been no public parliamentary review of time for reflection since 1999, and there is a lack of clarity of policy about how particular participants are selected—

The Convener: Excuse me, Mr Bonney—I am sorry for interrupting but we are a bit short of time today. If you take too long for your statement, you will not have any time left for questions.

Norman Bonney: Have I exceeded my five minutes?

The Convener: Yes.

Norman Bonney: Okay. My point is that there needs to be open parliamentary consideration of the way in which time for reflection works and how it might be improved to reflect more the pattern of belief in the country. I particularly stress the importance of applying equal opportunity principles in that respect, but perhaps I will have the opportunity to develop that point.

The Convener: Thank you for your opening statement. You have made a number of points about changing time for reflection, but how would that happen in practice? How would you change the organisation of time for reflection?

Norman Bonney: First, I think that Parliament must have an open public debate about whether it is satisfied with how time for reflection operates. If it saw the sort of figures that I have offered, it would begin to realise that it needs to think more carefully about that issue.

There are all sorts of ways in which the organisation of time for reflection could be changed. I mentioned the application of equal opportunity principles. One would have thought that a Parliament that is committed to equal opportunity principles might apply them to time for reflection. After all, by putting time aside for it every week, the Parliament must consider it to be a significant part of its business, and we need to see how equal opportunity principles can be applied to it.

One of my major points is about the underrepresentation of atheists in time for reflection. A straightforward way of filling that gap would be to follow the simple principle of advertising. After all, it is generally accepted that when you have to fill posts, you put out public advertisements, and the Parliament should be prepared to put more time and effort into selecting who is involved in time for reflection. A public advertisement inviting applications from people to make contributions might well bring forth proposals for atheists and could help to fill the gap that I have identified.

The Convener: Do you accept, in general terms, that parliamentary staff attempt to ensure a widespread and diverse group of contributors for

time for reflection, and that it is open to any member of the public and, indeed, any MSP to make recommendations as well?

11:15

Norman Bonney: I have no doubt that staff follow the guidance that they have on how they should operate time for reflection; what is at issue are the policies and principles that are followed in filling the available slots. I think that parliamentarians must reflect on that to ensure that appropriate instructions can be given. I suspect that too much power and influence is given to the churches, through the Scottish churches parliamentary office, the Inter Faith Network, Interfaith Scotland and so on, which provide a channel through which the Presiding Officer can quickly find someone appropriate to fit in with the pattern of contributions.

Chic Brodie: What is your objective in having humanists present time for reflection? Have you attended any times for reflection?

Norman Bonney: No, but, of course, one can see them online. I understand that attendance by MSPs is often not that great. In fact, I heard one contributor say that she was disappointed that, instead of all the MSPs listening to her, some were standing outside having a chat until time for reflection was over.

Chic Brodie: We all take time to reflect on our own particular gods from time to time—it does not necessarily have to happen in the chamber.

What is your objective with this petition?

Norman Bonney: To draw the Parliament's attention to the way in which it does not seem to be living up to its principles of equal opportunity, and to have time for reflection as an item that reflects—

Chic Brodie: But you have accepted—

Norman Bonney: If I may finish, I also want to draw attention to the way in which Parliament seems not to be living up to its principle of having time for reflection reflect the full diversity of belief in Scotland.

Chic Brodie: You have accepted that time for reflection is—regrettably, some might say—not well attended. I am sure that my colleagues exercise discrimination in how they approach various things, particularly their own philosophies. However, I am still not sure why you think that you are being denied something that cannot be promulgated more widely than just in the Parliament.

Norman Bonney: The Parliament is a special body that is representative of the people of Scotland and, indeed, has great ambitions to have even more powers in that field. I think that it has to demonstrate to people that it is fully representative. I am afraid that what we see in time for reflection is a religiously dominated slot, even though, as I have said, half the population can reasonably be said not to be religious, and ways have to be found to hear the moral views of that half of the population that is not religious.

Chic Brodie: I am still at a loss to see what advantage five minutes a week would bring that could not be gained by promulgating your philosophy on a much wider spectrum.

Norman Bonney: We are talking specifically about time for reflection. It is an important public arena, and I think that MSPs must give more consideration to what goes on there and should amend the Parliament's practices.

Chic Brodie: What do you think we should do about the oath of loyalty that we take when we become MSPs?

Norman Bonney: That is an interesting point. I have analysed the percentage of MSPs who make an affirmation rather than declare an oath, and I found that about 40 per cent of MSPs make an affirmation rather than swear on the Bible. That is another indicator of the non-religious element in the Scottish Parliament, and I hope that those members might want to speak up a bit more to enable atheist and non-believing voices to be heard in time for reflection.

John Wilson: You have talked about the number of people in the census who declared a religious affiliation or belief, extrapolated from that that 25 per cent of the time for reflection items should be presented by atheists and come up with the novel idea of putting out an open advertisement to invite atheists to come forward. However, when representatives of religious bodies take time for reflection, we know who they represent. If we invite atheists other than those from the Scottish Secular Society and the Humanist Society Scotland, how do we know that they are genuinely atheist and that they will present a genuinely atheist case at time for reflection?

Norman Bonney: Thank you for that question. By the way, I point out that secular societies are not necessarily atheists—religious people can be secularist if they believe in the separation of church and state. Someone does not need to be an atheist to be a secularist, which is one reason why I lodged the petition in my name rather than get the backing of an organisation.

I suppose that you are saying that, when someone from a religious denomination makes a contribution, you know broadly what they are going to say—but do you? You just take it on trust that a particular religious denomination will put

forward a person who is reasonably representative of those points of view. If we want a representative time for reflection that involves atheists, the Parliament will have to spend some time on that. It could invite applications and try to ensure that it gets a diversity of views from atheists.

I have tried to examine what we know about the characteristics of atheists. The social survey data shows that, actually, they seem to be a pretty representative bunch of people. They are to be found in all parts of society and are not a distinctive group in any way, except for the fact that they do not believe in religion. I expect, therefore, that you would get a diversity of views.

I am suggesting that Parliament needs to think a bit more about how it can get such a diversity and give due recognition to that 25 per cent of the population who say that they do not believe in God or any higher spiritual power.

John Wilson: You have made the case that religious organisations are overrepresented at time for reflection. Has every religious or belief organisation in Interfaith Scotland been invited to give time for reflection?

Norman Bonney: I guess so. I cannot say precisely, but certainly the overwhelming majority have been invited.

John Wilson: The majority, but not all.

Norman Bonney: I cannot be that specific. There might be an exception, but I doubt it.

John Wilson: We do not always invite religious people to give time for reflection—we have also invited individuals from the voluntary and public sectors. How would you balance it all out? You have identified 75 per cent of participants. With the remaining 25 per cent, would we be permitted to invite people from the voluntary sector, as long as they were not from a voluntary sector organisation that had religious affiliations? Is that what you are arguing?

Norman Bonney: Yes. With the 25 per cent that I have not identified, it would be open to the Parliament to decide on the priorities. That would include voluntary groups, which at present make occasional contributions.

The Convener: Members have no more questions. As you will know from previous experience, Mr Bonney, the next step is for us to consider how to deal with your petition. It is important that we write to the Presiding Officer—who, as you know, chairs the Parliamentary Bureau, which is responsible for the allocations—to get her view.

I seek members' views.

Angus MacDonald: In writing to the Presiding Officer, can we highlight Mr Bonney's comment that there has been no review of time for reflection since 1999?

Norman Bonney: I suggest that the views of the Equality and Human Rights Commission be obtained on whether time for reflection meets the Scottish Parliament's legal obligations in relation to equal opportunities. That is an issue that I meant to raise and develop.

The Convener: Thank you. This discussion is really just for committee members, but I am sure that members will take that point on board.

Do members agree to those suggestions from Angus MacDonald and Mr Bonney?

Members *indicated agreement.*

John Wilson: I know that Mr Bonney has given us a breakdown of the figures, but it would be useful to ask the Presiding Officer for a breakdown of who has given time for reflection over the past three years of the current session of Parliament and what body or religious organisation they represented. As I have said, some public and voluntary sector organisations have been represented.

We should also write to Interfaith Scotland to ask for its views, because I do not think that everybody who is involved in that body has automatically been invited to give time for reflection. Angus MacDonald is right that it is time to review the procedure for allowing people to come along. I also suggest that we write to the Humanist Society Scotland and the Scottish Secular Society for their views on the issue. Unfortunately, I do not think that we can write individually to the 1.5 million atheists out there, but I hope that, if any are listening to the broadcast of the meeting, we might get some views from members of the general public, who might wish to contribute to the debate by making a written submission.

The Convener: Do members agree with John Wilson's suggestions?

Members *indicated agreement.*

Anne McTaggart: To add to those suggestions, I wonder whether, when we ask the Presiding Officer for a breakdown over the past three years, we can also ask about the gender balance. There have also been schoolchildren who have delivered time for reflection.

Angus MacDonald: Could we add the Scottish Independent Celebrants Association to the list of bodies to contact? I have the contact details, if they are required.

The Convener: Thank you for that.

As you have heard, Mr Bonney, we are continuing your petition, and we will discuss it at a

future date once we have received all the information. Thank you for coming along, for giving your statement and for being a witness today.

I suspend the meeting for two minutes to allow Mr Bonney to leave.

11:26

Meeting suspended.

11:29

On resuming—

Unmarried Fathers (Equal Rights) (PE1513)

The Convener: Item 2 is consideration of two new petitions. PE1513, by Ron Park, is on equal rights for unmarried fathers. Members have a note by the clerk, the Scottish Parliament information centre briefing and the petition. John Lamont MSP has a constituency interest and I thank him for coming along.

Mr Park, who is in the public gallery, is unfortunately unable to make a statement. However, given the exceptional circumstances, the committee will allow Margaret Park to read out a statement on his behalf. We will not put any questions to Mrs Park. After that, I will ask Mr Lamont to make a brief statement, and then the committee will consider the petition.

Mrs Margaret Park: Lady and gentlemen committee members, I thank you all for allowing me to speak on my son's behalf. These are my son's words and I will read them as he wrote them.

"In addition to what I am sure you've already read in my petition, I'd like to share one more set of statistics from the General Registry Office. In 2011, of the 29,888 births registered in Scotland, 3,123 were registered to a sole parent, an incredible 10.4 per cent. Taking into consideration that a child is under the age of 16, it can be estimated that there are as many as"

50,000

"children whose births are registered to a sole parent.

Keeping this in mind, I'd like to focus our attention towards the United Nations Convention 'The Rights of the Child', specifically section 9, which states, 'You should not be separated from your parents unless it is for your own good ... Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child', a right which—by failing to require both parents to be named on a birth certificate by law, either amicably, by mediation or as a last resort by court ordered paternity testing—we fail to guarantee every child born in Scotland and, in far too many cases, fail to uphold altogether.

This goes hand in hand with fathers' rights and both speak to the very same grey area within our current laws, in that unmarried fathers have no legal rights until they are court awarded. As such, the child cannot see them. The measures I have proposed (or measures otherwise determined) will give family courts the power to enforce paternity testing in extreme cases, be it against the mother's wishes or the father's, and requiring by law that within a predetermined timescale every effort should be made and every avenue exhausted to name both parents on an amended birth certificate so as the child has their full rights protected and upheld, and they have access to both parents, and indeed that both parents have legal and binding responsibilities in relation to their child, if these are of course in the best interests"

of the child.

"I would like to close by quoting one of the comments posted on my petition, which I am sure all of you have read. It came from a woman known only as Pauline. Pauline wrote:

'It is totally unacceptable for a father to be denied parental rights under any circumstances (unless he is an unfit parent). I speak from personal experience—as a child, I was not allowed to see my father. My mother denied him his rights by denying that he was my father even though she continued for many years to accept financial support from him. Both my parents are dead and I only ever got to meet my father once as a young adult. It was too difficult to develop a relationship due to all the anger and rejection felt by both of us. I pray that this legislation will be changed so that no other child has to deal with the pain of rejection for no reason other than spite of the other parent.'

This is the voice of a child failed by your current legislation—a child who quite obviously has suffered, and continues to suffer into adulthood. ... we failed to protect her rights to the best of our abilities. This has to change, and I feel my proposals set forth are a step in the right direction to rectifying this terrible situation we continue to place some children in. Mothers and fathers have to be considered to be equal in terms of rights, accountability and responsibility. Giving precedence to one over the other is an outdated notion. A child needs both and if that is at all possible and in the child's best interests, this is what we should strive for every single one."

The Convener: Thank you for coming along and reading out the statement at late notice. I appreciate it.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I thank the committee for allowing Mrs Park to provide evidence on behalf of her son. I understand that the case is exceptional and I am pleased that the committee was able to listen to Mrs Park, who did remarkably well, given that she had no time to prepare. I say well done to her.

Ron Park has been in correspondence with me about the difficulties that he has had in obtaining access to his son. I think that he has contacted 87 other MSPs, as well, so committee members might have had correspondence from him. I have pursued the matter as his constituency MSP.

I have been in contact with the Minister for Community Safety and Legal Affairs. I think that the Scottish Government has some sympathy with the position that Mr Park finds himself in, but it says that it has no plans to amend the law as it stands. That is why Mr Park decided to pursue his

issue through the committee, as he has done. It is important to remember that he is not doing so only on his own behalf; he is championing the cases of many others in Scotland who find themselves in a similar position. I hope that the committee will look at his case with some sympathy.

The Convener: Thank you.

We cannot put questions directly to Mrs Park but, from looking through the briefing, I understand that there is a presumption of shared parenting in legislation in England and Wales. Is that a good comparison with what the petitioner wants for Scotland?

Mrs Park: Yes.

The Convener: I am sorry; I was speaking to John Lamont.

John Lamont: At the very least, we need to look at how other countries have dealt with the issue. I am not saying that that is necessarily the position that we in Scotland need or want to be in, but we certainly need to look at the issue from other perspectives to find out what the best-case scenario would be for Scotland.

The Convener: I throw open the discussion for members' comments and contributions.

Chic Brodie: I say well done to Mrs Park.

Mrs Park: Thank you.

Chic Brodie: I also thank John Lamont.

I, too, have had correspondence with Mr Park, and I think that the petition is brave. Notwithstanding the comments that have been made, it seems to me that there are opportunities that might be taken to declare parentage. Will Mr Lamont comment on how DNA evidence might be pursued?

John Lamont: I am not familiar with the exact details of how that works, but I understand that a Scottish court cannot force somebody to provide a child's sample for DNA testing. I suppose that that is the root of the problem. If a child cannot be forced to provide a sample, there is no way of ascertaining their parentage. From my correspondence with the minister, I think that that is the key point of law that the Government is not prepared to look at.

The Convener: I remind members that John Lamont is not here as a witness. It was therefore perhaps not fair to ask him that question, although I fell into that trap earlier, as members know.

Chic Brodie: I was just looking for his superior knowledge.

The Convener: I think that we are clear on Mr Lamont's superior knowledge but, if we need information, we must write to various organisations.

Anne McTaggart: I thank the petitioner for bringing this important petition to us. The convener is right—I would like the committee to consider seeking more information to enable the petition to move forward. That should certainly include information about the England and Wales model.

The Convener: Do members agree that we need to seek further information on this important petition, such as information from the Scottish Government, the Law Society of Scotland, the Family Law Association and Families Need Fathers Scotland as a starting point?

John Wilson: Can we add Scottish Women's Aid to the list? The petitioner has identified that there may be issues around why the mother decides not to register the father on the birth certificate or to engage further with the father in relation to the relationship that exists. It would be useful to get a view from Scottish Women's Aid on some of the issues that the petitioner has raised so that we have a balanced view in the responses.

The Convener: Do committee members agree with John Wilson's suggestion?

Members *indicated agreement.*

The Convener: Are there any further suggestions?

Anne McTaggart: It would be folly for us not to mention the work that the Equal Opportunities Committee is doing. I am aware that it might not be on this exact topic, but can we have an update or a summary of where it is at with its investigation?

The Convener: Yes—thank you for that.

Chic Brodie: I do not know about other committee members, but the petition strikes a chord with me, as it is not far away from the profound inquiry that we did into child sexual exploitation. We pride ourselves on having an equal society. We should pursue the routes that have been mentioned. I do not know whether we could do anything with a review of the Children (Scotland) Act 1995 or whether we could get information from the United Kingdom Government, given its experience, but those might be areas to explore.

As I said, the petition is brave. It is sad that the matter has not been sorted before. My mind immediately turns to people who try to find out in later years who their father is but cannot do so because there is no registration. I commend Mr Park for his bravery in lodging his petition and I sincerely hope that we will not drop it easily.

The Convener: Do you want the committee to write to the relevant UK minister?

Chic Brodie: I do.

The Convener: We will find out who the appropriate minister is and write to them.

As there are no further comments, are members happy with the proposed course of action?

Members *indicated agreement.*

The Convener: I thank Mrs Park and Mr Park for coming along today, and I thank John Lamont. This is a difficult area, but the committee will pursue it with as much activity as it can, and the petition will be on future agendas.

We will have a short suspension to allow our witnesses to leave.

11:42

Meeting suspended.

11:43

On resuming—

Current Petitions

Judiciary (Register of Interests) (PE1458)

The Convener: Our first current petition for consideration today is PE1458, by Peter Cherbi, on a register of interests for members of Scotland's judiciary. Members have a note by the clerk, which is paper 4, and the submissions.

Members will know that we sought permission from the Conveners Group to get a date for a plenary debate on the subject. The Conveners Group looked at that request and a date will be allocated in due course. Once we have it, we will ensure that members are informed. Members will also know that the Judicial Complaints Reviewer has supported the petition and that the petitioner urges us to ask Lord Gill for hysterical data on recusals, which we are still to follow up.

Chic Brodie: "Hysterical"?

Anne McTaggart: "Historical".

The Convener: I meant "historical".

Chic Brodie: You were probably right the first time. [*Laughter*.]

The Convener: The next step is to consider how we will deal with the petition. I suggest that we continue the petition until we have had a full debate on the matter in the chamber. I invite members to comment.

John Wilson: We seem to be at an impasse in relation to the petition. However, the latest submission from Moi Ali opens up a number of issues. From her unique position as the Judicial Complaints Reviewer, she has certainly brought forward more evidence—in my view, anyway—with regard to the current situation.

We have had a response from the Lord President and the Cabinet Secretary for Justice. However, I am keen that we get their current views in response to the latest information from Moi Ali. I hope that it will be more than the one-page, three-paragraph response that we seem to get from the Lord President and the cabinet secretary—it is almost as if it is scripted. The Lord President comments that neither he nor the cabinet secretary is minded to open the matter to review.

It would be useful, prior to the debate in the chamber, for the committee to ask the cabinet secretary and the Lord President for their detailed views on the issues that the Judicial Complaints Reviewer has raised. Her submission raises a number of issues, in addition to those that she raised in oral evidence, that require more detailed

scrutiny and a more detailed response from the Lord President and the cabinet secretary.

The Convener: Do members agree with John Wilson's suggestion?

Members *indicated agreement.*

Angus MacDonald: I place on record that I am grateful for the additional information that the Judicial Complaints Reviewer has provided. It certainly presents us with some issues that we need to follow up, and I am happy to second John Wilson's suggestion.

The Convener: If there are no further comments, are members happy with the proposed course of action? We will continue the petition, and there will be a plenary debate, with the date to be resolved. We need to chase up a couple of other issues with Lord Gill, in addition to addressing the points that John Wilson raised. Are members agreed?

Members *indicated agreement.*

Chic Brodie: Is the letter from the Judicial Complaints Reviewer on the website?

The Convener: Yes.

Co-location of General Medical Practices and Community Pharmacies (PE1492)

The Convener: Our next current petition is PE1492, by Alan Kennedy, on co-location of general practitioner practices and community pharmacies. Members have a note by the clerk and the submissions.

Members will be familiar with the crucial landmarks: the Wilson and Barber review, which was a first-class review of the issue, and a consultation by the Government. I understand that the consultation findings will be published shortly, and we expect amendments to be lodged prior to the summer recess.

There are a number of potential options for the petition. I suggest that we do not close the petition at this stage but instead defer consideration to a future meeting following the publication of the Scottish Government's report on its control of entry consultation and its presentation of the draft regulations.

Do members agree to that course of action?

Members *indicated agreement.*

Confidentiality Clauses (NHS Scotland) (PE1495)

The Convener: The next current petition is PE1495, by Rab Wilson, on the use of gagging clauses in agreements with national health service staff in Scotland. Members have a note by the clerk and the submissions. Members will know that the Cabinet Secretary for Health and Wellbeing said on 27 February that confidentiality clauses will be removed from standard NHS settlement agreements in Scotland and will be used

"only where there is explicit agreement between both the employer and the employee."

It is up to members to decide how we deal with the petition. The two main options are to close it in the light of that information, or to continue it—as we are doing with the petition from Alan Kennedy—to allow us to analyse what happens in practice.

Jim Eadie: It is clear from the correspondence that the committee has received from the Scottish Government and the cabinet secretary that there is a clear commitment to remove confidentiality clauses from standard NHS settlement agreements in Scotland. My concern about closing the petition is that we would not be able to continue our on-going scrutiny function with regard to the implementation of Government policy by health boards in Scotland. I ask the committee to pause and reflect on that point before taking a decision.

The Convener: Do you wish to recommend that we continue the petition?

Jim Eadie: I think that we should consider the point that I have made before we take a decision to close the petition.

John Wilson: There is an issue. The convener highlighted the cabinet secretary's wish that gagging clauses be removed from any settlements between an employer and an employee, and any agreement should be dealt with in that manner with regard to such clauses.

The difficulty is that many settlements between employers and employees are subject to employment legislation. As I think Jim Eadie alluded to—he can correct me if I am wrong—it might be difficult to get to the debate and discussion that takes place at meetings between employers and employees so that we can ascertain whether gagging clauses are actually enforced, in financial terms. Employers can do things in ways that do not involve directly stating that a settlement is subject to a gagging clause. The question is how we get information from the human resources departments of the health boards throughout the country on the individual discussions that take place between the employee and employer.

Jim Eadie is right that we should keep the petition open to allow further scrutiny of the practices that are put in place by HR departments and health boards throughout Scotland. We can then get an accurate reflection, and we will know

whether they are reflecting what the cabinet secretary has indicated he wishes to happen rather than engaging in a back-door discussion that allows the practice to continue.

The Convener: That is a useful point. One possibility would be for us to write again to Scotland's health boards in six months' time and ask them to confirm their actual practice, so that we get the information direct from the horse's mouth.

Chic Brodie: Members may correct me if I am wrong, but it is my understanding that the cabinet secretary and/or the minister are now getting involved in signing off compromise agreements, although I cannot imagine that they will be signing off all of them. That in itself demands that we keep the petition open.

That will allow us to understand better the rationale behind what has been happening, notwithstanding the signing of compromise agreements. I know that the UK Secretary of State for Health believes that such agreements will not prevent people from speaking out but, as we heard two weeks ago, that has not been the case. It is important that, as Jim Eadie said, we continue to have the ability to scrutinise the issue.

The Convener: Do members agree to continue the petition? We will set a date in future and write to health boards.

John Wilson: Chic Brodie is right. The petitioner has been good at submitting evidence to the committee and highlighting cases in which compromise agreements are being forced on employees. If we agree to keep the petition open for six months, I am sure that, if there are any cases out there, they will come back to the committee and we will be made aware of any difficulties that exist in particular health boards.

The Convener: I thank the committee for its consideration of that petition.

Additional Support for Learning (Funding) (PE1507)

The Convener: The final current petition is PE1507, by Alex Orr and Sophie Pilgrim, on behalf of the Scottish Children's Services Coalition and Kindred, on funding for additional support for learning in Scotland. Again, members have some notes, as well as paper 7 and the submissions.

One possible action is to close the petition under rule 15.7, given that the Scottish Government is liaising with local authorities on the provision of ASL and the petitioners have withdrawn their request. In doing so, the committee may wish to ask the Scottish Government to keep the petitioners informed of its work in this policy area.

Are members agreed?

Members *indicated agreement.*

Meeting closed at 11:54.

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e-format first available
ISBN 978-1-78457-315-7

Revised e-format available
ISBN 978-1-78457-328-7

Printed in Scotland by APS Group Scotland