The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 9 December 2014

Session 4

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PUBLIC PETITIONS COMMITTEE
18th Meeting 2014, Session 4

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

Jackson Carlaw (West Scotland) (Con)
*Kenny MacAskill (Edinburgh Eastern) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*John Wilson (Central Scotland) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Anne Booth
Shona Brash (Coastal Regeneration Alliance)
Sean Clerkin
Iain Gray (East Lothian) (Lab)
Gareth Jones (Coastal Regeneration Alliance)
Kay McCorquodale (Scottish Government)
Michael Russell (Argyll and Bute) (SNP)
Elaine Smith (Coatbridge and Chryston) (Lab)
Paul Wheelhouse (Minister for Community Safety and Legal Affairs)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Public Petitions Committee

Tuesday 9 December 2014

[The Convener opened the meeting at 10:00]

Interests

The Convener (David Stewart): Good morning and welcome to today's meeting of the Public Petitions Committee. As always, I ask everyone to turn off any electronic equipment, as it interferes with our sound systems.

Apologies have been received from Jackson Carlaw.

I welcome Kenny MacAskill to the committee. I am really pleased that he is now a member of the committee, given his great experience of government, which will be a big help to our committee in its future deliberations.

I thank our former deputy convener, Chic Brodie, for all the work that he carried out, particularly during my absence from the committee last year. I thank him for his commitment to the committee.

Before moving to agenda item 1, I take the opportunity to place on record a correction to a comment that I made at the meeting on 11 November. During the discussion on PE1533, on local authority non-residential social care charges, I said that Falkirk Council is one of the higher-charging authorities. I am happy to correct that and confirm that Falkirk is not one of the higher-charging authorities.

Agenda item 1 is a declaration of interests by Kenny MacAskill. In accordance with the code of conduct, I invite Mr MacAskill to declare any interests that are relevant to the work of the committee. The declaration should be brief but sufficiently detailed to make clear to the listener the nature of the interest.

Kenny MacAskill (Edinburgh Eastern) (SNP): I have no interests to declare.

Deputy Convener

10:02

The Convener: The next item of business is the selection of the deputy convener. Members have a note from the clerk setting out the procedure for selecting a deputy convener. The Parliament has agreed that members of the Scottish National Party are eligible to be chosen as the deputy convener of the Public Petitions Committee. That being the case, I invite nominations.

Angus MacDonald (Falkirk East) (SNP): I nominate David Torrance.

David Torrance was chosen as deputy convener.

The Convener: I welcome Mr Torrance to his new position.

Current Petition

Judiciary (Register of Interests) (PE1458)

10:02

The Convener: The next item of business is an evidence-taking session with the Scottish Government as part of the committee's consideration of PE1458, by Peter Cherbi, on a register of interests for members of Scotland's judiciary. Members have a note by the clerk and the submissions.

Nothing has been received from the Judicial Complaints Reviewer. However, the petitioner notified the clerk that the JCR's annual report to 31 August, which covers the tenure of the previous office-holder, Moi Ali, was published on Friday. Some members might have already received it.

I welcome Paul Wheelhouse, the Minister for Community Safety and Legal Affairs. He is accompanied by Kay McCorquodale and Catherine Hodgson from the Scottish Government's civil law and legal systems division.

I invite the minister to make a brief opening statement of approximately five minutes.

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Thank you for inviting me to speak to the committee today.

I welcome this further consideration of the issues around a register of interests for the judiciary and, in particular, the sufficiency of the existing safeguards.

The Scottish Government takes the view that it is not necessary to establish a formal register of judicial interests. That is because, as my predecessor, Roseanna Cunningham, has stated, the Scottish Government considers that the current safeguards are sufficient to ensure the impartiality of the judiciary in Scotland. There is no evidence to date that the safeguards have failed.

There are three important safeguards. The first is the judicial oath, taken by all judicial office-holders before they sit on the bench, which requires judges to

"do right to all manner of people ... without fear or favour, affection or ill-will."

The second safeguard is the statement of principles of judicial ethics, which states at principle 5 that all judicial office-holders have a general duty to act impartially. In particular, it notes:

"Plainly it is not acceptable for a judge to adjudicate upon any matter in which he, or she, or any members of his or her family has a pecuniary interest."

The third safeguard is in the Judiciary and Courts (Scotland) Act 2008, which contains provisions to regulate and investigate the conduct of judicial office-holders. Under section 28, the Lord President has a power to make rules for the investigation of

"any matter concerning the conduct of judicial office holders".

The Complaints about the Judiciary (Scotland) Rules were updated in 2013. In autumn 2013, the Lord President also consulted on the adequacy of the rules. The former Judicial Complaints Reviewer contributed to that consultation. I understand that new rules, together with accompanying guidance, will be published early in 2015. The new rules will simplify the complaints process for all concerned and will clarify what can be properly investigated.

In addition, as members are aware, on 1 April 2014, the Scottish Court Service set up a public register of judicial recusals, following the former JCR's call for greater transparency and accountability and the informal meeting between yourself, convener, the deputy convener at the time—Chic Brodie—and the Lord President. The register sets out the reason why a member of the judiciary has recused himself or herself from hearing a case. That is a welcome addition to the safeguards that I have already mentioned.

With regard to the complaints system, I am aware of the criticisms that were made in the former JCR's annual report, which was published last week. I acknowledge the former JCR's positive influence, during her time in office, over the handling of complaints about judicial conduct. That has contributed to the improvements that are being made to the complaints system.

It is, of course, of vital importance that judges are seen to be independent and impartial. They must be free from prejudice by association or relationship with the parties to a litigation. They must be able to demonstrate impartiality by having no vested interest, such as a pecuniary or indeed familial interest, that could affect them in exercising their judicial functions.

Setting up a register of judicial interests would be a matter for the Lord President, as head of the judiciary in Scotland. The Lord President takes the view that a register of pecuniary interests for the judiciary is not needed and that a judge has a greater duty of disclosure than a register of financial interests could address. The statement of principles of judicial ethics states that a judge's disclosure duties extend to material relationships, and the new register of recusals addresses that issue.

It is also important to bear in mind the potential downsides of establishing a register of judicial

interests. The Lord President said in his written evidence to the committee that it is possible that

"information held on a register of judicial interests could be abused."

He went on to say:

"If publicly criticised or attacked, the judicial office holder cannot publicly defend himself or herself, unlike a politician. The establishment of such a register therefore may have the unintended consequences of eroding public confidence in the judiciary".

The Lord President provided further information about the new register of recusals in his letter to the committee of 21 November, which records that all but two judicial recusals were voluntary. There is no record of a case in which a judge or sheriff who has an interest that would justify recusal has had to recuse him or herself after a party has raised the matter. There is, therefore, no evidence to demonstrate that the existing recusal system is not working.

I acknowledge the work that the committee has done in taking forward the issues that are raised in the petition. As the convener acknowledged in the chamber debate,

"the New Zealand bill was ultimately withdrawn on the basis that agreement was reached to improve the rules on recusals and conflicts of interests."—[*Official Report*, 9 October 2014; c 64.]

We have similarly had the opportunity for open discussion of these issues. Improvements have already been made in Scotland, such as the introduction of the public register of judicial recusals, and improvements to the complaints rules are about to be introduced. The Scottish Government's position is that a formal register of judicial interests is neither practical nor necessary.

I am happy to take questions.

The Convener: Thank you, minister.

Why should the judiciary be treated any differently from other holders of public office, such as ministers, MSPs or MPs?

Paul Wheelhouse: The point that was made by the Lord President in his letter of 21 November, to which I just referred, is pertinent. I recognise that, as politicians, we have a duty to be accountable to the public who elect us, and we need to be able to demonstrate that we do not have any conflicts of interest. However, the position of the judiciary is somewhat different. As the Lord President outlined, judges are not able to answer for themselves if they are criticised or attacked for their interests, which means that they are vulnerable in that sense. In addition, they or their families might be open to threats or intimidation if property details were registered or if other details were shared that might cause security concerns.

In my previous role, I was aware of Scottish Environment Protection Agency officials who were stalked and harassed on social media, as were their families, and who were being regularly physically and verbally threatened by individuals who were allegedly involved in serious organised crime. I have therefore seen that people of ill intent can attempt to intimidate officials.

The more we protect the privacy of the judiciary in relation to details that could otherwise create security concerns for them, the better, as that will ensure that no one attempts in any way to influence judges' decisions.

The Convener: How do you respond to the argument from the petitioner and the previous JCR that the current system does not provide individuals with sufficient protection from judicial bias?

Paul Wheelhouse: I am aware of those concerns. I recognise the genuine concerns that have been raised by members of the public, including Mr Cherbi, and, indeed, by committee members during the debate on 9 October. I stress that no one is pointing the finger of blame at any particular judge, but I am concerned to ensure that there is a perception that the judicial system in Scotland is above reproach and that there is no danger of bias in the decision-making process.

The concern that has been expressed has been addressed in a number of respects. We have the JCR and the ability to lodge a complaint against the judiciary if a conflict of interest that has not been disclosed comes to light. There is, therefore, a mechanism for people to raise a complaint, which the JCR can take forward.

As I said in my opening remarks, we have no evidence to date to suggest that anyone has been forced to recuse themselves after someone has raised a conflict of interest. In every case so far, the judge concerned has brought forward their own issues and therefore recused themselves. I am aware of two other cases, one of which involved Sheriff Cowan, who said that her membership of the RSPB might be perceived as a conflict of interest. She put that to both parties in the case, who were given the option to decide whether to allow her to continue in her role or whether she should recuse herself. Ultimately, the defendant in the case asked her to recuse herself.

The process seems to work, and therefore we have no evidence—to date, at least—to suggest that any such bias has been identified in any court case.

The Convener: But how will the parties know that there is a conflict if there is no register of interests? They are not psychic.

Paul Wheelhouse: I take the point. I will take forward these concerns when I meet—for the first time; I have not yet met them—Lord Gill and the new JCR, Gillian Thompson OBE. I will raise the issues in the context of wider discussions and see whether they have any thoughts.

The principle is whether there should be a public register. I note for the record that New Zealand, which was the prompt, if you like, for the matter coming before the Scottish Parliament, has decided to drop the proposal for a public register and instead strengthen its recusal process and complaints procedure. A recusal process and a complaints procedure are already in place in Scotland, and the rules on the complaints procedure are being updated by the Lord President. Those systems are being deployed in New Zealand as well, rather than a public register.

There are concerns about ensuring that there is no undue influence over or harassment of the judiciary as a result of information that they present in a register. In any case, a register could never be completely complete, if I can use that phrase, because it is difficult for a judge to anticipate the full range of cases that might come before them. They could have to declare absolutely everything—every person they know, every organisation they are a member of and every financial interest that they have—yet that might be entirely unnecessary given the case load that comes before them.

The Convener: Exactly the same is true for ministers. You are not expected to declare every single aspect. There is a laid-down procedure for what ministers—and indeed MSPs—have to disclose. No one is asking us to be psychic, but we need to make sure that we follow the rules. If they are good enough for us, why are they not good enough for judges?

Paul Wheelhouse: I take the point entirely. It is entirely appropriate that we declare that information as ministers and MSPs, and, indeed, that MPs do the same. However, we have the opportunity to answer for our actions and get our point across in a way that judges might not be able to—albeit that sometimes it does not feel like that, in terms of the media. As politicians, we can answer for ourselves, and we are usually pretty robust when we do so. It is more difficult for members of the judiciary, and I think that Parliament has to recognise that. They are in a different position and are unable to answer for themselves in the way that we would.

The Convener: I must say that I have not noticed that judges have been slow to come forward in the *Sunday Mail* recently, but I will leave it there.

10:15

David Torrance (Kirkcaldy) (SNP): Good morning, minister.

According to the Lord President's letter to the committee of 21 November, new rules for the judiciary and new guidance are to be published early in 2015. Do you think that they will go some way towards addressing the petitioner's concerns?

Paul Wheelhouse: That is a very good question—congratulations on being chosen as deputy convener, by the way.

We will have to leave it to the Lord President to provide a detailed response to the issues that were raised by the former JCR and in the most recent annual report. I will look to discuss those issues with Lord Gill when I meet him in due course.

I will bring in Kay McCorquodale to tell you about the detail that we are aware of, but I have every confidence that the Lord President has listened to the criticisms. Moves have already been made to address some of the concerns about the complaints procedure that have been raised by the committee and, importantly, by the former JCR, Moi Ali. Her report raises some concerns about specific cases, and we want to make sure that the complaints procedure addresses all of them. As the minister, I will look to ensure that the procedural weaknesses that have been identified are addressed in due course.

Kay McCorquodale (Scottish Government): Scottish Government officials are in exactly the same position as the minister, in that we have not seen the draft rules. We know that there has been a consultation, and that the JCR fed into it. We anticipate that her concerns will have been addressed. We will meet officials from the Lord President's private office, and I am sure that they will let us see the rules when they are in a position to share them with us.

John Wilson (Central Scotland) (Ind): Good morning, minister. I welcome you to your new role as the Minister for Community Safety and Legal Affairs.

You have laid out your defence for not having a register. The petition calls for a register to be set up to ensure that the public can have confidence in the judiciary in Scotland. Earlier this year, an article in *The Guardian* highlighted problems that had been identified in England and Wales to do with who judges the judges.

Are you 100 per cent confident that every judge and every sheriff will recuse themselves when they have an interest that is relevant to the case that they are considering? The petitioner feels that if we do not have on public record information to tell us whether a sheriff or a judge has an interest

in the issue that they are considering or in the individual who is before them, that information might come out at a later date and the person who appeared in court might feel that, in the circumstances, they were unfairly treated or unfairly judged.

Paul Wheelhouse: Thank you for your welcome, Mr Wilson.

You raise some highly significant issues. You asked whether I could give a 100 per cent guarantee that every judge will always recuse themselves appropriately. It would be unreasonable for me to say that I can give such a guarantee, just as I cannot be 100 per cent certain that every MSP, every MP and every person in public life, such as celebrities, will always declare their interests. However, I am confident that the system has procedures to address that—or will have, once the reforms to the complaints procedure have been carried out.

Public confidence in the judiciary is extremely important. You hit the nail on the head as far as the rationale for the debate that we are having is concerned. We want to deliver confidence in the judiciary and to ensure that that is maintained. We tried to establish whether any definitive surveys had been carried out on confidence in the judiciary. To date, we have not been able to identify such a survey but, from a personal perspective, I do not have any sense that there is widespread concern about the judiciary or a lack of confidence in the judiciary. There might be disagreements from time to time over the outcome of particular cases, which is entirely understandable, given that there are two parties to a dispute—a defendant and a prosecutor. However, I do not have the impression that there is widespread concern about the judiciary.

How do we ensure that confidence is maintained, and that the ability of the judiciary to be unbiased is never a concern? We need to have a robust system for recusals in place. We are developing that and, at least to my mind, it seems that the judiciary are using the recusal process appropriately.

Do we have a perfect complaints procedure? Apparently not. I recognise the points that the JCR made in her report. I am confident that the Lord President will reflect on those and will reform the process.

Are there sanctions for those who fail to recuse themselves? Yes, there are. If a judicial office-holder breaches the rules and a complaint is made that they should not have taken a particular case, for example, there might be legitimate grounds for an appeal. In such a case, the Lord President may give the judicial office-holder formal advice about what they have done, or a formal warning or reprimand, which would damage their reputation.

Measures are in place to address such situations should they arise, but I recognise the concern about the fact that the recusal process is shrouded in privacy, to some extent, because it happens within the judiciary and is not open to public scrutiny. I will look to discuss with the Lord President and the new JCR, Gillian Thompson, whether they have any suggestions as to how that might be addressed in future.

John Wilson: You are aware, however, that recusal is voluntary. I welcome the Lord President's submission on the number of recusals, and you have mentioned Sheriff Cowan's decision to recuse herself from a case that she was hearing on wildlife matters, but the point is that recusal is still voluntary.

A member of the public or someone appearing before the bench may become aware that a sheriff or judge may have a particular interest in an issue after the case and beyond the period of the appeals process, which is very limited—it lasts three months, as I understand it. The information that a judge or sheriff had a particular vested interest in a case that they were hearing may come out 12 months or two years down the road.

How does it give confidence in the judicial system if people feel that the process for complaining about judges is, as you said, shrouded in secrecy? How do we give the public more confidence that they will be dealt with without fear or favour when they appear before a sheriff or judge?

Paul Wheelhouse: I certainly note the points that you have made. There are three possible scenarios when it comes to recusal.

In the first, people voluntarily recuse themselves. They identify themselves as a risk, and they decide for themselves that, because the issue is so significant, they will voluntarily recuse themselves from the case.

The second scenario involves an element of perception. The member of the judiciary concerned might not believe that the issue will materially impact on their decision, but they offer the information to both sides in the case and leave it to them to decide whether the member of the judiciary should recuse themselves. That has happened twice, to my knowledge, so the system has worked.

The third potential scenario is where a judge or sheriff who has an interest that would justify recusal says nothing about it but has to recuse themselves during the court case, when a party raises the matter. We have no record of that happening so far. Further, to date, no information

has been provided to me to indicate that a conflict of interest that has not been identified during a court case has been revealed only thereafter. I appreciate that the recusals process is relatively new, and I cannot guarantee that such a scenario has never happened in the past, but the process is up and running now.

Perhaps we have not emphasised this enough, but the oath that the judiciary must take is quite onerous and clear in requiring members of the judiciary to assess potential conflicts of interest under ethical guidance.

The Convener: The big issue that I and my colleagues have been pushing is that it is assumed that those who appear before a judge have some form of psychic powers. How will they know whether there is a conflict? If there is no register, they will not be aware of it.

Until Chic Brodie and I met the Lord President, there was no system for recording recusals. We made that point to the Lord President, and—in fairness—he agreed to put a system in place, but it came into force only in April. It is only since then that we have been able to assess whether judges have recused themselves. Previously, that was a complete mystery; even recusals were a mystery.

You make out that everything is done fairly and is all above board. However, an ordinary person who appears before a judge does not have a clue whether there is any conflict of interest. That is the key point. We want—or rather, the petitioner wants—a system that is similar to the system for other public officials.

Your only real argument is that judges cannot defend themselves. I am sorry, but that is not a very strong argument.

Paul Wheelhouse: If I may say so, convener, you misrepresent what I said. I did not say that that is the only ground for my view. There are serious concerns about potential influence on the judiciary as a result of revealing their interests in a public register. That would open them up to potentially hostile and aggressive press action, which might apply pressure on them to come down in a particular way in an adjudication.

In some cases—as I said—if members of the judiciary reveal property interests or anything that might give away a physical address, that could put them at risk of physical threats. I have experience of that from working with colleagues in the Scottish Environment Protection Agency who have been threatened by those who are involved in criminal activity.

We must be very careful what we wish for. I take on board your points about the need for transparency. People have to know that the judicial service system is fair, above board and unbiased, and it is entirely right that the committee has taken a strong interest in that.

I appeal to the committee to think about the potential consequences of having a public-facing register that could expose members of the judiciary to undue influence from outside the court process and put them or their families at risk. We must recognise that many members of the judiciary deal with extremely sensitive issues, and often extremely violent people, in the context of their work. That is different from the work of politicians.

It is important to recognise that judges would not have the right to defend themselves—I raised that point, and it is fair for the convener to mention it—but I have wider concerns about the risks that such a register would place on the judiciary.

The Convener: I am a bit conscious of the time. I will bring in Kenny MacAskill before coming back to John Wilson but, before we leave that point, I stress that no member of the committee wants to put judges at risk from any security concerns. Ministers and other MSPs do not reveal their home addresses, and we would have a basic procedure that followed that model. I do not want the minister to misrepresent what I suggest. We would obviously have a register that respected the security concerns of judges; to do otherwise would be a very strange policy.

Kenny MacAskill: I will pursue the issue of public interest. One jurisdiction that has a register is the United States. I am going only by apocryphal tales, but I have heard of potential candidates for the Supreme Court being dissuaded, if not rejected, by House committees in which they have been pilloried. The issue is where the balance is struck. Is there any jurisprudential evidence from the United States on whether justice has been enhanced or whether the public opprobrium wreaked on many potential nominees for the Supreme Court has dissuaded people from going into that theatre at all?

Paul Wheelhouse: Mr MacAskill raises an important point. The petitioner, in his submission of 21 October, drew attention to the register of interests in America. The origins of the United States as a country explain to some degree the formal regulation of Government ethics there.

There has been great attention to the issue since the Watergate scandal in the 1970s, and the Ethics in Government Act of 1978 was brought in to require federal judges to file annual financial reports and provide a full financial disclosure to a committee. The purpose is to expose judges' financial holdings to public scrutiny, which assists them in avoiding conflicts of interest.

10:30

A system is in place in the United States. I have seen some of the reporting on particular judges—I will not quote it here—and the kind of details that are posted. Largely, they are on things such as retirement accounts and life insurance policies. I am not sure whether that adds any value, but it opens people up to being pilloried in the way that Mr MacAskill described and to having every aspect of their financial activities pored over in enormous detail.

When people invest in a general insurance policy or a pension fund, they have no day-to-day involvement in the decisions about how that money is invested. I am not sure how relevant such information is to the process. There was one case in Scotland in which a judge had a pecuniary interest, but it was clear that the decision in the case would not have influenced the value of the shareholding, so it was unlikely that the pecuniary interest would have had any influence.

I do not know whether Kay McCorquodale or Catherine Hodgson has any information of the kind that Mr MacAskill asked for about the negative consequences of having a register in the US.

Kay McCorquodale: I do not have any evidence of that to hand. It is interesting that the register there deals only with financial holdings, as Mr Wheelhouse just explained—it does not cover personal interests or anything else, so it is very narrow. In addition, it covers only federal judges; it goes no wider than that.

Anne McTaggart (Glasgow) (Lab): I welcome the panel and I welcome the minister to his new role. There has been discussion about the differences between our role as elected representatives and the role of judges when it comes to declaring information, but will you expand on why you think that judges should not have to declare information, whereas we have to? I am not fully convinced by that argument.

Paul Wheelhouse: I certainly recognise the point, which the convener also made. I do not want to misrepresent his approach. I am sure that his intent is entirely above board; I do not wish to suggest otherwise.

We have concerns on two fronts. First, as MSPs, we disclose our pecuniary interests and any other things that we perceive might give rise to a conflict of interests. A lot of trust is put in us to declare matters that we believe might influence our decision making as MSPs, whether as ministers, committee members or back benchers. We are trusted to do that, and I believe that the Parliament has a good record on that.

If there is any criticism of an entry in the register of members' interests, we have the ability to defend ourselves. We have the right to do so and we have the forum to do so—in Parliament, we can put things right on the record. I am not a member of the judiciary and I have no axe to grind in this particular fight, other than that I think that there is an issue of fairness, in that judges do not have the same ability to defend themselves in public as we have.

That is not to say that we have no interest in ensuring that everything is above board. I recognise the points that the committee has made. As I indicated, I will look to get feedback from the new JCR, Gillian Thompson, and the Lord President—when I get the chance to meet him—on what they think is necessary to give the public confidence that, although the system is largely hidden from view, it is operating robustly and that those who are perceived to have a conflict of interests in a case raise that and recuse themselves voluntarily or at least make both parties to the case aware that there is a risk of a conflict of interests and give them a choice.

It is extremely important that the system is seen to be properly and robustly applied and that there is no subsequent criticism of the kind that Mr Wilson fairly raised, whereby someone might have been totally unaware of a conflict of interests that the judge who oversaw their case had and it might be too late to do anything about it under the appeals process. We need to get feedback from the Lord President and the new JCR about how that should be dealt with.

Angus MacDonald: Congratulations, minister, on your new portfolio. You have touched on this, but will you expand on the Scottish Government's argument that the information on a register could be misleading, as it would not cover all the conflicts that could arise? Do you have a view on the argument that, even if a register is incomplete, it could still have value in increasing transparency?

Paul Wheelhouse: If we want to draw people's attention to something on the register of interests, we can do that at the beginning of a speech. That relates to Anne McTaggart's point. We can say, "Presiding Officer, I bring to your attention my entry in the register of interests," and we can flag up any concerns that members should be aware of. We can do that case by case.

If people had to write their entry in a register in advance, it could be difficult to define exactly what should be recorded. If we are dealing with general cases—not specialist cases in a judicial sense—it is difficult to imagine that the register could cover every scenario in which there could be a conflict of interest, every potential plaintiff or defendant who

might come forward in a court case, or every interest that might have to be declared.

The register would have to be either entirely comprehensive or targeted. If people have not anticipated that a case might come forward and have not put something on the register of interests, that could be misleading, because it could look as if there was no conflict of interest; something would subsequently have to be added in advance of a case to ensure that everything was clear. I am not sure that it would be easy to operate such a publicly facing register and to ensure that it fully encompassed all potential conflicts of interest that a judge or sheriff could find themselves involved in.

We have heard about the example of such a register in the US but, as Kay McCorquodale said, it covers only the financial aspects of judicial interests. It does not cover personal relationships or memberships of bodies, which might be an issue. A Scottish register would have to be wider than the one in the US to cover all those potential issues, and it would become difficult to manage. At what point would a judge decide that they knew someone well enough to put that on a register of interests? If you meet someone on the bus, do you have to declare as an interest the fact that you had a friendly conversation with them, or is the register for people with whom you have been lifelong friends? That is difficult to define, and I welcome the committee's views, but I do not see the case as compelling at this point.

Angus MacDonald: I find it strange that, in America, where it is a requirement to register financial interests, judges do not have to register membership of bodies. I was not aware of that.

Paul Wheelhouse: It appears that there is no requirement to register memberships. I find that slightly odd if the intent is to capture all potential conflicts of interest. We have examples in Scotland of people recusing themselves for being members of organisations. In that sense, we are one step ahead of the US.

Sheriff Cowan recently withdrew from a case voluntarily after having raised the issue with both parties to the case. As she had been a member of RSPB Scotland, and as witnesses from the RSPB were going to appear, there was the risk of a perceived conflict of interests, rather than an actual conflict of interests. She gave the parties the option and they asked her to recuse herself. The system worked well in that case.

We have a system that appears to work, but I appreciate the concerns about the need to ensure that it works every time. If one case goes through where it does not work, that is obviously a concern, but we have no evidence to date that that has happened, so let us look at the glass as being half full.

The Convener: I will let John Wilson in again, because I cut him short earlier.

John Wilson: There is an interesting debate on the constitutional issue of the appointment of Supreme Court judges in the United States of America. I am sure that the Judicial Appointments Board for Scotland will look carefully at how judges are appointed to the UK's Supreme Court and will try to draw on those rules. However, I want to concentrate on the register of interests.

You said in your opening statement that you are aware, because of your experience in your previous ministerial role, that senior officials at SEPA are sometimes stopped and harassed by elements in the community. In your new role as Minister for Community Safety and Legal Affairs, do you intend to introduce legislation to protect public office-holders and their families from being harassed, stalked and approached by people involved in criminal activity? If part of the reason for not having a register is that judges and sheriffs might be stalked and harassed by elements in society, surely we must examine the legislation that protects them from such behaviour.

Paul Wheelhouse: I assure Mr Wilson that, in my previous role, we introduced measures in the Regulatory Reform (Scotland) Act 2014 to protect SEPA officials, which brought their protection into line with that of other key emergency workers.

I take Mr Wilson's wider point about the judiciary. It would clearly be a criminal offence to do what has been described, but there is a great argument for prevention over cure. Why create a situation where we have to make a new protection for judges when we do not have to put them in that position in the first place? If we can avoid giving away sensitive information that might lead to them being coerced in any way, that will be better than having to resolve the situation after the event by applying legislation, whether old or new.

Mr Wilson makes a fair point, which is that the Government has a duty to protect people in such a situation. I assure him that I will do everything in my power to help to protect members of the judiciary from being threatened. However, it is better to prevent a situation than to have to resolve it.

Kay McCorquodale can give us some guidance on protection.

Kay McCorquodale: As the minister said, this is a serious consideration and we take it into account.

Judicial appointments to the United Kingdom Supreme Court were mentioned. When the Supreme Court was set up, it was decided that it

would not be appropriate or feasible for it to have a comprehensive register of interests, because it would be impossible to identify all the interests that might conceivably arise. The court has a formal code of conduct instead. That is similar to our position in Scotland, where we have a statement of judicial ethics.

The Convener: I would like to follow up that point, but I do not want to cut John Wilson off again, so I will let him continue.

John Wilson: Thank you, convener. Minister, you said that you would be wary of having sensitive information put on the public record. Can you define "sensitive information"? Is that just financial information or would it include family relationship information? We could have a judge or a sheriff hearing a case where their son, daughter, mother, father, aunt or uncle was appearing before them to defend or represent someone. Can you define what you mean by sensitive information appearing on a register?

Paul Wheelhouse: I can give examples, but I would need guidance from justice professionals and the police as to what might constitute information that could be risky in terms of modern technology and the ability to attack or damage the interests of individuals. Information on property might be sensitive. The convener made a fair point that personal household information should be kept off any register; that would be sensible if we ever had a register. It would be appropriate to keep residential information private, to protect the safety of the individual and the family and to ensure that it was not a honey pot for those who might want to coerce someone in advance of a decision.

Other sensitive information would be anything else that threatens people's safety or potentially opens them up to coercion in relation to a court case. We want to protect the integrity of the decision-making process in court, as well as the safety of those making the decisions.

Kay McCorquodale has just pointed out to me that, in the US, the assets, income and liabilities of judges, spouses and dependent children must all be disclosed, although information may be redacted to protect the safety of individuals if they are in danger. That issue has obviously been considered in the US and the approach there might be worth the committee's consideration.

10:45

Kenny MacAskill: It seems to me that it is for those who wish to have a register to define it. What John Wilson said reminded me of a recent high-profile case relating to a football club, in which the judge declared that he was a season ticket holder at another football club. Is it your understanding that that would not constitute a financial interest that he would be required to declare? The judge did not recuse himself but made the information publicly available, which seemed to me the right thing to do.

Do you have any comments on the generality of what would be registered in the proposed register? It seemed to me that the judge in that case was correct to make his declaration. Perhaps the judgment about what to declare should be made with regard to conflict of interest rather than precise rules. Do we expect a judge to declare an interest if he is a season ticket holder at a football or rugby club?

Paul Wheelhouse: Mr MacAskill is absolutely right that we must be reasonable about this. For example, it is left to MSPs to judge what they believe constitutes, or might be perceived to constitute, a conflict of interest and to declare such matters voluntarily, if need be. There is a section in the register of members' interests where MSPs can voluntarily declare things that might go beyond the minimum requirements, and I am sure that most if not all MSPs use that facility.

I think that we have to rely on the oath and the guidelines for members of the judiciary on what might be, or be perceived as, a conflict of interest and leave it to them to judge what it is appropriate to declare. I commend the example that Mr MacAskill used of the judge making a voluntary declaration so that there could be no perception of conflict of interest, even though that was not strictly required by the terms of the recusals policy.

We have other examples that we should commend of members of the judiciary behaving entirely appropriately by recusing themselves or giving information that would allow others to decide whether they should recuse themselves. I acknowledge and commend the committee's role in driving forward and achieving a public register of recusals, which is a welcome addition to the process. That register will help to inform those who are involved in court actions of what constitutes a conflict of interest and will refine the process further.

The Convener: Kay McCorquodale spoke about the Supreme Court. You will be well aware that prior to the setting up of the Supreme Court, the Scottish law lords were members of the House of Lords and had to comply with its register of interests. I am not saying that you have suggested that a register of interests is an alien concept for the Scottish legal system—of course it is not, given that generations of Scottish law lords had entries in the House of Lords register of interests. It is not true that the position would be, "Shock horror! We'll have to fill in a register." A register is not a new idea, because generations of law lords

used a register. It worked well then, so why could it not work for judges and sheriffs now?

Paul Wheelhouse: That is a fair comment. The law lords had to disclose financial interests. Perhaps it is in areas of pecuniary or financial interests that the public could perceive there to be conflicts of interest. For example, if the judge in a damages case had shares in a company that would be affected by the outcome of the case, that would clearly constitute a conflict of interest.

I can understand why financial interests would be declared under the US position and the disclosure rules for the law lords in the House of Lords, but I think that the petitioner seeks something considerably beyond that in asking for full disclosure of information. As I said, some categories of information might put people at risk of intimidation or intrusive press activity, which would be unhelpful for maintaining—

The Convener: For the record, the petitioner is asking for a register of pecuniary interests.

Paul Wheelhouse: Okay. There are certain bounds: we have discussed property assets, and some safeguards would be needed in relation to personal property, as the convener has identified. There are such examples, and I take that point on board. I would have to take such matters to the Lord President and the new Judicial Complaints Reviewer, Gillian Thompson, in order to get their views.

The Convener: I am conscious of time, but it was important to continue that discussion. Does Angus MacDonald have a quick point?

Angus MacDonald: The minister has just covered the point that I was going to raise.

The Convener: We have a high-quality judiciary, and by European—indeed, international—standards it is remarkably free of corruption, so I would not want to see any other view being promoted in that respect.

However, it is important for ordinary men and women who appear before judges that there is an element of transparency. That is what the committee has pursued, and I thank Lord Gill for agreeing to our request for a register of recusals, which was not in place before we raised the matter in April last year.

Paul Wheelhouse: I welcome that too, and I thank you, convener.

Kenny MacAskill: Paul Wheelhouse mentioned that he is due to meet Gillian Thompson, who has previously held the role of Accountant in Bankruptcy and is a senior civil servant. I wonder whether she can bring a fresh pair of eyes to the matter. Are her views known to you, or could they be provided?

Paul Wheelhouse: I am not yet aware of Gillian Thompson's views on the matter, but I will be seeking them, and I am happy to invite her to relay those views to the committee in due course.

John Wilson: I put on record my thanks to Moi Ali for the evidence that she has given to the committee in the past. I congratulate her on her comprehensive annual report, which was submitted in August and released last week. It makes very interesting reading, and I hope that the minister will, when he meets the Lord President, raise some of the issues that it highlights.

Moi Ali has raised issues about the judicial complaints procedure, and inferred that when a complaint is made against a judge, it disappears into the ether, and that there is no transparency in how those issues are dealt with.

It would be useful to take on board not only the new Judicial Complaints Reviewer's view on how she will move forward in her role, but the out-going JCR's experience in the past three years of dealing with the judicial complaints process, in particular with regard to the way in which complaints were dealt with by the Lord President.

I hope that we can move forward and get a system that everybody feels confident will act in the best interests not only of judges, but of the public and everybody involved in the judicial process.

The Convener: I am conscious of time, minister—

Paul Wheelhouse: I will respond briefly to Mr Wilson. I identify with what he said, and I add my own thanks to Moi Ali, albeit that I was not in post when she was the JCR. I welcome her report, and we will discuss the points that it raises with the Lord President and with Gillian Thompson as the new JCR.

We formally received the report only on 23 October, so the time gap is not quite as big as has perhaps been implied.

The Convener: I back up John Wilson's point. Moi Ali gave excellent and no-holds-barred evidence to the committee, which was refreshing and very useful.

I suggest that we consider the petition again in the new year, when we can reflect on today's evidence. We need to look in detail at the previous JCR's annual report, and at the new rules and guidance that I believe will be published by the Lord President early in the new year.

John Wilson: I agree that we should look at the petition again in the new year. I suggest that we tie that in with the release of the information from the Lord President on the new rules, rather than the

committee deciding to discuss the issue only to find out that the new rules have not yet been published.

The Convener: Yes, that is sensible.

Kenny MacAskill: It might be useful to hear in due course, either via the minister or directly from the new JCR, what her view is as a fresh pair of eyes.

The Convener: Yes, that is a good point. Do committee members agree that we will do what we have discussed?

Members *indicated agreement.*

The Convener: I thank the minister and his two colleagues for coming along. Your evidence has been very helpful in enabling us to work out the committee's next steps, and I appreciate you giving up your time. I suspend the meeting for two minutes to allow for a change of witnesses.

10:54

Meeting suspended.

10:56

On resuming—

New Petitions

Freedom of Information (Scotland) Act 2002 (Housing Associations) (PE1539)

The Convener: Item 4 is consideration of two new petitions, and the committee will hear from the petitioner in each case. The first new petition is PE1539, by Anne Booth, on bringing housing associations under the Freedom of Information (Scotland) Act 2002. Members have a note by the clerk, the SPICe briefing and the petition.

I welcome the petitioner, Anne Booth, and thank her for coming along. She is accompanied by Sean Clerkin, whom I also welcome. I invite Ms Booth to speak to her petition for approximately five minutes. After that, I will kick off with some questions, and then I will ask my colleagues for further questions.

Anne Booth: I start by saying that I have breathing problems, so I may have to stop now and again, and Sean can fill in for me. It just depends on how I go.

I am a factored home owner; my factor is the Glasgow Housing Association operating through YourPlace Property Management.

The Freedom of Information (Scotland) Act 2002 was introduced in the spirit of encouraging the people of Scotland to access information and to make organisations accountable. It is in that spirit that I ask the Scottish Parliament to call on the Scottish Government to extend the 2002 act to all housing associations in Scotland so that they are transparent, open and accountable.

Glasgow Housing Association, which in recent times has become far bigger in the form of the corporate Wheatley Housing Group, is an example of a housing association that needs to be more accountable to its stakeholders, such as factored home owners and tenants. In 2010, it became clear that the GHA was the only housing association that was consulted on whether the 2002 act should be extended to housing associations. It is clear that the GHA did not favour that route. For a number of reasons, I believe that it, along with other housing associations, should come under the 2002 act through section 5.

Thousands of factored home owners have had home improvement work carried out that has involved overcladding, re-roofing and putting up community aerials. That work has cost thousands of pounds. I could not get answers to questions such as what the quality assessment consisted of, what type of overcladding system was being used,

what the cost per square metre of overcladding was and whether the housing association was charging additional money to factored home owners. I also asked whether taxpayers' money was being properly used or not. We asked those questions at various meetings with the housing association, but it refused to give us any details or answers.

It was only in 2009, after three years of probing, that we found out that the housing association was charging a 6 per cent management fee and a 3 per cent contingency charge. It took an exposé by the *Sunday Herald* to force Glasgow Housing Association to properly itemise all improvement bills to include the above information. I also found that my home, along with 80 per cent of Glasgow homes, had been overcladded with the Alumasc system, which should not be erected in damp climates.

The point that I am making is that thousands of factored home owners would have been better informed in their decision making if they had been aware of all the facts. They could then have refused the work and prevented it from going ahead if they were not happy with the cladding. If the Freedom of Information (Scotland) Act 2002 covered housing associations, including the GHA, it would have been a great benefit to stakeholders.

11:00

Also, the management fee that 26,000 factored home owners pay is not itemised, so we do not know what we are paying for. We do not know why we pay that management fee and we cannot get any financial breakdown of it. That is another thing that we could find out if we had freedom of information.

I believe that all stakeholders would benefit from all housing associations coming under the 2002 act, and that the associations would be more transparent, open and accountable. I believe that, if the act had covered the GHA, my human rights would not have been breached. The work in my house was not to my satisfaction. I am bearing witness to the committee today and alluding to the suffering of others, which could be avoided if all housing associations in Scotland came under the Freedom of Information (Scotland) Act 2002.

The Convener: Thank you for your evidence and the clear points that you have made.

As you will know, the social housing charter places an obligation on housing associations to provide advice, guidance and information to tenants. Is that working?

Anne Booth: No, it is not working. With the housing associations that I know, when committees are set up, the people who sit on them are asked to sign a confidentiality agreement. Anybody who has to sign such an agreement will not be open and transparent.

The Convener: My understanding is that the Scottish Housing Regulator uses the outcomes from the social housing charter to regulate and assess how well housing associations are doing. Is that working?

Anne Booth: No, it is not.

Sean Clerkin: You are right that the Scottish Housing Regulator is involved in that aspect, but we are talking about the provision of information to tenants and factored home owners. The bottom line is that, in the new post-referendum Scotland, whether people voted yes or no, more of them are involved in civic Scotland. It would be good if tenants and factored home owners were more involved in the decision-making process through the Freedom of Information (Scotland) Act 2002. That would improve decision making and efficiency. Basically, it would make housing associations more open and transparent.

I can relate that Alan Benson, a senior member of the housing association movement and director of Milnbank Housing Association in Glasgow, said:

"Community based housing associations are already regulated organisations and are both obliged and want our activities to be open and transparent. Freedom of Information obligations would not in my view present"

any "difficulties" whatsoever.

Basically, we would have better community-controlled and tenant-led organisations if tenants and home owners had the chance to access the information that they need to base their lives on. At the end of the day, we are talking about their homes.

The Convener: Without making judgments about FOI requests and whether they are good, bad or indifferent, surely the current system should ensure that tenants get good information from their housing associations and, if they do not, the regulator should pick that up and put a black mark against those associations. That is the current system, is it not?

Sean Clerkin: Not necessarily. For example, a chap called John Gibson had to make a freedom of information request to Police Scotland to find out how much money Glasgow Housing Association was spending on employing police officers. The GHA was paying their wages, but he had to find out about that through freedom of information. It was quite a large sum of money, which I think would have been of interest to tenants, factored home owners and other stakeholders that deal with Glasgow Housing Association.

The bottom line is that openness is fundamental to the political health of a modern society. I believe that making housing associations subject to freedom of information would make them better and more accessible. They would be more accountable to their stakeholders, and the stakeholders would feel more involved and would get involved in the running of their associations. They would find that beneficial and would be more involved in the decision making. Overall, decision making would be improved.

Kenny MacAskill: I can see arguments for and advantages to the proposal. Can you see any disadvantages or arguments against it? I am thinking about how freedom of information could be abused in relation to the housing of offenders, antisocial behaviour or other rights that people may have. Do you see any downsides as well as the upsides? How can we manage and protect individuals from what might be the abuse—if I can call it that—of freedom of information?

Sean Clerkin: Since 2002, local government, the national health service, the police and all manner of organisations have been subject to the Freedom of Information (Scotland) Act 2002. The bottom line is that that act, which was introduced by Lord Wallace, has worked very well. It has improved decision making in the public sector because stakeholders are more involved.

We now have nearly 12 years of experience in dealing with freedom of information. It has worked well and any problems can be worked out and dealt with reasonably. Given that we have had 12 years of the regime in Scotland, during which time we have dealt with sensitive areas and many aspects of the public sector that are subject to it, I do not see why housing associations could not benefit from the process. If it is good enough for the police and the national health service, housing associations should come under it too, just like any other public organisation.

Angus MacDonald: Convener, it is a fair point that the housing regulator should be required to pick up any issues of governance and expenditure regarding registered social landlords. However, I have been at a loss to understand why registered social landlords have not been addressed through a section 5 order under the FOI act when opportunities have arisen to do that since 2002, especially given that, as you have said, arm's-length organisations are now subject to FOI requests. I have heard examples of my constituents being frustrated because they have been unable to obtain fairly basic information on governance issues relating to local RSLs and, until recently, ALEOs. I therefore have a great deal of sympathy with the petition.

I take it that that is the main driver for the petition. However, I note that there is the possibility of another section 5 order in spring 2015. I assume that, if the Government commits to considering RSLs as part of that section 5 order, that will give you some comfort.

Sean Clerkin: I draw on the fact that Nicola Sturgeon, our new First Minister, has stated:

> "We will also want to hear wider stakeholder views in order to inform proposals relating to other bodies, with a view to extending coverage further in the future."

That is what you are alluding to, and it is in that spirit that we are here today.

You should also know that housing associations are currently subject to amalgamations and mergers. The Wheatley Group, of which the GHA is the principal part, now has over 71,000 properties, and Sanctuary Housing has properties in Dundee and Glasgow. It is incumbent on those larger organisations to be subject to more control and democratic accountability.

The Convener: There is probably quite a strong argument for the GHA coming under the FOI regime given the size of its stock, which you mentioned. However, you will know that some housing associations, particularly in rural areas, are very small and are, in effect, private sector or third sector organisations—they are not technically in the public sector. Do you see your proposals having a de minimis level whereby organisations below a certain scale will not be asked to comply with FOI?

Sean Clerkin: I think that all housing associations should comply. The argument that that could lead to letters being asked for and increases in their costs is a spurious argument. With the improved decision making, cost efficiencies would be made. There would be a leaner, fitter and better housing association sector if the stakeholders were involved in questioning the decisions that are made. That would lead to a better quality of decision making. Currently, a lot of tenants who serve on housing associations are ruled by confidentiality clauses and are not allowed to talk to fellow tenants about what is happening in their associations.

John Wilson: I want to take the issue about housing associations a bit further. I take it that you are using the term "housing association" in its general sense. As the convener has noted, the registered social landlord sector contains many smaller, fully mutual housing co-operatives, the membership of which can be smaller than 500. One of the arguments against introducing FOI regulations for some parts of the housing association movement—I am not suggesting that GHA would be covered by this—is the cost of establishing a freedom of information officer to deal with issues. Is the petition intended to include all registered social landlords, not just housing

associations? The terminology has to be clear. For example, if I was sitting on the management committee of a housing co-op, I might think that my organisation would not be covered, because it was not a housing association.

Anne Booth: We were hoping that housing associations would be brought into the FOI regulations. Such a move would be beneficial; it would mean that we could help to make decisions and work with housing associations on various matters, because we would know exactly where we stood with them. At the moment, we cannot ask any questions at all, because we get no answers whatever.

John Wilson: The point is that, as has been mentioned by the convener and others, an issue of greater concern is GHA's consultation and engagement with not only its tenants but factored house owners. I am not sure that arguing for housing associations to comply with the FOI regime is helpful, as we might end up with people getting information after the fact. You mentioned, for example, that cladding that had been used had not been the right cladding for the climate, but an FOI request would give you that information after the cladding had been installed rather than prior to the process. It would be more useful to get the Scottish Housing Regulator to ensure that consultation and engagement with residents and tenants were adequate before the housing association went ahead with work.

Sean Clerkin: The information might come after the horse had bolted, as it were, but the fact is that, if the scrutiny by and involvement of a greater number of stakeholders that came about as a result of the freedom of information request led to the identification of any bad decisions that had been made, that could only improve subsequent decision making. The freedom of information process is a good vehicle for improving the decision-making process; after all, if senior housing association professionals know that they are going to be scrutinised by their stakeholders more closely than they currently are, the decision-making processes will improve. That can only be good for the housing association, because it means that stakeholders are getting involved in the whole decision-making process. As Anne Booth says, that improved co-operation brings the decision-making process together.

John Wilson: Thank you for that response, but my point is that, in the interests of those whom you have described as stakeholders—the tenants and residents who live in these areas—surely it would be better to get the consultation process right instead of having to use the FOI process, which you seem to be implying would become a big stick that could be used against officers, who would know that, if they got a decision wrong, there would be an FOI request about it. I suggest that it is better to say to housing officers and boards that they should fully engage with tenants and residents to ensure that what they put in place in the first instance is correct, instead of having a follow-up process that involves the threat of an FOI request if they get a decision wrong.

11:15

Sean Clerkin: As we have seen, consultation can work, but it can also fall down dramatically. In local government, for example, there have been consultations on cuts to public services that have been rushed and harried through. In such instances, the freedom of information process provides an added guard, check and support for the stakeholder, and a combination of consultation and freedom of information would go a long way.

Consultation has become a dirty word in Scotland. It has not had a great history in the context of school closures and various other matters, because it has not consisted of very much. Freedom of information is a necessary safeguard for stakeholders.

The Convener: As members have no more questions, the committee will consider its next steps. Indeed, you will be familiar with the process from previous petitions.

My view is that we need to write to the Scottish Government about the petition, and the Scottish Federation of Housing Associations is obviously a key body. I mentioned the Scottish Housing Regulator earlier; it is also important that we write to the Scottish Information Commissioner, the Campaign for Freedom of Information in Scotland and perhaps a selection of registered social landlords. Are members happy with that course of action?

David Torrance: I am happy with that, but can we also consider some smaller housing associations with very few staff?

Sean Clerkin: I would suggest Alan Benson of Milnbank Housing Association, which covers 2,000 homes, and there is also the Glasgow and West of Scotland Forum of Housing Associations, which represents a big group of smaller housing associations. Those organisations would very much welcome it if they were written to, so that they can participate in the process.

The Convener: Thank you for that.

John Wilson: It would be useful to take up Mr Clerkin's suggestion about the Glasgow and West of Scotland Forum of Housing Associations, which indeed represents a lot of smaller housing associations and housing co-operatives. I suggest that we also write to the Tenants Information Service, the Tenant Participation Advisory Service,

the Scottish Federation of Housing Associations—which I think you have already mentioned, convener—and the Chartered Institute of Housing. As those organisations represent both tenants and landlords, we should seek their views on the issue. There will clearly be differences of opinion about how the proposal would apply to different organisations, and it would be useful to get a wider scope by getting those organisations' views.

Anne McTaggart: I agree with what has been said.

Angus MacDonald: At the risk of being accused of being parochial, I want to add Paragon Housing Association, which is a small association.

Kenny MacAskill: I agree with the proposals.

Sean Clerkin: I would also suggest the Scottish Tenants Organisation.

The Convener: I think that John Wilson mentioned it.

Sean Clerkin: Iain MacInnes is the person to contact.

The Convener: Thank you both for coming along and giving evidence. As you can see, we are taking the petition very seriously, and we are going to write to what I think is a record number of organisations. When we get that information back, we will let you know when the petition is scheduled for consideration again.

I suspend the meeting for two minutes to allow a changeover of witnesses.

11:18

Meeting suspended.

11:20

On resuming—

Proposed Cockenzie Energy Park (PE1537)

The Convener: The second new petition is PE1537, by Shona Brash, on behalf of the Coastal Regeneration Alliance, on the proposed energy park at Cockenzie. Members have a note by the clerk, the SPICe briefing and the petition.

I welcome the petitioners, Shona Brash and Gareth Jones from the Coastal Regeneration Alliance, to the meeting. I also welcome Iain Gray, who is the constituency member and has an interest in the petition.

I invite Ms Brash to speak for a maximum of five minutes. After that, I will invite Iain Gray to make some comments and we will throw the discussion open to questions.

Shona Brash (Coastal Regeneration Alliance): Good morning, convener, ladies and gentlemen.

I speak on behalf of more than 8,000 residents in the communities that surround the Cockenzie site in East Lothian and beyond. Many other local people are of the view that the energy park is a done deal and that there is no point in signing a petition as the decision has already been taken. We do not share that view.

Our communities are not against industry or energy, but we believe that there has to be a harmony between the two for both to be successful. Our communities have demonstrated that in the 50-plus years for which Cockenzie power station has existed in our midst.

The energy park proposal arrived as a bolt from the blue in the local press on 22 May this year. There was no warning of a proposal of such a size and scale—it is too large for the proposed site—which would divide communities with strong historical links. Nor was there any consultation about it. In the weeks following, Scottish Enterprise organised a public consultation in the local areas but could offer very little information on what would be included or how the site would impact on the communities that are closest to the boundary.

People began to realise that the size and scale of the proposal would change their way of life for ever. The greenhills—loved open green space that is used by all ages for all activities—the site of the battle of Prestonpans, a well-used network of pathways and a historic wagon way would be lost. In fact, all our well-used and much-loved designated countryside land was included in the Scottish Enterprise scoping proposal, which would cause the greatest negative impact on our land and coastal environments in living memory. We had not been consulted, nor had we known that our communities had been at risk for the previous 12 months without anyone telling us. Our quality of life, environment, wildlife and marine life are now all at risk.

Greater disappointment was to follow with the realisation that East Lothian Council had been instrumental in suggesting the Cockenzie site for such a development with little regard for the communities that it serves.

Over the past 10 to 15 years, our communities—and, with them, the aspirations and hopes of residents—have changed significantly. Many hundreds, if not thousands, of new houses have been built, which has brought new people with new ideas to complement the talent that already existed. Previously, people would not have suggested our area as a hub for artists and out-of-the-box thinkers, but they would now. Although we

will always honour our industrial past, the desire in our communities is to be part of the leisure, recreation and tourism for which our county is well known.

Our communities can clearly demonstrate that they can embrace change and challenge. Positive community engagement came to the fore in the work of the coastal regeneration forum that was set up in 2010. Residents suggested how they wished our communities to be shaped in the future. The existing energy footprint was acknowledged, but it sat alongside a positive community vision and the one complemented the other. The CRF's final report was submitted to East Lothian Council but does not seem to have been given any consideration.

Two local fishing skippers with a combined time at sea of close on 100 years are of the view that the extent of dredging that is proposed to reclaim close to 12 hectares of the Forth will decimate fishing and change our coastline forever. Their view is that the impact will be felt in many, if not all, fishing communities around the Forth and in their associated services.

Scottish Enterprise and East Lothian Council have relied on a statement in the national planning framework 3, which was published in June 2014, to support the energy park proposals. It defines the Cockenzie site as an area of co-ordinated action, but there is no explanation of what that means nor any definition of what an energy park might be.

The substantial change in the site's use between NPF2 and NPF3 was not part of the main issues report consultation for NPF3 and appeared after the consultation had closed. That gave no opportunity for anyone in the community to comment on the principle.

If the energy park proposal is progressed, we might have to look elsewhere. That is likely to mean Europe, where we think a direct challenge to NPF3 and the energy park is likely to be considered under the Aarhus convention.

We are no experts; we are no more than local people living and, in many cases, working in our communities. The energy park proposal is an offence to the commitment and passion that we feel for our areas, but the greater offence is that no one is listening. There is no one to turn to for help other than the Parliament and the Government. We ask the Parliament to urge the Government to stop the work that is under way in order to relieve the stress in our communities while proper and transparent consultation is carried out and consideration is given to alternatives including a positive community alternative that would allow industry and community to sit side by side as they have done in our areas for more than 50 years.

Our communities want to be part of the leisure, recreation and tourism that the rest of the county enjoys. We want to celebrate John Muir, cycle route 76 and enjoy the East Lothian golf coast. We want our battle site to be preserved and enhanced, our green spaces and coastline to be protected and our residents to be encouraged to enjoy our beautiful outdoors.

The Convener: Thank you very much for your evidence. I will bring in Iain Gray.

Iain Gray (East Lothian) (Lab): I am pleased to have the opportunity to speak in support of the CRA's petition. It is absolutely clear that the community that I represent supports the petition, too. The CRA has organised campaigns that have included public meetings attracting 700 and 800 local people, and it has encouraged my constituents to write to me. Indeed, I have had more letters on the subject—well over 1,000—than on any other issue in my time as an MSP. There is no doubt in my mind that the campaign is supported by local residents.

The site that we are discussing is nationally strategic as well as being the gateway to Edinburgh and central Scotland. However, we must understand that it is a strategic site locally, too. It lies at the very heart of three communities—Prestonpans, Cockenzie and Port Seton—and their interests cannot be ignored.

On the face of it, we are discussing an industrial site. However, colleagues should understand that Scottish Power uses only part of the site for the power station. As Shona Brash mentioned, the perimeter includes green space such as the greenhills. It provides access to the local shoreline, it is contiguous with and covers some of the historic site of the battle of Prestonpans and it is traversed by the John Muir way, which was recently opened by the former First Minister.

The existing power station at Cockenzie has served Scotland, producing electricity for more than 40 years, and Scottish Power has permission to replace it with a gas-fired station. That idea was broadly accepted by the community, although not by everyone, on the basis that the facility would be smaller. However, there is no sign of that proposal progressing. Scottish Power appears to consider the site no more than a brownfield site that it wants to dispose of in order to realise its asset. In doing so, it would betray the community that has supported it for more than 40 years. The local community built, worked and lived next door to that power station, and it deserves consideration of its interest as Scottish Power decides how to move on.

The Scottish Government charged Scottish Enterprise with finding sites to create supply chains for offshore wind projects. That led to Scottish Enterprise making the current proposal—a proposal, as Shona Brash said, not just for an energy park but for the largest energy park facility that one could possibly imagine on the site. Local residents had no indication that that proposal would be made. They felt and continue to feel completely excluded from the development of that proposal.

The proposal would massively increase the site's industrial footprint. It would involve 24/7 floodlit working, which would compromise the Prestonpans battle site, break the recently opened and highly popular John Muir way and compromise a potential important development at Blindwells, which is not far from the Scottish Power site. Above all, it would divide and cut off the three communities—that is what my constituents find most offensive.

11:30

As a proposal, it is unacceptable. It would also rule out other proposals and possibilities. I believe that my county needs jobs, but not at any price, and there are other ideas about how the site could be developed. Many see the tourism potential. The CRA itself has developed a plan, which it has shared with the committee today. Not everyone has the same ideas but, in truth, nobody supports the proposal locally.

The proposal has united the community in its determination to have a say—that is the most important thing. That is why the CRA is right to appeal to the Parliament to ask the Scottish Government that the process stop now and start again.

It is important that the site comes into public ownership because there is a danger that Scottish Power will sell it to the highest bidder, and who knows what plans a private developer might have for the site? However, if the site comes into private sector ownership, we must start again and work with the community, not against the community, to plan the use of the site with local people rather than in spite of them.

The Convener: Thank you very much for your contribution, Mr Gray. The committee needs to consider the general principles of energy parks rather than one specific development. I understand the interest that you have in the specific site, but I wanted to make that general point about the purpose of our committee.

I have a question for Shona Brash. Do you feel that the proposal will squeeze out other development opportunities?

Shona Brash: Absolutely. Our communities would like to put forward a positive community alternative that could provide jobs and would complement everything that is good about Scotland and our garden county. There is room for everything on the site, as has been demonstrated over the past 50 years.

The Convener: Thank you.

Angus MacDonald: At a recent portfolio question time, Iain Gray asked the Deputy First Minister about the proposed Cockenzie energy park. In his answer, John Swinney gave an assurance that

"The site is not in the ownership of Scottish Enterprise, so Scottish Enterprise has no site plan"

in its possession. He added that

"The site remains in the ownership of Scottish Power".

Mr Swinney also gave Mr Gray an assurance that, should Scottish Enterprise acquire the site,

"there will be full and active dialogue with the local community before any developments are considered or undertaken."—[*Official Report*, 5 November 2014; c 5.]

I presume that that assurance gives you some comfort. You are shaking your head, Ms Brash.

Shona Brash: That does not really give me comfort. It seems as though an awful lot of money, time and energy have already been spent on taking the proposal to the level that it is at just now. The panic that I feel is because I wonder how the process can be moved back when such a lot of money has been spent. I feel anxious that, if another year passes, it is going be too late to change things. It already feels that way for many folk. We could have had 28,000 signatures on the petition, but folk truly believe that it is a done deal and that there is no point in signing the petition because there are ships sitting out in the Forth and this, that and the other are already being done. They feel that it is already happening. We are trying to say to people that it is not final—that there is a process, that people will listen and that they will be part of that process—but they do not believe that.

Angus MacDonald: Mr Gray referred to Scottish Enterprise taking over ownership of the site. In our briefings, we do not have any information on that having happened. Has that been mooted?

Shona Brash: No, I believe that Scottish Power still owns the site. I do not think that Scottish Enterprise owns the site. I have to say that there has been a harmonious relationship between the communities and Scottish Power over the 50 years. All our local bairns would go to Christmas parties in the power station and Scottish Power worked really hard to develop strong links between

the communities. The whole site might be seen as an industrial site, but it is not. The power station is on a very small footprint on the site, as is the coal plant. The rest of the site was given over to the communities by Scottish Power and we have enjoyed using it. Perhaps it is not our land in that we do not own it, but we feel as though we do because we have had it for so long and we have done so much with it over so many years.

Angus MacDonald: You speak about the footprint. I presume that the cover of the document that you gave us shows the site.

Shona Brash: Yes, it shows some of the site, but the site is bigger. The cover shows the greenhills, but the site extends all the way up to the Meadowmill roundabout.

Angus MacDonald: In your introductory remarks you also mentioned the possibility of a legal challenge to NPF3 in Europe. I presume that that would be a last resort.

Gareth Jones (Coastal Regeneration Alliance): Yes. I do not think that anybody would want to do that. However, we have come to realise that the whole thing came out of the blue—there was no public consultation and the proposal appeared from nowhere in NPF3. It was not in NPF2 or the MIR for NPF3, and it is not in the national renewables infrastructure plan. Cockenzie is not identified as a site for an energy park. Where did the proposal come from and why was nobody told about it? In May this year, we all opened our local paper and thought, "What's going on?" Nobody knew about it. That is at the core of why we are so concerned about it—as well as the fact that it is a massive-scale proposal, of course.

We have done a little bit of work. We have spent several months poring over mountains of information on the background to the proposal, and it appears to us that this is about as clear a case as is humanly possible under the Aarhus convention of a lack of transparency in the planning system and a lack of community involvement on a matter of environmental planning. People are telling us that such a legal challenge is what we will have to pursue if we do not manage to get the proposal put on hold now.

David Torrance: I have some sympathy with your petition. Fife energy park, which is in the area that I represent, has redeveloped and regenerated a run-down area and created a lot of high-skilled and well-paid jobs. It regenerated the whole of the Levenmouth area and it has the potential to be developed further. We are now compulsorily purchasing additional land to make room for more industries to come into the area.

There was a lot of consultation with Scottish Enterprise. We have the Fife coastal path, which gets half a million visitors a year, so there has been a lot of consultation with local groups, Scottish Enterprise and the Fife Coast and Countryside Trust, to protect all the areas round the energy park. Could dialogue not take place with the local community on what it wants in the area, to influence the plan before it goes ahead?

Gareth Jones: It would be great if there was dialogue, but there just has not been any. Scottish Enterprise presented a consultation that included four A1 boards in a community centre, for the biggest proposal that East Lothian has ever seen. There seems to be a lack of information being given out about the fact that the proposal does not just include the power station site. There would not be anything like this stushie if it was just the power station site, but it is not. It is a huge area that includes the battlefield of Prestonpans and the greenhills, which are public open spaces—green spaces. Fundamentally, the proposal is for something in the middle of communities. It is not on the outskirts or on a previously industrial site, although some of it was industrial in the 19th century.

There has not been any consultation. There might be scope for some, but it would be nice if it came sooner rather than later. It has not appeared so far.

David Torrance: I have a question about a major concern that affects my area, as well: the plans for underground coal gasification. The energy park will probably be used for that. Underground coal gasification licences are issued by Westminster. Last night at Westminster, a motion to stop fracking and underground coal gasification underneath houses was defeated. It would have no relevance to the energy park whether this went ahead or not.

Gareth Jones: Sorry, but I did not catch the question.

David Torrance: One of your objections is that the proposal would facilitate underground coal gasification in the area but, even if the energy park is not there, licensed companies will still go ahead with underground coal gasification.

Gareth Jones: That is probably right. We recognise that the designation of an energy park, wherever it may be, could easily be used for coal gasification. It seems that coal gasification is one of the things that has not been mentioned at all in connection with the Cockenzie site, although it is eminently suitable for it. In fact, some coal gasification proposers use the Firth of Forth, with the north and south sides—Methil across to Cockenzie, presumably—on their plans. However, there has been no consultation. Most locals are completely oblivious to the issue and some of the main protagonists in the debate—Scottish Enterprise, Scottish Power, to a point, and East

Lothian Council—laugh when we mention coal gasification, as if it will never happen here.

The Convener: If no other colleagues wish to ask questions or make any points, I will ask a final question.

One would clearly not want to take a case to Europe under the Aarhus convention, because that would be a lengthy, and presumably very expensive, process. Have you explored that route? Do you, or does anyone in your group, have any experience of such a process?

Gareth Jones: We do not. We are just a bunch of local people. We are not a bunch of battle geeks or busybodies; we are just really worried about what is happening in the middle of our towns. We have had no experience of such a process, but we have taken advice from a Queen's counsel who is sympathetic to us. We would have to take the matter forward with him, which would involve some expense. We obviously do not want to do that—we do not have the money to do it—but we would if we had to. We do not want to let 8,000 people down.

Shona Brash: We hope that the committee members sitting in front of us today, and our Parliament and Government, will listen to the folk who live in the area. The energy park proposal will slice down the middle of communities. The catchment area for our local high school covers Prestonpans, Cockenzie and Port Seton and Longniddry. Our bairns walk the pathways and use the road where all those things would go.

I know that Methil has found ways to get round that, but we have been able to demonstrate that industry, energy and communities can sit together. We would like the proposals as they stand to be halted, and for people to start looking at a plan that will allow us to work together and which will complement the community. Nobody is saying no to jobs, or to anything. We want to work together for a sensible outcome.

The Convener: Thank you for your evidence. The next step is for us to consider the next stage for the committee. You have both given clear and straightforward evidence on the issue, as has Iain Gray.

It would clearly be sensible to write to the Scottish Government, Scottish Power, Scottish Enterprise and East Lothian Council about the issue. We can then discuss it further once we have the full information before us. That is my suggestion, but as always the committee may have a different view. Does the committee agree that we should consult those organisations?

David Torrance: I am happy for us to consult them. Can we also ask how much consultation they have done with the local community and what input the community has had to the final draft plans?

The Convener: Thank you for that.

John Wilson: I agree with David Torrance. When we write to the Scottish Government, we should focus on NPF3, because I am concerned about the issues that have been raised today. The proposal seems to have landed in NPF3 in the latter stages, rather than the early stage, of consultation.

The Convener: Thank you. Other members may have a different view.

Kenny MacAskill: It would be better to try to get parties to work together. From listening to Iain Gray and Shona Brash, it seems that industrial development is not precluded. It is recognised that the worst thing might be simply to go on the market to the highest bidder, which might be even worse than the worst extremes of what is before us.

We need to seek public engagement. Given the size of the footprint, there must be an opportunity to achieve some of the things that can be delivered, taking a view of Scotland's future energy needs in the 21st century, while ensuring that public assets and public goods can be retained. We need to encourage the parties to come together and work constructively rather than one side giving an edict or a diktat, although it has doubtless been well researched. The tone and the tenor are important, as we are trying to reach an accord. People might not necessarily be on opposite sides, and they could sit down and chat.

Shona Brash: It feels as if a spaceship came from outer space and landed at Cockenzie, and everyone thought, "Help ma boab! What are we going to do about this?" We really are just local folk. We are not experts—we have never sat in a room like this before with people like you, and it is overwhelming.

The Convener: It is a case of, "Houston, we have a problem."

Shona Brash: Aye—and how do we fix it?

The Convener: I thank our witnesses for coming along. It is obviously a huge issue but, as I said at the start, we are also looking at the wider issues. We have agreed to write to the Scottish Government, Scottish Power, Scottish Enterprise and East Lothian Council, looking in particular at the issue of consultation and at NPF3, which is a vital aspect. I thank you all for giving such clear evidence—that includes Iain Gray. I will suspend the meeting for two minutes to allow our new witnesses to take their seats.

11:44

Meeting suspended.

11:46

On resuming—

Current Petitions

Thyroid and Adrenal Testing and Treatment (PE1463)

The Convener: Item 5 is consideration of three current petitions. The first is PE1463, by Lorraine Cleaver, on effective thyroid and adrenal testing, diagnosis and treatment. Members have a note by the clerk and a submission from the petitioner, whom I welcome to the meeting.

I also welcome Elaine Smith, who has a long-standing interest in the petition. I met Elaine Smith, Lorraine Cleaver and two members of our clerking team last week to look at the issues in more detail. Elaine, would you like to give us a brief summary of where we are with the petition?

Elaine Smith (Coatbridge and Chryston) (Lab): I thank the committee for the amount of work that it has done so far, and for its interest. Members have been thorough and interested, and they have understood the issues, which is more than can be said for some people in the medical profession. You have done a pile of work, but unfortunately we have not as yet had better outcomes for patients or any money saved for the NHS. That is where I am starting from.

We have Lorraine Cleaver's letter, which will be useful in guiding the committee in what it should request from the Scottish intercollegiate guidelines network. The SIGN guidelines might be helpful, but they could take up to two or three years to emerge, and there are other areas that still need to be addressed. I propose that the committee keeps taking an interest, not only because SIGN might have to liaise with you, given that you are asking it to carry out the work, but because you have not yet had any feedback from the Scottish Government's work on patient experiences.

If members do not mind bearing with me for a minute or two, I will just go over why you should keep the petition open, as I suspect that you might be considering closing it. First, there are outstanding issues. We know that more research is required on the condition and on what other options there are for patients. The lack of research in areas such as triiodothyronine—T3—prevents medical professionals from prescribing medication that could improve the lives of their patients. We need a programme of trials for T3 and for desiccated thyroid hormone. Patient experiences should be included in those trials, so that we listen to the patients and do not just look at test results, which is really important.

As the committee knows, there is still only a sole supplier of T3 in the UK, which means that there is a monopoly. There are current issues, again, with the supply of T3, according to the chemist who I spoke to last week.

We also know about misdiagnosis from the committee's work. You will know that misdiagnosis has an impact on the patient and on the NHS as a whole. Patients are often misdiagnosed with conditions such as depression, myalgic encephalitis and Addison's disease—the list goes on. Members can see that from the stories that you have received from 50 patients.

As Lorraine Cleaver's letter to the committee notes, the Royal College of Physicians says in its policy statement:

"We recommend that those patients whose thyroid blood tests are within the reference ranges but who have continuing symptoms, whether on Levothyroxine or not, should be further investigated for non-thyroid cause of the symptoms."

That is increasingly worrying, because, as members know, that is what happened to me. Over several years, the NHS spent thousands of pounds putting me on heart monitors and giving me brain scans, and on hospital admissions and prescriptions for this, that and the other, including for a low immune system. The cost to the public purse of that approach is huge and leaves people on medication that they do not need and that does not help them.

There is the specific issue of ME, where people are economically inactive and are living a half life, or no life at all. That is something in which the committee could take an interest.

There are 87 medicines for type 2 diabetes, 47 medicines for depression, 45 medicines for acne, 16 medicines for athlete's foot and just one for underactive thyroid, which is an immense condition, as the committee will know from all its work.

We know that people are resorting to sourcing T3 and pig thyroid from abroad. That is allowed under the Medicines Act 1968, but there is no regulation of what people are taking and no knowing what is in the medicines. People should not have to go to such lengths, but they are doing it, because they feel as if they are rising from the dead.

Many doctors are concerned about the guidance from the Royal College of Physicians, which really only helps people who convert normally. People who do not convert are a real problem, as the committee is aware. It is fair to say that endocrinologists are scared to push the boat out and try other things. They are worried about the stricture to do no harm, but they are actually doing harm by not trying other things that might bring people back to life.

The correct testing is out there, but it is not available on the NHS a lot of the time. People are paying to get the correct tests and to get on the right medicines, if they can afford it. Others who cannot afford to pay are left to languish. There is also the issue of telling patients that they are borderline, which is a scandal. People could be trying thyroxine—T4—in those situations.

The Healthcare Improvement Scotland scoping report that the committee received recently is telling. It found that the use of thyroid function tests is based on generally poor-quality non-peer-reviewed evidence. If a doctor carries out a test, it is usually only for thyroid stimulating hormone—TSH—and occasionally for T4, but the evidence for the adequacy of those tests is weak. At a Thyroid UK conference in October, Dr John Midgley said:

"There have been long, sad and unsatisfactory developments in thyroid function testing, including up to the present day".

He says a lot more than that and I am happy to share his report with the committee.

It has been admitted that 15 per cent of diagnosed sufferers do not do well, but we think that the figure is likely to be higher than that. It could be considered medical negligence not to treat those people properly. Even those sufferers who supposedly do well on T4 are still obese—we have a huge obesity problem. They also have thinning hair, dry skin and are tired.

It is estimated that only 20 per cent of people who are diagnosed are referred to endocrinologists. More people need to be referred. I have heard of several women recently who have had strokes that could have been caused by their underactive thyroid. They are not doing well and are suffering from ME-type symptoms, but they have not been referred to an endocrinologist by their GP. That is just not right for people with a complex condition such as an underactive thyroid.

Thank you for bearing with me, convener, but there are many issues to cover, including research, testing, medication and the supply of medication. I do not think that SIGN guidelines would address all those points, although they would help. An inquiry by the Public Petitions Committee would be helpful and welcome. There are so many areas to cover. The committee is still waiting for the patient experience feedback from the Scottish Government. There is a new public health minister, so it might be helpful to pass all the information to her and ask her to address the committee on the issue. The committee has done such a power of work and now is not the time to stop.

Thousands of women are desperate for help. It is specifically a women's issue, so another line that the committee could take is to ask the Equal Opportunities Committee to look into the matter from the perspective of discrimination against women and report back. The bottom line is, if the committee stops now, it will have wasted the time that it spent doing the work that it has already done. That work has been fantastic, but we need to change the outcomes for women and save the NHS thousands of pounds. The committee has the ability to do further work to enable that to happen.

The Convener: Thank you. That was a comprehensive submission. For my own part, I do not intend to close the petition, and I have some suggestions about how the committee might go forward. I should also say that Elaine Smith has done excellent work on this matter.

I suggest that we write formally to SIGN and forward the evidence that we have received, including the patient testimonies and the petitioner's suggestion of specific areas for investigation. SIGN should be invited to work with the petitioner to initiate the process of developing guidelines for the diagnosis and treatment of thyroid conditions and formulating the necessary questions.

We certainly want to keep the petition open, see what we get back from SIGN and, obviously, consider any other longer-term aspects that we can deal with. I certainly would not want to close the petition at this stage. What are members' views on that suggestion?

David Torrance: I am happy to agree to the recommendation.

John Wilson: I, too, am happy to agree to it. The issue for me is that we should, as Elaine Smith has said, write to the Scottish Government, particularly the new minister, to keep it updated and in the loop on how we are dealing with the matter. It would be useful if the Scottish Government brought some pressure to bear to ensure that SIGN takes up the committee's recommendations.

Anne McTaggart: I thank Elaine Smith in particular for the power of work that she has done on this issue.

I agree with the convener's suggestion, but I wonder whether we can pick up on a few outstanding matters highlighted by Elaine Smith that would not be covered by SIGN. One of my major concerns is about the supplier of T3, which Elaine Smith mentioned. We have been down this road before, and I never thought for one second that we would back here again so soon. Can we seek to resolve the issue and ask the health minister why what is happening is happening?

The Convener: We could put that in our letter informing the minister of the SIGN guidelines.

Angus MacDonald: In addition to the supply of T3, what has struck me throughout this whole saga—for want of a better term—is the failure to prescribe natural desiccated thyroid hormone. I do not see why that is not happening. I hope that we can get answers to that question and that it will be prescribed in the future, as it is a no-brainer to me. It just looks like a solution to the problem.

The Convener: Thank you for that. We will add that to the letter.

Kenny MacAskill, I appreciate that you are coming cold to the matter.

Kenny MacAskill: What has been suggested seems a sensible way forward.

Elaine Smith: Although endocrinologists know that desiccated thyroid hormone might help their patients, they are keen not to do something that nobody else is doing; they are a bit worried about that. The following quote, which is from a report by a medical investigative journalist, was made by a lecturer in geriatric care, but the same principle applies. That lecturer told a conference:

"We like to stick with the standard of care because when the"—

I will not use that word—

"hits the fan we all want to be able to say we were just doing what everyone else is doing—even if what everyone else is doing isn't very good."

That is a problem.

The Convener: I do not want to extend the debate, but has the National Institute for Health and Care Excellence been asked for its view on prescribing desiccated thyroid hormone? We might have raised that issue at previous meetings.

Elaine Smith: I am not sure about that—I will check.

I think that the problem is that although desiccated thyroid hormone can be prescribed—members will know that, because the health scoping report says that it can be prescribed as "a specials product"—our endocrinologists are not prepared to do so, because they are concerned that they will be put in front of the General Medical Council, as Dr Skinner was for years. He was never found guilty of anything, because he helped his patients by prescribing the product. Many general practitioners who prescribe it simply say nothing about it, because they are scared. The overriding and overarching guideline of "Do no harm" makes them worried about trying such things in case they do harm. However, by not trying them, they could be doing people harm—in fact, I would say that they are doing harm.

The Convener: Perhaps you can explore that matter and get back to us on it.

Again, I thank Elaine Smith for coming to the meeting. As she has heard, we are very keen on the petition, and we will pursue it in the ways that I have identified and the additional ways that my colleagues around the table have suggested. I also thank Lorraine Cleaver, who is in the gallery, for coming along.

Tinkers' Heart of Argyll (PE1523)

The Convener: The next petition is PE1523, by Jess Smith, on giving the Tinkers' Heart of Argyll back to Travelling people. Members will have a note by the clerk and the submissions, including the recent letter that we received from Ms Ramsay.

I welcome to the meeting Mike Russell, the constituency MSP, who has taken great interest in the petition, and I ask him to make a brief opening statement to the committee.

12:00

Michael Russell (Argyll and Bute) (SNP): Convener, I am sorry that Jess Smith is not here. She is otherwise engaged but she is grateful for the interest that the committee has shown and the work that has been done. However, I should also say that she is disappointed with the progress that has been made to date, as am I.

I will quote from a letter that I received last week. I am not at liberty to say from whom I received it, but it was somebody in the heritage sector. The letter, which really gets to the nub of the problem, states:

"Although no one knows the origins of Scottish Travellers for sure, they have been part of Scotland's history and story for hundreds of years, playing an important role as armourers to the clans, as bringers of news and useful items to rural communities across Scotland and today as the keepers of oral traditions that were once all of ours, but which have become largely lost in our world so dominated by technology. Their story is an important one within the story of Scotland. As Historic Scotland aims to preserve historic sites that help to tell the story of the people who have lived in Scotland over the past 10,000 years, by leaving Travellers out of this history the story of Scotland cannot be complete and an opportunity to recognise the contribution of this community is missed. It also adds to the cycle of discrimination in which Travellers are not visible within the telling of our history and this vacuum allows negative attitudes to this community to flourish unchecked."

Regrettably, that is what lies at the heart of Historic Scotland's response. It has not grasped the importance of the issue. If its procedures are such that it cannot properly recognise the only site associated with the Travelling people across Scotland, those procedures need to change.

I am also disappointed because I am unaware of any substantive response from the landowner. Am I correct in assuming that?

The Convener: There has been nothing at all.

Michael Russell: That is extremely disappointing. As a public body, Historic Scotland is bound to respond, even if it does not do so adequately. For the landowner to ignore this Parliament, just as she has ignored the petitioners, is disgraceful. In the circumstances, there is much unfinished business with the petition, which has received more than 1,000 signatures and generated an enormous amount of public interest. I shall certainly continue to back Jess Smith and those who work with her to ensure that that tiny spot of ground is given proper recognition and that we can include the Travelling people of Scotland as we tell our story and move forward as a nation.

The Convener: Thank you for that submission. What would be useful in taking the petition on to the next stage?

Michael Russell: Three things would be helpful. The first thing is to remind the landowner that, whatever her view, she is not above the democratically elected representatives of the Scottish people. The second thing is to return to Historic Scotland and the minister to question their position on the intangible cultural heritage, to question the procedures that they are following for scheduling monuments, and to see from them a solution to the issue. There might be solutions other than scheduling, but we need a solution that achieves the end that is sought, which is the site's proper preservation. At the moment, the site is not properly preserved; when I drove past it this morning, in the grey, wet light of an Argyll dawn, I saw that it had a metal container around it and nothing else. It needs proper signage and proper parking, and it needs to have attention drawn to it.

The third thing is something that I know Jess Smith would welcome, although it might not be possible for the whole committee. If the convener, as a Highlands and Islands MSP, were to visit the Heart, I am sure that Jess Smith would be there to welcome him to it, and such a visit would also draw attention to the fact that the Parliament is determined to do something to recognise the heritage of the Travelling people of Scotland.

The Convener: The clerk has advised me that the landowner rang the clerks to speak to them. She knows that she has been invited to write to the committee, but she has not done so yet, and I hope that we will get a written submission.

Michael Russell: I will suspend my criticism until we see the letter, but if the letter went to her, as it did, timeously at the end of September or beginning of October, she must be gey busy if she cannot reply in that time.

John Wilson: I welcome Mr Russell's contribution to the discussion. The Travelling people and tinkers have made an important contribution to the history of Scotland, and the Tinkers' Heart plays an important role in that heritage.

For me, the issue goes back to the issue of land ownership. We received a useful submission from Councillor Robert Macintyre. In the third paragraph of his submission, he says:

"I can confirm that in a minute of a meeting of Argyll County Council held in April 1969 there is record of a decision made that an area of ground at this location shall cease to be a highway within the meaning and for the purpose of Section 42 of the Roads and Bridges (Scotland) Act 1878."

Would it be possible to get clarification of the question of whether that means that the land reverted back to the private landowner? If the site was part of a public highway, why the land reverted back to a private landowner is beyond me. That raises issues about the suggestion that, as Jess Smith indicated previously, the site of the Heart and the access route to the Heart were public-access land. There is an issue about land ownership and whether the landowner who now claims ownership of the land has title to the land.

I think that, if possible, every committee member should act on Michael Russell's suggestion that they visit the site. It is not only this site that is under threat; the issue affects a number of sites across Scotland.

The submission from Historic Scotland of 3 November says:

"under the terms of the Ancient Monuments and Archaeological Areas Act 1979, scheduling does not provide any specific onus on an owner to care for or provide interpretation for a monument".

I hope that the committee will write to Historic Scotland to ask whether there needs to be a change to the act to ensure that the appropriate protection of these sites is put in place, particularly with regard to monuments that are on private land. As Jess Smith says, the landowner can do whatever she wants with the land, and has been doing so, up until recently, when the fence was erected around the site. We need to ensure that monuments such as this one are protected and we need to state that we see the value in protecting them.

We should write to Historic Scotland to ask whether it intends to introduce legislation that would amend the 1979 act to ensure that we get appropriate protection for sites that are on private land.

The Convener: I believe that Mr Wilson's suggestions are competent. With regard to the first one, about roads, we should write to Argyll and Bute Council and ask for a comment on that from its director of legal services.

Do members have views?

David Torrance: I am happy to go with the recommendations.

Anne McTaggart: I thank Mr Russell for his presentation, and I would also like to take up the offer to see the Tinkers' Heart. However, I am concerned about Historic Scotland's reply. It worries me that, although this is Scotland's only site of this nature, the issue does not seem to be being taken seriously. Can we meet representatives of Historic Scotland to discuss the matter further?

The Convener: We can certainly invite representatives from Historic Scotland to appear before us in the new year, if the committee is willing. I am sure that we can invite Mr Russell to come along on that day, too. That will make for an interesting meeting.

John Wilson: If we are going to invite Historic Scotland, could we invite the Cabinet Secretary for Culture, Europe and External Affairs to the same meeting, so that we get the Government and Historic Scotland speaking from the same page?

The Convener: That is a good idea.

Angus MacDonald: I am happy to go with the recommendations that have been made so far.

Kenny MacAskill: I think that there are two issues. The first is land ownership. Land ownership brings rights, but it also brings responsibilities. It is therefore disappointing that the landowner has not taken the opportunity to write to us. We should perhaps pursue the roads issue with Argyll and Bute Council, but it seems to me that someone owns the land, and that those who have a vested interest in the site, whether through their statutory responsibilities or their ownership of it, should do that bit more in relation to the site.

Equally, on the historical aspect, I think that it is appropriate to push Historic Scotland on the issue. The community that we are dealing with might be marginal, but it is part of Scotland's historical tapestry, as Michael Russell said.

The Convener: As you have heard, Mr Russell, we are very enthusiastic about the petition. We are going to invite Historic Scotland and the cabinet secretary to appear before us, and we will write to Argyll and Bute Council to check out the legalities involved. We will also send a gentle reminder to the owner to give us a written submission. In addition, we will write to Historic Scotland to try to get the heritage criteria correct, because they currently do not seem fit for purpose. Are

members happy with that comprehensive approach?

Members *indicated agreement.*

Michael Russell: Those will be excellent developments. I should have mentioned my gratitude to Argyll and Bute Council for responding positively. Historic Scotland is of course going into a new incarnation and, with new management, it might have a more comprehensive view of what Scotland's heritage is, which would be great.

The Convener: I thank Mike Russell for coming along today.

Sex and Relationships Education (PE1526)

The Convener: The final current petition is PE1526 by Jack Fletcher, on behalf of Sexpression:UK, on making sex and relationships education in Scotland statutory for all schools. Members have a note by the clerk, the Scottish Parliament information centre briefing on sex and relationships education in other European Union countries, and the written submissions.

Members might have other views, but it seems to me that we have two main routes forward on the petition: to refer it to the Education and Culture Committee for it to consider whether the provision of sex and relationships education in schools should be mandatory, or to close the petition under rule 15.7 on the basis that the Scottish Government will shortly issue revised SRE guidance that the petitioners support; that the Scottish Government has given a commitment to raise the profile of SRE when it publishes its revised guidance; that Education Scotland will monitor and assess the implementation of the new guidance; and that those who gave views to the committee were supportive of SRE continuing to be non-mandatory.

Which of the two options do committee members think we should pursue? Are there other options?

David Torrance: I am happy to close the petition as the petitioner is supportive of the Scottish Government's actions on it.

The Convener: Are members agreeable to taking that course of action?

Kenny MacAskill: Yes. We cannot decide the timetable for Scottish schools, which have been under pressure to include areas such as business and financial advice. The Government is showing willing on the petition, so we should leave SRE to those in charge of it.

The Convener: I thank members for their views. Do we agree to close the petition under rule 15.7 for the reasons that I gave?

Members *indicated agreement.*

Tackling Child Sexual Exploitation in Scotland

12:12

The Convener: The final agenda item is consideration of the Scottish Government's national action plan on tackling child sexual exploitation in Scotland. Members have a note by the clerk, a copy of the action plan and, for reference, a copy of the Scottish Government's initial response to the committee's report on the plan's recommendations.

As someone who is particularly interested in the issue, probably because of my background in social work, I welcome the action plan and I will just highlight some issues that are of particular interest to me. It is important to have refuges for young people at risk of child sexual exploitation and it is crucial to have specialist services in every region, as we recommended. I acknowledge the work that the third sector in particular is carrying out in this area. I believe that the risk of sexual harm orders must be used more comprehensively. I understand that it is a complicated area involving the police, the fiscal service and so on, but we asked for a bit more work to be done on that.

The action plan adopted most if not all of our 26 recommendations. I put on the record my thanks to Barnardo's Scotland for taking the time and trouble to raise a petition on the issue. I think that the committee went an extra mile on it by undertaking a major inquiry, and I thank everyone who has been involved in it.

I think that we have now achieved our objectives. For that reason, I believe that there is merit in now closing the petition on the issue, unless committee members think that there are other steps to take.

David Torrance: I am happy to go with your recommendation, convener.

Kenny MacAskill: You are right to thank all those who have been involved, convener. Things are moving forward post the Rotherham case and the Alexis Jay investigation, and action is under way. The issue will evolve, but all that can be done by us has been done, and the issue is now back with the voluntary and statutory agencies.

The Convener: We will draw to the attention of the Education and Culture Committee the work that we have done in this area.

Do members agree with my recommendations?

Members *indicated agreement.*

Meeting closed at 12:14.

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