



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# **Citizen Participation and Public Petitions Committee**

**Wednesday 14 June 2023**

**Session 6**



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Pàrlamaid na h-Alba

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**CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE**  
**10<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Jackson Carlaw (Eastwood) (Con)

**DEPUTY CONVENER**

\*David Torrance (Kirkcaldy) (SNP)

**COMMITTEE MEMBERS**

\*Foyso Choudhury (Lothian) (Lab)

\*Fergus Ewing (Inverness and Nairn) (SNP)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Alasdair Allan (Na h-Eileanan an Iar) (SNP)

Jackie Baillie (Dumbarton) (Lab)

Rt Hon Dorothy Bain KC (Lord Advocate)

Grahame Barn (Civil Engineering Contractors Association (Scotland))

Katy Clark (West Scotland) (Lab)

Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

Murdo Fraser (Mid Scotland and Fife) (Con)

Robert Galbraith (Transport Scotland)

Laura Hansler

Monica Lennon (Central Scotland) (Lab)

Morag Mackay (Transport Scotland)

Edward Mountain (Highlands and Islands) (Con)

Lawrence Shackman (Transport Scotland)

Andy Shanks (Crown Office and Procurator Fiscal Service)

**CLERK TO THE COMMITTEE**

Andrew Mylne

**LOCATION**

The Adam Smith Room (CR5)



# Scottish Parliament

## Citizen Participation and Public Petitions Committee

Wednesday 14 June 2023

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

### Continued Petitions

#### Human Tissue (Scotland) Act 2006 (Post Mortems) (PE1911)

**The Convener (Jackson Carlaw):** Good morning and welcome to the 10<sup>th</sup> meeting of the Citizen Participation and Public Petitions Committee in 2023. We have a particularly busy meeting this morning.

Agenda item 1 is consideration of continued petitions, the first of which is PE1911, on a review of the Human Tissue (Scotland) Act 2006 as it relates to post mortems. This continues our discussion on a petition that was lodged by Ann Stark to call on the Scottish Parliament to urge the Scottish Government to review the Human Tissue (Scotland) Act 2006 and relevant guidance to ensure that all post mortems can be carried out only with permission of the next of kin, do not routinely remove brains and offer tissues and samples to the next of kin as a matter of course.

We have convened this morning's session on the back of evidence that we have heard to date. It is not just a matter of routine or fancy—members of the committee have been drawn to the evidence that we have heard already and believe that there are issues of substance that we wish to pursue. That included taking evidence from witnesses based in England when we heard about the ways in which their approach to post mortems and tissue sample retention differs from ours. They shared their experience of setting up a scanning service for post mortems and—accepting that cases where the procurator fiscal will be involved because there are suspicious circumstances would require a different route—outlined the ways in which that reduces the requirement for full invasive post mortems.

We also heard that the next of kin are offered a range of options for how tissue samples are handled. Despite our having received written evidence that those issues might be insurmountable, they seem to have been dealt with in passing in England—without us even questioning the witnesses about it, they volunteered the alternative solutions as a matter of course.

We would quite like to pursue those issues this morning. We are delighted that the petitioner is in the gallery today. It is worth reminding everyone that the petition was lodged by Ann Stark, whose son Richard died suddenly at the age of 25. Unlike many other Scottish Parliament committees, there is no party-political agenda driving our inquiry—our inquiry is happening because a petitioner decided to participate in the public process open to them to bring a petition to the Parliament. In essence, all of us sitting on the committee are representatives of that petitioner in the way in which we seek to take forward the substance of the issue that she raised.

I am delighted to welcome the Lord Advocate, Dorothy Bain KC, to our proceedings this morning, as well as the head of the Scottish fatalities investigation unit, Andy Shanks. Thank you both for giving us your time. I understand that you would like to make an opening statement, Lord Advocate.

**The Lord Advocate (Rt Hon Dorothy Bain KC):** Thank you very much.

As Lord Advocate, I am responsible for both the system of criminal prosecution and the system of investigation of deaths in Scotland. By virtue of the Scotland Act 1998, any decision in those capacities shall be taken independently of any other person, including decisions that are taken on my behalf by procurators fiscal.

Critical to the constitutional role that I fulfil is the ability on my part and those who act on my behalf to take any decision independent of any other person. One of the main reasons for procurators fiscal investigating sudden and unexpected deaths is that, depending on the circumstances, such an investigation might disclose a proper basis for criminal proceedings. However, the investigation is also important to ensure that the medical cause of any death is accurately identified and recorded; that the bereaved family can be informed about what led to the unexpected death of their loved one; and that any lessons can be identified and learned to avoid similar deaths in the future.

Yes, the role involves investigating deaths, but it also involves taking steps to save other lives, and I take my responsibility with regard to the constitutional function very seriously. I hope to fulfil it in a humane and compassionate way.

**The Convener:** Thank you very much, Lord Advocate. The points that you have made have been raised in the written submissions that we have received, and they are very much appreciated and understood. In part, what has surprised the committee is that, in our investigation of practices elsewhere, we have seen the function that you have just identified evolve both to the satisfaction of the people in

question and in a way that has proved to be equally effective. Those are the areas that we would like to explore this morning.

I will open the questioning. Everybody understands that, if there is any suggestion that the circumstances surrounding a death are suspicious, a completely different criminal procedure is undertaken, but where no such suspicious circumstances are anticipated, is there scope for greater involvement of the next of kin and their views with regard to instructing a post mortem?

**The Lord Advocate:** Although we appreciate that the instruction of a post mortem is a distressing matter for the next of kin—and we will, of course, take account of their views, particularly any religious or cultural sensitivities—the views of the next of kin cannot be determinative with regard to the decision-making process around such matters. Unfortunately, as we know, close relatives can sometimes be responsible for the fatality.

In practice, post mortems are instructed only where they are considered essential. A post mortem might be required to determine the cause of death, to ensure that the circumstances surrounding the death are fully investigated and to exclude criminality. The final decision is for the independent prosecutor as part of their role in investigating the person's death, and, as I have said, that independence is expressed in the 1998 act. However, it is the case that post mortems are instructed only where they are essential.

**The Convener:** Two questions follow from that. First, how is a post mortem determined as being essential? Secondly, by what means are the views of the relatives of the deceased taken into account? What is the process for establishing and assessing their preferred wishes?

**The Lord Advocate:** A post mortem is considered essential if it is to establish the cause of death.

It is impossible to give all the permutations of the circumstances in which post mortems are instructed. Essentially, a post mortem is carried out to establish the cause of death in order to inform whether there needs to be a criminal investigation or to assist in a criminal investigation; to understand whether there are systematic deficiencies in healthcare or in how workplace operations are undertaken; and to inform the bereaved relatives as to why an individual has died. There is a whole series of reasons.

On how that is effected operationally by the procurator fiscal, the head of the Scottish fatalities investigation unit, Mr Shanks, can explain a little further as to how that happens in practice.

As I said, it is the case that post mortems are carried out only when that is essential. At all times, the procurator fiscal, along with the expert advice that is received from the pathologists, takes on board the views of the next of kin and speaks to them—

**The Convener:** How?

**The Lord Advocate:** They discuss the issues and the processes with them, and they take on board their views.

Perhaps, on an operational level, you could hear directly from Mr Shanks.

**Andy Shanks (Crown Office and Procurator Fiscal Service):** Good morning. During that process—throughout the course of a death investigation—contact is made with bereaved relatives. If a post-mortem examination is being contemplated, their views are sought and are definitely taken into account, particularly when, as the Lord Advocate said, there are cultural or religious sensibilities.

The primary purpose of the instruction of a post mortem is for the identification of a—

**The Convener:** Is a record of that engagement kept?

**Andy Shanks:** Yes.

**The Convener:** In each case, it would be possible to demonstrate the engagement that took place with the relatives in relation to the request that they had made regarding the desirability of a post mortem.

**Andy Shanks:** Yes. Indeed, there may well have been prior contact with the police, if it was a police-reported death, and the relatives' views may have been made clear at that stage. Therefore, even on—

**The Convener:** Is that record open to inspection?

**Andy Shanks:** I am not sure by whom, convener. The records would be held for operational purposes by the Crown Office and Procurator Fiscal Service.

**The Convener:** If a relative were to assert that they did not feel that there had been any engagement, a record would be publicly available that would demonstrate that, in fact, their assertion was not correct.

**Andy Shanks:** I am not sure that that would be publicly available. However, we would certainly aim to respond to any inquiry that was made by a member of the public.

**The Convener:** Thank you. The Lord Advocate identified two situations. I think that the committee fully understands that, where there is any

suggestion of a suspicious death or a death of unknown cause, different rules must pertain. However, the Lord Advocate also suggested that a post mortem can identify underlying systemic health deficiencies.

Children are excluded from post-mortem scanning—my understanding is that that does not work with young children; their bodies have not developed to the point where that would be appropriate. The professionals in England to whom we spoke told us that 94 per cent of all causes of death are established by use of scanning and that a similar percentage of their post mortems were non-invasive. I know that one of my colleagues will be pursuing that issue later.

You carry out post mortems when you identify that they are essential. The term “essential” seems to me to be very general.

**Andy Shanks:** It is not a decision that is taken lightly, convener.

When a decision is made that a post-mortem examination must be carried out, that instruction will be provided to the pathologist. Thereafter, generally speaking, it is a matter for his or her clinical judgment as to the nature and the extent of the examination that is necessary.

I think that, having heard previous evidence, the committee is also aware that there are certain circumstances in which a non-invasive external post-mortem examination is possible. That is very much driven by the individual circumstances—perhaps there is a detailed medical history that points towards a likely cause of death and, in consultation with the pathologist, the decision can be made that an external examination may be appropriate.

I think that almost 800 external view and grant post mortems were carried out last year. However, even in those circumstances, the pathologist is still at liberty to decide, having applied his or her professional judgment, that the external examination has not been sufficient in fully identifying the cause of death and that a more invasive procedure is therefore required.

09:45

**The Convener:** Are brains always removed during a post mortem?

**Andy Shanks:** I do not think that the brain is removed as a matter of course or routine. The instructed pathologist will make a clinical judgment on the nature and extent of the examination that is required. That will depend on a range of circumstances relating to the presentation of the individual and their medical records.

**The Convener:** What percentage of post mortems that are conducted involve the brain being removed?

**Andy Shanks:** I am not in a position to answer that question. Such matters are based primarily on the instructed pathologist’s clinical and professional judgment. The COPFS does not specifically direct pathologists in that regard.

**The Convener:** I understand that, but my understanding is that removing the brain is more a matter of routine in Scotland than it is elsewhere in the United Kingdom. Elsewhere in the UK, it is not routine practice simply to remove the brain in the way that we seem to do here. I wonder whether we have fallen behind medical practice elsewhere in the way in which we are proceeding.

**The Lord Advocate:** I will respond to what you have said. Although the decision on whether to instruct a post-mortem examination is for the COPFS, decisions on the nature and extent of the examination that is required are for the pathologist. In all this work, we are guided by the medical experts who perform post mortems. Our understanding, through our engagement, is that pathologists retain whole organs only on rare occasions when it is absolutely necessary in order to establish the cause of death. In such cases, there are well-established procedures for ensuring that families are advised immediately when organ retention is a possibility, and options for the return of organs are discussed with them.

In our investigation, the Crown will use any tools that are available to us to establish a cause of death and provide the next of kin with the answers that they seek, where possible. Any decision on the appropriate course of action should be taken in consultation with, and following discussion with, the relevant pathologist and in accordance with the Royal College of Pathologists guidelines. If there are differences between Scotland and England in relation to processes, practices and the understanding of what is required to allow an expert to advise the COPFS on the cause of death, those matters should be explored with the pathologists. Unfortunately, we cannot advance such matters any further with the committee today. What pathologists do in order to inform us of the cause of death is a matter for them.

**The Convener:** To whom are they accountable?

**The Lord Advocate:** Pathologists are medically qualified professionals who answer to their own professional body. The Crown Office and Procurator Fiscal Service investigates deaths and seeks to identify the cause of death in order to inform whether a criminal investigation is required or whether we need to make further investigations in order to proceed with a fatal accident inquiry.

Critical to all that decision making is what caused the death. When we require that answer, we instruct an expert pathologist, who has responsibilities in relation to their own professional body, to carry out a post mortem. If there have been medical advances that could better inform pathologists operating in Scotland, it is for pathologists to advise on those medical advances.

**The Convener:** I have to say that I am struggling here—I feel as though I am wrestling with a ball of cotton wool. Are you saying that the pathologists would have to be the ones to decide whether there were modern operational practices that would mean that there were alternative ways of fulfilling their function?

**The Lord Advocate:** I understand that the pathologists who are instructed to carry out these examinations in Scotland are individuals from a professional body that we hold in the highest regard. We, as the Crown, are informed by those experts as to what is required in order to establish a cause of death. If there are different practices across the pathology profession, I would assume that the professional body would train, advise and give directions to the professionals in that body. If it is the case that there are less invasive processes that could be applied at the post-mortem stage, those are the ones that should be chosen by the pathologist.

I can see that there are issues of enormous concern to the committee, but it is important to distinguish between the responsibility that I have as the Lord Advocate and the responsibility that lies with the professional body of pathologists who carry out the examinations.

**The Convener:** I understand that distinction. I am grateful to you for that.

You touched on the issue of retention. The Royal College of Pathologists explained that

“small tissue samples taken for microscopy and diagnostic purposes are retained as part of the medical clinical record”.

It said that such samples

“could theoretically be returned to relatives, but the gain would be marginal and would need traded off against further complexities in the authorisation and consent processes, which are already difficult.”

We took evidence from Dr Adeley, a senior coroner in England, who said:

“What happens with any sample that contains even a single cell is that the family are asked what they want to be done with the sample when it is finished with. The family are given a number of choices. The coroner’s officer will ask whether the sample could be retained by the hospital for medical research and teaching, or it can be returned to the family and their undertaker.”

Indeed, Dr Adeley outlined a process whereby there can be a second funeral proceeding for the

additional tissue. All that happens regularly and as a matter of course in England. Dr Adeley continued:

“Alternatively, they can elect for the sample to be disposed of by the hospital in a lawful and sensitive manner. Those are the three choices.”—[*Official Report, Citizen Participation and Public Petitions Committee, 17 May 2023; c 18.*]

It seems that there is an operational practice elsewhere in the United Kingdom that is executed with no complications and without any professional obstacles being put in place, yet such obstacles seem to be routinely put in place by the processes that apply in Scotland. Is that any longer appropriate? Could Scotland seek to operate in a much more transparent and humane manner, consistent with practice elsewhere in the UK?

**The Lord Advocate:** I hear what you are saying; I understand that there is a different practice in England and Wales and that you have taken evidence on that. As the Lord Advocate, who is responsible for the investigation of criminal matters and sudden and unexpected deaths, I have a different role to play from the one that the committee is in the process of examining. It is not for me to advise on what the law should be; I implement the law and I have to do what the law provides for in Scotland. Currently, the Human Tissue (Scotland) Act 2006 applies to the issues that you have raised this morning.

If there is to be a change in practice and if the practice is to be, as you described, more humane, that is not a matter for me to comment on. I cannot advance that matter any further. All that I can do is explain what the law is currently in Scotland and what the procurator fiscal and the Crown Office do in relation to the implementation of our investigations and what happens when the 2006 act comes into play.

I can say that, at the conclusion of our investigation, by virtue of the Human Tissue (Scotland) Act 2006, any blocks and slides prepared for the purposes of histopathology—examination of the tissue under a microscope to detect any signs of disease, damage or other abnormalities—are considered to be part of the medical records of the deceased person. That is the statutory provision. If there is to be a change to the law, that is a matter for parliamentarians; it is not a matter for the Lord Advocate of the day.

**The Convener:** Thank you—

**The Lord Advocate:** The decision on returning samples is for the health board to make. A requirement to offer tissues and samples to the nearest relatives as a matter of course before the end of a criminal investigation might impact on the investigation of death. It might impair the procurator fiscal’s ability to fully investigate the



circumstances surrounding the death or establish a definitive cause of death.

I am not here to advance any inhumane practice. I am here to say how I operate within the existing law. I can only do that.

**The Convener:** To which minister in the Government does the responsibility fall?

**The Lord Advocate:** The responsibility for what?

**The Convener:** The issues that we have just discussed.

**The Lord Advocate:** If the law requires to be changed, it is for the democratically elected representatives of the people to bring forward the arguments for such a change in the law. As we know, when the law is to be changed, we have a process of open consultation and parliamentary committees consider the proposals for change—

**The Convener:** I have been here for 16 years so I get that bit. To which minister in the Government would the responsibility fall?

**The Lord Advocate:** I am not entirely sure. I do not know why you are speaking to me in the way that you are. I am here to try to assist—

**The Convener:** I understand that, and that is why I am asking you if you can assist me by telling me which minister in the Government we should direct this issue to because you believe that is where that responsibility would lie if not with the Crown Office.

**The Lord Advocate:** I think that I have answered the question to the best of my ability. I am not here to be difficult. I am here to explain the job that I do as the independent head of the prosecution system that is responsible for the investigation of deaths in Scotland. I operate within the law, and if there is to be a change in the law, it is for parliamentarians such as yourself to advance the reasons for that change. I fully understand that the committee is dealing with sensitive issues about human dignity and the need for bereaved relatives to be supported through what is the most traumatic period of their lives when they lose a loved one in unexpected circumstances.

**David Torrance (Kirkcaldy) (SNP):** The committee has heard evidence that there are real pressures on the service in England because of a lack of pathologists to carry out post mortems. Can the Lord Advocate or Mr Shanks confirm that the pathology workforce is under the same pressure to carry out post mortems in Scotland?

**The Lord Advocate:** That is an operational matter that Mr Shanks can fully explain.

**Andy Shanks:** In our operational experience, the level of service that we receive from various pathology providers across the country varies. As you might expect, there is always a degree of variation through the seasons of the year. When I talk about a level of service, I am really talking about the period of time between the instruction of a post-mortem examination and the completion of that examination.

The Crown Office and Procurator Fiscal Service is essentially a service recipient; we are not the service provider and we are not in charge of the pathologists. We rely on service providers from across the country, including the NHS, local authorities and universities that provide the service. We have a number of contracts and service level agreements in place with those organisations, so they are responsible for the level of service across the country.

At the same time, we recognise the need for an improved service more generally. We are therefore in the process of reviewing the nature and the number of the contracts and agreements that are in place to see whether there is a way of making them more efficient and resilient across the board. It is not for me to characterise the service in the way that Mr Torrance has suggested, but it is certainly variable at the moment and there are a number of different service providers.

**David Torrance:** Thank you for that, Mr Shanks. You said that you are looking to review the system. Is the current model of service sustainable?

**Andy Shanks:** Again, I am not sure that I can answer that question directly. All that I can say is that we recognise the number of different service providers and the way that the contracts are at the moment—there is room for improvement and the contracts are under review with a view to making them more resilient and effective across the board. The matters under discussion are essentially matters for the service providers.

**The Lord Advocate:** The Crown Office and Procurator Fiscal Service is the client and the recipient of the service, to allow the Lord Advocate and the procurators fiscal to discharge their death investigation duties. To that end, we have a series of contracts and service level agreements with universities, local authorities and the NHS for pathology, mortuary and toxicology services across Scotland.

10:00

We do not have a role in the recruitment or training of pathologists—that is a matter for the professional body. All of what the committee is looking at today in terms of the way in which

pathology is undertaken sits with the pathology providers. There is a distinction between what the Crown does in this matter and what the experts who carry out the post mortems do. We are the client of the service.

**David Torrance:** As a client, you are procuring a service, so can you not determine how that service looks and change the ways of working to the approach that we have heard about in certain areas in England? You are procuring a service, so surely how that service looks is up to you. You can determine how it works.

**Andy Shanks:** That cuts across some of the issues that the Lord Advocate raised in an earlier response about the exercise of professional judgment by individual pathologists and the overarching role of the Royal College of Pathologists. As the Lord Advocate said, we can be supportive of tools and innovations that assist pathologists in the exercise of their professional duties, but that is different from being overly prescriptive about the techniques that they deploy in particular circumstances.

**David Torrance:** You said that you were looking at the service. How far down the line are you on that, and how deeply are you reviewing the service with the aim of changing it?

**Andy Shanks:** I am not personally involved in that but, if the committee requires more information on it, something could be provided in writing, if there are particular points on which you require clarification.

**David Torrance:** Thank you.

**The Convener:** There are around 56,000 deaths in Scotland each year and 12 per cent of them require a post mortem. In a submission to the committee, the Royal College of Pathologists stated:

“there are significant pressures on pathology, post mortem and forensic services across Scotland. With grossly inadequate facilities and staffing levels being the reality of current provision.”

I should earlier have recognised our colleague Monica Lennon, who has joined us this morning. When she raised in Parliament the issues of delays and backlogs in the post mortem service, the Lord Advocate explained that

“The Crown Office and Procurator Fiscal Service aims to conduct its investigation and advise the next of kin of the outcome within 12 weeks of the initial report of the death in at least 80 per cent of those cases.”—[*Official Report*, 6 October 2021; c 3.]

Can you confirm whether those pressures on the post-mortem service exist in Scotland? What proportion of post mortems are currently reported within 12 weeks?

**Andy Shanks:** I do not have that information before me at the moment but, again, I can provide that in writing if it would be of assistance to the committee.

**The Convener:** Do you expect to achieve the objective of 12 weeks in 80 per cent of cases, or do you think that that objective might be under challenge at present?

**Andy Shanks:** Again, I would like to follow that up in writing, if that would be convenient.

**The Convener:** That was specific but, more generally, are there pressures on the post-mortem service in Scotland?

**Andy Shanks:** As I said, there are variations in service. In particular parts of the country and at particular times of the year, there will be an impact on the period of time between the instruction of the examination and the completion of the examination. I am not sure that it is for me to characterise that as particular pressures, but the service is certainly variable in that regard.

**The Convener:** If you are supplying us with further information to follow up on the point that you discussed with Mr Torrance, it would be helpful if we could have information on the scope of and timescale for the review that was identified.

Earlier, the Lord Advocate referred to changes in the law being the responsibility of parliamentarians and not the Crown Office, which is there to apply the law. However, the use of imaging does not require any change in the law at all. There is no provision in law that needs to be changed to achieve that. Alexander Stewart will pursue that.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Some of the questions and answers that we have heard this morning have been quite vague. I acknowledge that you are giving your views about your roles and responsibilities, but we are trying to investigate the petition and to draw out as much information as we can, in order to assist the petitioner. As the convener said, there is no need for a change in the law to allow for the use of imaging.

Previous witnesses have told us about the time saved by the use of imaging. We have heard that scans can be used to establish a cause of death in 94 per cent of cases and that 92 per cent of those post mortems were non-invasive. It is obvious that using that equipment for scans is of real benefit to individuals. The process saves time for professionals and the fact that it is quicker can give some reassurance to the next of kin. You have already told us about the targets that you have set and want to achieve within your service.

Mr Shanks may be the best person to answer this. Do you acknowledge that imaging could have

benefits both for the service and for the next of kin? Should you consider procuring imaging services, in order to ensure that we have a better service for clients, for service users and for yourselves?

**The Lord Advocate:** I understand the evidence that the committee has heard about imaging and the benefits of that process that have been described.

All that I can say is that, when the Crown Office and Procurator Fiscal Service investigates a cause of death, we instruct experts to undertake the examination and are informed by the expert as to whether an invasive post mortem is required. If there is an imaging process that means that there is no need for an invasive post mortem, I would expect that the pathologist of the day would advise that that process was available for use, rather than having an invasive post mortem.

It is really for the professional body to consider the quality, efficacy and benefits of the imaging and to determine whether imaging should be utilised in the process being undertaken. If the Royal College of Pathologists has identified a means by which post mortems can be less invasive when undertaken using imaging, then I—as the Lord Advocate who is instructing the investigation of a death in order to understand the cause of death—would reasonably expect that the pathologist advising the Crown on that issue would explain that the process was available and should be used.

I am not aware whether there is provision for imaging in Scotland to the same extent as there is in England. That is a matter for the pathologists' professional body to advise on. I have not heard all the evidence that you have heard about how pathologists in England and Wales carry out examinations, but one would expect a consistent approach in relation to decisions about whether to conduct invasive or non-invasive examinations.

**Alexander Stewart:** I acknowledge that, Lord Advocate, but there seem to be barriers in Scotland at the moment and we are concerned about that. Imaging facilities are available in other parts of the United Kingdom and imaging takes place as a matter of course, but that is not happening here. We would like to know why. You explained that the professional organisation has a role to play in all that, but it is quite difficult for individuals, and for the petitioner, to see why there seems to be a differentiation between what takes place here and elsewhere. It is my understanding that there must, therefore, be a barrier in Scotland that is not permitting imaging to take place here. Do you acknowledge that there may well be a barrier if the service is not being provided to the same standard in Scotland as it is in other parts of the United Kingdom?

**The Lord Advocate:** Could you explain to me what you mean by a barrier? What barrier has been identified in Scotland?

**Alexander Stewart:** It could be many things. It could be a lack of training or equipment—I do not know. I am making an assumption that there is a barrier because, from what you have said this morning, I am not convinced that Scotland should not be doing what is done elsewhere.

You have given information and evidence to suggest that it would be up to the professionals to decide. In my opinion, the professionals are not doing what I have described, because there is a problem. If there is a problem, it may be that a barrier is in place, or some kind of logjam that is causing the situation to occur. That is my interpretation, but it would be good to get your view on whether you think that there is a similar issue.

**The Lord Advocate:** It is difficult for me to answer the question that you pose when you have not actually identified a single barrier.

What I would say is this: your questions, and your anxiety and your obvious concerns about the issue, should be directed to the professional body that delivers the service to the Crown: the Royal College of Pathologists, which operates in Scotland and carries out those post-mortem examinations at our request.

It is simply the case that the Crown would only ever instruct a post mortem if necessary, and the post mortem that would be instructed would be informed by what the pathologists were telling us needed to be done in order to identify the cause of death.

If there is a less invasive process that is available in England and Wales, I would expect that pathologists in Scotland should know about that and should have access to the same facilities and the same provision. If they do not, and if they are not able to do their job in the way that they should be, they should raise that with their professional body. They should let those within their professional body know, and they should take steps to ensure that the equipment that is required in order for them to carry out their job is available.

There is only so much that the Lord Advocate can do. I cannot instruct the Royal College of Pathologists to take the steps that you have identified might be needed in order to resolve the issues that you are so concerned about.

**Alexander Stewart:** You acknowledge that we have a role here. If the Parliament wants to change things and make things happen, it is up to individuals such as Monica Lennon MSP, who has supported the petition, to try to do that. We are doing that now by having this discussion and

debating the topic. We are putting the topic further up the agenda to try to ascertain what the problem might be and what the solutions should be.

I see that as my role in this committee: to try to tease out some of the evidence and the issues so that we can provide the best service that we can within our capability for individuals in Scotland. As I said, however, I am perplexed when those individuals are not being given a similar quality of service as people south of the border. To me, it is not right, in some respects, that individuals in Scotland are not being provided with the same standard of information and operation that people are getting elsewhere. As I said, that perplexes me, as a member of this committee, and I am trying to tease out the issues to try to iron them out and support people to get a better service.

**The Lord Advocate:** I understand what you have said. It is the case that the law is changed by people bringing forward problems and injustices and identifying inhumane, improper practices, and bringing those to the attention of their parliamentarians.

It is for the parliamentarians to change the law; I cannot do that. If there is to be a change in service and better service, I would support that, but I cannot do it. I have a particular role to perform here in terms of my constitutional responsibility. If I were to come forward and suggest changes in policy, practice and the law, it would be quite inconsistent with the job that I have, which is to uphold the law as it is. If there is to be a change, it is for people such as yourself, committed to issues like these, to make the change. I do not dispute any of what you have said here today.

10:15

**Alexander Stewart:** Thank you.

**The Convener:** I return to the fact that the use of imaging does not require a change in the law. There was no change of the law in England when the practice was changed; it was just changed. It did not require parliamentarians to change the law; it required direction and discussion.

**The Lord Advocate:** Perhaps I could return to that point. If there is to be a different process applied by the expert pathologist, that is for the expert to apply. If pathologists in Scotland do not have access to imaging of that type, that is not for me to change and it does not require a change in law. It is a change in professional practice, and the availability of the essential tools for that is not my responsibility.

**The Convener:** I understand. The thing is that it is not pathologists, it would be radiologists. It might very well be that the reason why pathologists are not interested in pursuing this is

because it is not a service that they would be able to provide.

**The Lord Advocate:** I cannot comment on that.

**The Convener:** I do think that that ought to be a matter of public concern. Both Mr Choudhury and Mr Ewing want to come in. Is it to develop this point or to touch on a different point?

**Foysoil Choudhury (Lothian) (Lab):** It is to develop this point.

**The Convener:** We will go to Mr Choudhury and then to Mr Ewing.

**Foysoil Choudhury:** Thank you very much, and good morning.

Sorry, I am just confused, although I do not want to repeat what my colleagues have already asked. I get your point that it is up to us to make the policies and that you will not be able to answer quite a lot of questions. However, my question is about how the samples are examined just now. From what we are hearing and what I have read, what is happening here is not the same as what is happening in England and Wales. If that is the case, why? Who should be telling us that we are not doing the same job as they are doing in England and Wales? What procedures are we following?

**Andy Shanks:** As the Lord Advocate said, I cannot speak to the particular practices and procedures that are taking place elsewhere in the UK, but in Scotland, the conduct of the post-mortem examinations is a matter for the professional clinical judgment of the pathologist on the instruction from the procurator fiscal that a post mortem has to take place. I think that I would be repeating my earlier points if I was to go any further there.

**Fergus Ewing (Inverness and Nairn) (SNP):** Good morning, Lord Advocate. I absolutely understand your central point that the concerns that other colleagues have expressed this morning are not matters for which you, as Lord Advocate, have legal responsibility. I understand that.

We are here because not only did the petitioners lose a child, that horrific experience for any parent was compounded, as Monica Lennon has eloquently said on previous occasions, by what happened afterwards. Therefore, my question to you is really about the role of Lord Advocate in Scotland. After all, you are leading the system of criminal prosecutions and the investigations of death. Is there not a storable argument that, although there are certain specific legal responsibilities, which you have clearly set out and are clearly delineated, there is perhaps a higher obligation? If not the Lord Advocate, who can deal with this? It seems to me that the

professional bodies will patently not really be able to do this.

Lord Advocate, is it not the case that some people might see your role not so much as one of an umpire or a referee but as one of a team manager? If something really goes wrong, some kind of action would be expected of the Lord Advocate in order to initiate action, if not by yourself, because you lack the legal power and competence to do so, by urging others to do so, whether that be the Scottish Government, the royal colleges or otherwise.

Our job is to speak for the petitioner—that is why we are here; it is, as the convener has said, nothing to do with politics—so, in that respect, is there not a statable argument that some people see your role in a much wider sense than you appear to have set out to us today? If there is merit in that argument, is it worth reflecting on whether there is any way in which your esteemed and distinguished office, which is so important to the dispatch of justice in Scotland, can take action to deal with the horrendous grievance that the petitioner in this case has suffered?

**The Lord Advocate:** I wonder what you are suggesting should be done. You know very well the role of the Lord Advocate—what are you suggesting?

**Fergus Ewing:** It is perhaps for the committee to consider the matter later, but my first reaction would be to recommend that you as Lord Advocate make a specific series of recommendations about how the injustice suffered by the parents can be remedied. I will admit that it is not a straightforward matter, but then I have discovered that very few things in Government are. Nonetheless, this is an important issue, and just because something is difficult does not mean that Governments can fail to discharge their functions.

**The Lord Advocate:** If the committee were to recommend a series of actions to alleviate an injustice that had been suffered and if those actions were to come within the responsibility of the Lord Advocate of the day, I would, of course, act. I would not say anything other than that. I am therefore very interested in seeing the committee's recommendations.

I am interested only in providing a humane and progressive justice system that meets everybody's needs. I do often deal with difficult issues, but it would be quite unfair if there were an underlying suggestion that I would ignore the committee's decisions or recommendations or that I would not act to make better things that have gone badly. I am here today to give evidence and answer questions. Of course, if recommendations are made that I can do something about, I will do that.

**The Convener:** Thank you very much, Lord Advocate. That final remark was very helpful. If we have seemed a bit testy, it is not just because we are seeking to benefit from such an assurance; the committee is just a bit confused as to where best to pursue these points and colleagues will probably consider who else we might need to see to try to bring that position around. We look forward to receiving the additional written information that you have mentioned.

I invite Monica Lennon to say a few words, as someone who has actively engaged with the committee on the petition.

**Monica Lennon (Central Scotland) (Lab):** I am very grateful to you, convener, and to the committee, the Lord Advocate and Mr Shanks. Thank you for taking this petition very seriously and for bringing us to this point.

We have heard a lot of evidence over many months and, as you said at the start, convener, real issues of substance have arisen. Most recently, the evidence-taking session with the coroner and the pathology and radiology teams was really important and helped to set out in our minds that different practices are emerging—and, indeed, have been in place for a few years now—that still provide an effective and accurate service and system, but with people and families at the heart of things.

I am very heartened to hear the Lord Advocate's commitment to humane and progressive practice. We all want to hear the committee's recommendations on the matter, because, convener, you are right: operationally speaking, changes could be made to policy and practice. People need to be corralled a bit so that we can have that dialogue and direction.

The Lord Advocate is correct to say that the royal colleges play a very important role, but the Royal College of Pathologists is only one stakeholder and partner. It might want to protect the way in which things are done right now, but as we have heard, the reason for the change in practice in Lancashire—which is about 150 miles from Lanarkshire in my region, where the Stark family live—was the shortage of pathologists. There were also those who were electing to become pathologists but who did not want to do post mortems, because they wanted to do other important work.

We have heard about the opportunities to speed things up in order to alleviate workforce pressures. We do need to get the correct equipment for this work, but I would point out that what has been done in England has proved to be cost neutral, which is very important for us parliamentarians who are thinking not only about the law but about the public finances.

I appreciate the fact that the committee has been able to hear directly from the Lord Advocate today, but this issue needs to go to the top of the agenda. I am sure that health and justice ministers will be very interested in this—I note that we have not yet heard from them. I know that Mrs Stark has been busy engaging with MSPs and, indeed, has had a number of meetings since we last met. I am quite encouraged that colleagues from across the Parliament, irrespective of party politics, have been able to understand the very human issues that lie at the heart of this. No one is looking for short-cuts or is seeking to undermine the Lord Advocate's important role or the duties that she and her team have to carry out.

I again thank the committee for its time. It is important to bear in mind what can be changed now, with very little resource required. We might need to have that change in the law, particularly with regard to the retention of tissue samples; the petitioner has set out a number of proposals in that respect and I know that the committee is looking at the issue very carefully. I am encouraged not just by the practice that is emerging in other parts of the United Kingdom but by what is happening internationally. Indeed, I think that the committee is aware of practice in Japan as well as in Australia, where there is now a faculty of post-mortem imaging.

It therefore seems to me, if we are to have the humane and progressive system that we all want, we might need to be a bit more proactive in ensuring that we keep pace with such developments. I am sure that we are doing things in Scotland that are cutting edge and innovative and that people can learn from, but we need to look outwards and I thank the committee for its efforts in doing that.

**The Convener:** Thank you very much. I must also thank the petitioner for her forbearance. She is with us in the gallery this morning and we remember that it was the loss of her son that led to the petition that the Parliament is discussing. Thank you, again.

I also thank the Lord Advocate and Mr Shanks for their evidence. It has been very helpful to us and we look forward to receiving the further information. I am grateful for your time this morning.

We will now have a short suspension before our next evidence-taking session.

10:27

*Meeting suspended.*

10:32

*On resuming—*

### **A9 (Dualling) (PE1992)**

**The Convener:** Our next continued petition is PE1992. I am delighted to say that we are joined by the petitioner, Laura Hansler—a very warm welcome to the committee, Laura.

The petition calls on the Scottish Parliament to urge the Scottish Government to deliver on the commitment that it made in 2011, and address safety concerns on the A9 by publishing a revised timetable and detailed plan for dualling each section, completing the dualling work by 2025, and creating a memorial to those who have lost their lives in road traffic incidents on the A9.

As well as the petitioner, we are joined by Grahame Barn from the Civil Engineering Contractors Association Scotland. A warm welcome to Mr Barn as well.

We are also joined by a number of MSP colleagues, and others will be joining us later. First, we welcome Edward Mountain, who joins as a reporter on the petition for the Net Zero, Energy and Transport Committee. Mr Mountain will be assisting us in our consideration of the petition, including during today's evidence sessions. It is nice to have you with us.

We also welcome Murdo Fraser and Kate Forbes, who I understand may be following proceedings online at present but will join proceedings later. Mark Ruskell may also join us. We have apologies from Jamie Halcro Johnston, who had hoped to join us.

All members who join us will have an opportunity to contribute at the end of the second evidence session. We have also received a written submission from Rhoda Grant, who is unable to join us due to other committee business.

A positive galaxy of parliamentary investigative talent will be brought to bear as we pursue the inquiry. After we have heard from our two witnesses, we will suspend briefly then hear from Transport Scotland.

I understand that, in the first instance, the petitioner would like to make a short statement. I am very happy to invite her to do so.

**Laura Hansler:** Thank you for allowing me to bring the petition to the committee. I first became involved with the campaign as a direct result of listening to families' first-hand accounts of losing their loved ones as a consequence of road traffic collisions—RTCs—on the A9.

The history of dualling the A9 dates back to the 1970s, when the original road was rerouted to bypass our small Highland villages, such was the

dramatic rise in the volume of traffic and the need to improve road safety—a direct comparison that we can note today.

So, why dualling? By virtue of dualling, the proclivity for a head-on collision is removed by almost 100 per cent if there is a fixed central reservation in place. Head-on collisions are normally the most horrific accidents, involving multiple vehicles and producing the greatest number of fatalities. In 2022, 12 of the 13 fatalities on the A9 were the direct result of multiple-vehicle RTCs on single-carriageway sections. Only one fatality was on a dualled section, and it involved no other vehicle. In just three months, nine innocent people lost their lives on the A9 within a distance of 28 miles—all on single-carriageway sections. Five of those fatalities were within metres of one another at Slochd and took place within a matter of weeks; the people killed included two grandparents and their two-year-old grandson.

However, it is in more recent times than the 1970s—specifically, in the Scottish National Party's 2007 manifesto—that the matter of dualling has become more pressing. In 2009, the Scottish Government outlined ambitious plans to dual the A9 with a £3 billion project. In 2011, it became a pledge of the utmost priority to complete dualling in totality from Perth to Inverness by 2025, such was the exponential increase in the rate of deaths by RTCs on the A9 at that time.

Today, we have no clear indication of when nine out of 11 initial sections might be dualled. Only 11 miles of the promised 80 are dualled to date, and there has been no clear guidance from the recent briefings in the chamber by the former Minister for Transport, Jenny Gilruth, who insisted that she would produce a revised timetable after consultation with Transport Scotland. The timetable was to be made available by October 2023. To date, we have been given no clear indication, after numerous changes within the Government, as to when there will be—or who will make—a concerted effort to refocus on the dualling of the A9. Many of us fully expect there to be a retraction of plans to partially or fully dual the remaining sections.

As has been discussed in the media by me and civil engineers, each section takes at least one year for procurement and two years of construction. Bearing in mind that there are nine sections yet to be dualled, the maths is pretty simple, and 27 years from 2023 brings us to 2050, which is an utterly shambolic state of affairs. However, those figures are conservative. So far, no two sections have been dualled consecutively or sequentially, and there have been very significant delays between the dualling of sections. It is an untenable situation, with no real

explanation or apology from the Minister for Transport or the Scottish Government.

There have been various pockets of moneys, but they are just an Elastoplast on an already haemorrhaging wound. Where has the £3 billion budget gone? Where has our money gone? On 22 February, Collette Stevenson, an SNP MSP, in response to a motion that was lodged by Graham Simpson, clearly stated in the chamber that a significant portion of the money had been siphoned off to the beleaguered Edinburgh tram project.

Furthermore, figures that we obtained through a freedom of information request revealed that, in 2017, an accident would have cost £2,158,284 per fatality. Calculating using the 59 fatalities from 2011 until the end of 2022 brings us to the horrific figure of £127,338,756. Please remember that that is an underestimate in the figures. We should never put a cost on anyone's life. However, that appears to be exactly what the Scottish Government is doing, because innocent people are playing with their lives day in, day out on the A9.

The A9 itself is a long and laborious drive and, throughout the year, drivers can experience changeable, variable and exceptional weather conditions. The ambiguity of dual to single carriageway; poor signage; unlit junctions; lack of adequate white lines; cat's eyes that no longer reflect; the presence or not of snow poles; and the fact that you swap every few hundred yards between a newly resurfaced section of road that is therefore completely up to date with safety legislation and a section that is terribly maintained all compound the ambivalence of the A9, giving it the infamous title of "Scotland's killer road".

The A9 is a main arterial road through Scotland. It is often referred to as "Scotland's spine", yet it is treated like a country back road, despite the fact that nearly 33,500 vehicles use it every day, from local commuting to heavy goods vehicles bringing essential supplies and our emergency services keeping our rural communities safe. It is a direct link to our islands: Skye, Lewis and Harris, Orkney and beyond. Inverness is now one of the fastest-growing cities in Europe, and a great deal of investment is going into the freeport at Invergordon.

In addition, it is an essential tourist route, which brings much-needed revenue to the Highlands and Islands. Moneys were ploughed into the north coast 500 route, but how utterly ironic it is that we have no safe road by which to get people there.

I requested an investigation into the procurement procedure. Why are major road projects in Scotland so highly unattractive to the construction industry? However, many answers

lay directly with the Scottish Government, which, unlike our English counterparts, finds it acceptable for the burden of risk to lie 100 per cent with the construction industry. In addition, to lodge each tender bid costs a company in excess of £500,000. That makes major roads projects in Scotland a highly risky and unlucrative proposition.

Recently, we had the failure to secure the contract for the section from Tomatin to Moy, which has been in the news numerous times. Only one contractor submitted a bid, and that bid was subsequently rejected on the grounds that it failed to deliver value for money. The section is currently up for retendering, with absolutely no guarantees that it will attract further interest.

Within the past two weeks, the A9 has claimed yet another innocent life—this time, that of an 18-year-old man, on that very section from Tomatin to Moy, at Dalmagarry quarry. One cannot help but think that, maybe, had the transport minister and Transport Scotland got on with their jobs, we would not yet again be in the situation of a family burying its son and the community being without its loved one.

We have asked without success under freedom of information to obtain the statistics for life-changing injuries and disabilities as a direct result of RTCs on the A9. In the short term, there is the loss of earnings. In the longer term, there is the loss of career and the subsequent pressure to secure suitable benefit support, and the loss of the home through a lack of earnings or a house subsequently becoming unsuitable and unsafe for those who have life-changing injuries.

In our emergency services, a sharp rise has been noted in post-traumatic stress disorders as a direct result of attending accidents on the A9. That has been seen throughout our mental health services. In addition, for the loved ones who are left behind and who are unable to process that unfathomable burden of grief, there has been suicide.

We simply cannot allow that wholly unacceptable state of affairs to continue. Yes, it is a betrayal of the Highlands but, mostly, it is a complete and utter disregard and disrespect to those who have lost their lives and the loved ones who are left behind.

A total of 335 people have now lost their lives in 252 collisions on the Perth to Inverness section of the A9 since 1979, when the old road was bypassed. Those people are not statistics that I will allow to be hidden in a drawer to make the situation more palatable. That is why I call for a national memorial—every name should be etched in the memory of every minister who has ever been involved with dualling the A9. That would be, by a small measure, a means of apology to our

families and communities. Unfortunately, it is a very sad indictment. I sit here with a very heavy heart today, at the beginning of our summer holidays, knowing that many more lives—the lives of innocent people going about their daily business—are going to be lost on the A9 over the coming months.

**The Convener:** Thank you very much. I will ask an introductory question of both witnesses, and then invite colleagues to come in.

We may come back to touch on the memorial that you referred to at the end of what you said, but how has the delay that has taken place impacted personally on you, and what is your view of the interaction that Transport Scotland has had with communities and the way that that has evolved during the process?

**Laura Hansler:** Where I live was one of the first sections to be dualled. I do not even use the dualled section. Back in 2009, the initial roadshows were very promising, interactive et cetera. Since then, there has been a lack of direct communication with communities. A lot of people do not know what is happening. Certainly, during the period when accidents tend to happen on the A9—between the Easter school holidays and the October school holidays—local people try to avoid it as much as they can. However, certainly in our small villages, we can no longer avoid the A9. It is part of the daily commute. In peak season, people do not want to use it unless they really have to.

**The Convener:** Mr Barn, good morning and welcome. In 1993, we had George Bush Snr, Boris Yeltsin and John Major, and “Jurassic Park” was the top movie of the year. Your submission rather suggests that dinosaurs still rule the earth and Transport Scotland, when it comes to the way in which contracts are awarded. It seems to be the central point of your case that the process that is in place will not encourage interest.

10:45

**Grahame Barn (Civil Engineering Contractors Association (Scotland)):** Thank you for that, convener. My submission contains two strands. The first is about how we dual the A9 and the possible options for a timescale. Secondly, we have to overcome a couple of hurdles, one of which is the bespoke standard contract that Transport Scotland uses, which is highly unattractive to the contracting industry.

**The Convener:** Just to be clear, I referred to 1993, because that was when the rest of the country moved away from using that form of contract.

**Grahame Barn:** That was when the new engineering contract was introduced, and it has



become the industry standard in the intervening period.

The standard Transport Scotland contract is unattractive to contractors, because the financial risks lie with the contractor. Those risks include, but are not limited to, ground conditions, weather, utilities and third-party consultations. They can all take up time and that means that, when the contract is a fixed-price one with time penalties at the end, the risk all lies with the contractor.

Our contention is that other contracts are much fairer and share the risk more equitably between the client and the contractor, and we find that there is a better working relationship between the client and the contractor on those projects. It must be borne in mind that the principal contractors in almost every recent major road project have all lost significant sums of money. They are therefore not too keen to continue with that process.

The way to allow contractors to come back into the game again is to change the contract to one that is fairer and more attractive to the contracting industry.

**Fergus Ewing:** I thank the petitioner for setting out so comprehensively the sad series of unacceptable facts on this issue. I will not repeat what the petitioner has said but she has done a service for the people of the Highlands.

I want to focus on how we move forward and get dualling done as swiftly as possible. I have two areas of questioning for Mr Barn. The first is about the retendering of the Tomatin to Moy section and the second is about what he, as a representative of 80 per cent of the civil engineering sector in Scotland, which is the vast majority of the businesses that are involved in doing that work, thinks is the solution. What needs to change?

I will take Tomatin to Moy first. There was only one bidder and the bid was rejected because it was said not to offer value for money, which appears to mean that it was too high. Is that your understanding? That contract is being retendered, and in a late submission to the committee—it was submitted this morning or perhaps late yesterday—Transport Scotland said that it has engaged with you, Mr Barn, and others in the industry about changing the risk profile of Tomatin to Moy. Has it done that, and is there a risk that, when the Tomatin to Moy contract is retendered, which is supposed to be done by the end of this year, we might end up with an even higher price than the one that was rejected because it was deemed to be too high?

**Grahame Barn:** You are absolutely correct that there was only one bidder for Tomatin to Moy, and that bid was rejected on price, I believe. I do not know what the final bid price was, because that is commercial, but there was only one bidder, so

there was no competition for that particular section. Transport Scotland has consulted us and we have been working with it on how we can make the sections, and all road projects in Scotland, more attractive. The issue that we still have is that Transport Scotland is trying to tweak the existing contract by changing the risk profile rather than moving to the industry standard contract.

That is where we are on that, and it remains to be seen how many contractors will bid for the Tomatin to Moy section when it goes back out to tender again. We have not seen the tender documents yet, so I do not know what the contract might look like at this stage. There may be competition—it might be attractive enough to bring in one or two more bidders, but I cannot say for certain. However, I am fairly certain that the price will probably have gone up. Six months have passed, and construction inflation is running at between 10 and 15 per cent, so it is likely that the bid will be more expensive than it was the first time round.

**Fergus Ewing:** So, it could be even higher than the price that was deemed to be too high.

**Grahame Barn:** It could be, yes.

**Fergus Ewing:** The profit margin in the contracts is 2 per cent. Is that standard?

**Grahame Barn:** That is a standard profit margin for civil engineering contractors across all work that we do, so it does not take much to go wrong with a job for it to go seriously wrong, and especially on a job where all the risk lies with the contractor. That is what makes such jobs unattractive.

**Fergus Ewing:** From memory, the figure that was provided in the tender for Tomatin to Moy as the estimated value of the contract was £115 million. Can you explain from your industry knowledge whether that represented a detailed estimate after ground investigations had been done? In other words, how robust is that figure as an accurate indication or estimate of the likely cost of the project?

**Grahame Barn:** I am not sure just how up to date that pricing was. That is perhaps a question for the colleagues in Transport Scotland who are sitting behind me. However, from what I have heard within the industry, it does not seem that it was a very accurate costing. I do not know whether that is because it is a good few years out of date, but the feedback that I have had from within the industry is that it was not a very accurate price in the first place.

**Fergus Ewing:** The point that I am making is that it is perhaps wrong to postulate that £115 million was a proper estimate at all; it was more or less a stab in the dark. We do not actually know

whether that figure was a valid basis for a yardstick of value. Is that a fair comment?

**Grahame Barn:** Yes. There is recent history where Transport Scotland has awarded a contract with just one bidder—it awarded the Haudagain roundabout job with just one bidder.

**Fergus Ewing:** So, there is a precedent there.

I want to ask about the way in which Transport Scotland conducts the tender process. My understanding is that, once the process gets going, Transport Scotland ceases contact with the tendering companies. In the course of the timescale of the Tomatin to Moy tender process, I discovered that some supply companies in the quarrying sector had not been approached for estimates. I found information that indicated to me that it was unlikely that a particular company was going to submit a bid, because it had not bothered to get estimates from the company from which it normally gets estimates.

As I understand it—tell me if this is correct—Transport Scotland does not engage with the various contractors that are on the approved list to bid and therefore perhaps it was not really aware, until far later than it might have been had it pursued a more collaborative approach, that it might end up with only one bidder.

**Grahame Barn:** Clients have to be mindful of procurement law and must be seen to be fair to all tenderers. However, most clients have enough local knowledge to find out what is actually going on around their particular project. It is surprising that they were not aware that there was truly only one bidder for this project.

**Fergus Ewing:** If I may, convener, I will move on to the second area of questioning, which is on Mr Barn's view about how this can best be sorted.

**The Convener:** We will move on to that in a second. I will invite Mr Fraser to address the committee later, but he has a supplementary that he would like to ask now on the Tomatin to Moy issue.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Thank you, convener. I am particularly obliged to you for letting me in as I am not a member of the committee. I want to put a particular point to Mr Barn in this area. The petitioner made what I thought was a powerful comment earlier about the Tomatin to Moy section and the young man from Moray who tragically lost his life at Dalmagarry, just two weeks ago. We can only speculate what might have happened had progress been made on dualling that section instead of it being a single carriageway.

I just noticed that a Government-initiated question was lodged on Monday afternoon, in the name of Jim Fairlie. It reads:

“To ask the Scottish Government when the new procurement for the dualling of the A9 between Tomatin and Moy will commence”.

As you know, convener, a Government-initiated question is lodged when the Government wants to make an announcement to Parliament and it asks a back bencher to lodge a question that enables that to be done. Curiously, however, this question was not answered on Monday, and it has now been withdrawn, which suggests that an announcement might be imminent, but for some reason it is not yet ready to be made. That is a very curious issue, which perhaps we can explore further with Transport Scotland when it appears before the committee. However, as Mr Barn is here, I wanted to ask him whether he is aware of any moves by Government to advance the bidding process on that particular section, given that something appears to be happening in the background.

**Grahame Barn:** No. All that I am aware of is that we are working to the timetable that was announced by the Minister for Transport, according to which an award will be made in the back end of this year. That means that the procurement process that we go through, which normally takes a year, will have to be shortened. Transport Scotland advised me that that was still doable within the timeframe. That is the only information that I have, sorry.

**Murdo Fraser:** I have one follow-up question to that. If the intention was to award the contract by the end of this year, what is the reasonable last date at which a contract could have been put out to bid?

**Grahame Barn:** It depends on what information they are asking for from the contractor, but six months is going to be pushing it.

**Murdo Fraser:** We are very tight for time.

**Grahame Barn:** We are very tight for it just now, yes.

**The Convener:** Thank you, Mr Fraser. I noted that there is a mysterious statement to be made in the final half hour before we rise for the summer recess, the content of which we know not at this time. Perhaps we can all live in hope. I return to Mr Ewing.

**Fergus Ewing:** In the statement that you provided to the committee, Mr Barn, which is extremely helpful and succinct, you set out the ways in which you, as the voice of industry, believe that procurement can be changed in order to achieve the objective that the petitioner has set out—namely, the as-swift-as-possible completion of the A9 project. I believe that, yesterday, the First Minister said that the Government's commitment to that is “cast-iron”. That is welcome, but how do we get it done? The petitioner has

already said that, at the current rate of progress, we will not see the job done until 2050, and I think that I will be pushing up the daisies by then.

The issue before us is, how can we make the necessary changes in order to get the job done as swiftly as possible? I think that there are two or three options. I wonder whether it might be helpful, convener, if Mr Barn can set those out for us in his own words.

**Grahame Barn:** I have given some examples of ways that it can be done through procurement, but there are multiple other ways in which you can do it.

I can tell you some, in no particular order; I favour none of these ways in particular because there are pros and cons to each of them. If you are looking for the quickest way to complete the A9, do it in two or three sections all at one time. That would make it absolutely terrible to drive between Perth and Inverness, and Inverness might be cut off while it is being done, but that would be the quickest way of completing it. The other challenge would be how to fund that, because there could be £4 billion worth of work to be done in dualling the remaining sections.

11:00

Another option would be to take a private finance initiative approach. It is for the Government to decide how it wishes to fund the project, but all measures depend on the available funding. Doing it all in one go would involve using a whole pile of the capital budget, but it could be done through the public sector by using a PFI.

UK contractors might have some concerns about the PFI approach. If the same contract is used, they are unlikely to be at all interested, so you might have to go to a European contractor. There would then be the problem of a European contractor not having a supply chain and having to use the existing Scottish supply chain.

There are a number of reasons why UK contractors are not interested in PFI. There is a double whammy if they use the old contract: they get penalised by the client if risks cause a project to run late and they also get penalised by the finance company that is not getting any interest from the client who is not prepared to pay for a road that is not ready. The contractor on the Aberdeen western peripheral road project was paying charges of £100,000 per day, so you can understand why contractors are not particularly interested in proceeding with the risks that would come from using that sort of contract.

There are other options. There could be a framework, perhaps for 10 years. All the contractors could bid to get into that framework

and work could be allocated to those contractors to work on sections of the road as and when there is money to do that. That costs money: it might cost a contractor £400,000 or £500,000 to bid for and get on to that sort of framework. They will only spend that money if they think that there is a real possibility of work coming to them through the framework. There must be a cast-iron guarantee that funding is available to complete the dualling, or contractors will say, "There's work elsewhere. Why would we spend that money without a guarantee of work coming through the framework?"

Yet another option would take the longest time but would probably be the easiest to fund. It involves breaking the sections down into even smaller sections and doing the work as and when the Government can afford to pay for it. That would take longer but it would support the indigenous Scottish contracting industry and retain road building capability within Scotland. However, it would take a very long time for the road to be dualled that way.

Those are just some of the possibilities.

**Fergus Ewing:** A framework contract could involve several companies, perhaps mostly from Scotland, sharing the work to complete the A9. It would be possible to put the section of the A96 from Smithton to Auldearn, which is also a Government commitment not affected by the Bute house agreement, into that framework. That might have the benefit of limiting the disruption, or spreading it out across the road network, rather than risking the closure of the A9 to Inverness, which is an unattractive prospect for many of my constituents. Would it be possible to put that into the framework contract?

**Grahame Barn:** That is all possible. The way that that is all bundled together is down to the client.

**Fergus Ewing:** The companies in the framework contract would have guaranteed work, really, for that period of 10 years, so they would be able to recruit some retained staff more easily; have a long-term relationship with suppliers; perhaps get more keen prices for quarrying and other material; and have a guaranteed order book. That would instil confidence and retain employment in Scotland at a time when, as I understand it, many other opportunities exist in the UK for civil engineers to do work—down south, for example.

**Grahame Barn:** Yes, that is absolutely correct.

**Fergus Ewing:** All the benefits would accrue.

I appreciate your time, convener; I would like to ask one further question.

**The Convener:** There is a queue behind you, Mr Ewing, but please go ahead.

**Fergus Ewing:** I am sure that they will wait with due patience.

**The Convener:** I am sure that they will.

**Fergus Ewing:** Well, they do not really have much choice, do they?

Seriously, I want to ask one further question. As the petitioner rightly said, nine sections out of 11 have not been done. Only one of those has not had a design sorted out—essentially, the Dunkeld section. Three sections have had ministerial approval, but four have gone to what is called made orders, which means that they have gone through the legal process. The legal process for two of those four sections was completed well over a year ago—coming up for two years ago, I think.

Am I right in saying that absolutely nothing—apart from an unwillingness to devote sufficient funding—prevented the Scottish Government from progressing those four sections immediately after completion of the made orders, had there been a necessary will to implement the promised dualling of the A9? The made order means that you have sorted out compulsory purchase and ancillary roads orders; that you have gone through the process of consultation; that you have your design route; and that everything has been sorted out and is ready to roll—“shovel-ready” is the phrase. Given your knowledge of the practicalities about how those sorts of things work, is that an oversimplification or is it a fair comment and correct explanation?

**Grahame Barn:** In my opinion, that is a fair view.

**David Torrance:** I put on record that I am somebody who knows the A9 well and has been to the Moy fair for the past 25 years—Fergus will probably testify to seeing me there.

Your first option, which is the quickest way to do it, is to break the road down into three sections. How much would that disrupt the tourism industry? Would it cut it off for a long time in the area?

**Grahame Barn:** It would be a disruptive way to do the road. You would have three sections there, so trying to manage three traffic management systems across a huge length of the A9 would be very difficult for everyone, to be honest with you.

**David Torrance:** Just to put on record, those communities around there and a lot of the holiday towns—Aviemore and such places—would be devastated, would they not?

**Grahame Barn:** It would be for a period of time; the construction could last four to five years or perhaps longer.

**David Torrance:** I know that it is to do with contracts, but how difficult is it to get the workforce there and get accommodation for it? From speaking to people who stay in the area in which I am, I know that winter rates are cheap and that the communities rely on tourists in the summer. Therefore, workers were moved off the A9 and away and found it very difficult to get accommodation—they were having to travel. Having to travel huge distances to get to those sections is not an attractive prospect for anybody who is employed in that industry.

**Grahame Barn:** Civil engineering work involves a great deal of overnight travel and all the rest of it, so the people who work in that particular industry are familiar with having to work away from home. You are absolutely correct to say that one of the real challenges in the north of Scotland is accommodation for the workforce.

We are not just talking about the A9. There will be a huge amount of work in renewables in the civil engineering sector over the next decade and getting the workforce will be key to that work. Indigenous Scottish contractors have that workforce: they are—and, in some cases, stay—local, and that would be the attraction for using contractors that are indigenous to Scotland or the UK. European contractors that come in do not have a workforce; they would have to find one from somewhere, which would be a significant problem for them.

**Edward Mountain (Highlands and Islands) (Con):** Before I say anything else, I should remind members of my declarations in the register of members' interests: I have a tourism business relating to a fishery where people have to travel up the A9. In addition, I travel up the A9 at least twice a week—it is probably more likely to be four or five times a week. Therefore, I have an interest in the topic.

I want to question Grahame Barn about the procedure. Both the Aberdeen peripheral road and the Kincaig to Dalraddy section were undertaken as a joint venture. Interestingly, it was always said that the Kincaig to Dalraddy section was opened on time. What a load of nonsense. It was opened on the right day and then closed the day after. Things had to be sorted out, because they had not been done.

Do you think that joint ventures in which the Government pays the other parties all the money and then allows them to decide which subbie gets paid or does not get paid is the right way to do it?

**Grahame Barn:** Joint ventures are a fairly standard approach in which contractors will share financial risk on larger projects, where they do not wish to do those all by themselves. How do you ensure that they get paid? You make sure—I

believe that Transport Scotland does this anyway—that you put clauses in contracts to ensure that the principal contractors pay their subcontractor chain in a timely manner.

I represent companies across all parts of the supply chain—first tier, second tier and even third-tier contractors. The key to a client using and making that work properly is monitoring the situation and having proper key performance indicators on payment down the supply chain to make sure that that is done. You also have other mechanisms by which you can ensure that the money goes down the supply chain and is not at risk with the contractors.

**Edward Mountain:** However, if cost overruns happen—they are part of life—on a fixed-term contract with an agreed sum, somebody somewhere will have to bear the loss. It will be up to the joint venture to decide which subcontractor gets saddled with that loss. Is not that the inevitable outcome?

**Grahame Barn:** No. If you take the Aberdeen western peripheral route as an example, the three contractors all shared the loss. They took huge losses on that project.

**Edward Mountain:** If I am a subcontractor to a joint venture and I am taking all the risk—based on historical events, the chances are that there will be a loss on it—would I not want to ensure that my price is much higher so that I do not make a loss?

**Grahame Barn:** On how people pull together the pricing on a job, if there is one principal contractor, as is the case on the Tomatin to Moy upgrade, they will go out to a subcontractor with packages. They will try to find the most competitive package—they will go out to tender, essentially. You then have tier 2s tendering to tier 1s. Risk is shared along the way—and yes, risk is involved if a project goes wrong.

**Edward Mountain:** Okay. From my experience as a surveyor, if you place the risk on somebody, they will inflate the price to ensure that the risk to their company is such that they will be able to survive at the end of it. Surely, that is not the best way of getting the best price. Surely, if the risk is shared between not only the person who is carrying out the work but the person who is commissioning the work, that is a more equitable system, because the person commissioning the work knows that the industry needs to survive. That would encourage people to take part in the tendering process.

**Grahame Barn:** Absolutely.

**Edward Mountain:** That is not what we have, is it?

**Grahame Barn:** No.

**Edward Mountain:** Thank you, convener.

**Laura Hansler:** Can I come in for a wee second?

**The Convener:** Yes, of course.

**Laura Hansler:** This information is for Mr Torrance and is about the impact on tourism and the hold-up if we start dualling roads sequentially. When the A9 gets closed to allow accident investigators to go out, it is quite often shut for 24 hours. On an occasion when it was shut recently, the traffic was diverted 70 miles across the Dava moor. The road is mostly single track and is completely inappropriate for the HGVs that had to use it. It also creates tachograph-related issues for HGV drivers, as the diversion was taking them miles out of their way.

If there is an accident on that road, we are completely stuck. It is a remote and barren road, so given the time that it takes to shut the A9 and divert traffic, surely, as far as tourists are concerned, it is better to get people there safely and slowly than it is to shut the road for 24 hours or put diversions in place that add three to four hours to the journey on completely inappropriate roads.

11:15

**David Torrance:** I have been caught in diversions several times, especially when going to the Harley-Davidson rally. I have had to wait for six hours. In some communities, people would not travel if they had to wait a lengthy time in diversions, especially to places such as Aviemore for skiing, given that there are alternative ski resorts in the area, off the A9. A long delay—

**Laura Hansler:** I am sorry, but I am talking specifically about the delay when the road has been closed because of an accident.

**The Convener:** I promised that we would consider another aspect of the petition, which is the proposal for a national memorial. Alexander Stewart has questions on that.

**Alexander Stewart:** The memorial is one of your wishes in your petition, but it appears that Transport Scotland has dismissed that because of road safety fears. I commend you for bringing forward the proposal, but what is your view on Transport Scotland's position and how do you respond to the fact that, from my reading of the papers that it has provided, it is quite dismissive of that proposal?

**Laura Hansler:** First of all, it is not my wish: that proposal came forward from the communities and people who we have interacted and communicated with. To make it clear, we do not mean a small roadside memorial; we mean a

memorial that would be specific to Highland Perthshire, Inverness-shire or somewhere in the mid ground, and it would very much be off the road. It would be a memorial garden. After all, we are not talking about half a dozen names here. We are talking about 330-odd names. I would see a memorial as a means to an apology and an acceptance of what has happened to these families. It would be an apology to those communities for what has gone on.

**Alexander Stewart:** As I said, I commend you for that proposal, because I think that something of that size and stature is required, if you wish to ensure that those individuals are remembered in the correct manner. You have indicated that you have some ideas about where that might be located. What discussions have you had with communities that might wish to have that memorial in their area?

**Laura Hansler:** Obviously, we need to fully explore that. Before that kind of thing can happen, different communities would have to speak to families. It is very much a founding interest that was brought to us that we should acknowledge that that has happened in the Highlands.

**The Convener:** Before we draw this part of our evidence taking to a conclusion, is there anything else that either of our witnesses feels that we might want to touch on?

As there is not, I have a question about something that intrigues me. I have colleagues here who are immersed in the realities of the A9, on which I am a sometime traveller. In the context of this project, who first brought up the date of 2025? Who advised them to say 2025, and was it ever realistic?

**Grahame Barn:** I cannot answer the question of who advised the person to say it. I would imagine that it would have been a minister who said it at the time. I think that it was realistic at that time, but it needed the commitment to do it straight from the beginning and a real commitment over time to do it, and that is what we have not had.

**Fergus Ewing:** I have a final question for Laura Hansler. I know that the petitioner has not only come here today but been extensively involved in taking the matter forward in other ways, in the media and by directly lobbying. I believe that she might have reached out across the political spectrum in order to garner support, and cross-party support, which I hope that we have on this issue, is always a good thing. Has the petitioner done that and, if so, what response has she received from the various parties that she has approached?

**Laura Hansler:** I spoke to every party in Parliament, and I must admit that I have had a lot of support. There is one party that has not

supported me, and which really stonewalled it, to be honest. I was exceptionally disappointed with its comments, including in the chamber, with regard to dualling the A9. Some of the comments that I have heard are really concerning.

**Fergus Ewing:** Which party was that?

**Laura Hansler:** The Greens.

**Fergus Ewing:** Thank you.

**The Convener:** On that note, I thank both our witnesses for their evidence and your contributions.

We will have a short suspension to allow the next witnesses to come in.

11:20

*Meeting suspended.*

11:24

*On resuming—*

**The Convener:** Welcome to our second session on PE1992. We are joined by representatives from Transport Scotland. I am delighted to see that we have Lawrence Shackman, Robert Galbraith and Morag Mackay. They have been following our proceedings avidly this morning. I noticed them faithfully sitting through all our deliberations on other petitions as well as the one that is before the committee now.

Do you want to make an opening statement or are you content to move straight to questions?

**Lawrence Shackman (Transport Scotland):** I just want to say that we all have the utmost sympathy for those who have been involved in accidents on the A9. I know that it has been said several times before, but one life lost is certainly one too many. There is nothing good to be said about having accidents on the A9. We truly recognise that.

**The Convener:** Thank you for that. It might play to the discussion that we want to have about a national memorial and the possible misunderstanding between all parties about where that might be sited or the desirability of it, but we can come back to that.

Colleagues are very interested in this subject. I want to start where I finished in the earlier session, if I can be the daft laddie in relation to the petition. Did Transport Scotland ever advise the Scottish Government minister that the A9 could be completed by 2025? If not, did it warn the minister who gave that assurance to the public some years ago, particularly to all those who use the road regularly, that Transport Scotland could not meet such a target?

**Lawrence Shackman:** Obviously, that happened a long time ago and I do not know what advice the minister of the day was given. I can say that the aspiration was to dual the A9 by 2025 and it would have been a big achievement if it had been done by 2025. I know that Grahame Barn thought that it was achievable and, with a fair wind, perhaps it could have been, but many events along the way have prevented it from happening, as Ms Gilruth, the then transport minister, said in her statement on 8 February.

**The Convener:** Were ministers adhering to that date of 2025 on a wish and a prayer or did they continue to believe that the target was achievable?

**Lawrence Shackman:** In 2022, leading up to the statement, it got to the stage at which it became abundantly clear that 2025 was not achievable. Even allowing for building every section of the A9 concurrently, as committee members have heard today, it would have been impossible to achieve that date of 2025, given that each section would have taken three years, depending on the size of the section that we were looking at. During 2022, that was very much apparent towards the end and—I hold my hands up—with the Tomatin to Moy issue, it was clear that ministers needed to make a statement to say that 2025 was not achievable.

**The Convener:** Well—

**Lawrence Shackman:** I am sorry to interrupt, but I should also add that between 2020 and 2023, a lot of things were going on in the world that did not exactly help with progress on dualling the A9. The Covid pandemic stopped construction for a while—

**The Convener:** We understand that. We are very familiar with the fact that there was a pandemic from ministerial replies to questions about every other deficiency in public life and that it was responsible for a number of things, not least of which was its tragic consequences in the first instance.

Mr Ewing will come in with questions first, to be followed by Mr Choudhury.

**Fergus Ewing:** The witnesses will have read the statement by Mr Barn and will have heard the evidence that he gave to the committee this morning. What he is saying is very clear. He praises the professionalism of Mr Shackman and his colleagues, and I endorse that, but the praise ends there. In his statement, he goes on to say that, from a civil engineering contractor's point of view, Transport Scotland is the worst client in Britain.

11:30

That is not a personal comment; that is based on his assessment, which you have heard, that, as far as road building in Scotland is concerned, your form of contract, which passes all risk to the contractor, who has minimal margins of profit at 2 per cent, has resulted in the completely unacceptable outcome of there being only one bidder in two contracts—the Haudagain roundabout and the Tomatin to Moy section—despite the fact that the whole purpose of a tender process is to attract competitive bids. That has failed.

I am not trying to catch you out, but do you accept that the current procedure is just not fit for purpose and that, therefore, we now need to move on from that, without overly recriminating about the past, because we cannot do anything about that? Perhaps the committee can help in working out together how to solve the problem of getting a form of contract—a form of procurement—that, provided that the Scottish Government is willing to put up the money, which is not your responsibility but its responsibility, can deliver the swift completion of the project of dualling the A9, for all the reasons that the petitioner so eloquently and passionately set out in her opening statement.

**Lawrence Shackman:** I do not disagree with Grahame Barn about our current form of contract. It has been in place for well over 20 years. When I started working in the then construction branch, at around the time of devolution, it was still being used heavily and we were getting a lot of good tenders.

Although it is not written into our contract, we have always tried to collaborate as best we can with contractors, to help to solve problems along the way and to minimise risks. However, as time has gone by and, as Mr Barn has pointed out, attitudes have changed and we need to have collaboration at the heart of our contract. I accept what he said. We need to move forward. When I came into my role as project director, 18 months ago, I said in one of my first meetings with Grahame Barn that I could not see a future for our form of contract as it is at the moment.

The alternative form of contract is very much up for discussion within Transport Scotland and with our advisers. Obviously, we are informing ministers about how we should go forward appropriately, so that we can balance value for money for the public purse against ensuring that contractors make a reasonable profit. We do not want contractors to make losses. That is not in anyone's interests. As Grahame Barn has said, 80 per cent of his members work for Transport Scotland. If they are not making a profit, they will not tender for us. We need to come together to ensure that we get a consensus and a reasonable

risk profile for contractors to make a reasonable profit, at the same time as getting good value for the public purse. That is not easy.

There are different varieties of NEC contract, not just one type, and risk profiles can vary within the NEC contract. For example—I am trying to say this in very simple terms—we can have a fairly basic NEC contract, but certain clauses can be adjusted to increase the risk profile. In Transport Scotland's form of contract at the moment, we could vary our risk profile very much towards that which applies in an NEC contract. For us, that means a balance in how we manage our contracts through the construction period. We tend to have a lot of the commercial discussions at the end of the contract, whereas, if the NEC contract is used, those commercial discussions and issues that happen during construction are dealt with there and then. We need to look at the different style of managing those contracts.

**Fergus Ewing:** I understand that those are all complex matters, and I know that you have been in regular dialogue with CECA, which you meet several times a year. What I do not understand—I do not say this to be recriminatory—is that you have admitted *mea culpa*, that the system is broken and that it is not fit for purpose, which is patently the case and has been obvious for quite a long time. Surely, therefore, particularly over the past couple of years of this parliamentary session, the advice about precisely how the contract should be changed—to perhaps some form of contract as set out by Mr Barn—so that risk sharing is used, should have been given back in 2021, at the latest. Why have we not made more progress more quickly? Mr Barn referred to glacial progress. Is he right about that as well?

**Lawrence Shackman:** I think that the Tomatin to Moy procurement has really crystallised the issue. We have been looking at the potential to change our contracts for a while, but, over the 20-plus years in which we have used the contract, it has given ministers a good surety of outturn cost compared with the tender cost. For a long period, there was about a 3 per cent variation between tender costs and outturn costs. The contract was very effective in protecting the public purse, but the risk profile is very much being looked at as we speak.

**Fergus Ewing:** I have two further questions. Was it the case that Transport Scotland did, in fact, do some work that has not been made public in which some use of private finance was considered, but, by the time that the work came to fruition, the financial crisis had emerged and interest rates had risen, so that option no longer became applicable? If that was the case, can you share with us the document that shows what consideration has been given to all those matters?

I appreciate that that decision may not be for you and that it may be for the Scottish Government, because under FOI—FOI requests have been made to you on such things frequently—there is an exemption to cover ministers' desire to have candour of internal discussions. That has been invoked in response to a FOI request about the A96 that I have seen recently, for example. Have you given advice to ministers on that? Will you share that with us? Have you considered the options that Mr Barn set out? Did you leave things too late because, by the time that you came up with the proposal, interest rates had risen, which made the finance package unaffordable? Can you share with us what work you have been doing over the past two and a half years on all of that?

**Robert Galbraith (Transport Scotland):** I will take that question, Mr Ewing.

We have been working on comparing options for a considerable time. Fundamentally, we are comparing procuring a series of design and build contracts using capital funding versus procuring a smaller number of private finance contracts using resource funding as alternative options. We had significantly advanced in that work last year and were getting towards a point of preparing to put advice to ministers when some of the fundamental assumptions that underpin in particular the private finance solution, which relies on cost of borrowing assumptions, began to change in a very volatile fashion in the aftermath of the UK Government's mini-budget in September.

**Fergus Ewing:** It was too late.

**Robert Galbraith:** It took several months for things to begin to settle down.

It is not really a case of leaving it too late. We have had to go back and redo that work. We have had to look again at the base assumptions against which we can make that comparison. When that work is complete, advice will be brought forward to ministers. In effect, we have had to go back and redo a whole series of work.

**Fergus Ewing:** Okay. I want to put to you a point that Mr Barn made. Four of the sections have made orders. In two sections, the made orders were made well over a year ago; the other two were made more recently but still some time ago. Mr Barn said that, as soon as things reach that point, the contracts are ready to go. People are ready to press the button and ready to go into procurement, provided that the Scottish Government provides the money. Did you ask the Scottish Government to provide the money for each of those sections as soon as they reached made orders? If so, what was the response?



**Robert Galbraith:** I will pick that up to start with; my colleague might then want to come back in.

I described a comparison between a series of design and build options versus a smaller number of PFI contracts. One of the features of PFI contracts to make them attractive to competitive parties is that a pipeline of bidding opportunities has to be offered. If we start to subtract elements of what would make up that pipeline, we will no longer have a PFI option available. In trying to get to a position to compare approaches, taking out elements of one approach would make that approach fundamentally impossible to deliver in the future. That is a reason why it would be difficult to do what you suggest.

**Fergus Ewing:** Are you saying that you have not been held back by the lack of funding from the Scottish Government? I have been critical of my own Government because the delays cannot be justified or defended in any way. It is disgraceful. I am sad to say that, but that is what I have said.

We want to know to what extent the Scottish Government has had the money ready but you have not got the process ready. We also want to know to what extent you have asked for money but you have not got yes as an answer. We need to know that for our inquiry. Moreover, to be frank, the public have a right to know.

**Lawrence Shackman:** To a large extent, it has been—I hate to use this phrase—a chicken-and-egg situation because one of the key things is knowing which procurement route is best to enable us to package up the sections so that we can then ask for the correct amount of money and the right sort of money, whether it is capital or revenue funding. Obviously, the PPP route would require sums of money into the future, whereas capital-based projects would need money up front. That means that there is a completely different profile with the financing and it is a difficult conundrum to try to get out of.

**Fergus Ewing:** I appreciate that it is all complex. I do not detract from what Mr Shackman says in any way, but I would like Transport Scotland to produce the documentation showing the exchange of views between it and the Scottish Government—submissions, emails and other documents—so that we can get to the bottom of it for the sake of the petitioner and all those who have lost their lives on the road over far too long.

**Lawrence Shackman:** As you mentioned, we have been the subject of FOI requests on all of those aspects ad infinitum in recent times so a lot, if not all, of the information is out there.

**Fergus Ewing:** I have just been refused some information—or, at least, information has been refused under FOI legislation—on the grounds of

internal candour. That is the information about which I am talking. It is specifically about the interchange between you and the Scottish Government on value for money and the sufficiency of Scottish Government funding. As long as that information is not published, there will be unanswered questions, frustration, anger and irritation. That just will not go away so the sooner that the Scottish Government does what it did in the Holyrood inquiry in 2003, and the more recent Salmond inquiry, and publishes the available advice notes, the better for our work and, more important, the public interest.

**The Convener:** I welcome Kate Forbes to our proceedings. I will invite her to comment after we have heard the evidence, but I have, unusually, agreed that, if there is a point during the proceedings when she would like to put a question to the witnesses, I will be happy to facilitate that if she lets me know.

We move to Mr Choudhury.

**Foyso Choudhury:** It is clear that completion of the project by 2025 is not possible any more. Do you have a date in mind when it could be completed, Mr Shackman? For the time being, are any emergency procedures being taken so that no more accidents happen? What are the temporary measures? Are there any at all?

**Lawrence Shackman:** Ministers have mentioned several times that they will make a statement in the autumn about how the A9 project will be progressed—the timescale and what will happen when. That is still planned for the autumn.

Morag Mackay can comment on short-term road safety measures.

**Morag Mackay (Transport Scotland):** The former minister advised Parliament that £5 million would be put towards measures last financial year and in the next two financial years. We have worked with stakeholders—Police Scotland and the road safety professionals in the operating company that covers the A9—to understand the causes of the accidents that have happened on the road and have targeted measures at those. Therefore, a £5 million package of works is being undertaken.

We have started that work from Luncarty to the Birnam to Dalguise section. That is the first single-carriageway section as you travel north, and we picked that section specifically because it is the first one and because we were doing the measures over winter and they were less likely to be affected by the winter weather.

The measures include signing and road markings, and we are looking to improve the transitions between dual and single carriageway by making them more conspicuous. We have

increased the lining and are using a specific product that has better reflectivity and acoustics to target the drifting of vehicles on single carriageways by making them rumble when they go over the white lines. We have also put in mobile variable message signs to deliver road safety messages. We have started down that section, but we will continue with the other single-carriageway sections.

11:45

**Foyso Choudhury:** Is this published, or has the information been given to the people in the area? Do you still think that 2025 is achievable?

**Lawrence Shackman:** No, 2025 is not achievable. The former minister said that in her statement in February. Ministers will come back with a revised timeline in autumn.

**The Convener:** I will go to Mr Fraser before Mr Mountain, if I may, because Mr Choudhury's question touched on a point that Mr Fraser raised with our previous witnesses and he would like to pursue it again just now.

**Murdo Fraser:** Thank you, convener, and thank you for bringing me in. I wonder whether you can shed any light on this rather curious issue that I raised with the earlier witnesses. I am just looking for the exact reference.

A Government-initiated question was lodged on Monday afternoon in the name of Jim Fairlie MSP:

"To ask the Scottish Government when the new procurement for the dualling of the A9 between Tomatin and Moy will commence."

As I am sure you are aware, the purpose of a Government-initiated question is to allow a statement to be made to Parliament, so such questions are lodged only when the statement is ready. Curiously, in this case—I have never come across this before—the question was not answered and it was withdrawn this morning, which is rather extraordinary. Can you shed any light on that?

**Lawrence Shackman:** I believe that the reason for its withdrawal is that, as you are aware, there is a new transport minister and the view was taken that she should be given time to have a think about the issue and make her own decision on how it should be taken forward.

**Murdo Fraser:** That helps with understanding the context, although we knew on Monday, when the question was lodged, that we did not have a transport minister. That is a matter for the Scottish Government; perhaps the committee can pursue that separately.

**The Convener:** Does that mean then that something was going to be announced but it has

now been deferred so that the new transport minister can be given the opportunity to reflect on its content?

**Lawrence Shackman:** That is for ministers to answer.

**Murdo Fraser:** Can I follow up with the other question that I put to Mr Barn? We have gone through two new transport ministers, but when Jenny Gilruth was transport minister, she told Parliament at the beginning of the year that she hoped to make an announcement about the award of a contract for the Tomatin to Moy section by the end of this year. Mr Barn told us that, given the likely timescale, six months to award such a contract would be very tight. Are you in a position to tell us any more about the procurement process for that section?

**Lawrence Shackman:** No. We are still working through that. I agree that it would be extremely tight to award that contract by the end of the year. We are certainly aiming for that target, but we will have to wait and see what happens when the new minister has decided on the procurement route and when it will be launched.

**Murdo Fraser:** Right. To go back to the conversation that we have just had with Mr Ewing about the type of contract, are you proceeding on the basis of the existing contract, or are you looking to adjust that for the Tomatin to Moy section?

**Lawrence Shackman:** It is highly unlikely that we will use the existing contract.

**Murdo Fraser:** It sounds as though there is still a lot of work to be done before you put it out to tender.

**Lawrence Shackman:** No, there is not too much to do. You will remember that we had the original Tomatin to Moy contract and the vast majority of that was about where we want the road to go, how wide it will be, where we want kerbs and where we do not want kerbs, and that sort of thing. All that is in the bank, so to speak. It is about the front-end contract. Is it an NEC contract? Is it using Transport Scotland's terms and conditions albeit heavily modified? It is not going to take too much longer to do those things.

**Murdo Fraser:** Presumably, the process is that you publish a tender document, and then you have to wait for responses for a period.

**Lawrence Shackman:** We publish a tender notice, which is an advert—a sign to the market—that we will procure. That is the start of the procurement, basically.

**Murdo Fraser:** Can you give us any indication of when you expect that to be done?

**Lawrence Shackman:** I cannot, at the moment, because that is subject to the involvement of the new minister and other ministers.

**Murdo Fraser:** But, clearly, the clock is ticking when it comes to getting the contract awarded by the end of the year, as was promised to the Parliament.

**Lawrence Shackman:** It is, yes.

**Edward Mountain:** I have just two areas of questioning. First, when do you start the compulsory purchase order stage for the land that you want to acquire to build the road?

**Lawrence Shackman:** The statutory process for that happens after a project has got through the preferred route stage. We advertise that. We invite the public and stakeholders—anyone with an interest in the scheme—to see the material that has been produced. The environmental assessment report and the draft road and compulsory purchase orders are all put into the public domain.

If we get objections to that process—if an affected landowner, say, or a statutory body does not like a particular part of it—we may need to go through a public inquiry process, for which a reporter will be appointed who will make a decision. On some sections, we have had to go through a public inquiry process. On others, we have been fortunate in many ways that we have not had to have a public inquiry.

Ministers have then decided that they will make the orders. Orders have been made for some of the sections, which means that we have a three-year period in which to vest the land, before we would have to go back to the start and promote the scheme again. In some cases, we have yet to make the orders. How that will be managed is part of what we plan to announce in the autumn.

When it comes to the procurement process, the making of the orders and the vesting of the land are not constraints on the timescale for construction, albeit that we have not yet got the Dunkeld section through that process.

**Edward Mountain:** If somebody objects to a compulsory purchase order, is there not quite a complex process to go through, which could take years rather than months?

**Lawrence Shackman:** Objections can be made only about the process. Once the compulsory purchase orders are made, people cannot really object to the making of them or to the purchase of the land, unless there is some problem with the legality of how we have done things. By that stage, it has been through due process.

**Edward Mountain:** Once the order is made, is there nothing to stop the road from being built?

**Lawrence Shackman:** No. Just buying the land is the thing after that, then—

**Edward Mountain:** Then the compensation at the end of it, once that is agreed.

**Lawrence Shackman:** Yes, when that is all wrapped up.

**Edward Mountain:** Convener, if I may, I will go back to the question that I asked in the first session, about sharing risk. Lawrence Shackman, you have alluded to that. Do you think that, by coming up with a new contract, you will convince subcontractors across the Highlands who might possibly tender that they will not be left hanging out to dry? That has happened to them in the past. A lot of them have spoken to me about it and are unhappy about it. Can you rebuild those bridges?

**Lawrence Shackman:** I would be surprised if local subcontractors were not a major part of dualling the A9, because of its location. Even if we were to go for PPP—the public-private partnership finance option—through which we would be likely, as Grahame Barn mentioned, to attract a lot more foreign construction companies, those companies still need local labour and local materials. They need people in the locale to be able to construct the road.

We are talking about a huge amount of road building. It is comparable to the upgrading of the A74, back in the 1980s and 1990s. It is at that sort of scale. There were 10 or 11 contracts. Back then, we found a way to build those contracts, so I do not see any reason why local labour and suppliers cannot be heavily involved.

As you will know, that question was asked many times when the Queensferry crossing was being built. A lot of contractors from abroad were involved in that project, but they used a huge amount of local labour and local supplies. The topic was regularly discussed in committee meetings relating to the Queensferry crossing. I believe that the same applies to the Aberdeen western peripheral route, which Robert Galbraith was heavily involved in.

**Edward Mountain:** I clearly remember discussing these issues in relation to the Aberdeen western peripheral route when I was on the Rural Economy and Connectivity Committee, as well as the Kincaig to Dalraddy section. A lot of people got their fingers burned and are nervous about the process in the future.

My final question is this: do you think that you have some bridges to build metaphorically speaking before bridges can be built on the A9?

**Lawrence Shackman:** We will always engage with the industry and the supply chain as much as they will let us, to be honest. We are more than happy to do that. We have initiatives in which we

always ask our tier 1 contractors to advertise any opportunities on the public contracts Scotland portal. That approach was pioneered with the Queensferry crossing, and it is now a standard way of doing things.

As we touched on earlier, we have project bank accounts for our projects, and we ensure that tier 2 and beyond suppliers and subcontractors are paid on time so that they do not have to wait for payment. That system is working really well, and we have that for all our projects.

We are doing a number of things to try to ensure that we embrace local suppliers as far as we possibly can, and we will continue to do that.

**The Convener:** Alexander Stewart will return to the point that we raised on the petitioner's ambition for a national memorial.

**Alexander Stewart:** It would be useful to get a flavour of your views and opinions on the proposed memorial. As I indicated when I spoke to the petitioner, it appears from your previous comments that you dismissed that type of memorial on the ground of road safety concerns. Now that you have heard from the petitioner what the intention may be, do you have a similar view, or has your view been changed?

**Morag Mackay:** We responded based on that memorial being by the roadside, and we gave the reasons for that response. We follow guidance from the Society of Chief Officers of Transportation in Scotland on roadside memorials. I appreciate that the petitioner suggested that the memorial could be somewhere else more localised—maybe in a community on the A9. Obviously, we have not considered that, because we thought that the ask was about the roadside. That can be considered further. However, tragic as the lives that we have lost on the A9 are, we have to recognise the road deaths that there have been across Scotland. We have to be mindful of doing something specifically for the A9 as opposed to for people who have lost loved ones on the other roads across Scotland.

**Alexander Stewart:** I acknowledge that. However, given the strong case that has been made in communities the length of the A9, which has been called the "spine of the country", I think that doing something of that nature would go a long way to managing community involvement. I look forward to hearing how that might progress, depending on how things move forward.

**The Convener:** Will Transport Scotland reflect on that, given the petitioner's evidence this morning, and give us a flavour of what it thinks might be possible for us to consider further at another date? I would be very grateful for that.

Are there any other questions from colleagues?

**Fergus Ewing:** Is there a risk that the retender of the Tomatin to Moy section will lead to an even higher price, as we heard Mr Barn elucidate? Can you answer his point and recommendation that, although one must treat all parties equally in a tender process—that is a plain and clear legal requirement of procurement—that does not prevent you from reaching out to all the contractors to inquire about their progress, provided that they are asked the same questions, in order to be able to ascertain whether it is likely that you will end up in the same situation again, with one bidder only, but this time with an even higher price than the price that was previously rejected because it was deemed to be too high?

12:00

**Lawrence Shackman:** We use our Transport Scotland process to speak to the contractors during the development of their proposals because they are responsible for both the design and the construction, not just the construction. Therefore, they are fully responsible for coming up with a design that is competent and fully embraces all the requirements of the contract. We have consultation meetings through the procurement process with each individual contractor. They are confidential meetings and, yes, we ask for an update on how they are doing with their design and how they are likely to build the contract. Their methods are important to understand.

In the Tomatin to Moy project, part of the way through the process, we asked the contractors what they thought about our tender estimate. You are correct that the middle figure is £115 million, and I think that that is at April 2021 prices. The two tenderers, including the first one, who withdrew, both thought that it was reasonable at that point. I do not know what happened with the one bid and why the contractor put in the bid to the value that they did. I do not wish to reveal the commercially confidential aspects of that.

We engage fully with contractors. Although the contractors do not particularly like our terms and conditions, we try to derisk projects as much as possible. For example, through the tender period, we undertake an additional ground investigation. I think that, on the Tomatin to Moy project, the cost of that was about £1 million. It is a pretty substantial extra ground investigation to help to derisk the project and get the contractor in a position to put in a competent price. That is one of the methods that we use all the way through our alternative tendering initiative projects.

**The Convener:** Thank you all very much. Your evidence has been very much appreciated. Is there any final point you would like to touch on that we have not addressed?

**Lawrence Shackman:** No. We are fully committed to dualling the A9. We are waiting to see what the autumn statement holds, as I am sure everyone is.

**The Convener:** Rest assured.

**Lawrence Shackman:** Only two days ago, as you all know, the First Minister made a very strong commitment to dualling the A9.

**The Convener:** And many other things.

Two parliamentary colleagues have joined us: Kate Forbes and Murdo Fraser. O comes before R, so I invite Kate Forbes to address to the committee comments that we can take into account as we consider the petition.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** Thank you for having me at the meeting, convener.

I express my sincere thanks to Laura Hansler and the A9 dual action group for bringing the petition before the committee and, indeed, raising the profile of the issue. It is the product of frustration but also grief at the number of fatalities on the road, as well as accidents and near misses, which do not get recorded.

I will make some very brief comments about the matter not being just a Highlands problem. It is an issue of national concern for three reasons. The first is that there is no transition to net zero without dualling the A9. That is contrary to arguments that have been made about it being inconsistent with our move to net zero. However, the Highlands and rural Scotland disproportionately rely on car use and we must have an electrified, dualled A9 for safe use. Secondly, the Highlands relies on the road for economic reasons, which have already been covered. Thirdly, the region is reliant on it when it comes to safety. Above everything else, that third reason is perhaps the most important.

There is a cast-iron guarantee to dual the A9. We are exercised about seeing the timetable and ensuring that it is backed up with appropriate procurement processes, which have come in for some criticism, and a budget. I know the constraints on our budget. Clearly, given a £5 billion capital budget every year, an A9 dualling programme that costs £3 billion needs to be prioritised. That will mean difficult decisions elsewhere but, such is the importance of the project, we need that prioritisation and that funding.

That is all that I have to say, because the topic has been adequately covered, but I cannot stress enough the importance of the programme both to my constituents and to those whose lives have been affected as they wait for the updated timetable—including those who are subject to compulsory purchase orders, who have been

waiting in some cases for almost a decade for dualling to go through and the sale of whose houses, for example, has been affected. It also impacts on the rest of Scotland. Those three really important groups want answers.

**The Convener:** Thank you, Ms Forbes, including for referencing again the petitioner on whose behalf we are pursuing our inquiry this morning.

Finally, I call Murdo Fraser.

**Murdo Fraser:** Convener, you have been very kind in letting me ask questions, so I will be brief in making final comments. My colleague Jamie Halcro Johnston, who represents the Highlands and Islands, had hoped to be here, but he is in another committee this morning. Clearly, he is interested in this matter, too.

As Kate Forbes said, this affects the Highlands but, elsewhere, it affects my constituents in Perth and Kinross, as part of the Mid Scotland and Fife region, who have very similar concerns not just about the accident rate on the A9 but about the economic impact of the road not being dualled.

It has been very helpful to hear from the petitioners and from Transport Scotland. We wait with interest to hear what will happen on the Tomatin to Moy section. It sounds as though some announcements are imminent on that. We hope so. However, that is only one of the remaining sections of the A9. It sounds as though the preparatory work has been done on all but one section—at Dunkeld—so the only issue that is holding up progress is finance, provided that the contract issues can be dealt with. That is a matter of political will and priorities.

I refer to the petitioner's comments at the start of the meeting about the number of people who have died. Sadly, as we enter peak tourist season, I dread turning on the news in the morning and hearing about people who have lost their lives on the A9. Some of those are visitors to Scotland who have come on a family holiday but have lost their lives. Sadly, that will continue until the road project is finally completed.

I therefore encourage the committee—if it needs any encouragement—to be like a terrier in pursuing the matter to a conclusion and to continue to press the Scottish Government for the definite timescale that the petitioner is looking for.

**The Convener:** Thank you, Mr Fraser.

Although, as I said earlier, I am on the A9 occasionally, in an earlier time in my political life the A77 from Eastwood to Ayr was notorious for loss of life. That issue was resolved with the dualling of that section. At one point, I think, more people lost their lives on that road, annually, than on any other in Scotland. Dualling is the ultimate

and only reliable way in which we can hope to provide a safe journey and, as Kate Forbes said, achieve other objectives that are also in the national interest.

Thank you all very much. Are my colleagues on the committee content to consider at a subsequent time the evidence that we heard both from the Lord Advocate and in this session?

**Members** *indicated agreement.*

**The Convener:** I suspend the meeting briefly, thanking again our colleagues who have joined us this morning, and those from Transport Scotland. It is very much appreciated.

12:08

*Meeting suspended.*

12:10

*On resuming—*

### **Island Community Representation on Boards (PE1862)**

**The Convener:** The next of our continued petitions is PE1862, which was lodged by Rona MacKay, Angus Campbell and Naomi Bremner on behalf of the Uist economic task force and calls on the Scottish Parliament to urge the Scottish Government to introduce community representation on the boards of public organisations delivering lifeline services to island communities, in keeping with the Islands (Scotland) Act 2018. Dr Alasdair Allan has joined us before in our consideration of the petition, and I warmly welcome him back for this discussion.

When we considered the petition at our meeting on 22 February, we agreed to write to the Minister for Transport, recommending that the Scottish Government explore all available options for formalising the role of community representation on boards of public organisations, including Caledonian Maritime Assets Ltd, David MacBrayne Ltd and Highlands and Islands Airports Ltd.

We received a response from the now-former transport minister, Kevin Stewart, who agreed that more islanders should be involved in decisions on lifeline services. Similar to the response from the previous minister, Jenny Gilruth, Mr Stewart provided information on the efforts to encourage applications from island representatives in recent CMAL and DML recruitment processes. The minister also highlighted HIAL's location-neutral policy for head office roles, which enables staff undertaking head office functions to be based at any HIAL sites.

We have also received a further submission from the petitioners, which emphasises the unintended consequences that can result from not having islander knowledge on the boards of public bodies and includes a request to give oral evidence to the committee. That is one of the options open to members, although colleagues might think that, in inviting Dr Allan to address us, we have taken the issues in the petition as far as we can.

I invite Dr Allan to address us.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I thank the committee for its work on the petition. Since the committee last considered it, evidence of the need for more islander knowledge on public boards has only increased. The problems with ferry services—not least in South Uist in my constituency, which currently has no direct ferry service to the mainland—have been well rehearsed.

A constant theme throughout all of that and in the petition, and one that I have raised in a members' business debate and in this context, is the strikingly obvious need to have islanders on the boards of organisations such as Caledonian MacBrayne and CMAL. To quote John Daniel Peteranna from South Uist:

"The goal has to be to make it as easy to live and work on an Island as it is anywhere else ... and without the influence of Islanders on these public bodies controlling Island services the current de-populations trends ... will accelerate."

Those boards conspicuously lack people who have experience of living on an island that is served by CalMac and who as a result are lobbied daily about ferries. As I said in my previous contribution to the committee, if people were stopped and asked about ferries every time they went out to buy a pint of milk—as I am—they might take a different perspective back to their board meetings. It is also important that these people live in communities where they experience the consequences of things going wrong.

12:15

Everyone understands that boards do not and should not take day-to-day operational decisions in organisations such as CalMac but, as the petitioner has put it, they should set the policy, define the way of working and set the culture of the organisation. It is also their duty to hold management to account against the outcomes set by the board.

It is important to note that the call for more island board members should not be seen in isolation. There is, in my view, a wider need for more senior staff from organisations such as CalMac and Transport Scotland based in the

Highlands and Islands and for jobs to be dispersed whenever feasible. Many islanders, as well as having lived experience of ferry services, have a wealth of other experience. These are seafaring communities, and their skills should feature prominently in whatever recruitment exercises those organisations run.

With all of that in mind, I am happy to answer the committee's questions, and I would like to indicate again my support of the petition's aims.

**The Convener:** In the responses that we have received, there is a general acceptance of the desire for more community representation and involvement on the boards, and the minister has talked about providing information on the efforts that have been made to solicit applications for such representation. Against the background of those assurances and that suggestion, what is your impression of the public perception of the lack of any momentum to realise such an ambition?

**Alasdair Allan:** I acknowledge that the Government has made moves in that direction, but I must also acknowledge that, if I remember rightly—someone will correct me if I am wrong—only one person on the CMAL board lives on an island that is served by the ferries. I do not think that, as yet, anyone on the CalMac board lives on any island that is served by CalMac.

Efforts have been made to look at, for example, the criteria by which people are appointed. Obviously, the Government is at the mercy of whether people actually come forward or not, but the reality is still that those voices are not being heard on those boards.

**The Convener:** I do not think that we have got to the end of this issue yet—or have we? I am sorry, colleagues, for summing up on behalf of the committee. Do colleagues have any points to make?

**Fergus Ewing:** I have just been looking through the previous evidence and the points that Dr Allan has made about the desirability of having island residents on public bodies. I also looked at the specific recommendations of the three petitioners, who use HIAL as an example of a body where a place on the panel for selecting the chair could be reserved in this respect. The same could be done for every chair of every board such as CMAL and CalMac.

They also talk about assigning three seats on the HIAL board to people who live in island communities, one of which would be retained for a co-opted member, with at least one council—the Western Isles Council, Orkney Islands Council or Shetland Islands Council—allocated a place on the board.

The point that I am making is that the petitioners have made concrete and specific suggestions and they have not been responded to. I hope that I am not being unfair to the former minister, but my reading is that he replied with a lot of good will without responding to the petitioners' specific suggestions.

In as much as we are the voice of the petitioner, irrespective of party issues, it seems to me that we have not got an answer from the former minister and we need to get an answer from the current minister as to whether those specific suggestions can be pursued. There are arguments for and against each suggestion but not to have had an answer of any sort means that your premature summation was absolutely correct, convener.

**The Convener:** The petitioners have specifically requested that they be given an opportunity to speak to the committee, but it would have to be a prelude to our trying to bottom out with the new minister exactly how matters could be realised instead of our just getting a lot of good will without any outcome being achieved or the desirability or otherwise of the outcome being assessed and responded to.

As a result, I might be minded to keep the petition open and accede to that request from the petitioners, as a precursor to speaking further to the new minister, who I understand has been presented as having vast experience of parliamentary life and an ability to resolve even the most intractable of problems. We will be very happy to put that ambition to the test.

Do members agree to keep the petition open and to accede to the petitioners' request on that basis?

**Members indicated agreement.**

**The Convener:** We will keep the petition open. If the petitioners are watching us today, I say to them that they will be invited to address the committee after the summer recess. It can be decided in due course whether they want to do so online or to come here. Thank you, Dr Allan.

### **Surgical Mesh and Fixation Devices (PE1865)**

**The Convener:** PE1865 was lodged by Roseanna Clerkin and Lauren McDougall, from whom we have heard previously. This long-standing petition calls on the Scottish Parliament to urge the Scottish Government to suspend the use of all surgical mesh and fixation devices while a review of all surgical procedures that use polyester, polypropylene or titanium is carried out, and guidelines for surgical use of mesh are established.

We are joined, once again, by our parliamentary colleagues, Jackie Baillie and Katy Clark, both of whom have followed the petition with interest as we have debated it. We last discussed the petition some time ago, on 28 September 2022, when we agreed to write to the Scottish Government and seek a parliamentary debate on the issues raised. Members will remember that debate on 17 January 2023, as they probably all participated in it.

Ahead of that debate, we also received a response from the then Minister for Public Health, Women's Health and Sport, which highlighted the Medicines and Healthcare products Regulatory Agency's

"proposals ... to increase the classification of surgical mesh implants".

The minister's response also states that

"the Scottish Government is taking forward improvements in the recording of procedures and implanted devices"

and that the Scottish Association of Medical Directors has been asked

"to report on the availability of non-mesh surgery in individual Health Board areas".

We have also received another submission from the petitioners, which offers their reflections on the evidence that the committee has gathered to date and the debate that took place in January. They have also highlighted the difficulties that patients continue to face in making an informed choice about their treatment and where to seek support when experiencing complications resulting from surgical mesh.

I have also received representations in that regard, including on the question whether a urologist should have been part of the national centre for chronic pain and mesh services in Greater Glasgow and Clyde health board, as well as from individuals who are still experiencing difficulty in taking advantage of the opportunity to have mesh removed by a surgeon of their choice at a location of their choice.

This might be a slight characterisation, but, as with the previous petition, although there has been a lot of good will and concrete action along the way, there are still clear deficiencies in the actual outcome of all that work.

Would Jackie Baillie and Katy Clark like to say a few words to the committee? I normally go alphabetically, but I saw Jackie Baillie defer to Katy Clark, so I invite her to speak first.

**Katy Clark (West Scotland) (Lab):** I am grateful for the opportunity to appear before the committee again.

I met both petitioners yesterday. Roseanna Clerkin is personally affected, as one of the

individuals who has suffered from debilitating chronic pain and life-altering injury after undergoing a mesh procedure. Lauren McDougall's mother, who has now passed away, was also affected, and I know that the committee has received testimonies from many other individuals who have been affected.

As the committee knows, the mesh used in hernia operations is different to transvaginal mesh, but many of the issues are similar, and they affect both men and women. However, there is a lack of data on the extent of the problem. That is why the petitioners are asking for an independent review; they want that data to be gathered, and the use of surgical mesh and fixation devices to be suspended until such a review has been concluded.

I have submitted freedom of information requests to every health board in Scotland, because I wanted to know the number of patients who were treated for hernias using surgical mesh and who had been readmitted to hospital following complications that arose from mesh. Most health boards did not provide information, but some did respond. NHS Ayrshire and Arran revealed that 8 per cent of all patients who were implanted with mesh to treat a hernia in its hospitals were subsequently readmitted due to complications arising from the mesh, while NHS Lanarkshire said that the figure was 10 per cent.

That data suggests that the petitioners are right to highlight the need for a review to explore the issue further, yet the Scottish Government continues to refuse to engage with them—indeed, the minister and the former minister refused to meet with the petitioners directly. Given that lack of engagement with the petitioners by Scottish ministers, I urge the committee to consider asking the Cabinet Secretary for NHS Recovery, Health and Social Care to appear before the committee and give evidence so that we can consider the issues further.

**The Convener:** Thank you. I call Jackie Baillie.

**Jackie Baillie (Dumbarton) (Lab):** I acknowledge, convener, your own particular contribution to tackling the mesh scandal in Scotland, and I know that we will get a good hearing from all the committee.

I echo my colleague Katy Clark's call for the committee to ask the Cabinet Secretary for NHS Recovery, Health and Social Care to give evidence on the issue and to give an update on all the promises that the Scottish Government made prior to the debate in January, as I have yet to understand whether those commitments have been fulfilled.

There is a need for a viable and safe alternative to mesh, and Maree Todd acknowledged as much



in a previous committee meeting in June 2022, when she agreed that the skills gap between mesh and natural tissue repair needed to be bridged. I am keen to know what progress has been made on that.

Some patients have very recently had mesh inserted, and the petitioners have raised concerns that no discussion took place about the risks or the alternative treatments, if any, that could be offered. Patients in Scotland have the right to a choice and to make informed decisions about their healthcare, and medical professionals should be given the tools to answer patients' questions about the risks and alternatives. It cannot be right that patients are relying on one another for information through support groups. Clear guidance needs to be in place and shared with all general practitioner practices across every health board.

I find it hard to believe, but the Scottish Government previously said that the mesh hernia repair used at the Shouldice hospital in Canada would not work for the Scottish demographic—I really do not understand why that would be the case. I believe that the opportunity remains to create a national treatment centre that properly offers alternatives and deals with the problems of mesh, and I wonder whether we can explore the matter.

We cannot continue to deprive those people who have had hernia mesh repairs of options for removal treatment. I would therefore be most grateful if the committee would do the petitioners and all of us a favour and press the Scottish Government in that regard.

**The Convener:** This is not a happy thought, but it is exactly 10 years since the committee first considered the issue of mesh in the petition that Elaine Holmes and Olive McIlroy brought forward. It would be ungenerous indeed not to acknowledge that, five cabinet secretaries later, we have seen progress in relation to the issue. Things have happened; the moratorium on transvaginal mesh continues to apply and we have secured the Transvaginal Mesh Removal (Cost Reimbursement) (Scotland) Act 2022, which provides for women to have the mesh removed by Dr Veronikis in Missouri. However, issues remain, and there are questions that we want to put to the Scottish Government.

A number of suggestions have been made. I, too, am confused about the Shouldice thing. I kind of understood the Scottish Government's concern that, for the people who might undergo that surgery, a commitment involving considerable weight loss would be required, which might ultimately be selective, but very open offers were made in that respect by the medical staff. Indeed, Dr Spencer Netto, in his evidence to the committee, specifically said that the hospital would

be willing to offer training and to have discussions with the Scottish Government on the processes and procedures involved. I thought that the Government was willing to consider that, but I have not heard anything further about where that might play into the outcome. Therefore, I would very much like to understand what further reflections the Government has had on the Shouldice model and the offer to support NHS Scotland in that respect.

Do colleagues have other suggestions?

12:30

**Alexander Stewart:** You have made some very valid points, convener, and Katy Clark and Jackie Baillie, too, have outlined the situation that we find ourselves in. I am happy for us to keep the petition open.

We have a number of options for action. I suggest that we write to the Minister for Public Health and Women's Health to highlight the petitioners' latest submission and seek information on the outcome of the exercise by the Scottish Association of Medical Directors to explore the availability of non-mesh surgery in individual health boards—that is vital—and on the development of NHS Scotland's scan for safety programme. Specifically, we should ask when it will begin and how it will be rolled out.

We could also write to the British Hernia Society for its views on the action that is called for in the petition and for information on its work to develop a hernia-specific registry, which is important. Those are my suggestions, convener.

**The Convener:** I think that, on the petition's clinical objective, which was to rule out the use of mesh in all circumstances, we had previously taken the view that we had heard sufficient evidence not to support it in principle. Is that the point that you wish to make, Mr Torrance?

**David Torrance:** I want to make two points. I have had mesh inside me for a long time following a hernia repair, and I am one of the 90 per cent of people for whom its use has been very successful. Indeed, it has changed my life. Therefore, I would definitely rule out a ban on the use of all mesh implants.

You have mentioned this already, convener, but when we write to the Scottish Association of Medical Directors, could we ask them about the very strict criteria that need to be met at Shouldice hospital before surgery can go ahead? If we implemented such strict criteria, would the public accept that? The fact is that many patients would be rejected for surgery on those grounds.

**The Convener:** That is certainly a question, but I would note that, every year, 6,000 people in

Canada are operated on successfully. There is also a consequential saving to the health service when a patient recovers, as they do not require constant additional medical support and treatment. I realise that there are issues to weigh up here, but I do not think that they should be casually dismissed just because of that.

According to Katy Clark, despite all the assurances that we have received about the consequences being discussed with individuals and the alternatives being properly represented to them, the petitioners still believe that that sort of thing is not happening universally. Therefore, I would be interested in getting the latest update on that matter from the Scottish Government. When the minister gave evidence along with health officials, assurances were given to us that further work was being done to provide more updated information material, and we would like to understand the status of that work and the impact that it has had.

It might well be that that will lead to our seeking to bring the cabinet secretary, rather than the minister, before us. After all, it was the cabinet secretary who first came before the committee and on whose initiative a lot of action was initially progressed. However, I think that that will be a decision for a subsequent meeting.

Do members have any other suggestions? Is the committee content with what I have proposed?

**Members** *indicated agreement.*

**The Convener:** I thank Katy Clark and Jackie Baillie for their comments. We will keep the petition open and move forward on that basis.

### **Motorhomes (Overnight Parking) (PE1962)**

**The Convener:** PE1962, which seeks to stop motorhomes being parked overnight outside formal campsites, caravan parks and aires, was lodged by Lynn and Darren Redfern. It calls on the Scottish Parliament to urge the Scottish Government to improve licensing enforcement on motorhomes to ensure they are only parking in designated and regulated locations. We previously discussed the petition on 23 November 2022, when, members will recall, we were keen to explore the promotion of aires as an alternative solution to the challenges presented by the petitioners.

The Scottish Government has stated that a camper van and motorhome working group was set up and has explored the unique challenges created by motorhome and camper van users in Scotland, with facilities being part of its consideration. [*Laughter.*] I do apologise. The group will report its recommendations to the visitor

management steering group at some point this year.

The petitioners' recent submission states that new facilities will not be effective in addressing the issues that were raised in the petition and that strict restrictions must be enforced against unregulated camper van parking, wherever that might take place. They highlight an incident where a camper van renter was displeased because the rental company had promoted the vehicle as fully self-contained, incorrectly implying that campsite facilities would not be necessary. The petitioners state that that is the mentality that they wish to stem. Financial challenges are also highlighted by the petitioners, because they are ineligible for the support that not-for-profit establishments might get.

I will try to contain my obvious associated hysteria. Do members have any comments that we might wish to consider?

**David Torrance:** I think that Jackie Baillie wants to say something.

**The Convener:** I see that Jackie Baillie, who is not formally here to advise us on the petition, would like to come in. I have been generous today in bringing in parliamentary colleagues, so it would be churlish of me not to offer you that opportunity.

**Jackie Baillie:** I am so grateful, convener. I did not know that I had such an interest in camper vans until now, but I suggest that the committee might want to consider a debate in parliamentary time, given the level of interest.

**The Convener:** Thank you. I suppose that we could also take evidence from camper van owners—that is potentially a way—[*Laughter.*]—forward.

Mr Torrance, save us from this mischievous hilarity.

**David Torrance:** If someone has road tax for their vehicle, whether or not it is a camper van, they are allowed to park it anywhere, as long as it is not causing an obstruction to a road or driveway. Therefore, under rule 15.7 of standing orders, I am happy to close the petition—

**The Convener:** Oh, I feel that that would be a terrible wasted opportunity, Mr Torrance. Given that a working group has been set up, might we not want to know what it has done?

**David Torrance:** Convener, I am quite happy to close the petition under rule 15.7 of standing orders—[*Laughter.*]—if any other committee members wish to back me.

**The Convener:** Are there any alternative suggestions?

**Foyso Choudhury:** I have never been in a camper van.

**Fergus Ewing:** That's what they all say. [*Laughter.*]

**The Convener:** On what is the safest thing for us to do, there is a proposal to close the petition or we can—[*Laughter.*] Are there any alternative suggestions?

**Fergus Ewing:** I will incur the wrath of Mr Torrance, but I wonder whether we have done justice to the petitioners, who have said that they want specific restrictions on overnight parking. There is no doubt that it is a nuisance in the Highlands and also elsewhere. Camper vans are huge vehicles, so parking can cause some nuisance issues.

In order to ascertain whether the working group will consider any specific recommendations, perhaps we could write to the Government to ask whether the working group has looked at the issue and what its recommendations are. Could any measures be taken? For example, local byelaw provisions might enable Highland Council to tackle such things.

To be fair, the petitioners' business is one of many that operates a caravan park, and it is a particular issue of nuisance for many residents along the North Coast 500, and perhaps in many other places, too. If you have a bloody great camper van parked somewhere that you need to go or that needs to be made available for safety vehicles, particularly on restricted narrow and single-track roads in places such as Skye, it is a serious issue, although perhaps not necessarily the one that was foremost in everybody's minds as the frivolity and jollity proceeded unabated.

**The Convener:** We have a proposal to close the petition and one to ask the Scottish Government whether the camper van and motorhome working group has reported to the visitor management steering group and when the steering group is expected to respond to that report.

**Fergus Ewing:** I apologise to Mr Torrance for stealing his thunder, but I think that that is worth while, out of justice to the petitioner, because we do not really have a clear answer. We should at least get an answer to that.

**Alexander Stewart:** I support Mr Ewing, convener, because I think that there is an opportunity here. I would like to hear from the visitor management steering group as to where we are. I propose that we keep the petition open for some more deliberation.

**The Convener:** Mr Choudhury, do you wish to close the petition or would you like to explore your interest in camper vans a little further?

**Foyso Choudhury:** I think that we should explore more.

**The Convener:** Are you content that we proceed at least to that stage, Mr Torrance?

**David Torrance:** Yes.

**The Convener:** Thank you. That concludes agenda item 1.

## New Petitions

### Thrombosis (PE2016)

12:40

**The Convener:** Item 2 is the consideration of new petitions. As always, for those who might be tuning in, because we are considering a petition for the first time, we invite the Parliament's independent research body, the Scottish Parliament information centre—SPICe—to offer its reflections on the petition, and we also invite the Scottish Government to give its initial thoughts on the petition. That does not in any way determine the outcome of the petition, but it does mean that we proceed on an informed basis.

The first new petition is PE2016, which was lodged by Gordon McPherson. It calls on the Scottish Parliament to urge the Scottish Government to raise awareness of the risk factors, signs and symptoms of thrombosis. Jackie Baillie has stayed with us for this petition as well, having an interest in it.

According to NHS Inform, deep vein thrombosis—DVT, as I think that many now know it—is

“a blood clot that develops within a deep vein in the body, usually in the leg. Blood clots that develop in a vein are also known as venous thrombosis. DVT usually occurs in a deep leg vein, a larger vein that runs through the muscles of the calf and the thigh. It can also occur in the pelvis or abdomen. It can cause pain and swelling in the leg and may lead to complications such as pulmonary embolism.”

The Scottish Government's response to the petition explains that it carefully prioritises the issues to which funding and staff resource are allocated, with the close input of clinicians. Given that it has already provided updated material to clinicians and revised the guidance available to the general public on NHS Inform on thrombosis, the Scottish Government does not consider that this is the right time for a major public awareness campaign. It does, however, commit to running a “package of activity” on the Scottish Government's health social media account on thrombosis awareness later this year.

The petitioner's further submission responds to the Scottish Government's cited statistics on thrombosis, highlighting that the higher numbers provided in his petition were taken from a ministerial answer to a question lodged by Jackie Baillie MSP. Therefore, before I ask members whether they wish to come in, especially in the light of the Scottish Government's quite clear direction, is there anything that Jackie Baillie would like to say to the committee?

**Jackie Baillie:** Thank you very much, convener. I am very grateful for the opportunity to speak.

Gordon McPherson is, in fact, a world ambassador for world thrombosis day. He has been campaigning on this issue for 20 years, and I feel that I have known him for each and every one of those years. He is persistent, and rightly so, because he is asking the Scottish Government to raise greater awareness of deaths in Scotland that can be attributed to thrombosis, as you have outlined, and to show the risk factors, signs and symptoms to look for in order to reduce mortality and morbidity.

The petitioner lost his daughter, Katie, who was an occupational therapist, in 2003, when doctors at two hospitals failed to spot a blood clot in her leg and she was sent home with painkillers. Mr McPherson feels that if medical staff had been more aware of the risk factors, plus the signs and symptoms, Katie may not have died from untreated thrombosis.

The Scottish Government has not run an awareness campaign on the condition since 2011, and Mr McPherson feels that it is not treating the matter as seriously as is required. As a result of a lack of awareness on the part of both the public and medical professionals, he is concerned that there will be increased cases of thrombosis. He is keen that the Government does more than it is already doing. He is not looking for something that is hugely expensive—he has suggested practical stuff. For example, he has talked about blood clot alert cards, such as are available in Ireland. They inform patients of the risks and signs of clots and of the need to get medical attention fast in the event of a clot. That strikes me as something that the Scottish Government could do effectively without too much cost. He has raised issues such as that with the Scottish Government over the past 20 years and it has been particularly unhelpful in trying to progress the matter.

12:45

What makes the issue more significant—and is I think the reason why he has lodged a new petition—is that new research by the *BMJ* shows that, after a Covid-19 infection, there is an increased risk of DVT for up to 3 months, pulmonary embolism for up to 6 months and a bleeding event for up to 2 months after infection. The circumstances around thrombosis have changed since the Government's last awareness campaign in 2011 when Covid-19 was not the health risk that it is now. In that light, I would be most grateful if the committee could consider whether it would be wise for the Government to take another look at public and medical professional awareness of thrombosis so that more lives such as Katie's are not lost.

**The Convener:** Thank you. Your evidence was helpful and compelling. Do colleagues have any suggestions?

**Fergus Ewing:** I am grateful to Jackie Baillie for shedding light on the new information that there are linkages between Covid-19 and thrombosis, as well as other linkages, which would suggest that there is a need for further consideration of what preventative interventions may be appropriate in identifying cases where there is a risk predisposition. It would be well worth putting to that to the minister.

I am new to this and I do not know the petitioner, but having read through the papers, I picked up that the loss of his daughter was a crushing blow. He has been through the mill. One death is one too many and I bear that in mind when I refer to numbers. However, there is a clear conflict between the figures that he has provided, which indicate that there are 11,400 deaths per annum in Scotland, whereas the figures in the Scottish Government's submission indicate that there were 380 deaths from blood clots in 2021 and a total of 1,925 where blood clots were mentioned on the death certificate—380 as an underlying cause and 1,545 as a contributory cause. In turn, the petitioner replied saying that:

"It is not the first time the Scottish Government has quoted one set of figures when there are other figures which reflect the case I put forward".

I would be interested to learn more about that and to tease out why the figures that he refers to are roughly 10 times greater than the figures that the Scottish Government uses.

Whether or not there have been 1,000 or 10,000 deaths, it is such a serious thing; the consequences can be fatal in serious cases. Whether there is a public information campaign or other specific actions that are taken on the basis of proper clinical considerations about preventative action, we need more information on the matter from the Scottish Government. I do not have a view on whether we want to do that by letter or in an evidence session.

**The Convener:** If Jackie Baillie does not mind, I will ask her for clarification. The petitioner feels that his figures came from a ministerial response received to one of your questions. Have you been able to understand or establish why there might be a discrepancy between the two sets of figures?

**Jackie Baillie:** No, but he is accurate in saying that the first set of figures that he quotes were provided to me in answer to a parliamentary question, I think. I am happy to provide that information to the committee if you do not already have sight of it.

**The Convener:** It would be useful to write to the Scottish Government to seek an explanation for

the discrepancy in the figures. We should also draw attention to the report that has suggested that there could be a link with Covid. We could refer back to the petitioner's long-standing association with the issue, the fact that it is all about prevention and that circumstances have changed. In the light of all of that, it could be that it is necessary to do a little more than had previously been suggested. Are colleagues content with that?

**Members indicated agreement.**

**David Torrance:** I wonder whether we should write to the Scottish Government. It will be running a health awareness messaging campaign on social media later this year, and given the fact that Covid has been brought into the matter, perhaps it can be put into that social media campaign.

**The Convener:** Okay—we will keep the petition open on that basis.

### Swimming Pools (Financial Relief) (PE2018)

**The Convener:** Our final petition is PE2018, which was lodged by Helen Plank on behalf of Scottish Swimming. The petition calls on the Scottish Parliament to urge the Scottish Government to help keep our swimming pools and leisure centres open by providing financial investment for pools. The petitioner notes the important role that swimming can play in supporting the physical and mental wellbeing of people of all ages and highlights that, pre-Covid, swimming was one of Scotland's highest-participation sports.

As noted in the papers, a report in November 2022 by Community Leisure UK found that 95 per cent of Scotland's leisure facilities are at risk of closure, with swimming pools facing an increased risk of closure, due to the cost of the energy that is required to operate such facilities; I believe that that has been the subject of recent parliamentary questions. Members might also be aware that increasing financial pressures have recently led to the closure of three public swimming pools in West Lothian, as well as Bucksburn swimming pool in Aberdeen.

In response to the petition, the Scottish Government states that it has repeatedly called on the UK Government to use all the powers at its disposal to tackle the cost of living crisis and to provide appropriate energy bill relief to leisure facilities. The Scottish Government response goes on to acknowledge the financial package that has been provided by the UK Government to support swimming pools in England, noting that, in deciding how to allocate the resulting consequential, it will consider what support can be provided to the sport and leisure sector in Scotland. I think that that too has been raised in

the chamber. The Scottish Government also states that it is working with sportscotland to examine the facilities estate in Scotland.

We have also received a submission from the petitioner, which highlights the estimated social value—some £55 million—that swimming contributes to society and notes the role that swimming pools play in helping to keep people active, particularly women, people with disabilities and older people.

Members will also note from our papers that we have received a submission from our colleague Tess White MSP, a former member of the committee. She is unable to join the meeting but wanted to express her support for the petition and to highlight concerns about the closure of Bucksburn swimming pool in her region.

Do members have any comments or suggestions for further action?

**Alexander Stewart:** This is a very important issue, which, as you have identified, has already been raised a number of times in the Parliament, so it is important that we keep the petition open.

We should write to the Minister for Social Care, Mental Wellbeing and Sport to seek an update on how the Scottish Government intends to allocate the consequential that result from the UK Government's funding of swimming pools in England—which has recently been discussed at length in the Parliament—and to seek details on the Scottish Government's consideration of the support that it will provide to the sport and leisure sector in Scotland.

We should also write to sportscotland to seek further information on the support that it is providing to Scottish Swimming for the delivery of the Scottish swimming facilities project. That information would also help to give us an indication of where we are with the whole process.

Those are the actions that I propose, convener.

**Foyso Choudhury:** I will just add that I wrote to the minister to ask for a meeting about the West Lothian swimming pool closures. At that time, she did not have time for us to meet. I would like to keep the petition open and to ask questions about what the Scottish Government is doing to support swimming pools.

**The Convener:** We could ask the Scottish Government specifically to confirm what consequential have been received. It has given a commitment in the chamber, in response to parliamentary questions, that it is giving thought to the issue and deciding how to allocate the resulting consequential and what support can be provided to the sport and leisure sector in Scotland. I think that we should ask the Government not just for an update on its

deliberations, but when it expects to conclude them. We should also ask that it make clear and public how, if at all, those consequential are going to be allocated. Given the parliamentary question, I think that we can be quite specific in regard to all that.

I think that we are content to keep the petition open and to proceed on that basis.

**Members indicated agreement.**

**The Convener:** That brings us to the end of the public part of this morning's meeting.

12:54

*Meeting continued in private until 12:59.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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