

# **PUBLIC PETITIONS COMMITTEE**

Wednesday 11 May 2005

Session 2

£5.00

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## PUBLIC PETITIONS COMMITTEE

### 8<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Michael McMahon (Hamilton North and Bellshill) (Lab)

#### DEPUTY CONVENER

\*John Scott (Ayr) (Con)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)

\*Helen Eadie (Dunfermline East) (Lab)

\*Rosie Kane (Glasgow) (SSP)

Campbell Martin (West of Scotland) (Ind)

\*John Farquhar Munro (Ross, Skye and Inverness West)  
(LD)

\*Mike Watson (Glasgow Cathcart) (Lab)

Ms Sandra White (Glasgow) (SNP)

#### COMMITTEE SUBSTITUTES

Frances Curran (West of Scotland) (SSP)

Susan Deacon (Edinburgh East and Musselburgh) (Lab)

Phil Gallie (South of Scotland) (Con)

Rob Gibson (Highlands and Islands) (SNP)

\*attended

#### THE FOLLOWING ALSO ATTENDED :

Pat Clark

Ronald Conway (Association of Personal Injury Lawyers)

Pat Curran

Sandra Curran

Margaret Dekker (Scotland's Campaign against  
Irresponsible Drivers)

Judith McCrorie

#### CLERK TO THE COMMITTEE

Jim Johnston

#### ASSISTANT CLERK

Richard Hough

#### LOCATION

Committee Room 2



# Scottish Parliament

## Public Petitions Committee

Wednesday 11 May 2005

[THE CONVENER opened the meeting at 10:01]

### New Petitions

#### Traffic Calming (PE840)

**The Convener (Michael McMahon):** Good morning. I welcome everyone to this morning's meeting of the Public Petitions Committee. We have received apologies from Campbell Martin.

The first item on the agenda is consideration of new petitions, the first of which is PE840 by Judith McCrorie. The petition calls on the Scottish Parliament to urge the Scottish Executive to review its policy on traffic calming measures such as road humps and road cushions to address adequately their impact on disabled users and the elderly.

Judith McCrorie will make a brief statement in support of her petition. She was due to be accompanied by James Page, but we understand that he is in hospital and cannot attend the meeting. Please pass on our best wishes to Mr Page. After your opening remarks, we will discuss the issues that you raise.

**Judith McCrorie:** Although the aim behind installing road humps, cushions, H-humps, zebra crossings and pads is laudable, they present unforeseen consequences for people who have medical conditions, elderly people and disabled people. Enforced jolting independent of speed not only causes pain, discomfort and potential deterioration of condition, but has wider repercussions for the general public's health and for those who are involved with emergency services.

I will outline five principal issues that highlight how speed humps and cushions force the aforementioned groups to be selective in their journeys, which eliminates the possibility of their taking certain routes or reaching certain destinations. Indeed, such discrimination was established in the Disability Rights Commission's submission to the Cabinet Office consultation on transport and social exclusion on 19 March 2005, which said that

"there have been recent initiatives to reduce traffic speed through the installation of traffic calming humps. Positive though this is, the uninformed design of the humps can cause pain for disabled drivers and passengers as jolting occurs when driving over them.

According to the 2004 pain in Europe study, 18.1 per cent of Scots are believed to suffer from chronic pain.

Secondly, humps and speed cushions are being overused as gateways in a desire to turn residential streets into 20mph zones. Moreover, their use creates barriers for disabled motorists, pedestrians and wheelchair and electric scooter users. Frequently, pavements are too narrow for passage, and bus shelters and street furniture can reduce pavement width further and force disabled people on to the road, where they face new problems because of a lack of dropped kerbs and because of cars being parked at kerbs. According to the Department for Transport, gateways do not have to be humps.

Thirdly, Janet Kennedy, one of the authors of the Transport Research Laboratory report TRL614 "Impact of road humps on vehicles and their occupants" for the Department for Transport, told me that common sense should be employed in the selection of humps and cushions over other forms of traffic calming, especially on accident-free streets. She also said that we should not ignore the report's recommendation that

"Vehicles should be prevented from parking near to speed cushions to enable buses and ambulances to straddle the cushions (since discomfort is greater when such vehicles are forced to mount the cushions)."

However, contractors for one Scottish region have stated that as humps and cushions have been installed in residential streets, people cannot be prevented from parking by or on them.

Pain is subjective, so the researchers were unable to include disabled people in their research and their findings are applicable only to healthy persons. The humps and cushions that were tested were made of flawless concrete to a tolerance of plus or minus 3mm, since quite small deviations can adversely affect the comfort of a vehicle's occupants.

Fourthly, a lack of standardisation of design means that materials such as granite setts and concrete bricks are being used in Scotland in the construction of humps, cushions, kerbs, ramps and crossings. Such materials increase the severity of the pain that occupants experience. Granite setts and aggregate are also problematic for people who have walking difficulties, and for wheelchair and scooter users. Lips and humps, cushions and pedestrian crossings also cause discomfort and difficulty, and tactile slabs—although they are beneficial to blind people—are problematic for wheelchair and scooter users. Wheelchair and scooter users cannot cope with lips as high as 2in or inclines greater than 8.5 per cent.

The London Ambulance Service has requested that proper research into traffic calming schemes be initiated because out of 7,500 to 8,000 accidental deaths a year, at least 5,500 are caused by heart attacks or cardiac arrest. Road deaths in comparison account for 280 to 300 deaths. It is claimed that a one-minute reduction in response times could save 500 lives a year and that response times, chances of survival, treatment and discomfort levels en route to hospital would all be affected. The fire services also experience delays. How will the explosive growth of traffic calming measures affect future emergency statistics in Scotland?

There is a distinct lack of research about the impact of traffic calming methods on the emergency services and on the health and well-being of elderly, frail and disabled people. Road humps and cushions discriminate against that section of society, so greater consultation of disabled people should be a prerequisite in consideration of all future transportation issues. The Disability Discrimination Act 2005 places a duty of care on public authorities to eliminate unlawful discrimination against and harassment of disabled persons, in order to promote positive attitudes and to encourage such people's participation in public life. Those duties should be honoured.

I will read out what Mr Page wanted to read out, if I may. James Page is the transport spokesman for the Fife independent disability network. He says that problems are caused by traffic calming devices, raised kerbs, granite setts, paving slabs with knobs on, narrow pavements, the absence of dropped kerbs, gradients steeper than 8.5 per cent, obstructions, doors hinged so that they require to be pulled open, second-hand public transport vehicles and limited provision of disabled facilities. The fundamental problem is that designers work to a limited model of disability, using statistics that are an average across the whole United Kingdom.

**Helen Eadie (Dunfermline East) (Lab):** Rather than ask a question, I will make a comment in support of Judith McCrorie. I have been working with her to try to bring this matter to a successful conclusion. I have been struck above all by the fact that the Department for Transport has not conducted any research into the effect of speed humps; that is a major concern.

Having suffered from a dislocated shoulder four years ago, I remember vividly two things about my experience. One was that when I was in the ambulance going over the many cobbles and speed humps on the way to the hospital, it was excruciatingly painful. Then, after my dislocated shoulder was restored, I travelled by taxi and train to Parliament. There is a speed hump at the exit of

Waverley station and each time I went over it, I was in absolute agony.

I empathise with all sufferers of back injury, arthritis or whatever the disability is, because such speed humps are a problem for them. That is not to say—Judith McCrorie said this eloquently—that we are against traffic calming measures. We are in full support of such measures because in Fife last Friday, we had three road deaths in the space of 20 minutes. We are not sure of all the circumstances yet, but there is a suggestion that one of the deaths might have been caused by speeding in the driver's locality. Therefore, I am absolutely behind attempts by local authorities to introduce speed-reducing measures, but the petition is about the types of measures that are put in place.

PE840 is an extremely good petition that raises an important issue. I hope that at the end of the day we will be able to help Judith McCrorie and other sufferers across Scotland to reach the amicable solution that we all want. I congratulate Judith McCrorie on the extensive and tenacious work that she has undertaken.

**Mike Watson (Glasgow Cathcart) (Lab):** The issue is important. I am struck by the additional information that members have had placed on our desks this morning from the London Ambulance Service. London is not typical of England as a whole and it is certainly not typical of Scotland, but there are a couple of revealing statistics. The document states that, despite the fact that traffic calming measures were introduced from 1995,

“the number of road deaths in the capital actually increased from 217 to 280 a year”

and that the 280 road deaths in London in 2002 contrasted with approximately 8,000 cardiac arrests. The London Ambulance Service concludes:

“a reduction of one minute in average ambulance response times could save in the region of 500 lives a year.”

That information must be taken in context, but there must be some read across to Scotland, even if the figures here might be smaller.

The Scottish Ambulance Service has the right to object or, at least, to comment when proposals for road bumps or other traffic calming measures are introduced. Do you know the extent to which the service does that and how much notice is taken of the objections, with the result that traffic calming measures are either not proceeded with or are mitigated in some way?

**Judith McCrorie:** I was not aware of that. However, I have spoken to Mr Daren Mochrie, who is head of the Scottish Ambulance Service's accident and emergency services in Edinburgh.

He stated that traffic calming measures delay ambulances, which has a knock-on effect on care and treatment for patients and on life saving. For someone who has a heart condition, an extra minute of delay can result in their being brain damaged. A similar point applies to people who suffer spinal injuries.

Mr Mochrie stated that ambulances suffer damage from humps, especially to their tailgates. I was told to contact Mr Michael Jackson, who is the general fleet manager for Edinburgh. I asked him whether research has been carried out in Scotland into prolonged journey times, the ability to treat people while ambulances are traversing humps and the number of deaths that arise from road accidents compared to those among passengers in ambulances. He said that, as far as he is aware, no research exists on those issues, but he confirmed that ambulances get damaged, especially the tailgates and the steps.

**Mike Watson:** That must be the case. It would be interesting to find out from the Scottish Ambulance Service the extent to which it objects to such measures and the extent to which its objections are acted on.

Have you had a sympathetic hearing from Fife Council? Local authorities are ultimately responsible for deciding whether to go ahead with traffic calming measures. I have been involved with such issues in Glasgow, although not from this angle. Has Fife Council been sympathetic to the issues that you have raised?

**Judith McCrorie:** Fife Council's transportation department is divided into different districts; I have been given slightly different information from the different units but, for my own area, the answer must be that the council has not been sympathetic. During a consultation, I asked what allowances the council made for disabled people in deciding on traffic calming measures; I was told that it makes no allowances. I have requested that the humps on our road be reduced and that some other form of gateway be allowed on our road, given that where the existing gateway has been placed, there are disabled parking spaces and, usually, parked cars, so people cannot speed at that point anyway. However, the request for different measures was rejected by Fife Council's transportation department.

**Mike Watson:** I find it surprising that Fife Council can take no account of people who have disabilities, because the Disability Discrimination Act 1995 would surely cover that issue. I am sure that the committee will want to follow that up.

**John Scott (Ayr) (Con):** Like other members, I think that the petition is good and timeous. Mike Watson asked about ambulance response times, but do you have any figures on fire brigade

response times? As you mentioned in your opening remarks, time is also critical in fire brigade call-outs.

10:15

**Judith McCrorie:** I am afraid that I do not; I have just hearsay. People have told me that ambulances take longer to arrive. In Glenrothes, for example, I believe that each hump adds at least 10 seconds to journey times. One road has so many humps that ambulances and fire services tend to avoid it if they can.

**John Scott:** Do you have any evaluation of speed humps? Are they common elsewhere in the world or have they been tried and rejected abroad?

**Judith McCrorie:** Unfortunately, I have no internet connection at home, so I cannot research matters as thoroughly as someone else might be able to. I know that people are appealing against road humps in many countries; a person in America who is campaigning against road humps has contacted me and, I believe, road humps are being removed from some areas of America for the benefit of people with disabilities. People all over Europe are also campaigning against road humps because they feel that disabled people, people with poor health and elderly people have been ignored in respect of installation of humps.

**John Scott:** That is a good point. The petition is certainly thought provoking.

**Rosie Kane (Glasgow) (SSP):** I support very much what the petition brings to Parliament. It raises many issues and several points have been teased out. In my area—Govanhill—road humps were installed a couple of years ago.

I will respond to John Scott's question about fire engines. I saw a fire engine being damaged by hitting a road hump at the speed at which it had to travel to reach a fire, which stopped the engine. A new engine had to be brought as a result of the damage. A record of that major problem exists.

The Scottish Ambulance Service's letter provides a balance to the supposed improvements that result from road humps because fewer accidents occur. I imagine that that is the case and that, in the long term, fewer people will be disabled as a result of road accidents. However, road humps in areas that are further away from hospitals, such as Drumchapel, slow ambulances and fire engines, so people are even more disadvantaged in obtaining speedy treatment and reaching the emergency services.

We all seek to slow traffic and we should do that more in built-up areas and around schools. We must remember that children do not just appear on the road next to a school, but in its whole area. I

wonder whether road humps were experimental and could be seen to have failed. A measure that has cross-party support and which has been tried and tested is the 20mph zone. Do you agree that such zones should be made mandatory? In areas that seem to need road humps, the humps could be removed and replaced with mandatory 20mph zones, which would calm traffic in such areas and beyond. The committee might agree that, in the long term, that would generally slow traffic and therefore improve the environment and communities. Could humps in built-up areas be replaced with mandatory and broad twenty's plenty schemes?

**Judith McCrorie:** I think so. People's mindset must be changed. Our whole village has become a 20mph zone, but that is not affecting people's speed hugely—they speed up after travelling over humps or cushions. Even a general practitioner has told me that his car can travel over some humps without slowing—the ability to do that depends on the form of transport—and that he avoids areas where humps cause him discomfort. If you stand beside a hump or platform to record the number of people who slow down, you will see that the number is low. A change in drivers' mindset and, perhaps, more police to reinforce speed levels are needed.

**Rosie Kane:** You talk about a change of mindset for drivers; I agree that that is necessary. In the areas where a twenty's plenty scheme has been advisory rather than mandatory, green signs have been put up—you may have seen them. When drivers found out that the 20mph limit was not mandatory, they began speeding up again; drivers also speed up between humps. I wonder whether any other members of the committee support my suggestion, which is that traffic be slowed down to 20mph in areas where that is required. Although traffic in general would be slowed down, ambulances and fire engines would not be deterred, which would mean that people who had disabilities or other difficulties would not be dragged over bumps. Do you see what I mean?

**Judith McCrorie:** I do. I have discovered that a new form of hump has been trialled successfully in London; I will leave information on it with the committee. If a car or an ambulance goes over the hump at 20mph or less, it apparently has no effect, so the driver can maintain their slow speed. However, if someone is going at more than 20mph, the hump inflates itself and gives the vehicle a bump. As well as having been trialled successfully in London, the hump has been used in other parts of England. Provided that its use is tested for disabled people, it might offer the way forward. It is claimed that the system pays for itself within six months.

**Rosie Kane:** That, too, would be a good idea, but I imagine that the cheapest, smartest and

easiest measure might be to slow down traffic completely. Thank you very much; I support your petition.

**The Convener:** I have had experience of the twenty's plenty scheme. North Lanarkshire was one of the first councils to pilot it and I was able to help the council to verify that it was entitled to bring in mandatory 20mph zones. As far as I am aware, North Lanarkshire was the first local authority to have such zones, although other councils might have followed its lead. The introduction of the scheme has resulted in a reduction in accidents. That shows what can be done; the issue is not reserved.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** Good morning. The petition that you have submitted has two sides to it. As well as addressing the problem of speed restriction ramps, it examines the installation of street furniture and that furniture's proximity to the kerb. The petition has two thrusts.

**Judith McCrorie:** Yes. I included both elements because the more people I talked to, the more it became obvious that in some areas a hump and a speed cushion are not just a hump and a speed cushion. In some places, they are combined with zebra crossings. In some places, when a hump is created, the road level is raised, which means that wheelchair users can cross from one side of the road to the other without going on to the road. However, I have been informed by some wheelchair users that such humps cause problems, not only when they drive over them, but when they use them to cross the road. That is because lips are formed on the edge of the pavement when such installations are created.

The second part of the petition was included to address all the factors that seem to be being built into traffic calming. Even pavements are affected. In George Street, granite setts are being used in the centre of the road, in the parking areas. For many disabled people, they are impossible to traverse. Granite setts are also being used to make humps at road junctions in Edinburgh, which are extremely painful for disabled people.

**John Farquhar Munro:** I quite accept that, but the main thrust of your petition is to address the problem of speed-restriction ramps.

**Judith McCrorie:** That is right.

**John Farquhar Munro:** You have made a good case. It is not the first time that we have heard about the difficulties that speed ramps create. As motorists, we sometimes complain about them because of the problems that they cause. However, what is the alternative?

**Judith McCrorie:** Someone from the Disability Rights Commission told me that, in England,



boxes with flashing lights that warn people to slow down have been found to be highly effective. Someone else told me that, on the continent, there is a system whereby if someone is caught exceeding the speed limit where there is a camera, they are brought to a halt at a set of traffic lights slightly further on. However, the Department for Transport and the DRC have told me that that other measures, such as rumble strips and notices of intended prosecution—NIPs—are often as effective.

**John Farquhar Munro:** I have seen an alternative to the speed ramp in some areas: a chicane is constructed in the road to slow down the traffic, which would eliminate the sort of problems that we are discussing.

**Judith McCrorie:** It would indeed, but Fife Council has said that speeding youths will just zig-zag through them anyway. If speeding youths are going to fly round or over something, they will do it in any case, as I have witnessed.

**John Farquhar Munro:** Is your main priority the traffic calming measures or do you want your petition to be associated just as strongly with street furniture and pavement space?

**Judith McCrorie:** Our main priority is the discomfort and pain that is caused to people who go over humps. However, when I talked to many of those who signed the petition and to others, they illuminated for me the problems that relate to the design of the humps and the pavements beside them, which is why I included those other issues. They are important for wheelchair users or people who have to use electric scooters. Even if a chicane is created, we still need dropped kerbs and they still need to be at the right gradient for wheelchairs to get up them. As I say, the tactile slabs that are used for blind people cause wheelchairs to slip, but they are being placed across entire crossings. I know that that is a difficult issue, but those matters all need to be taken into account as well.

**Helen Eadie:** For the avoidance of doubt, I place on record my strong support for Fife Council's endeavours to slow down traffic throughout Fife. It has tried every variety of traffic calming measure.

The petition is concerned with the need for all local authorities in Scotland to ensure that any speed humps or any other traffic calming measures are designed to cause no pain or discomfort to people who suffer from disabilities. That is essential. From the research that the team in my office has undertaken, we can see that a great many advisory leaflets are provided on the design and style of road humps, but minimum regulations should be laid down requiring a local authority that chooses to run with speed humps to

ensure that they are designed to cause no such pain or discomfort. There are other measures; Fife Council has developed slow-down signs with solar-powered lights that are controlled by radar intelligence and which flash automatically at motorists to tell them to slow down when they approach a village. That is a good and welcome measure.

I recommend that the committee agree to seek views on the petition from the Scottish Executive—it is important that we get the Executive's views—and from the Disability Rights Commission, which ought to have input on such an important issue. The information that we have from the Disability Rights Commission is not nearly specific enough, so I hope that it will be able to clarify matters further. Perhaps we could also involve other organisations, such as Capability Scotland, some of the motoring organisations—such as the Scottish Road Safety Campaign and the Automobile Association—Age Concern Scotland and the Mobility and Access Committee for Scotland. We could approach all those organisations, ask for their views, get their feedback to the committee and let Judith McCrorie and other campaigners know the outcome and what more we can do to help.

10:30

**Mike Watson:** In our letters to the Disability Rights Commission and to the Executive I would like to ask about the DRC's consultation paper, some points from which are detailed here, and to ask what the Executive is doing in response to that. I mentioned earlier that a letter should also be sent to the Scottish Ambulance Service, specifically to ask how many objections they make to any proposed introductions of traffic calming measures and how successful they are either in having those proposals withdrawn or in having them mitigated in some way.

**John Scott:** If we are to write to the Scottish Ambulance Service, we should also write to the Scottish fire brigades.

**Rosie Kane:** I do not know whether Helen Eadie mentioned the Scottish Road Safety Campaign, but we should seek some advice on its experiences. Would anything be gained from asking traffic police for their experience? I am sure that they have a lot of knowledge.

**The Convener:** Judith McCrorie has brought before us a wide-ranging issue. You have received a lot of support from the committee, and we will seek out as much information as we can on the way forward. Once we get responses back from all the suggested organisations, we will keep you updated and we will continue to discuss the issue until we can conclude—I hope successfully—on

your behalf. Thank you for bringing your petition to us this morning.

**Judith McCrorie:** Thank you.

**The Convener:** I welcome to the public gallery a delegation from Blyth Valley Borough Council, which is interested in the work of our committee. I hope that the delegation will be able to take away some useful information.

### **Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (PE841)**

**The Convener:** Petition PE841, from the Curran family, calls on the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless driving. Pat and Sandra Curran are here to make a brief statement to the committee in support of the petition, accompanied by Margaret Dekker from Scotland's Campaign against Irresponsible Drivers. I welcome you all to the committee. You have a few minutes to make some introductory comments, after which we will discuss the issue that you have brought before us.

**Pat Curran:** Many of you here will have said goodbye to your loved ones this morning without a thought. You expect to see them tonight when you return home, just as we did on 15 December 2003. Sadly for us, however, a so-called careless driver had other ideas and our beautiful, much-loved daughter and sister never made it home.

As a family, we will never get over the loss of Gillian or the fact that she has been treated with so little respect when she did nothing wrong. Gillian paid the ultimate price for someone else's carelessness: her young life. The most important fact—the loss of a precious life—was completely ignored when the case came to court. That is unforgivable and totally unacceptable in this day and age. We are not looking for favouritism for Gillian; all we seek is the same right that other victims have to be considered in the charge. Losing Gillian completely devastated our family. We miss her so much. Someone must put a stop to victims being treated in the way that she was treated, so that families like ours can be allowed peace to grieve.

Gillian's death should surely send shivers down the spine of any motorist. It beggars belief that someone who had stopped in a well-ordered queue of traffic could lose their life as a consequence. If the victim had been the loved one of a member of the committee, would you want them to be treated in that way? Please help us to put a stop to injustice. Any one of us could be in Gillian's situation tonight.

The committee will be aware that the charge of careless driving is wide ranging and covers everything from minor carelessness to gross carelessness. It is the only option in law when, first, there is insufficient evidence to bring a charge of dangerous driving; secondly, there is no proof that drink or drugs were contributory factors—for example, when a driver leaves the scene to avoid detection; and, thirdly, when a higher charge is plea bargained. Families who are bereaved by the actions of careless drivers experience aggravated grief because there is no recognition in law that their loved one was killed or that their loved one was an innocent victim.

The Road Traffic Act 1988 addresses a reserved matter, but we ask the Scottish Parliament to consider the application and administration of the law, which is a devolved issue. The law has evolved quite separately north and south of the border. For example, a coroner's inquest is the norm after all sudden deaths in England and Wales and takes place before any criminal proceedings. The coroner is an independent judicial officer who is empowered to inquire into the death to ascertain who the deceased was and how, when and where they met their death. The Data Protection Act 1998 specifies that, at the end of the inquest, an inquisition form that sets out those findings should be completed.

In Scotland, however, a fatal accident inquiry following a road crash is held at the discretion of the Lord Advocate and is mandatory only if a driver dies while driving in the course of his or her employment. A discretionary fatal accident inquiry following a road death is a rare occurrence. The purpose of a fatal accident inquiry is not to apportion blame; it is to determine where and when the death took place, the cause of the death, the reasonable precautions whereby the death might have been avoided and any other facts that are relevant to the circumstances of the death.

The Road Traffic Act 1988 denies bereaved families and innocent families recognition or dignity, so we ask the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by a careless driver. Such a step would bring compliance with the European convention on human rights, to which the Scottish Parliament agreed.

**The Convener:** Thank you, Mr Curran. Do members have comments or questions for the petitioners?

**Jackie Baillie (Dumbarton) (Lab):** I welcome the petitioners to the committee. I am sure that other members of the committee will, like me, want to express their regret for the loss of your daughter

Gillian in such tragic circumstances. I acknowledge how difficult it must be for you to be here today.

I read the background information that you supplied to the committee and I have a couple of questions. First, was one of the problems the lack of contact with the procurator fiscal's office after Gillian's death, despite your efforts to make contact? Can you expand on the nature of the contact that you had? Secondly, am I right in picking up from the papers that not until about six and a half months after Gillian's death did you receive a letter that said that a charge of careless driving, rather than causing death by dangerous driving, would be brought? Was that your first contact?

**Sandra Curran:** That was the first contact that we had. It had been arranged that Pat would phone on the last Friday of every month to find out what was happening. Every month he phoned and was told that nothing was happening. After five and a half months, at 12.30 on the Friday afternoon before the case went to court—it went to court on the Wednesday—we received a letter telling us that the person who killed Gillian would be charged with careless driving and the fact that Gillian had been killed as a result of that careless driving would not be considered in the charge. We had been told at the beginning that we would be kept in contact with the fiscal's office at all times. That never happened. As I said, every time Pat phoned, we were told that there was nothing to report.

We had never been in such circumstances before and we left the law to the law. We were told that we were not entitled to have anybody to represent us, as that was the fiscal's job. We took it on trust that the fiscal's office would do everything that it said that it would do. However, when we received that letter on the Friday afternoon, it shook us to the core that we and Gillian could be treated so badly. We should have been taken to the fiscal's office. We were told at least twice that we would be kept informed at all times, but that never happened. I know that the office says that that is the way that it should be done, but that is not the way that it happened with us.

You are right—it was five and a half months before we heard anything. We did not know what the careless driving charge was to do with. When the police told us about the accident on the night that it happened, we were told that Gillian had been hit at speed and that the other driver was entirely to blame. However, we were later told that they could not establish a speed. The driver had travelled from Preston to where she hit Gillian in two hours and five minutes, although it should take more than three hours and 10 minutes. However,

the police could not take into account the distance that she had travelled from A to B when they were trying to find out whether she had been driving at speed. We are stunned that none of those facts was taken into account.

Sixteen months down the line, we know no more information than we did the night that Gillian was killed. Every time we asked anything, we were told that it would prejudice the case if we were given any information. However, now the case is over and done with and we are still none the wiser. That is why we would like a fatal accident inquiry. A lot of people in our position might not want a fatal accident inquiry, but we do. Gillian was far too precious to be treated the way in which she has been treated. She was sitting, stationary, in a queue of traffic, with her handbrake on. She was the last car in a mile-long tailback when the other car hit her at speed. She had done nothing wrong. Why has she been treated like this? Why has she been ignored?

**Jackie Baillie:** As I understand it, the Lord Advocate has the power to instruct that there be a fatal accident inquiry if he so wishes. You want to make a fatal accident inquiry mandatory in all cases. Can you understand that some people might not want an inquiry in certain circumstances?

**Sandra Curran:** Yes. However, when people die in jail or while doing their job, there are mandatory fatal accident inquiries. What difference is there between those situations and our situation? We expect the same treatment. Perhaps people who do not want one would not have to go along to the hearings. However, there should be inquiries into fatal accidents.

We had to go to court and listen to someone being charged for being careless. The fact that they took a life was not even acknowledged. However, whenever a death has occurred, that should be the thing that anybody who is involved in the case should start with. It should not be the last point that is dealt with and it should not be ignored completely. The death is the most important thing. Gillian was the most important thing in our world and she has been ignored by the justice system.

**The Convener:** The accident that Mr and Mrs Curran have referred to took place in my constituency. I do not know whether I have to declare an interest, but I have a lot of knowledge of the case.

I am particularly interested in the fact that Mr and Mrs Curran are asking for a fatal accident inquiry to consider the reasonable precautions that could be taken to address the circumstances that might have led to the accident. I am aware that the junction where the accident happened, which most

people will know as the Shawhead junction, is a particularly difficult one, as a bypass with a 60mph speed limit meets the A8, which also has a 60mph speed limit. The junction is not suitable for that type of traffic flow and, at certain times of the day, it virtually becomes a car park and traffic goes from 60mph to zero in a short space of time. Furthermore, at the junction, two lanes become one lane without any prior warning.

I would have hoped that an examination of an accident such as the one that we are discussing would result in the junction being altered to take away the traffic problems. That is the aspect of the idea that there should be a fatal accident inquiry following a road traffic accident in which I am particularly interested. For that reason, I have a lot of sympathy with the issue that you have brought before us. Indeed, everyone on the committee has the greatest sympathy for your circumstances.

We cannot look solely at your daughter's case, however. We have to look at the way in which we can ask the Scottish Executive to use the example of what happened to your daughter to make the situation in Scotland better for other people who might find themselves in similar circumstances. If that is the case, would a fatal accident inquiry help to address the issues that I have just outlined?

**Sandra Curran:** Yes.

10:45

**Margaret Dekker (Scotland's Campaign against Irresponsible Drivers):** If I may, I will come in, convener. What you said about precaution is reasonable, but even if a sheriff makes that sort of recommendation, the authorities have no power to put the recommendations into force. As Scotland's Campaign against Irresponsible Drivers knows all too well, the Curran family and all the families like them seek recognition of the victim at a fatal accident inquiry. Although the fact that an innocent victim can be ignored in a charge is a reserved matter, the opportunity is open to us in Scotland to correct the situation through amending the law on fatal accident inquiries.

The committee might not be aware of the fact that 85 fatal accident inquiries were held in 2002. The figures for the number of mandatory and discretionary inquiries are not disaggregated, but it would be interesting to know how many of those inquiries were held on a discretionary basis after a road death.

It could be argued that a fatal accident inquiry should be held into all road deaths because of the lessons that can be learned. However, PE841 calls on the Parliament to look at recognition of the victim. A fatal accident inquiry into the death of Gillian Curran would give dignity to the family.

**John Scott:** I, too, express my condolences on the loss of a daughter and sister. I am concerned that the fiscal's office did not make more effort to keep the family informed about the progress of the case. If the fiscal's office had done so, I suspect that our petitioners may not have been at committee today.

**Sandra Curran:** I would still have been here. My daughter's death would still not have been recognised and the whole purpose of our being at the committee today is to get that recognition. The fact that the people in the fiscal's office did not do their job does not change the outcome.

**John Scott:** In the inquiries that you made in bringing the petition to the Parliament, did you come across other people who had also not been kept informed by a fiscal's office?

**Sandra Curran:** We have made contact only with one other family. They told us that their fiscal was great, but that was a situation in which the family knew the fiscal. They felt that everything had been done properly: they were shown round the court and they knew beforehand about everything that was going to happen. Until we got the letter on the Friday and Pat phoned the fiscal's office that afternoon to make an appointment, no one had been in touch. They did not even offer us an appointment in the letter that they sent to us; Pat had to ask for one.

The other family's daughter was killed in Cumbernauld. The family was taken to Stirling and shown around the court. In fact, they went up and down to Stirling a couple of times and spoke to the fiscal on a few occasions. That did not happen to us.

**Pat Curran:** In our case, one of the fiscals took ill and was off for two months. We think that our daughter's case was not looked at during that time.

**John Scott:** In reflecting on what you are telling us, I wonder whether guidelines are set down for fiscals on how they should keep in touch with people in advance of a fatal accident inquiry.

**Margaret Dekker:** Guidelines are in place. The Crown Office publication "Criminal Proceedings and Fatal Accident Inquiries" gives details of the way in which families should be kept informed. Although some families have been kept very well informed, you are right to suggest that there is a problem in the imparting of information. Even at the conclusion of a case, families do not always have their questions answered. That is because answering those questions may involve witness statements and all the rest of it.

The point is that a fatal accident inquiry would ventilate the facts in public. An inquiry is not intended to apportion blame, but it would give the

families the opportunity to hear the evidence and the witness statements for themselves and in some way deal with their grief. Their grief is aggravated because the victim has not been recognised and there is a lack of knowledge about the circumstances of the death.

**John Scott:** I understand.

**Sandra Curran:** We called for a meeting after the case was over. Two fiscals in Hamilton, two senior traffic investigators and a reporting officer were at the meeting. Pat, Margaret Dekker, Nicola and I went along to the meeting. At the meeting, the police told us that they had recommended a dangerous driving charge but that that had been reduced to a careless driving charge because they did not have enough evidence. I do not know how they did not have enough evidence. When Gillian's records were sent to our lawyer, he advised us not to look at them because her car looked as if it had been through a crusher. The police could not establish a speed. I do not know how there was not enough evidence. They had a body and someone had been killed. I am not saying that it would have made us happy if the girl who killed Gillian had been given 10 years or even a month in jail—it would not. The fact is that Gillian should be recognised. That is what we are calling for. We are not out for vengeance; we want recognition. The very least that Gillian deserves is recognition.

**John Scott:** I will return briefly to the point about the guidelines. In your view, Mrs Dekker, were the guidelines not followed as they should have been in this case? Does that happen in other cases?

**Margaret Dekker:** In some cases, the guidelines have been followed, but in the majority of cases that we have dealt with—perhaps it is why families come to us—they have not been. We know that fiscals are overworked. SCID would like specialist fiscals to deal with road deaths. However, leaving that aside, I think that the fact that fiscals are overworked should not be the problem of families. The families have put their faith in the justice system, but they come out with an aggravated grief.

**Mike Watson:** I, too, pass on my condolences and pay tribute to the strength and dignity that you are showing today. It must be very difficult.

Mr and Mrs Curran, you said that you were told to phone the fiscal's office on the last Friday of every month to get an update, but that each time you phoned you were told that there were no developments. How long after you were last told that there were no developments did you get notice on the Friday that the court case was coming the following Wednesday?

**Sandra Curran:** We got notice on the last Friday of the month. Pat had just come in from work and he was going to phone the fiscal's office when the postman came.

**Mike Watson:** So the notice came on the last Friday of the month.

**Sandra Curran:** Yes. The letter came that afternoon.

**Mike Watson:** I find it surprising that the fiscal's office would not have had more notice than that. Given that you were phoning on a monthly basis, you ought to have been informed in advance of your monthly call. It is difficult for us to get into the details of the case. What has been detailed this morning is that the approach by procurators fiscal is patchy. They should follow basic guidelines. I take Mrs Dekker's point that staff shortages, staff illnesses or staff holidays should not be an issue. Mrs Dekker also said that there were 85 FAls in Scotland in 2004.

**Margaret Dekker:** In 2002—the last available figures are for 2002.

**Mike Watson:** Do you know how many of those related to traffic accident deaths?

**Margaret Dekker:** No. There is no information on that, although it would be useful to know the figure.

**Mike Watson:** Is even the cause of death not listed publicly?

**Margaret Dekker:** We do not know how many FAls were mandatory, how many were discretionary and how many were related to road deaths.

**Mike Watson:** I understand that you would not know whether the inquiries were mandatory or discretionary, but I would have thought that the cause of death would be made public.

**Margaret Dekker:** I got the figures from "Civil Judicial Statistics Scotland 2002". There is no further information or breakdown of the figures in that publication.

**Mike Watson:** Your submission suggests that there should be a mandatory FAI in cases of careless driving. You believe that that would bring compliance with the European convention on human rights. Can you explain what part of the convention that would involve?

**Margaret Dekker:** For a start, it would involve the right to respect for family life. We believe that the fact that a family member has been killed and there has been no recognition of that is a violation of that right. The introduction to the Association of Chief Police Officers in Scotland's "Road Death Investigation Manual" includes the following mission statement:

"Article 13 of the European Convention on Human Rights (ECHR) suggests that 'when an individual dies in suspicious circumstances' there is a requirement that the police conduct a 'thorough and effective investigation capable of leading to the identification and punishment of

those responsible and including effective access for the relatives to the investigatory procedure'. *Kurt v Turkey (1999)*".

Given that no one has been held responsible for the death, we feel that that statement is undermined.

**Mike Watson:** I certainly think that effective access to information is an issue that the committee could follow up.

**Rosie Kane:** Like everyone else on the committee, I offer you condolences and support. You talked about being totally ignored and the fact that that aggravated your grief. The lack of communication concerns all of us—we hear about such problems quite often, unfortunately. I agree that the procurator fiscal's office is overworked and understaffed, but the family should not have to take the burden of that problem. We all agree with your aim of looking for recognition and dignity for Gillian.

I do not think that anyone would disagree with the convener's comments about the local problem and the need to look for solutions to prevent such a thing happening in the future. At the very least, we must try to avoid the pick-and-mix approach to information and support, as shown in your case in the months leading up to what eventually happened in court. I hope that in what we do today we can begin to address your concerns. If the things that you seek had been in place before the accident happened, where do you think you would be now?

**Sandra Curran:** I feel that at least Gillian would have had some recognition and we would perhaps be able to continue grieving for her. It has been so horrendous losing her and there is no recognition. I understand what you say about the roads, but the roads are not our priority. Our daughter is our priority, just as your families are your priority. The roads must be looked at, but the recognition of innocent victims must be looked at, too. Roads can be fixed, but what happened to us cannot be fixed. People should never be treated in the way that Gillian has been treated. We will never get recognition for Gillian—it will never happen for her. However, if the next time such a thing happens to somebody the family is recognised in the charge, we will at least be able to say to Gillian, "Good night, hen. God bless. We couldn't do it for you, but no other family out there will suffer in the way we've had to suffer through the lack of respect for you."

**Pat Curran:** I add that the road that the convener talked about is well signposted "Queueing likely".

**Sandra Curran:** The person who killed Gillian had a 400m clear view of the traffic ahead. Gillian complained about the road every night. She

travelled on it every night and she would sit in the queue of traffic because, as the convener said, it is a bottleneck at the top, with two lanes going into one. She would always talk about the idiots coming up the inside and trying to squeeze in at the top. She said that every night. It is just unfortunate that she had to lose her life. The doctor who was first on the scene said that the only thing that the person who killed Gillian was interested in was cancelling her meeting, because she would not be able to get to it. That could have been due to how she was feeling, but she took Gillian's life and she has never said sorry. Nobody has ever said sorry for the fact that Gillian lost her life.

If you go home tonight and you get a bump on your car, you would exchange insurance numbers and everything would be sorted. However, you lose your child and you are expected to accept it. Well, it does not matter what happens out on the roads—I know that there are lots of problems and lots of drivers—but the buck stops here. Somebody has got to put a stop to people being treated in the way that Gillian has been treated. We put our hope in the committee and we hope that you can make a difference. We will support anything that you want to do. All we ask is that somebody stops people such as Gillian being treated in the way she was treated, because she did nothing wrong.

11:00

**The Convener:** Do members have any recommendations?

**Jackie Baillie:** Mr and Mrs Curran make a persuasive case for the committee to consider. Committee members may remember that Enable—or somebody with Enable's support—brought a petition to us on the robustness of the process and the implementation of recommendations around a fatal accident inquiry. Although this petition raises a different matter, it strikes me that there is perhaps a wider issue of the need to review what fatal accident inquiries are all about, the circumstances in which fatal accident inquiries are held and the recognition that families and victims get. Given that interest in fatal accident inquiries, I wonder whether we should not write to the Scottish Law Commission, to find out whether it is conducting any programmes of work to review them; to the Lord Advocate, who has overall responsibility; and to the Minister for Justice, as the matter fits into the wider issue of access to justice for victims and their families.

**John Scott:** Given that there has been an apparent breakdown of communication in the procurator fiscal's office—I say "apparent breakdown", as I am not sure what the guidelines are—the Crown Office and Procurator Fiscal

Service should be contacted to find out whether it has any plans to change the procedures or to reassure people that the guidelines are being adequately implemented.

**The Convener:** I must say that I have a concern about that aspect of the matter. I hope that I am not digressing. I am dealing with another case concerning an incident that was perpetrated by a minor, who went through the children's hearings system rather than the criminal courts. That means that, in law, there is no victim, so the newly established victim information and advice unit in the procurator fiscal's office cannot deal with the family in the way that it should.

The case raised in the petition sounds similar. Unless there is a victim, VIA cannot kick in with all the support that is required for the family. We have to ask about VIA's remit. What has to be established in order for the procurator fiscal to get the support services that are available to families such as the Currans, who—without apportioning any guilt or blame—are clearly victims? We must get some answers on that. If members have other suggestions, I am more than happy to hear them, but we have to ask that specific question. When does VIA start to give support, information and advice to the families of victims?

**Rosie Kane:** I agree. That is a good point. There are clearly many victims. Perhaps we could approach the Royal Society for the Prevention of Accidents, to see what its take on the issue is.

**The Convener:** Okay. That is a good point.

**Mike Watson:** When we write to the Executive, we should ask it to comment on the European convention on human rights aspect that Mrs Dekker highlighted.

**The Convener:** Okay. We will write to all those organisations and we will keep the petitioners updated on the responses that we receive. We will progress the petition and keep you informed—I hope that we will not let you down in that respect. Thank you for talking about your petition this morning. I reiterate the committee's condolences and thank you for the dignity with which you have given evidence.

**Pat Curran:** Thank you very much.

**Sandra Curran:** Thanks for listening to us.

### **Prescription and Limitation (Scotland) Act 1973 (PE836)**

**The Convener:** Petition PE836, from Ronald E Conway on behalf of the Association of Personal Injury Lawyers, calls on the Scottish Parliament to urge the Scottish Executive to review, as a matter of urgency, the Prescription and Limitation (Scotland) Act 1973—in particular, sections 17

and 19A, which relate to compensation for injured people. Ronald Conway is here to make a brief statement in support of the petition and is accompanied by Pat Clark. I welcome you both to the committee. You have a few minutes in which to make some additional comments, after which we will discuss the matter that you have brought to us.

**Ronald Conway (Association of Personal Injury Lawyers):** Thank you for the invitation to be here. Having heard the previous petition, I am acutely aware of a sense of proportion about this matter. However, it is my strong view that the law in Scotland has taken a wrong turn, and that it is speeding down that wrong turn as fast as it can go. I have with me as a witness Mr Pat Clark, who is a welfare rights officer with Inverclyde Council. He is a former shipyard worker who suffers from vibration white finger. He is also suffering from the Scottish legal system.

It is my experience and that of our members over a number of years that when acting for people with industrial occupationally-induced disease, such as noise-induced hearing loss, vibration white finger—which is caused by the use of pneumatic and electrical vibrating tools and results in numbness and circulation problems in the hand—and other conditions, the only live defence in Scotland is that the claimant has taken too long to bring his case to court. There is almost always negligent exposure or breach of some kind of statute, and there is always a diagnosis at consultant level for medical legal purposes to get the claim off. However, since 1996 or 1997, the courts seem to think that the law forces them to place a burden of proof on an applicant, not just to show that he did not know that he had the condition, but that he could not have known that he had the condition, or that it was not reasonably practicable for him to know that he had the condition.

I know from acting for people with this kind of injury that they routinely accept the problems as simply a fact of life. They have generally spent their whole working lives working outside in a cold, wet and hostile environment. They tend to accept such conditions as one of the ills that the flesh is heir to, like grey hair. They do not realise that they have a medical condition. They do not realise that they have suffered an injury. They do not realise that the conditions, tools and systems of work to which they were exposed day in and day out were negligent. They were never told by the shipyards, steelworks or the construction industry that they were risking their health by using the tools and, as a result, they typically do not make a connection between the condition and their work history.

Committee members may be aware that the Department of Trade and Industry recently paid

out a record £1.1 billion in compensation to ex-miners under an agreed compensation scheme for vibration white finger, chronic bronchitis and emphysema. The Government imposed no time bars and persons with such conditions simply had to prove that they suffer from them. Contrast how the Government has dealt with the situation with how the insurance industry is using the law to escape its right and proper obligations to make amends to persons who are injured.

It is increasingly absurd that the only get-out in Scotland is a time-bar defence, when the approach in the sister jurisdiction in England seems so radically different. The issue is addressed in the petition. It is a dry-as-dust point. What should the difference be between someone acting reasonably before the clock starts ticking, which is the position in England, and someone who must act reasonably practicably? However, it seems to make all the difference in the world.

In Scotland, persons in that situation are expected to be their own doctor: when they see the symptoms they are supposed to make the diagnosis themselves. Members will see from the information that we supplied that we are not ranting about general practitioners, who have plenty of important work to do. However, occupational disease is not widely known about by doctors. I have been told time and again that people have gone to the doctor with their symptoms and have not received a diagnosis. At the same time, the men are supposed to have worked out that they have the condition and the time-bar clock has started to tick.

My experience, and that of the members of the association, is that the courts have thrown out such cases; there are examples in the petition. We also find that cases have to be settled on an adverse basis because of the fear that they will be lost completely. Increasingly, my colleagues and I are simply not taking up cases in the first place because of the genuine concern that the courts will throw them out.

**Mike Watson:** I thank both of you for coming here to raise this important issue. I have had some experience of an organisation called Clydeside Action on Asbestos, with which you might well be familiar. That organisation has had difficulty with cases, but publicity has helped people to raise them earlier.

In the background information that you submitted, it is stated that

“a person can bring a claim no later than three years after it was ‘reasonably practicable’ for him to have known about”

the disease. Are cases thrown out of court because, although you claim that your client could not reasonably have known about the illness within the period, the insurance company or

employer says that he should have known? How are those issues argued in court? It must be very subjective.

**Ronald Conway:** You are right. Purely inadvertently, you proposed a test with which I would be content when you said that a person could reasonably have known that he had the condition. In fact, the legislation asks whether it was “reasonably practicable” for the person to know.

In effect, what happens is that the person has actual knowledge of his illness once he has a diagnosis from a consultant. Actions are always raised within three years of that actual knowledge. Once the case starts, the defender will say, “Well, you had the symptoms for the best part of seven or eight years. Why did you not go to the doctor?” The fact that hardly any persons in the pursuer’s situation go to the doctor and the fact that if he went to the doctor, the doctor would be unlikely to diagnose the condition, appears to cut very little ice.

The petition makes the point that once one knows the end of the story, it is easy to say that the story should have started a good bit earlier. Members might be familiar with the case of Cowan, a Clydeside Action on Asbestos case that was publicly reported. It was thrown out. Mr Cowan goes to the Department of Social Security in 1986 and is told that he does not have asbestosis. In 1991, he is told that he does have asbestosis, so he has actual knowledge of his condition from 1991. Proceedings are raised in 1993, so on the face of it, one would think that that falls within the three-year period, but the court said, “Well, he hasn’t explained what he did or didn’t do between 1986 and 1991, therefore his case is thrown out.” Respectfully, that seems absurd.

**Mike Watson:** I am sure that it is naive to ask whether one could argue that what Mr Cowan did or did not do would not have mattered, because the damage had been done by the time that he raised his case. Even if he had taken action earlier, it is not as if he would then have been told, “Well, you’ve got asbestosis, you’ve identified it, but if you take this treatment, it will stop.” That cannot happen because the disease is incurable.

**Ronald Conway:** That very good point might segue into the point about the general practitioners. There is very little that medical assistance can provide. GPs are used to fixing people, to describe it at its simplest. I suppose that a GP might consider a hearing aid for noise-induced hearing loss, but nothing can be done about vibration white finger or about asbestosis, other than giving palliative medicine.

**Mike Watson:** I will ask briefly about a couple of other points. In your introductory remarks, Mr



Conway, you said words to the effect that the Scottish legal system has turned down a road, down which it is now proceeding with speed. Were you referring to the 1973 act? Obviously, that act was passed quite a while ago. Have there been no developments since then?

11:15

**Ronald Conway:** That point is well made. Let me give my view of what has happened. I believe that the lawyers for the insurance industry have picked up on this tension between what is “reasonable” and what is “reasonably practicable”. The documents accompanying our petition show that, in 1973, the Scottish Law Commission saw no such tension, as it believed that the legislation and approach in Scotland and England would be exactly the same. However, since about the time of the Cowan case, from 1996 or 1997 onwards, lawyers for the insurance industry have argued that there is a distinction between what it is reasonable to do and what it is reasonably practicable to do. The courts have accepted that argument and taken it on board. Effectively since then, we have seen decision after decision in which, from my perspective, the courts have taken a wholly unrealistic approach.

**Mike Watson:** I have one final question. Your association will doubtless have made a submission to the Scottish Law Commission’s consultation. Do you have hopes that the logic of your argument will be taken on board in the commission’s report?

**Ronald Conway:** Obviously, I hope so. I should point out that the petition was drawn up before we were aware that the Scottish Law Commission was considering the matter. The association of which I am a member has made noises about the matter for some time, so I suspect that that might be one reason why the commission has picked up the issue.

However, with respect, the processes of such commissions are painfully slow. For example, the recommendations of a 2001 report that the Law Commission for England and Wales produced after two or three years of consultation are still not on the statute book. As members will be aware, the Scottish Law Commission reported on psychiatric injury a couple of years ago, but its recommendations have still not been put on the books.

In my experience, we are talking about the generation of Scottish workers who worked in the 1970s and 1980s in heavy industry, such as the shipyards or the British Steel Corporation. Such people tend not to be in employment any more and, under the current legislation, the clock is ticking for them. Unless something is done quickly,

they will lose any right to proportionate compensation.

**Mike Watson:** Is that because any claim dies with the claimant?

**Ronald Conway:** The issue is not just that claimants might die, but that we will be a further four or five years down the line. Even if different legislation is introduced, the clock will be ticking on their actual knowledge. I will try to explain. The clock ticks twice, both on their actual knowledge and on their reasonably practicable constructive knowledge. Unless something is done quickly, those persons might be denied reasonable compensation.

**John Scott:** Good morning. I think that Mike Watson has asked most of the essential questions. Nonetheless, I am surprised at the apparent disparity between how the legislation is interpreted in Scotland and how it is interpreted in England and Wales. I am also surprised that the issue turns on the interpretation of the word “practicable”. Even if both systems are right in legal terms, by definition they cannot both be just. Will you expand a little more on how the system works in England and Wales? What benefits are available to claimants south of the border that are denied to people in Scotland?

**Ronald Conway:** At the back of the documents accompanying the petition are example cases with a comparative résumé. I will not rehearse all the cases.

**John Scott:** Say just a few words about them.

**Ronald Conway:** Sure. I suggest that the English legislation reflects the realities of life. The *Milner v Hepworth Heating Limited* case, which involved deafness and constructive knowledge, is referred to on page 22 of the documents accompanying the petition. The defendant suggested that the plaintiff should have put two and two together much earlier. The Court of Appeal stated:

“Perception of deafness is a subjective matter, and it is a common experience that reasonable people whose hearing has been slowly diminishing do not appreciate that it has done so to a significant extent, or to an extent which would lead a reasonable person to think of consulting a doctor ... it could not be said that the plaintiff could reasonably have been expected to acquire knowledge that his hearing deficit was significant or that it was noise induced”.

I fully accept what Mr Scott says. One might wonder how changing “reasonable” to “reasonably practicable” would make a tremendous difference in such analyses, but it makes all the difference. Instead of asking whether someone simply acted reasonably in the way in which other persons in a similar situation would act, there is an objective test that asks not what a person did, but what they could have done. If the Court of Appeal had to

apply that test in England, it would have to say, "You had the symptoms and you could have gone to the doctor. You could have insisted that you had a medical diagnosis."

**John Scott:** Yes, but I return to my basic point. Even if both interpretations are correct in law, the system is unjust, as it apparently does not favour people in Scotland who are subject to the time limitation. However, thank you for making that point.

**Jackie Baillie:** I will be brief, as Mike Watson covered all the important points. Is actual knowledge still subject to the three-year limitation?

**Ronald Conway:** Yes. Actual knowledge always tends to be later than constructive knowledge. The pursuer or claimant will go to court and say that a consultant diagnosed the condition on 1 April 2005, but when the case comes to a hearing, the defence will say, "You've had the condition for some time and it's permanent. You should have known about it in 1995." The pursuer or claimant must then prove that they did not know about it and could not have known about it, which is difficult.

**Jackie Baillie:** I understand that. I am driving at timescales because the Executive asked the Scottish Law Commission in September 2004 to consider the 1973 act and I understand that it will produce a discussion paper by the end of the year. What timescale are we talking about? You implied that the Scottish Law Commission is slow to move. I wonder whether you have a more suitable timescale in mind.

**Ronald Conway:** Are we negotiating?

**Jackie Baillie:** No. If there is an issue to do with three-year limitations, that was a genuine question.

**Ronald Conway:** I can say only that I would like matters to move forward as quickly as possible. The Scottish Law Commission's report on psychiatric injury, which has been completed for some time, does not inspire me with tremendous confidence that such a route should be taken. The Law Commission for England and Wales has already done all the work and a quick fix is outlined in the papers that are before members. I urge the committee to consider that and to say that that fix is a quick fix for industrial disease cases. The Scottish Law Commission's remit is much wider—it relates to limitation over the whole range.

**Helen Eadie:** John Scott asked my question, which has been answered, so I do not have a question to ask. Are we ready to discuss recommendations?

**The Convener:** John Farquhar Munro may ask a question before we discuss recommendations.

**John Farquhar Munro:** From the evidence that has been presented to us, it seems to me that the current law under the Prescription and Limitation (Scotland) Act 1973 is heavily weighted against the pursuer, which should concern the committee. I would like a point to be clarified. The background note to your petition states:

"a person can bring a claim no later than three years after it was 'reasonably practicable' for him to have known about the existence of the disease".

That is not very clear, because the individual probably would have known about a problem or disease and may not have suffered from it. That wording seems ambiguous to me. It is all very well to say that the individual who is now suffering from the disease should have known, and probably did know, but the limitation is three years. To say that the individual should have known about the disease is rather confusing.

**Ronald Conway:** Yes, he should know about the disease as it affects him. I shall ask Mr Clark to answer your question, because he has direct knowledge of what a person with vibration white finger knows.

**Pat Clark:** The difficulty, not just with vibration white finger but with many occupational diseases, is that they are insidious in how they develop. Looking round the table, I see a number of members with reading glasses. I have reading glasses, which unfortunately I have left in the car, but I got them because my wife sent me for an eyesight test. I thought that my eyes were fine, but the optician reckoned that I was probably five years too late in getting those glasses. That is an example that some of you may be able to identify with. My eyesight had been deteriorating, but I was not aware of it. The same is true of many of the conditions that Mr Conway has referred to. When a problem is identified, we are then told by the employers' legal representatives or insurance company that we should have known about it. If you consider the reading glasses example that I have just given, you will appreciate the difficulty.

Reference was made to the fact that I am currently involved in the legal system, and the matter is sub judice to a certain extent. What I can say is that I won the time-bar argument in the outer house and that that decision is now being appealed by the other side. I ask members to place themselves for a moment in my position as the pursuer in that case. The burden of proof is with the pursuer, and I have been asked to prove that I did not know something. Think about that; that is what I am being asked to prove. In Scotland, the situation is worse. Not only do I have to prove that I did not know something, but I also have to prove that I could not possibly have known it. That is the burden that is being placed on pursuers in these cases, and that is at the root of

the petition that Mr Conway has brought to you today.

I ask members to look at the question in those terms, through the eyes of the layperson. If you were asked to prove that you had knowledge of something, that would be fine. You might be able to get correspondence conveying that information in a contemporary way, but how do you prove that you did not have knowledge or that you could not possibly have had knowledge? That is what Mr Conway's clients are being asked to do. The whole purpose of the petition is to rectify that situation, not to do away with the rights that the other side obviously has. Jackie Baillie talked about the date of actual knowledge, and I think that that is reasonable. I think that we would agree that, when a person has actual knowledge that they are suffering from an industrial disease, it is only fair to the employer that they make a claim within a specified time period. However, it is when we get to the nonsense that I have described that the law really needs to be re-examined.

**The Convener:** What industry did you work in, Mr Clark?

**Pat Clark:** Shipbuilding.

**The Convener:** I was a welder myself.

**Pat Clark:** I was a plater—a welder with O-levels. [*Laughter.*]

**The Convener:** The old ones are always the best.

You will know that employers in that industry would often put out leaflets advising people about the warning signs for pneumoconiosis, vibration white finger, tinnitus and things like that. Has that ever been used as a way of circumventing the timescale rules, because employers might claim that people were given prior warning of what might happen and that they should therefore have known the signs?

**Pat Clark:** I cannot answer that, because my tour of duty in the shipyards ended before vibration white finger became a recognised condition. It was never mentioned while I was there, but Mr Conway might be able to answer your question.

11:30

**Ronald Conway:** I am certainly aware that the defence is being used that there was a generalised knowledge of it among union members. Vibration white finger is not a self-explanatory term. Many of the people to whom I have spoken, who have the symptoms, did not realise that they had a condition called vibration white finger. Persons suffering from hearing loss do not accept that they are suffering from hearing

loss; a third party—generally their wife who is driven to distraction by television volumes that are far too high—has to tell them that they are suffering from it. Even though there is low-level general knowledge in the air, so to speak, in my experience the persons have little knowledge that they have suffered an injury in the sense of a bodily insult; they do not make the connection.

**The Convener:** I invite recommendations for what to do with the petition.

**Jackie Baillie:** If somebody else has already done the work, why are we going to do it again? Should we write to the Scottish Executive, given that it asked the Scottish Law Commission to look into the matter, and to the Scottish Law Commission to ask what plans it has, what its timetable is and how quickly we will see a change in the law?

**John Scott:** We should ask what plans, if any, it has to amend the law.

**The Convener:** I am more than happy to pursue that and see what help we can get for platers. Having helped out platers all my days—and covered for them on a number of occasions—I am more than happy to help one out on this occasion.

We will write to the Executive and seek support.

**Rosie Kane:** Can we write to the Scottish Trades Union Congress too?

**The Convener:** That would be useful.

**Jackie Baillie:** It supported the petition, so I do not see it adding anything to that.

**The Convener:** I thank the petitioners for coming to the committee. That was the last of our oral evidence this morning.

### **Small-scale Energy Generation Equipment (PE837)**

**The Convener:** Petition PE837, by Neil Hollow, calls on the Scottish Parliament to urge the Scottish Executive actively to use its influence to ensure that by 2020 all buildings in Scotland, including domestic, commercial and Government buildings, will be fitted with at least one type of small-scale energy generation equipment, that such equipment will be brought within permitted development rights and that no charges for connecting to the grid will be made. Before being lodged formally, the petition was posted on the e-petitions site, where it gathered 163 signatures. The usual e-petition briefing has been circulated for members' information. Although microgeneration and energy policy are reserved, the promotion of energy efficiency is devolved.

**Mike Watson:** I have had some involvement with this, because the Enterprise and Culture

Committee held an inquiry into renewable energy last year and earlier this year. The Executive could do more. I know that its community and household renewables initiative was extended at the end of last year and that £6.5 million was made available. I would like to ask the Executive what it is doing to ensure that that is taken up, because it seems a useful way of developing small-scale energy generation, which can be viable in certain circumstances. Permitted development rights can sometimes be an issue and I would like us to ask the Executive how effectively it thinks that the system is operating.

**Rosie Kane:** I agree with Mike Watson. The petition is good. I would have liked to ask more questions and get more information. It was interesting to read the e-petition and the exchange between Neil Hollow and others. I throw that in to draw attention to the opportunity to read the exchanges between people from outside this place. Could we also seek the views of non-governmental organisations such as Friends of the Earth?

**John Scott:** I, too, think that the petition is interesting. The idea is worthy of further exploration. I notice that the petition talks about connecting to the grid for free, but somebody would have to bear the cost of that. I suspect that the cost would fall on the power companies, so it is only reasonable to seek their views on the petition or at least on who should bear the connection charge.

**Rosie Kane:** Do you not think that we should take the companies back into public ownership?

**John Scott:** I do not think that Rosie Kane and I will agree on that.

**Helen Eadie:** With reference to the options for action, I suggest that we consider writing to the Baywind Energy Co-operative, which is a United Kingdom co-operative that owns wind turbines. As a Scottish Co-operative Party-sponsored member, I should declare an interest. Baywind Energy Co-operative is a worthwhile organisation that could give us all good information.

**The Convener:** Are members happy to write to those organisations?

**Members** *indicated agreement.*

### Road Design Standards (PE838)

**The Convener:** Petition PE838, which is by Sheila Carribine on behalf of Low Valleyfield community council, calls on the Scottish Parliament, in the interests of road safety, to urge the Scottish Executive to review its policy on road design standards and to encourage the publication of such standards and their proper and consistent application throughout Scotland.

The petition concerns the general issue of road safety and road design standards, but it is based on the petitioners' experience in the Low Valleyfield area of Fife. The petitioners express concern that Fife Council is failing to apply its published road design standards properly and consistently, which exposes local communities to unnecessary road safety risks.

Each local authority is the roads authority for all public non-trunk roads in its area. A local roads authority is responsible for setting the design standards that are to be met by all new local roads in its area, whether they are designed and built by the authority or by private sector developers. Each local roads authority sets out its required detailed design criteria for new roads in a design standards document and that guidance must comply with a series of statutory instruments.

Do members have views on the petition?

**John Scott:** As no one else has taken up the baton, I will speak. As ever, it is reasonable to seek the consistent application of guidelines. The public expect legislation to be implemented in the same way throughout Scotland, but apparently it is not—not even within a council area. We should investigate the matter further.

**Helen Eadie:** Fife Council has a laudable track record in everything that it has done on roads and transportation in Fife. It has led in many fields. We return to some issues. As we heard this morning and know from the petition, the public are concerned about how standards are enforced. We have all tried to work towards standards. At any level of government, standards are good for us and for delivery. They exist for a purpose. If standards are not delivered, that creates question marks.

In fairness to everyone concerned, we ought to seek a range of views on the petition, because we might be unaware of reasons for the situation in Fife and other local authority areas throughout Scotland. Could we consider seeking views from the Society of Chief Officers of Transportation in Scotland, which represents local authority senior transport officials? That would be a good organisation to write to for advice. Similarly, we could write to the Institution of Highways and Transportation, which is a professional organisation for engineers who work in transport; to the Scottish Executive; to the Transport Research Laboratory, which is a centre for research into all aspects of road design; and—last but not least—to the Royal Society for the Prevention of Accidents. If the public have in mind safety considerations on which we are not matching their aspirations, we must take up cudgels on their behalf.

**Mike Watson:** The petition makes certain allegations against Fife Council, in terms of its not

sticking to the road design standards. We should at least ask the council whether it would like to respond to those allegations.

**The Convener:** We should give Fife Council the opportunity to comment on the petition. Are members happy that we do that?

**Members** *indicated agreement.*

### **Drinking Water (Chloramine Treatment) (PE842)**

**The Convener:** Our last new petition is PE842, from Mrs F C Bowman, which calls on the Scottish Parliament to urge the Scottish Executive to review the use of chloramine disinfectant in the treatment of drinking water. Chloramination is a process that is used to disinfect drinking water after it has been treated to remove harmful bacteria while it travels from the treatment plant to premises. Although the petition is concerned with the general issue of the chloramination of drinking water, it is based on the petitioner's experiences in Skerry, where residents are concerned that chloraminated drinking water that is supplied from Loch Calder in Caithness has a horrible smell and tastes equally bad.

**John Farquhar Munro:** The petitioner lives in a neighbouring constituency that is represented by Jamie Stone. Jamie Stone would have been here to speak to the petition this morning, but he sends his apologies because he is attending the Justice 1 Committee.

In my constituency, there have been problems with over-chlorination of the water system; I have received many complaints about that. The same situation seems to be developing in this case. Mrs Bowman complains about the water having a horrible smell and tasting equally bad. That is quite a common complaint about Scottish Water supplies in the Highlands. I do not know why that should be, because drinking water needs some sort of treatment to ensure that it is safe and drinkable. When the systems that have been installed to chlorinate the water are new, they function quite efficiently and we do not have a problem. However, when there is a lack of maintenance and the mechanism deteriorates, the chlorination seems to be excessive and causes problems.

I do not know what you propose that we do with the petition, convener. Your suggestion that we could seek information from various agencies might be the most appropriate course of action.

**John Scott:** I was not aware of this process, but John Farquhar Munro was obviously aware of it, given that people in the Highlands get a smell of chlorine in the water. I am not aware of a similar problem in Ayrshire or in Edinburgh. That

suggests that there is a fault somewhere in the process, in which case Scottish Water should definitely be asked for an explanation. We should ask whether the process is necessary and, if it is necessary, what Scottish Water intends to do to reduce the problem. Most people in Scotland would not even be aware that the water is chloraminated—if that is how it is pronounced. We should, in the first instance, ask Scottish Water why the problem exists and why the process is needed to deal with it. Is water universally chloraminated throughout Scotland, or is it chloraminated only in the Highlands?

**Rosie Kane:** I do not think that the process is universal. I would like to know more about the cumulative effect and whether the bad smell and the bad taste are connected to a pollutant or an excess of chemicals in the water at any given point. I wonder whether Dr Richard Dixon is still at Friends of the Earth Scotland. He would be very good on this issue. If he is no longer there, Friends of the Earth will have someone else from whom it would be equally good to ask for a bigger overview of what is going on. We should ask whether the process is necessary, in the first place, and whether there is a cumulative effect at any point, either in the individual or in the supply. We could also seek the views of the Scottish Environment Protection Agency.

11:45

**The Convener:** Yes. Why not?

**Helen Eadie:** What came home to me when I read the papers was the fact that the World Health Organisation sets out a maximum acceptable concentration for chloramines in drinking water of 3mg per litre. It would be helpful if we knew the minimum acceptable level—perhaps the Scottish centre for infection and environmental health could tell us.

I lived in London for many years and I have travelled abroad extensively on holiday, and it is always good to come home, because the water is wonderful in my part of Scotland. I am sorry that that is not the experience of members in other parts of Scotland. I am blowing the trumpet for Fife again, but Fife has good water supplies and I am not aware of having tasted anything like chloramine in the water. However, as John Scott says, if the water quality is patchy in different parts of Scotland we need to ask Scottish Water why that is the case.

**The Convener:** Do members agree that the committee will write to Scottish Water, SEPA and Friends of the Earth? Should we contact other organisations? Perhaps we should seek the Scottish Executive's view on the matter.

**John Scott:** I presume that Scottish Water's response—

**The Convener:** We will get a response from Scottish Water, but the Executive might have an overview on the matter, depending on the environmental issues. We could check out the Executive's perspective.

**Rosie Kane:** Did you mention the drinking water quality regulator for Scotland?

**The Convener:** Do you want to include the regulator?

**Rosie Kane:** Yes.

**The Convener:** Okay.

## Current Petitions

### Nuisance Hedges (PE497)

11:46

**The Convener:** Petition PE497 calls on the Scottish Parliament to urge the Scottish Executive, following its consultation exercise in 2000, to implement legislation at the earliest opportunity to alleviate the nuisance caused by hedges.

At its meeting on 8 December, the committee agreed to seek details of Scott Barrie's plans for a proposed member's bill on high hedges and, in particular, to ask about the timescale for the publication of a consultation paper on the proposal. A response from Scott Barrie has been circulated. Given that he intends to introduce a bill at some point—

**John Farquhar Munro:** The petition has been around for a long time.

**The Convener:** It has indeed.

**John Scott:** Does Scott Barrie definitely intend to introduce a bill?

**The Convener:** Yes, according to his response.

**Mike Watson:** The committee's additional papers include an e-mail from Scott Barrie, in which he says that he hopes to issue the consultation document later this month.

**The Convener:** He has been working on the document and intends to issue it soon.

**John Scott:** I have received numerous complaints from constituents about the matter. I always tell them that Scott Barrie is going to introduce a member's bill, but I have been saying that for four years and it is wearing a little thin. I am pleased to hear that he will do so, but I hope that he gets on with it.

**The Convener:** Scott Barrie says in his e-mail, in relation to the consultation document:

"I have been working with ScotHedge on this document and I had hoped to launch it on 20<sup>th</sup> May but it may require some tweaking and therefore the date may need to be put back a couple of weeks."

I should think that he will launch the document in June.

**Rosie Kane:** We are hedging our bets.

**The Convener:** That was worth a try. Do members agree to close the petition? That would save us from more such jokes.

**Members indicated agreement.**

### **NHS Prescribed Drugs (Effects on Children) (PE639)**

**The Convener:** Petition PE639 calls on the Scottish Parliament to investigate the storage and dispensing of national health service prescribed drugs in schools.

At its meeting on 27 October, the committee agreed to write to the Scotland Patients Association, the Educational Institute of Scotland, the Association of Head Teachers in Scotland and the Scottish Association of Health Councils, to seek their views on the Scottish Executive's response. Responses from the SPA, the EIS and the AHTS have been circulated to members. Do members have views on the responses?

**Mike Watson:** I was surprised that the EIS said that it was

"not in a position to respond to the issues raised in the petition".

The letter does not suggest that there are no issues, and it was odd that the organisation supplied the advice on the matter without saying whether it thinks that the advice is being followed. Perhaps we should ask the EIS about that.

**Helen Eadie:** I was concerned by the fact that the SPA said that it does not agree that the medicines should be stored in schools. If that is the case, what happens to the children who need the medicines? There is no doubt that an arrangement is needed. We do not have a neat solution to the concerns that the petitioner has raised. Perhaps we ought to ask the Executive whether it is satisfied that the guidance that was issued on 4 September 2001 is working in practice. The petitioner brought to us a legitimate concern and I am sure that every parent in Scotland would want to be satisfied that the drugs, which are essential, are administered properly.

**The Convener:** Are we happy to write to the Executive? Mike, do you want to get back to the EIS?

**Mike Watson:** I am just rather surprised that it gives us a rather equivocal answer. It simply says that it is not in a position to respond, although it has guidance. Perhaps we should get some views about whether the guidance is effective. It seemed odd that the EIS did not state one way or the other.

**The Convener:** Do you want us to write back to the EIS and ask it again?

**Mike Watson:** Let us see what other committee members think.

**Helen Eadie:** That is a reasonable suggestion. The question is whether the matter was put to the EIS's executive committee or whether a researcher just wrote back because they did not

have time to deal with the petition. If the EIS researchers do not have time to deal with it, the matter needs to be put to its executive, as it is important. Last week, I was out with a school and saw an auxiliary whose job was to administer all the medicines. That reminded me that the petition was coming up and made me think that, if I was a patient, I would like to be absolutely sure that all such medicines were properly stored and administered.

**The Convener:** We will write to the EIS and seek further clarification, but that need not hold us back from asking the Scottish Executive how effectively it thinks the guidance is being implemented.

### **Tax Collection (Legislation and Procedures) (PE766)**

**The Convener:** Petition PE766, by James Mackie, calls on the Scottish Parliament to investigate the financial implications on businesses of the Inland Revenue's current system of collecting taxes and to change the legislation so that businesses have prior notification and the opportunity to address issues in front of a sheriff before a warrant is issued to collect alleged overdue taxes.

At its meeting on 27 October, the committee agreed to seek comments from the Scottish Executive, the Inland Revenue, the Scottish Sheriff Court Users Group, the Scottish Association of Law Centres, the Federation of Small Businesses Scotland and the Confederation of British Industry Scotland. Various responses have been received and circulated to members. Do members have views on the petition?

**John Scott:** It would be fair to ask Mr Mackie for his views on the responses that we have received. As I said when the petition was first lodged, I am not sure that the problem is huge but, were it to arise, it would be a matter of concern to the CBI and the FSB.

**The Convener:** Shall we pass on the responses to Mr Mackie and ask him to reply to us?

*Members indicated agreement.*

### **Historic Scotland (Remit) (PE703)**

**The Convener:** Petition PE703 calls on the Scottish Parliament to urge the Scottish Executive, as part of its review of Historic Scotland, to amend the organisation's remit to ensure that it is accountable for its decisions and responsive to communities' views.

At its meeting on 5 October, the committee agreed to write to the Minister for Tourism, Culture and Sport seeking an indication of whether the Executive has any plans to encourage Historic

Scotland to adopt any measures to enhance community involvement. A response has now been received and circulated. Are committee members satisfied with the Executive's response?

**John Scott:** The minister's response is clear and there is not much more that we can do. It is a fairly definite letter from Patricia Ferguson and we should probably let the matter rest at that.

**The Convener:** Are committee members happy to close the petition?

*Members indicated agreement.*

### **Scottish Opera (Funding) (PE715 and PE777)**

**The Convener:** Our next petition is PE715, which is linked with PE777. PE715 calls on the Scottish Parliament to urge the Scottish Executive to ensure that Scottish Opera has adequate resources to maintain a full range of operatic provision; PE777, which is by Lorne Boswell, on behalf of Equity, calls on the Scottish Parliament to urge the Scottish Executive to safeguard the future of Scottish Opera by ensuring adequate funding to allow maintenance of a full-time chorus.

At its meeting on 27 October, the committee agreed to seek an update from the Minister for Tourism, Culture and Sport, as well as from Scottish Opera and the Broadcasting, Entertainment, Cinematograph and Theatre Union Scotland. We have received responses, so I ask committee members for their views.

**Mike Watson:** The Cultural Commission is undertaking a review of all aspects of arts and culture in Scotland and is due to report soon. That report will certainly include Scottish Opera, but we could still write to the minister.

**The Convener:** Are members happy to send the responses to the minister for comment?

*Members indicated agreement.*

### **Local Government Finance (PE754)**

**The Convener:** Petition PE754, which is by Christine Grahame MSP, calls on the Scottish Parliament to urge the Scottish Executive to accelerate the review of local government finance and to ensure that the review takes into account the ability to pay. In the meantime, the Executive is asked to consider a means of reducing the impact of this year's increase in council tax for those who have no matching increase in income to meet the additional charges.

At its meeting on 5 October, the committee agreed to write to the Minister for Finance and Public Service Reform to seek details of the timescale for the review of local government finance and to request that the petition be passed

to the review group. The minister's response, which has been circulated to members, states that the review committee has recently launched its website. A copy of the current timetable for the review, which appears on the website, has also been circulated to members.

Do members think that we can do anything else with the petition?

**Jackie Baillie:** I suggest that we close the petition. As the minister's letter states, the review is independent of ministers, so we should send the petition directly to the review group, if we have not already done so.

**The Convener:** The minister's response states that the petition has been passed on, as we requested.

**Jackie Baillie:** Fine. We should just close the petition then.

**John Scott:** There has been a consultation on the issue, which closed on 16 March.

**Jackie Baillie:** I hope that the MSP in question has responded directly to that consultation.

**The Convener:** She will not be able to use this committee any longer.

### **Building Regulations (Thermostatic Mixing Valves) (PE786)**

**The Convener:** Petition PE786 is by Alan Masterton, on behalf of the Scottish Burned Children's Club. The petition calls on the Scottish Parliament to urge the Scottish Executive to include in the Scottish building regulations a mandatory requirement for thermostatic mixing valves to be installed in the hot water systems of all new-build and renovated properties.

At its meeting on 24 November, the committee agreed to invite the views of the Minister for Communities, the Scottish Building Standards Agency, the Thermostatic Mixing Valve Manufacturers Association and the Scottish and Northern Ireland Plumbing Employers Federation. The responses have been received and circulated. Do members have any views?

**Helen Eadie:** Perhaps we could write to the Scottish Building Standards Agency to ask for an update with regard to the working group that it said it would establish early in 2005 to review section 4 of the technical handbooks for the Building (Scotland) Regulations 2004.

**John Scott:** I agree. We might do this as a matter of course, but we should also pass on the correspondence to the SBSA, because we have received worthwhile letters from the SNIPEF and other bodies, which have moved on the discussion in a sensible and worthwhile way.



**The Convener:** The petition is worth while. The committee was unanimous that we wanted to pursue the issue vigorously. If we pass on the correspondence, we can be said to be doing that.

**John Scott:** Yes. I am certainly concerned about the danger of legionella. A sensible solution must be found at minimum cost, but the petition is a good one.

### Complementary Medicine (PE571)

**The Convener:** Our final current petition is PE571, which calls on the Scottish Parliament to introduce legislation to require health boards in Scotland to integrate and implement within the NHS the recommendations of the National Medical Advisory Committee's 1996 report, "Complementary Medicine and the NHS".

At its meeting on 2 February, the committee agreed to write to the Minister for Health and Community Care to seek further comment on the petition. The minister's response, which has been circulated to members, states:

"the Executive's position is that it is already open to NHS Boards to provide CAM, based on their assessment of local needs ... I agree that it would be appropriate to remind NHS Boards that they have this discretionary power. Health Department officials will do so when they write to NHS Boards about the herbal medicine and acupuncture consultation."

12:00

**Helen Eadie:** I am delighted by the response from the minister. He makes it clear that the expectation is that complementary and alternative medicine can be provided based on an assessment of local needs. That helps to move forward the situation for those who campaign and argue for complementary or alternative medicine. It is very good that the minister will address the issue in the context of the consultation on improving our access to herbal medicine and acupuncture. I thank the minister and also thank the petitioners for bringing forward a very important petition.

**John Scott:** The minister's letter to the committee was written on 1 April. Is it possible to find out whether the letter to health boards has been sent? That letter was to be sent within two months and it will soon be six weeks since 1 April. Thereafter, I suspect that we should close the petition.

**The Convener:** We can close the petition, but get confirmation that the letter has gone out. Is that okay?

*Members indicated agreement.*

## Equalities Report

12:01

**The Convener:** Item 3 on the agenda is our equalities report. Do members have any general comments on the report before we consider the recommendations?

We had to get a baseline by which we could judge the progress that we make, and the paper is useful in that regard. It highlights some points that we thought were the case. We are probably not reaching out to the types of organisations to which we would like to reach out. That is why we are doing our tour of Scotland to promote the work of the committee. At least the paper gives us a clear indication of where we stand in relation to the responses that we have received so far in the equal opportunities monitoring forms. My general observation is that the paper provides a useful set of statistics that will allow us to move forward.

**Helen Eadie:** I agree. It is good to see the clerks' recommendations. I am particularly pleased about recommendation 11, which states:

"Consideration could also be given to producing a BSL version of the promotional video."

That kind of thinking is very welcome. Along with all the other suggestions in the paper, it is very good that Parliament staff, the committee and other committees are working hard to ensure that we try to address many of the issues that face people who might find it difficult to access our committees.

**The Convener:** Are members happy with the paper and the recommendations?

**Mike Watson:** I have one question. Recommendation 13 states:

"the Committee may wish to consider amending questions 1 and 5 ... to allow a more accurate comparison with the census data."

How could we do that? What sort of changes might be made?

**Jim Johnston (Clerk):** We would change the questions that we ask to bring them into line with the questions that are asked in the census.

**Mike Watson:** So there are comparable questions in the census. That is fine.

**The Convener:** Are members happy that we sign off the paper?

*Members indicated agreement.*

*Meeting closed at 12:03.*



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