



OFFICIAL REPORT
AITHISG OIFIGEIL

Citizen Participation and Public Petitions Committee

Wednesday 23 November 2022

Session 6



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CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE

16th Meeting 2022, Session 6

CONVENER

*Jackson Carlaw (Eastwood) (Con)

DEPUTY CONVENER

David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

*Fergus Ewing (Inverness and Nairn) (SNP)

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

*Paul Sweeney (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Carole Hunter

Monica Lennon (Central Scotland) (Lab)

David Strang

Brian Whittle (South Scotland) (Con)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Citizen Participation and Public Petitions Committee

Wednesday 23 November 2022

[The Convener opened the meeting at 10:23]

Continued Petitions

Detainees in Custody (Access to Medication) (PE1900)

The Convener (Jackson Carlaw): Good morning, and welcome to the 16th meeting in 2022 of the Citizen Participation and Public Petitions Committee. I apologise for our slightly late start this morning.

Agenda item 1 is consideration of continued petitions. The first petition that we will consider is PE1900. The petition, which is a very important one that we have previously heard evidence on and considered, is on access to prescribed medication for detainees in police custody. It was lodged by Kevin John Lawson, and it calls on the Scottish Parliament to urge the Scottish Government to ensure that all detainees in police custody can access their prescribed medication, including methadone, in line with existing relevant operational procedures and guidance.

We are joined by David Strang, who is the former chair of the Scottish Drug Deaths Taskforce, and Carole Hunter, who is a former member of the task force. Carole is joining us remotely. I warmly welcome both of you. Obviously, we are aware that the task force is no longer operational, so we are grateful for your taking the time to discuss the petition with us, even though you have been decommissioned, so to speak.

Members would like to explore a number of questions. I recognise that you have produced a report and have moved on from the task force. We are very keen to understand where you think that that report can assist us.

Do you have a preference as to who will answer? David Strang can indicate to me whether he will lead or invite Carole Hunter to take the flak on each question. We will see how it proceeds.

David Strang: If Carole is happy with that, I am happy with it.

The Convener: During your time on the task force, what were the key concerns that were raised regarding the experience of people who use

drugs and their current interactions with the justice system?

David Strang: I will begin. Thank you for inviting me to appear before the committee.

You are right. I chaired the Scottish Drug Deaths Taskforce for the first six months of this year, from January until July. I am now chair of the national drugs mission oversight group, which is overseeing the implementation of the recommendations.

Once I have kicked off, I will invite Carole to comment.

The main thrust of our report was to say that substance dependency should be treated as a health issue and not as a justice or crime issue. Fundamentally, we received evidence that people who use drugs often got second-class treatment from some health and care services. In particular, when they were in the justice system, they tended to be treated as lesser citizens—people who were not deserving of top-quality healthcare. In our report, we said that everyone in the justice system—all those who pass through police stations, prisons and courts—is a citizen and has a right to good healthcare.

We know that lots of people who are engaged with the criminal justice system have poor mental health and addiction and substance issues, and that, often, they are not well treated when they are in the justice system. We recommended that every point at which someone has contact with the justice system—whether that is the police, the courts or prison—should be an opportunity for them to engage with health services and for support to be provided for people who have substance dependency issues and who need care or treatment.

That was the main thrust of our recommendations on treatment in custody, whether in a police cell or in a prison context.

Dr Carole Hunter: I thank the committee for the opportunity to speak to it today.

We were always very keen that the work of the task force should be evidence based. I would like to make reference to the United Kingdom guidelines on drug dependence and how it should be treated in the UK. The highlighting of health inequalities is not unique to Scotland. The national guidelines on drug misuse and dependence and how that should be clinically managed, which were published by the Department of Health in England, were endorsed by all four devolved nations.

The task force thought that, although the evidence is there, in practice that was not what people were experiencing. There is a whole chapter on criminal justice settings in the guidelines. The transitions to, from and between

different criminal justice settings were highlighted as potential transition points. There is evidence that, if maintenance treatment on methadone or buprenorphine is not maintained at those transition points, there is a risk of relapse and overdose.

The Convener: Thank you.

10:30

Fergus Ewing (Inverness and Nairn) (SNP): Good morning to both witnesses. I would like to ask both of you two questions. First, how important do you feel it is to embed the medication-assisted treatment—or MAT—standards in practice, especially for ensuring that individuals receive appropriate medication while in police custody? That is a point that David Strang made clearly in his opening remarks.

David Strang: The answer to your question is that that is very important. A cornerstone of the work of the task force that predated my time as chair was the production of the medication-assisted treatment standards, which set out what standards people should expect if they are seeking assistance and service for drug dependency. One of the key MAT standards involves people getting access to support when they need it. They should have some say in what treatment they should receive, in the same way that anyone might for other cases.

The risk is that people do not get continued replacement therapy when they are in police custody. That has a detrimental effect on their health and general wellbeing, and on their likelihood of reducing offending. Therefore, I think that it is absolutely important that the MAT standards are met.

Dr Hunter: I would go as far as to say that that is essential.

Fergus Ewing: Thank you. I thought that that would be the answer; obviously, it is the answer that one expected.

I have one more question, which has two parts to it. First, are the witnesses aware of any data on the availability of healthcare staff to administer methadone in police custody? I ask that general question because questions have been raised by the petitioner and others about there perhaps not being sufficient, appropriately qualified medical staff to do the job of ensuring proper treatment in police custody.

Secondly, the petitioner has asserted that, in NHS Grampian, there is inappropriate prescription—as he considers it—of a drug. From memory, I think that it is dihydrocodeine. Is either of the witnesses able to comment on whether that is inappropriate, in their view? Do they have any information with regard to that?

In saying that, we will perhaps make direct inquiries to NHS Grampian to be fair to it, and put that point to it, as is right and proper.

David Strang: I am not a clinician, and I cannot comment on the second point. In the task force's report, we laid out the standard that we expect. That will vary across different police areas and national health service board areas. I am not aware of data about the available healthcare staff in police stations.

Dr Hunter: I cannot give members any information on staffing either.

Dihydrocodeine is sometimes prescribed in custodial settings. There is guidance on exceptional circumstances within the UK guidance that I mentioned. Its prescription should not be routine as a replacement, but there are some exceptional circumstances—including when it is not possible to get access to existing prescribed medication safely—in which it would be used by an experienced clinician.

Fergus Ewing: I am most grateful to Dr Hunter for that very useful clarification. We can pursue that further.

I go back to the first question, about the availability of healthcare staff. As neither of you is able to give us information about that, can you suggest from whom we may be able to obtain information? If the answer is that there is nobody from whom we can obtain such information because records are not properly kept, does that not point to a lacuna in the system of oversight of the application of correct treatment and sufficient medical personnel available to deliver it for those people in police custody who require it?

David Strang: To be helpful, I could make inquiries and let the committee know the extent to which that data is available. I have said that I am not aware of its being available, but that does not mean that it is not available. It may well be locally or nationally collated, but I am simply not aware of the availability of data on healthcare staff in police stations. We could advise you on that.

Fergus Ewing: So it is a known unknown.

David Strang: It is definitely a known unknown from my point of view.

Dr Hunter: Each health board should be able to give you information on the NHS staff that it has in certain settings. You would also need to explore prescribing staff, who might be different from those who can supervise once the medication has been prescribed.

The Convener: Quite a bit of the evidence that we have heard was not so much about the ambition around the delivery of various principles.

Alexander Stewart will ask a couple of questions in relation to that.

I go back to the medication-assisted treatment standards and the importance that you attach to their being embedded—I refer back to that word. To what extent did the work that you did suggest how far adrift we were from the delivery of that principle?

David Strang: We fell considerably far short. Those standards were published in the spring of 2021. When the task force originally published them, the Scottish Government gave a commitment to implementing them within a year. In fact, that was overambitious—our report said that we would expect the standards to be implemented by 2024.

There was an audit and a report by Public Health Scotland. I think that it audited the first five MAT standards, and a report was published in the spring of this year—that was a year on from the publication of the standards—that showed where the shortfalls were. They were substantial across Scotland. That is an important piece of work on which local health boards and alcohol and drug partnerships still need to deliver.

The Convener: Before I come to Carole Hunter, I refer to your first answer. Do you have an ambition to include in the oversight role that you referred to in your opening response seeking to ensure that those procedures will be effectively embedded? Is that part of the oversight function?

David Strang: Yes. The oversight group's function is to hold the Scottish Government to account on the delivery of the national mission and, specifically, the recommendations in the "Changing Lives" report, and to give advice to the Scottish Government. The group has a twin role. We will absolutely consider the implementation of the MAT standards, and there will be regular reports. There is a MAT standards implementation team in the Scottish Government. It will report to the oversight group.

The Convener: Does Carole Hunter have anything to add before I bring in Alexander Stewart, who will pursue that point?

Dr Hunter: Just that the medication assisted treatment implementation support team—MIST—is in place and is working with the alcohol and drug partnerships on the implementation of the MAT standards.

Alexander Stewart (Mid Scotland and Fife) (Con): You have already alluded to the fact that potential gaps still exist around the MAT standards. Is anything still needed to ensure that the standards are fully implemented and working as intended?

David Strang: Each area has been required to produce an action plan to say how they are implementing the standards and what resource they need. The minister has directed them to identify a lead person because, as our report comments on, clear accountability for leadership can often get diluted when there is collaborative working, with people saying, "Oh, I thought they were doing it." One person has therefore been identified as responsible for leading that work, which is helpful.

Some of the issues relate to training personnel, which might take some time and be about resourcing. By focusing on the 10 standards, we are saying, "This is what needs to happen," which should ensure consistency across Scotland.

One of the criticisms of drug support services across Scotland is that they are patchy and different according to area. I accept the challenges of Scotland's geography and that cities will have a different footprint from rural areas. However, if you are drug dependent and need support, you should be able to access the treatment that you need timeously, wherever you are in Scotland.

Alexander Stewart: You have identified that there is a postcode lottery for some services, depending on location and geographical situations and circumstances. That is important because, if services are not fully implemented and working collectively across the whole estate and the whole country, there will be massive gaps for individuals, who are at risk if they are in that situation.

David Strang: I know that you are using the term "postcode lottery" in a pejorative sense, but people might argue for local flexibility, because there are different needs in the Scottish Borders and Edinburgh, for example. However, I agree that everyone who needs treatment should be able to get it. Things such as residential rehabilitation might not be available in every local authority, but, wherever you live, you should be able to get access to whatever treatment you need, whether that be opiate substitution therapy or residential rehab.

Dr Hunter: Workforce recruitment is a challenge in every area of Scotland, no matter the geography, although there might be different challenges in each area. From speaking to my colleagues across Scotland, I know that they all experience challenges with recruitment, which will affect implementation.

Alexander Stewart: Did the Scottish Government consult with the Scottish Drug Deaths Taskforce on the evidence gap that was identified regarding prescription medication being made available to individuals who are in custody? If so, what progress has been made on that?

David Strang: I am not able to say. We published our “Changing Lives” report on 21 July. I have not seen the latest update on the implementation, so I do not have up-to-date information on that. With the report’s focus on that issue and the Government’s commitment to respond to its recommendations, we would hope to see an improvement—as your question implies—but I have not yet seen the data.

Alexander Stewart: Is it correct to say that the gap was identified during the process?

David Strang: Yes. Recognising that there are inconsistencies across Scotland and that we should have standards to address them led to the introduction of the MAT standards. The gap that you have referred to will vary across the geography of Scotland and will depend on resourcing.

Dr Hunter: I have recently retired as the lead pharmacist for alcohol and drugs services in NHS Greater Glasgow and Clyde; however, I am still working two days a week. In our area, there has always been good communication between police custody and collection services. Twenty years ago, we developed a form for the collection of drugs from pharmacies. I do not think it is fair to say that there is a complete gap, because there are patches of good practice.

The Convener: That was one of the most striking parts of the earlier evidence that we heard in the consideration of the petition. From the committee’s point of view, it took some time before we were able to get the Government to accept that there seemed to be a breakdown in how it could be demonstrated that a prescribed drug had reached the individual for whom it was intended. It was not that the intention was not there or that the process was not happening, but it was impossible to demonstrate that it had actually happened because of the lack of a national standard. As a committee, we felt that that was a significant deficiency. The petitioner’s experience, which was tragic and sad in its ultimate conclusion, made that clear. That is the reason that we continue to pursue the points that the petition raises.

10:45

Paul Sweeney (Glasgow) (Lab): I thank our guests for their insights so far. I note the points that have been raised by the task force, particularly those that relate to Friday releases from custody. Page 10 of the “Changing Lives” report says:

“Prison releases on a Friday or the day before a public holiday should be banned to give people a better chance to access support.”

Has the Scottish Prison Service or Police Scotland given you any indication that it would be willing to adopt that policy?

David Strang: Action 96 on page 73 of the report recommends that

“The Scottish Government should change the legislation to implement a blanket policy of no liberations on a Friday or the day before a public holiday”,

so you are absolutely right that that was a key recommendation.

There is legislation on the books at the moment that allows someone to be liberated a day early if it is considered essential for them to get the support and treatment that they need as they leave prison. However, it is used very rarely, and the day of the week when most people are released from prison is still the one that is worst for their health: Friday.

The reason why Friday is the day with the highest number of releases is that the length of a person’s sentence is calculated on the day of sentencing—they will know what day they should be released at that point—but, if that day falls on a Saturday or Sunday, the person cannot lawfully be held until they are released on the following Monday, so they have to be released on a Friday. That means that we end up with three sevenths of releases taking place on a Friday and one seventh each taking place on a Monday, Tuesday, Wednesday or Thursday.

The reason why Friday is the worst day is that, on the day of release, if someone does not have accommodation—which is very often the case, as they could have lost their tenancy while in prison—they have to go to the local authority housing office. They also have to register with a general practitioner if they need medication and, if they have no money, they need to register with the Department for Work and Pensions for benefits. Those services are often closed on a Friday afternoon and on a Saturday and Sunday, so that is the reason that it is the worst day for people’s health.

The day of release and the following two or three days are a very vulnerable time for drug overdoses and potential drug deaths. People’s tolerance will have changed while they have been in prison and they are at risk of succumbing to an overdose, so that is why we say that, rather than it being discretionary, it should be mandatory that people are not released on a Friday. There is no flexibility in the law at the moment. It is unlawful to detain a person until the Monday following the end of their sentence, but, if they were released early, they would be unlawfully liberated. There needs to be a change in legislation to allow that.

The principle is that people leaving prison should be well supported; ideally, they should have accommodation, the healthcare that they

need and access to funds. If we do not put those things in place, we should not be surprised that the level of offending is so high, because, if someone is released with no money, nowhere to live and no lawful medication, we can see what will happen.

Paul Sweeney: I take your point entirely, and I think that it is really important. Anecdotally, from my experience in representing Barlinnie, the largest prison in Scotland, and having visited it on several occasions, prison officers have described to me quite candidly that they have repeat customers who they liberate on a Friday, who then go into the city centre to shoplift, purchase and take drugs—usually in an unsafe way—and who will likely then be arrested and back in prison on the following Monday. Those people are, in effect, serving life sentences in short bursts.

When I participated in the unofficial overdose prevention pilot in Glasgow, we frequently had people turning up to the ambulance who had just come straight from Barlinnie prison or Low Moss prison and were seeking a safe place to inject.

You made a very important recommendation, but I want to know whether there has been any indication from the Government that it considers that recommendation to be an urgent action that it is willing to expedite. Are there any indications of the timescales for adjustments?

David Strang: As an aside, I spent five years as Her Majesty's chief inspector of prisons, so I am very familiar with the picture that you have described.

Our recommendation in the report was that the Scottish Government should produce an action plan, and we gave it six months. It has not yet had those six months. We have seen a general response from the Minister for Drugs Policy, Angela Constance. As members would expect, she welcomed the report, and she said that the Government will look at it in detail and provide a report. The national drugs mission oversight group, which I mentioned, will receive the Scottish Government's detailed response to each of the 20 recommendations and the 139 action points in the report. We are awaiting that. The answer to your question is therefore no, I have not seen the response to that.

Paul Sweeney: That is certainly helpful for when we come to future evidence sessions. Would Dr Hunter like to make any points in relation to my questions?

Dr Hunter: I would. I was on the Scottish Drug Deaths Taskforce as a representative of the Royal Pharmaceutical Society. There is a wider role for pharmacy. The UK guidelines on clinical management that I mentioned earlier said that prescribing arrangements should be in place

before someone is liberated, and that is a responsibility for healthcare professionals. I think that there is a lot more that community pharmacy could do there.

In my health board area, roughly 10 per cent of the pharmacies are open seven days a week, and some of them, although not many, are open until late in day—until 10 o'clock at night. We do not utilise that service enough, and we do not use the prescribing capacity enough in community pharmacy. Communication is the key to that, and we need to be a key partner.

Paul Sweeney: Thank you very much for that. I really appreciate it.

Another important point that I noted that the task force raised was that people who use drugs should be provided with naloxone on liberation. That seems to be a relatively straightforward recommendation to implement. Is there any indication at this stage that the Government is adopting that policy and that it will instruct Police Scotland and the Scottish Prison Service to do that? I know that you mentioned that you are awaiting a detailed report.

David Strang: I mentioned that I was previously chief inspector of prisons. It was Scottish Prison Service policy that naloxone was offered. One of the task force's successes has been the national roll-out of naloxone. Police Scotland has committed to all its front-line officers carrying it. In my time, which was pre-2018, the families of people who were drug users and leaving prison were offered naloxone kits. I know that that has happened, but the approach was probably patchy, depending on local arrangements.

We want national consistency to ensure that naloxone is available. It is clear that people who are leaving prison are at high risk of being in the company of someone who overdoses or of overdosing themselves. We are very strong on recommending that naloxone should be available as widely as possible.

Paul Sweeney: That is great. Does Dr Hunter have any points to make on that?

Dr Hunter: Yes. As a former chair of the national naloxone advisory group—that was when Mr Ewing was the Minister for Community Safety—I think that everyone should carry naloxone. It is not just about supply from prisons; it is about whole community coverage. That is really important, because we know that there is a high risk of overdose at the post-liberation point.

Paul Sweeney: Mr Strang raised a really important point about availability of support in the community, particularly on Fridays, in the critical risk period following liberation, and Dr Hunter raised a point about community pharmacy

availability and utilising that network more readily to support people. We have mentioned naloxone. It is clear that there is an effort from the Scottish Government and the health and social care partnership in Glasgow, in particular, to launch an official overdose prevention pilot in Glasgow. Do you have a view about how such a facility might assist people who have been liberated from prison and do not necessarily have a safe place to go? It could be a key interface for people who are in the justice system and being liberated. Could that add value?

David Strang: Are you referring to a supervised drug consumption facility?

Paul Sweeney: Yes.

David Strang: We make a key recommendation that that should be explored. As you know, there are legislative problems with that, because policy, under the Misuse of Drugs Act 1971, is still reserved to Westminster. NHS Greater Glasgow and Clyde has been pursuing the establishment of a supervised drug consumption facility, with some assurance from the Lord Advocate that it will be allowed to do that. The legislation is 50 years old and contains some things that are unhelpful nowadays, for example in relation to drugs paraphernalia and allowing premises to be used for injecting.

The answer to your question is yes. If supervised drug consumption facilities were available, they would reduce the harms of drug taking and increase access to healthcare and support.

Paul Sweeney: Dr Hunter, do you have any comments?

Dr Hunter: Absolutely. I would fully support the implementation of a facility in Glasgow—I am part of the working group locally that is looking at that. It is hugely important to provide a safe space, where people can be supervised and where there is someone who can intervene if there is an overdose. All the evidence around the world shows that such spaces can encourage people into treatment and support them until they are ready to get into treatment. Supervised facilities are not just about preventing overdoses; they are about preventing blood-borne viruses and infections and generally promoting health and wellbeing. There are a huge number of benefits.

Paul Sweeney: Thank you. Your points are really important and help to colour the overall context of this policy area.

The Convener: Mr Strang, you referred to dozens of recommendations in the report. I am sorry that we are not here to do full justice to the report today. The work of the committee has been very much focused on the issues raised in the

petition, despite Mr Sweeney's heroic endeavours to draw out slightly wider evidence, which I am sure is also very useful to the committee. Is there anything that we have not touched on that either you or Carole Hunter would like to add?

David Strang: Not in relation to the petition. We are just grateful for the committee's interest. The more people who read the report and take an interest in it, the better.

The Convener: Carole Hunter?

Dr Hunter: There is nothing else from me.

The Convener: In which case, I thank you both very much. Your evidence has been very helpful to our consideration of this distressing petition. Thank you for being present remotely and in person today.

I will suspend the meeting shortly, once members have agreed that we are content to consider the evidence at a subsequent meeting.

Members indicated agreement.

10:58

Meeting suspended.

11:03

On resuming—

Witchcraft Act 1563 (Pardon and Memorial) (PE1855)

The Convener: PE1855, which was lodged by Claire Mitchell QC, calls on the Scottish Parliament to urge the Scottish Government to pardon, apologise and create a national monument to memorialise the people in Scotland who were accused and convicted as witches under the Witchcraft Act 1563.

Members will recall that the First Minister has provided an apology to the people in Scotland who were accused and convicted as witches under the 1563 act. I seem to remember that we heard in evidence that some 2,200 people were convicted, the vast majority of whom were women. I am not sure that the First Minister apologised to the men who were convicted under the act—I have a recollection that she apologised to the women who were convicted—so I think that 400 people have gone without an apology.

We last considered the petition at our meeting on 18 May 2022, when we agreed to write to the Scottish Government and to Natalie Don MSP. We now have responses from the Cabinet Secretary for Justice and Veterans, Natalie Don MSP and the petitioner.

The cabinet secretary advises that, although it is Scottish Government policy that costs associated with creating and maintaining new memorials

“are not to be met from scarce public funds”,

the Government would be happy to consider helping to publicise any fundraising efforts. The cabinet secretary also indicated that the location of any national memorial would primarily be a matter for local authorities.

Natalie Don MSP has provided a brief update on the progress of her proposed witchcraft convictions (pardons) (Scotland) bill, letting us know that the consultation responses will be published shortly and that she intends to progress to the next stage of the member’s bill process.

The petitioner highlights the considerable work that has been undertaken in pursuing the aims of the petition, including discussions with interested parties about taking forward plans for a national memorial and a museum of witch hunts, and has indicated that, as a consequence, they are reasonably content with the actions that have been taken on all three aspects of the petition that were raised.

Do colleagues have any suggestions as to how we might proceed?

Alexander Stewart: You have summarised the process well, convener. At this stage, there is not much requirement for the committee to take things further. It would therefore be appropriate to close the petition under rule 15.7 of the standing orders. As you have indicated, the First Minister has apologised to the women who were convicted, Natalie Don is continuing to progress her member’s bill, and the petitioner has indicated that plans are being taken forward for a national memorial. Under those circumstances, there is not much point in the committee progressing things, because they have already moved on considerably since the petition was lodged.

The Convener: Are colleagues content to close the petition, as suggested by Alexander Stewart?

Members *indicated agreement.*

Unborn Victims of Violence (PE1887)

The Convener: PE1887, which was lodged by Nicola Murray, calls on the Scottish Parliament to urge the Scottish Government to create an unborn victims of violence act, creating a specific offence that enables courts to hand down longer sentences for perpetrators of domestic violence that causes miscarriage.

Members will recall the evidence session that we held at our last meeting, with stakeholders, who raised many important issues in relation to the petition. We have also heard directly from the

petitioner, Nicola Murray, about her personal experience and her desire to see a change in the current system.

In advance of the meeting, we had a chance to reflect on the evidence. Today affords us an opportunity publicly to give some thought to what we have heard and how we might take matters further forward. This is one of the more important petitions that we have heard. We have all been very struck by the evidence as we have listened to it.

Fergus Ewing: I entirely endorse what you have just said, convener. Nicola Murray’s evidence was profoundly moving and extremely effective. We all commended her bravery in speaking out on a matter that could not be more sensitive.

There is more evidence that we have yet to hear—we need to obtain, collate and consider it—but, at present, I am minded, on the principal matter in the petition, to go down the route of recommending that there should be a specific new statutory offence.

I have raised with witnesses—including, at our previous meeting, Dr Neal, Dr Scott and Mr Tidy—the possible alternative of seeking to use the existing law of assault by libelling these particular circumstances, or the alternative of an aggravated offence, which Mr Sweeney raised as well, as far as I can recollect. Those might be alternatives.

However, the evidence at that meeting—in particular, Dr Neal’s dismissal of those alternatives—was compelling. I took from her evidence the argument that, although in theory the alternatives might work, in practice they would not, and that a matter of such gravity as the loss of an unborn child merits a proper, distinct and separate new statutory offence. She also pointed to the fact that such an offence exists in England and elsewhere, albeit that the law in England dates back to 1929 and was conceived for a different purpose altogether.

Be that as it may, and subject to learning a bit more information from the various legal authorities and relevant bodies from whom we can obtain that evidence, my feeling has changed from thinking that there might be an easier way—an existing alternative—to agreeing with the evidence that we heard, which was that there should be a new statutory offence.

Another important point, although perhaps not the main one, is that the circumstance that the petitioner described in which she found that the charge had been reduced without her being consulted is, I think, profoundly wrong. All the witnesses that we asked about that said so, and it must be changed. Some recommendations there anent would be appropriate, in my opinion.

Alexander Stewart: I concur. As you have identified, the petition has been quite a harrowing one for the individuals involved. Without question, a gap seems to have arisen, and it would be appropriate for us to recommend that we have a specific statutory offence to alleviate some of the problems that have been identified.

Fergus Ewing is correct when he talks about the difficulties that individuals have suffered in going through this process. The difficulties have been exacerbated and aggravated by circumstances and situations in the agencies that are there to provide support. There needs to be some clarity there. Going down this route might give us the opportunity to ensure that some of the problems are ironed out and that individuals who go through the process do not suffer the same consequences that others have.

Paul Sweeney: I recall Dr Neal's evidence, which was very helpful. In particular, she broached the idea of a member's bill as a potential remedy and did not find that convincing. I tend to agree with her. She said that we simply require an amendment to the Domestic Abuse (Scotland) Act 2018, as that would be a smoother and more coherent remedy. I recommend that we seek the Government's agreement on that.

The Convener: I very much agree. In some of the evidence that we heard, and in particular the Scottish Government's initial response, superficially the alternatives looked as if they might have been an effective way of proceeding. However, in the face of the evidence that we heard subsequently, I too have been persuaded that we require a specific charge to be included in the 2018 act.

Wearing a completely different hat—my Scottish Parliamentary Corporate Body hat—I am struck by the fact that we have 17 members' bills already before Parliament in this session, which is a record number. The prospects of any additional members' bills finding scope to proceed before 2026 are probably nil. We must either take the view that this is just something that we are going to nod at and move along from, having said that it is all very terrible, or we have to be prepared to take more decisive action.

Mr Ewing drew attention to the fact that we discovered that the offence in England and Wales grew out of provisions that were passed at a much earlier time and to meet entirely different circumstances. Until we heard that, maybe we assumed that the offence had been brought in for this purpose. I think that we would like to hear more about that.

I think that the committee's feeling is that we would like the clerks to prepare an appropriate representation of our consideration to the Scottish

Government, subject to that final evidence being heard, which would recommend, on behalf of the committee, the specific offence being included in legislation.

Fergus Ewing: I have a suggestion for consideration, although I have not really thought it through and, as I said, there is more evidence that we have to obtain. Because the issue that the petitioner has raised is of such gravity, I wonder whether it might be a candidate for a debate that the committee brings to Parliament, so that we have the oxygen of transparency and openness, and the opportunity for other members to contribute.

I know that we want to use that approach sparingly, and I do not have knowledge of how sparingly it has been used in the past—although you will know, of course, convener. Nonetheless, I feel instinctively that, because this is such a profoundly emotive, important and sensitive issue, there would be considerable interest from other members in hearing more about it.

11:15

The Convener: We have actually identified a number of candidates that we think might be suitable for a chamber debate. We will potentially make a specific recommendation in respect of the action that might be appropriate, as we might like to see that added to the matters that we could potentially seek to raise for a chamber debate. We will, I think, be making a fairly consequential recommendation arising from a very sensitive petition. Are we happy to consider that?

Members indicated agreement.

Paul Sweeney: I believe that Dr Neal has drafted the relevant amendment, so it is a question of offering it for the Government to adopt. I note, too, that Mr Tidy mentioned that

"amending the Sentencing Council's guidelines for judges might be a more immediate goal".—[*Official Report, Citizen Participation and Public Petitions Committee*, 9 November 2022; c 16.]

That is worth noting as a potential action that we can recommend.

The Convener: I am happy for us to take that forward.

We are content to keep the petition open and proceed on the basis that has been set out. I thank the petitioner for the time that they took in speaking to us, as well as last week's witnesses, who helped to inform our discussion.

Reusable Water Bottles (PE1896)

The Convener: PE1896, which has been lodged by Callum Isted, calls on the Scottish

Parliament to urge the Scottish Government to replace the disposable water bottle that is provided with primary school lunches with a sustainable reusable metal bottle.

During our previous consideration of the petition, we were fortunate to hear from Callum personally—as members will recall, he was the youngest ever petitioner to present to the Scottish Parliament. We have to thank him not just for his evidence but for the fact that his petition was specifically cited in relation to the powering change award that the committee, as a mover and shaker of the year, subsequently received from *Holyrood* magazine.

Callum explained why reusable water bottles are important and told us about his campaign work, which included an impressive fundraising exercise. The committee agreed to write to the First Minister, whom Callum met, to ask what action she intends to take in order to fulfil the ask of the petition.

I regret to say that we have not received a response to our representations from the First Minister on the petition, and I understand that Callum is waiting for an update from the First Minister, too. I thank Callum again for his evidence and the time that he has taken over his petition. Do members have any comments or suggestions as to how we might proceed?

Alexander Stewart: I am disappointed that neither Callum nor the committee has received any further information. There was a huge amount of publicity around Callum's coming to the committee to give evidence that day, and I would have hoped for such a young inspiring individual to be treated slightly better than that. However, we are where we are.

It is now time to write back to the First Minister to seek an update on where we are with the petition. When we had Callum here to receive the petition, there was a real buzz about the possibility of his ask becoming a reality, because he had put so much effort into it. It is disappointing that that effort has not been given the full credit that it deserves.

We need to write back to the First Minister and invite the Cabinet Secretary for Net Zero, Energy and Transport to give evidence on where the petition might be going, in order to fulfil the aims that Callum put forward. His objectives and ambition were fantastic, and we should encourage them as much as we can to ensure that his dream becomes a reality.

The Convener: Are we content to proceed on that basis? I should note in passing the further representation that we have received from Sue Webber in relation to the petition. We will write to the First Minister to seek an update and to express

our disappointment that neither Callum nor the committee has received any response, particularly given the personal engagement that the First Minister had with Callum on the occasion of his giving evidence to the committee.

Members indicated agreement.

Impact of Motorway (Central Glasgow) (PE1906)

The Convener: PE1906, which has been lodged by Peter Kelly on behalf of @ReplacetheM8, calls on the Scottish Parliament to urge the Scottish Government to commission an independent feasibility study to investigate scenarios for reducing the impact of the M8 between the M74 and Glasgow cathedral, including, specifically, the complete removal and repurposing of the land.

When we previously considered the petition on 23 February, we agreed to write to stakeholders seeking their views on the action that the petition calls for. Glasgow City Council has highlighted its commitment to address the aims of the petition as part of its "Strategic Plan 2022 to 2027". It has committed to

"Commission research on and explore options to reduce the impact of the M8 on the city centre, and review opportunities to re-engineer other roads infrastructure to become more people-friendly including options for long-term replacement."

It also states that funding and collaboration with stakeholders such as Transport Scotland is required to take forward the research.

We have also had submissions from Professor Richard Williams, who provided information on a recent project in São Paulo, and from Dr Wood, who supports the petition. Dr Wood's submission highlights relevant traffic reduction projects in other parts of the UK, and the related economic development opportunities.

Do members have any comments or suggestions for action? I recall that Mr Sweeney has a particular interest in the petition.

Paul Sweeney: Yes, convener. That is certainly a positive indication from Glasgow City Council that it is seriously investigating the matter, not least as it has submitted a levelling-up fund application worth £50 million to the UK Government to finance the capping of the M8 at the Mitchell library at Charing Cross. However, the asset itself is owned by the Scottish Government, and Transport Scotland as the agency.

It would be good if the committee could establish the exact nature of the co-operation that is required from all levels of Government, from the council to Transport Scotland, to deliver the best outcome for the city. We have not fully established

that. It is one thing for Glasgow City Council to have a position, which, although it is positive, is not necessarily specific in its actions. The council has put in one levelling-up fund bid, but there is no indication from the Scottish Government, via its agency Transport Scotland, of what its intentions are, at either a strategic or an operational level, to effect the proposed changes or to co-operate with the council.

Furthermore, the points that Dr Wood makes about the international dimension, given some of the work that that chap has done, are really important. Perhaps there is some merit in requesting a response from Transport Scotland or from the minister in relation to the matter. We can then assess what the Scottish Government's position is in the light of the evidence that we receive.

The Convener: We could write to the Scottish Government to ask it to facilitate a collaborative approach between Transport Scotland and Glasgow City Council to see what progress could be made, and to clarify what the funding mechanism for the proposed outcomes might be. Does that seem sensible?

Paul Sweeney: Yes, I think that that would be helpful.

Fergus Ewing: Convener, what other evidence have we obtained? The petitioners have plainly expressed their view, as have a few others. However, as someone who is not unfamiliar with the M8, I am a bit unsure as to how it could be removed, which is what the petition calls for.

It occurs to me that that would have a huge impact, in a number of respects, on the flow of traffic and therefore on the conduct of business and the conveyance of emergency vehicles to and from hospitals. In general, the system of transport that we have in Scotland depends, whether we like it or not, substantially on roads. I wonder, therefore, whether we should seek evidence more widely in order to get a rounded view. I am thinking in particular of bodies such as the Glasgow Chamber of Commerce, motoring organisations such as the RAC and the police and emergency services. I appreciate that there is a huge range of possibilities, some of which are relatively modest, and some that may involve complete removal of the road, shutting it at weekends or whatever.

I am struck by the fact that we do not appear to have sought that evidence—as far as I know; I am sorry if I have not picked that up from the papers by the clerks, although I have raised the matter with the clerks in correspondence. Perhaps we should cast our net a bit more widely to get a more rounded view of the proposals.

The Convener: That is a perfectly reasonable point. There are two issues. First, Mr Sweeney referred to the capping of the M8. Those who are familiar with the Charing Cross end of the motorway will know that it is really a valley through civilisation when you get to the top end of Glasgow.

The points that Mr Ewing makes are perfectly fair. Perhaps the various organisations that you have identified could be included in our approach to the Scottish Government in terms of any collaborative approach that is being undertaken between Transport Scotland and Glasgow City Council. Could we do it that way?

Fergus Ewing: Yes—I am happy to do that.

The Convener: We can see if that works. Ultimately, the project would have to be taken forward by others, but I take the point that it would have to include a much wider range of views to be certain that it was viable, in addition to any capping proposal that might proceed.

Paul Sweeney: I agree, and the point that Mr Ewing makes is important. Perhaps the removal of the road in a broad sense is a bit of a provocation, but the petitioner goes into that question in more nuanced detail in his comments; he talks about specific interventions that would reduce the road's impact such as capping or constructing buildings above the road. There are areas where it is overengineered—for example, the Townhead interchange was built for a flank of the motorway that was never built. That is a massively overengineered solution that could largely be deconstructed without having any material effect on traffic. There are ways in which that could be done.

The point that the petitioner is perhaps trying to drive at—pardon the pun—is that the issue has never been seriously reflected on by Transport Scotland, and it is only recently that the city council has started thinking about it. It feels like there is an opportunity for the committee to be a catalyst.

The Convener: I have resolved not to reach for any other metaphors. I take the point, and we can proceed on the basis that we have described with that understanding.

Train Fares (PE1930)

The Convener: The next petition is PE1930, which was lodged by George Eckton, on ensuring that, as part of any new ScotRail contract, customers are always given information on the cheapest possible fare.

The petition calls on the Scottish Parliament to urge the Scottish Government to ensure that a requirement of future rail contracts is for

customers to be given information on the cheapest possible fare as a matter of course, and to recognise the vital role of the existing ticket office estate in delivering on that aim.

We are joined by Monica Lennon. Good morning, Monica; it is lovely to have you with us again. We will hear from you in a moment.

The committee previously considered the petition at our meeting on 29 June, just before the summer recess, when we agreed to write to the Scottish Government and Transport for London. I am pleased to say we have now received responses from Transport Scotland and TFL, as well as two submissions from the petitioner.

Transport Scotland has indicated that the Scottish Government is considering whether Scottish Rail Holdings Ltd will be covered by the consumer duty legislation. Its response also contained information on the progress and purpose of the fair fares review, which is expected to be concluded in full at some point during 2023, and on the work that is being undertaken to develop and trial smart ticketing options.

The response from Transport for London provides information on how its fare-capping and pay-as-you-go system operates, and on the work that goes into ensuring that customers can trust that they will always be charged the correct fare for their journey.

The petitioner has also been in touch to update the committee on the freedom of information requests that he has made to ScotRail about how the £5 city-to-city advance fares are advertised. Mr Eckton has shared information on how easy it is for passengers to miss out on cheaper fares when using the ScotRail app, and he has set out his view on why ScotRail should be included in the consumer duty.

Before I open it up to wider discussion, I invite Monica Lennon to speak in support of the petition.

Monica Lennon (Central Scotland) (Lab): Good morning. It is lovely to be back at this award-winning committee. That is me trying to get in with you all.

I was listening patiently at the back of the room. I was in West Lothian, which is not my region, at an event where Callum Isted was mentioned. He is a superstar with lots of fans, so I wish the committee well with your endeavours on his petition.

I wanted to come along to support George Eckton's petition because the issues that he has raised are of no surprise to me or my staff, given the emails that we get. Even before the pandemic, people would get in touch out of frustration about the price of rail travel and the reliability of services at times.

11:30

I have taken on the role of patron of Disability Equality Scotland, which has helped me to appreciate even more the points that Mr Eckton has made about the ease of getting information. I commend him for the efforts that he has made. I have looked at the correspondence between him and the Advertising Standards Authority. It should not be so difficult to get cheap fare information. The issue of access to staff and ticket offices is really important, too.

This issue has been of interest to me since before the pandemic, especially in the context of the climate emergency, because we need a modal shift to get people on to Scotland's sustainable rail network. We can do that only if the public have confidence in and can afford to use our rail services.

I know that your predecessor committee looked at a previous petition that was lodged by Mr Eckton. The petition was closed on the basis that the Scottish Government had given undertakings, but, from reading the petitioner's submissions, it looks as though they have not been fulfilled.

Colleagues might know that I am a member of the Net Zero, Energy and Transport Committee. I do not speak on behalf of the committee today, but I note that we have had the chance to ask the Cabinet Secretary for Net Zero, Energy and Transport and his officials about the fair fares review. It is frustrating that we do not have a clearer timeline for its completion. It was indicated that it will be "early 2023", but, from my experience in the Parliament, that could become the summer, and then summer could become winter or Christmas. We need certainty, which is why I feel that, although the fair fares review is looking at wider issues, Mr Eckton's petition should be considered and should inform that work.

This meeting is timely. I was looking at today's newspapers, in which there are reports that ScotRail's commuter numbers are down by 40 per cent, which means that revenue is down—it looks as though it is down by around 20 per cent on pre-pandemic figures—so making people feel confident about the service is a big issue. Part of the explanation for commuter numbers being down is that people who have the option to work from home are choosing to do so. However, many workers are taking into account the cost of getting to work and getting around, so, if they have the choice, many are saying that they will work at home and that they will not go to the office.

I am concerned for those constituents who, due to medical appointments or other issues, cannot be flexible about when they travel and are therefore not getting access to the most affordable

fares. We should be abolishing peak-time fares—that should be looked at in the fair fares review.

As I said, I cannot speak for the Net Zero, Energy and Transport Committee, but, in his petition, Mr Eckton is clearly raising matters that are of interest to that committee. I note what Transport Scotland has said, and I note the information that has come from Transport for London—it was very helpful that Paul Sweeney prompted it to send that.

It is important to look at good and other practice where we can, but it is also really key for Mr Eckton's aspirations that we have a rail service in Scotland that is properly staffed. If committee members are not aware of it, I point them to the document, "A Vision for Scotland's Railways", which was prepared by Scotland's four rail unions and published in October 2021.

In Parliament, we often talk about challenges instead of solutions. That document has lots of good policy in it and, to be fair to the Scottish Government, some of it has already been actioned. It is important to look at the document, because, to achieve the sustainable rail network that we want to see, the executive summary says that we should

"Reduce ticket prices, abolish peak fares and simplify the ticketing system".

My understanding is that the Scottish Government has not formally responded to that document from the four rail unions. I declare an interest in that I am a member of Unite the union and the National Union of Rail, Maritime and Transport Workers parliamentary group. It is a good document that has cross-party support.

I am really pleased to have the chance to speak in favour of the petition, and I will be happy to answer questions. I hope that it is an issue that can be kept open and explored by colleagues across the Parliament and the Government.

The Convener: You are not a witness, so we cannot ask you questions.

Monica Lennon: Of course.

The Convener: You are just here to speak to the petition. Do colleagues have any recommendations for how we might proceed?

Paul Sweeney: I thank Monica Lennon MSP for coming along today and offering such a compelling account of why the petition is so important and why the committee should consider it.

I was struck by the submissions from Transport Scotland and Transport for London. According to Transport Scotland,

"ScotRail delivered a pilot for Account Based Ticketing ... allowing for fare capping and tap in/tap out technology. The

pilot took place on the Cathcart Circle ... for a period of four months and although proving to be a good customer proposition it was deemed unsuccessful on commercial grounds. Since ScotRail has been transferred to public ownership ... an account based ticketing trial has been included within its business plan".

I am not satisfied with that response. It is totally inadequate, particularly when viewed in contrast with the submission from Transport for London, which says:

"The core principle of our fares system is to make it as simple as possible".

TFL has a "best value promise" that,

"when travelling using pay as you go ... on Oyster or contactless"

debit or credit card,

"customers just need to touch in and out when travelling on our services and we ensure that customers pay the cheapest fare for the journeys they make."

The cheapest fare is no more than the cost of the equivalent travel card, and there is an automatic refund when a journey has not been completed. The contrast between the two submissions is striking—it is night and day. It is the greatest contrast between submissions to the committee that I have seen in recent times, and I think that there is an opportunity for the committee to probe further.

The Convener: I would certainly be willing for the committee to try to tease out an explanation. Transport for London deals with tens of millions of people using the system. The Glasgow pilot is referred to as being useful but not necessarily cost-effective on a commercial basis, which may reflect the numbers involved in relation to the cost of setting it up. I do not know. Any citizen of Glasgow who travels abroad is surprised at how far behind the smart technology is in the largest city in Scotland. There is more that we could tease out in relation to that.

Paul Sweeney: It is interesting that I knew nothing about the pilot, and I do not know how many Glaswegians knew about the pilot. However, I note that TFL says that it issues

"press releases publishing changes to fares, and advertising campaigns to highlight the cheapest way to travel around London (these can be seen in media advertising and on our services)."

It goes on to say that it has seen "strong growth" in the adoption of pay as you go, with

"over 70 per cent of all journeys now made using PAYG."

I take the point about population density and scale, but, nonetheless, there are cities of equivalent size to Glasgow that have that technology and it works very successfully. I wonder whether, sometimes, there is risk aversion, leading to our not persisting with a

measure that might initially make a bit of a loss but that, in the longer term or even in the medium term, would result in a perception change and in a lot more people using a service because it has become much more convenient for them to do so. Perhaps we can be too timid.

The Convener: It strikes me as peculiar that we have introduced barrier technology at a series of stations but that we cannot programme the barriers to be pay as you go. I would not have thought that that was impossible.

Who should we try to pursue these issues with? Meanwhile, we should write to the Scottish Government to clarify whether Scottish Rail Holdings Ltd is covered by the consumer duty legislation. If it considers that SRHL is not covered, we should ask what action it proposes to take to ensure that it is. It would be a deficiency if it is not.

I was also struck by what Mr Eckton said in his latest submission about how easy it is to miss the advertising on fares. We should ask SRHL about the action that it is taking to ensure that people can easily identify that. I would be very interested to know what advertising it does and how it evaluates whether that advertising has been successful.

Are there any other thoughts or comments?

Alexander Stewart: I, too, thank Monica Lennon for her presentation; she made some very valid points on the petitioner's behalf about the way forward.

Convener, you have identified that advertising is one of the biggest issues. There is a need to find out what action is being taken. These days, when someone purchases a ticket, nine times out of 10 it is not from an individual but through a machine. The machine tells them what the price of the ticket is, so they are not necessarily able to understand what options are available. They hit the button and it tells them what they can have. That process may not give them the cheapest or best-value ticket. Some of that needs to be looked at.

We have talked about technology and ensuring that developments can be made, but there is room for improvement as to how that can be managed on the ground.

Fergus Ewing: I preface my remarks by saying that I still feel as if I am serving my apprenticeship on this committee, so it may be slightly premature for me to say this. I wonder whether we are moving a bit beyond the specific ask in the petition towards a general tour-de-table discussion about the rail service in Scotland. That is perfectly interesting and valid, but to go back to what the petition says, it is very narrowly focused. I am not dismissing any of the points that have been made

before the committee today, but is it not our primary role to focus pretty forensically and ruthlessly on what the petitioner has actually asked for, rather than fish every sea in the ocean? Let us stick to our own waters.

The Convener: That is a perfectly fair observation. The actions that we have discussed can be linked back to the actual aim of the petition, but I agree that we have to be careful. Although I welcomed everything that Monica Lennon had to contribute, it invited us to stray slightly beyond, in a number of areas, the specific ambition of the petition.

We are always willing to receive an additional petition from another party on all those other matters. If we opened up an inquiry in the broadest possible terms in relation to every petition, we would—to extend your metaphor, Mr Ewing—be trawling very deeply.

Are members content to proceed on the basis of the various recommendations that we have had?

Paul Sweeney: On Mr Ewing's point, the important thing to focus on is TFL's submission, which discusses a technological solution that would deliver on the petitioner's request. The question then is why ScotRail is reticent to adopt such technology, when it is clearly deliverable in other jurisdictions in the UK and internationally. I am not convinced by its response.

The Convener: No. That is a fair point, which—as I said—relates to the petition.

Paul Sweeney: It may be analogous to the Highlands and Islands Airports Ltd investigation, which involved technology for the air traffic control system. It is perhaps not entirely similar with regard to the impact on jobs, but there is something in the fact that it involves a technological solution to deliver a performance outcome in transport. There is also the matter of the unconvincing response from ScotRail.

I do not know whether there is some engineering expertise that we could approach.

The Convener: Let us, in the first instance, pursue the issue a little bit further and see where that takes us. We can consider that response in due course. I thank Monica Lennon for her evidence.

Are members agreed on the way forward?

Members indicated agreement.

Redress Scheme (Fornethy House Residential School) (PE1933)

The Convener: Our next petition is PE1933, which has been lodged by Iris Tinto, on behalf of the Fornethy survivors group, is on allowing the

Fornethy survivors to access Scotland's redress scheme.

The petition calls on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's redress scheme to allow Fornethy survivors to seek redress. We were going to be joined by Martin Whitfield MSP, who has unfortunately had to go to a meeting elsewhere. However, we are joined by Brian Whittle MSP, who has an interest in the petition. I welcome him to the committee.

We previously considered the petition on 15 June. At that time, we agreed to write to the Deputy First Minister, Glasgow City Council and bodies representing victims and survivors of abuse. Since then, the committee has received responses from the Deputy First Minister, Glasgow City Council, Victim Support Scotland, the Moira Anderson Foundation, the National Association for People Abused in Childhood, Future Pathways and the petitioner. Copies of those responses are included in the papers for today's meeting. Our meeting papers summarise some of the issues that have been raised.

Members will also be aware that representatives of the Fornethy survivors group visited the Scottish Parliament very recently, on 27 October, and the matter of their exclusion from the redress scheme was raised directly with the First Minister at First Minister's question time on that day.

The written evidence that we have received from organisations that represent and support victims and survivors of abuse suggests that there is support for widening the scheme's eligibility criteria to include survivors who experienced abuse during short-term respite or holiday care.

11:45

The Deputy First Minister has stated that it was always the Scottish Government's intention to exclude arrangements where there was no exercise of public function in either the provision of accommodation or the reason for the child being resident in the care setting.

The responses from both the petitioner and Glasgow City Council highlight that records relating to Fornethy house are limited. It strikes me that it may not be possible to establish, one way or another, the reason for a child's stay at Fornethy, in order to meet the proviso that the Deputy First Minister has stipulated is to form the basis of their exclusion.

Before I open up the matter to committee members to see how we might proceed, would Brian Whittle like to say anything in support of the petition?

Brian Whittle (South Scotland) (Con): Thank you, convener—I am happy to have the opportunity to speak once again on this issue. At the outset, I note that the former Education and Skills Committee produced an in-depth and comprehensive report—I do not know whether members have seen it—as the bill that became the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 progressed through Parliament in the previous session of Parliament. I recommend reading that report.

Sexual abuse, and specifically child sexual abuse, has been swept under the carpet for too long, and victims have been left without the support that they desperately need. As several colleagues will be aware, I have been working on the issue with constituents for a number of years. I think that it is fair to say that my understanding of the trauma that they have suffered over a prolonged period, as they seek justice and redress, and my discomfort and disquiet at the way in which victims are retraumatised and left open to suffering secondary abuse, continues to deepen.

The redress scheme was designed to make it easier to access redress than taking a case to the civil court. However, the Criminal Injuries Compensation Authority already has a similar redress scheme in which the decision is based on the balance of probabilities. That is different from a criminal court, which decides on the basis of "beyond reasonable doubt", and the victim does not need to wait for the outcome of a criminal trial if there is already enough information to make a decision on a case. Crucially, however, the 2021 act suggests that the victim would waive their right to take future civil action and any subsequent payment from civil action, and if there had previously been a criminal injuries compensation scheme payment, the act would require that it be reimbursed.

I welcome the redress scheme, but I think that it is flawed. Most important, the 2021 act was designed to provide financial redress to survivors of historical sexual abuse while in care in Scotland. Welcome though the legislation is, it is too narrow in scope. When I questioned the Deputy First Minister on the eligibility criteria for the scheme, and on whether victims of sexual abuse in a school setting, for example, should also be included, he responded by saying that the scheme is designed to compensate those in situations where the state—a care home, in this case—had undertaken parental responsibilities.

However, the bill that led to the Education (Scotland) Act 1980 used the term "in loco parentis", which has the effect of transferring parental responsibilities to schools temporarily. There are many allowances as to where that can

be true, including specifically for the Fornethy survivors. That being the case, the 2021 act is flawed and could, I believe, leave the Government open to a challenge in the European Court of Human Rights and from the Equality and Human Rights Commission, because of its inequality of approach to the victims of a crime, especially such a heinous crime.

Members may be aware that there was a related case in which the judge found that the Irish Government had misrepresented a ruling by the European Court of Human Rights by excluding children who were abused in Irish schools from a redress scheme. Although I accept that the issues in that ruling are not exactly the same, it suggests that the 2021 act could be open to a similar legal challenge. Again, the Fornethy survivors sit directly in that path.

As I said, the 2021 act was and is very welcome, but it is incumbent on us to ensure that it is the very best that it can be for all those who have been victims of such a heinous crime and have to carry that burden throughout their lives. Financial redress will not heal their wounds, but it will at least perhaps give them comfort that their voices have been heard, and in the acceptance that they have been victims.

However, I think that more needs to be done on understanding the journey of those victims—both those who speak out and those who initially cannot do so. The repeated trauma of retelling their story to multiple agencies, and the lack of accessibility and adequate support, are all part of the jigsaw.

I have absolutely no doubt that the Government has a commitment to those who have suffered such a crime, but I think that it needs to be braver. It will need to look beyond the limitations of how the 2021 act is currently deployed for those who have suffered in similar ways but are currently excluded, including the Fornethy survivors. If the Government does not do that, it will require the legislation to be amended further down the road. We need to make the act everything that it could be. I speak on behalf of the Fornethy survivors and all those other child abuse victims who are yet to have similar redress.

The Convener: The Deputy First Minister, in identifying that the intention was to exclude arrangements where there was no exercise of public function, is compromised slightly when it is clear that it simply may not be possible to establish one way or another the reason for a child's stay at Fornethy. In the light of what Mr Whittle says and the further evidence that we have received, do colleagues have any suggestions as to how we might proceed?

Fergus Ewing: The Deputy First Minister in his reply said that it would be open to the Fornethy sufferers of non-recent abuse to apply to the existing scheme; in other words, he did not say that they were ineligible. In fact, I think that the implication of his reply to the committee was that they may be eligible. The difficulty is, as you have said, convener, how that can be proven if the records are not there.

I wonder whether we might suggest a solution for the Fornethy victims that, given that it is not possible for them to demonstrate how they came to be in care, they should be given the benefit of the doubt. Would that be possible? If someone is denied the opportunity to provide evidence because of the fact that public authorities have not kept that evidence properly—they have mislaid it or cannot find it—that is not the fault of the survivors. I know that that is not an in-principle answer, because if one has suffered in care, the explanation of how you came to be in care is not relevant. A victim is a victim, and as Victim Support Scotland argues in its submission, all victims should be entitled to redress.

That principle is easy to expound but more difficult to put into practice. I know that it has been considered by the previous Education and Skills Committee in far more detail, but I confess that I have not studied that, so I should put that on the record. Perhaps there are other arguments that I have not considered, but, in order to get a solution for the petitioners, I wonder whether we might make the point that it is simply not possible for those victims to provide evidence that they came to be in care because of a decision that was taken by a public authority. It appears that that is almost certainly the explanation for most cases of children who found themselves at that unfortunate place.

The Convener: I am very supportive of that suggestion.

Alexander Stewart: I concur with Mr Ewing. He identifies an area that requires to be considered. As Mr Whittle said, it is difficult not to include those individuals because of the circumstances that they found themselves in, so I am very supportive of Mr Ewing's proposal that we attempt to move the issue into that area. Doing that will give some redress to those individuals.

The Convener: Do members agree to take that forward? We would invite the clerks to draft a response for us to consider along those lines based on the evidence that we have gathered from a number of sources on that point.

It would be unusual, but I will let Mr Whittle back in; you are not here to assist us in our deliberations but merely to lobby us as we consider them.

Brian Whittle: I know that it is unusual to be brought back in. On Mr Ewing's point, I have highlighted the lack of record keeping across all local authorities, which seems to hamper things. The key here is that you only have to have probability; you do not have to have proof. I also underline the phrase "in loco parentis"—it is key to your deliberations. Thank you for allowing me back in.

The Convener: Your points have been noted. We will keep the petition open and proceed on that basis.

Members *indicated agreement.*

New Petitions

Digital Communications Infrastructure (Permitted Development Rights) (PE1954)

11:54

The Convener: The next agenda item is consideration of new petitions. PE1954, which was lodged by Lorna Buntain, calls on the Scottish Parliament to urge the Scottish Government to amend the current permitted development rights for digital communications infrastructure to encourage the use of underground ducting for new broadband service installations and avoid the installation of unsightly telegraph poles and overhead cables; ensure that local communities are made aware of plans to install digital communications infrastructure in their areas and are given an opportunity to share their views prior to any installation work taking place; and ensure that all digital infrastructure, including underground ducting, is routinely maintained by the developer.

Lorna tells us that, as part of the roll-out of ultrafast full fibre broadband, Openreach has erected hundreds of telegraph poles across Lennoxton and Milton of Campsie. That work was carried out without prior consultation with the local community. Having received no prior notice, local residents raised objections with Openreach about the installation of the telegraph poles only to receive what they felt were unhelpful and dismissive responses.

As we do with all new petitions, the committee requested an initial view from the Scottish Government. In its response to that request, the Scottish Government has highlighted that, although

"land use planning is a devolved power",

telecommunications remains "a reserved matter". In response to the petition's aim to amend permitted development rights, the Scottish Government notes that the permitted development right for digital communications infrastructure was included in phase 1 of its review of permitted development rights and was amended following a public consultation in August 2020. The Scottish Government believes that, having been recently reviewed and updated, the

"current provisions ... strike an appropriate balance"

and it has no plans to further amend permitted development rights in that area.

Do members have any comments or suggestions for action?

Alexander Stewart: I note the petitioner's comments, and it is also interesting to see the

information that has come back from the Scottish Government. Looking at the permitted development rights on digital infrastructure, I am not sure that, in reality, we can take the petition much further. Therefore, I propose that we close it under rule 15.7 of standing orders on the basis that the Scottish Government has recently reviewed and updated the permitted development rights for digital infrastructure, considered its position and struck “an appropriate balance” and that there are no current plans for further amendments to those rights.

The Convener: Thank you, Mr Stewart. Mr Ewing, I think that I saw you nodding in assent.

Fergus Ewing: Yes. I agree with Mr Stewart.

The Convener: Are we generally agreed, then?

Members *indicated agreement.*

The Convener: We thank the petitioner but, in view of the response that we have received from the Scottish Government, we will close the petition under rule 15.7.

Public Toilets (PE1955)

The Convener: PE1955, lodged by John Wood, calls on the Scottish Parliament to urge the Scottish Government to ensure that local authorities provide good-quality, clean and accessible public toilets by placing a statutory duty on local authorities to provide adequate public toilets and ensuring that sufficient funding is available to local authorities to meet that requirement.

The Scottish Parliament information centre briefing highlights a 2018 BBC report, which revealed that 15 of the 28 Scottish councils that responded to an FOI request had fewer public toilets in 2018 than they had in 2010. The briefing also points to a comfort scheme that runs in a number of local authorities and which provides grants to businesses and organisations when they register to become providers of toilet facilities. I have to say that I was unaware of that scheme.

In its response, the Scottish Government states that

“there are no plans ... to make the provision of public toilets a statutory obligation on local authorities.”

It points to the rural tourism infrastructure fund, which includes

“project proposals”

to deliver

“new public toilets, car parking, and waste disposal facilities.”

In his response to the Scottish Government, the petitioner says that the provision of public toilets is

“a basic requirement of public and environmental health”,

not simply “an optional ‘tourism’ issue”. He points to the Scottish Government’s role in ensuring “health and environmental protection” as a demonstration of why the issue is of national importance.

I note from a motion lodged by one of our parliamentary colleagues that this is national toilet week, of which I was also unaware. We are therefore considering the petition at an apposite moment. Do members have any comments or suggestions for how to take the issue forward?

12:00

Fergus Ewing: It is appropriate, and very convenient, convener.

There is, in principle, a strong argument behind what the petition calls for, but there is a more practical option that we might pursue. I appreciate that it is perhaps not absolutely what the petitioner wants, but we might want to consider asking the Scottish Government whether it believes that the rural infrastructure fund could be continued and extended. I know that the fund is a popular financial provision with both local authorities and the Scottish Government. It is fairly flexible, and I know that it has been well used in Highland to address local issues of concern in places such as the fairy pools on Skye and has enabled solutions to be found to some long-standing local community issues.

Given that experience, I wonder whether we might even encourage the Scottish Government to work with local authorities on using the fund to fill gaps in the provision of public toilets throughout the country. The scheme, as a *modus operandi*, seems to be practical and has been working in practice for a good few years now.

The Convener: Are there any other suggestions or are members content to proceed on that basis? It might also be useful to write to Highland, South Ayrshire and Aberdeenshire councils in order to understand how the comfort schemes operate. As I have said, I was not previously aware of them, and I would be interested to find out how many businesses are actually supportive of the schemes and what effort had to be put into achieving them; what the annual cost is; and how widely advertised and understood the schemes are. They would seem to offer an opportunity that other councils might wish to take into account. In addition, councils might seek to use the rural infrastructure fund that Mr Ewing has suggested we write to the Government about as a means of facilitating that.

Are we agreed?

Members *indicated agreement.*

The Convener: We will carry on the petition at our convenience.

Wheelchair Accessible Homes (PE1956)

The Convener: PE1956, lodged by Louise McGee, seeks to increase the provision of wheelchair-accessible homes. The petition calls on the Scottish Parliament to urge the Scottish Government to review the existing wheelchair-accessible housing target guidance, and to explore options for increasing the availability of wheelchair-accessible housing in Scotland.

In the background information to the petition, Louise tells us that she has been waiting for around five or six years to be offered a more suitable house, but the local authority has been unable to do so, due to a lack of wheelchair-accessible houses in the area. In its response to the petition, the Scottish Government has set out a range of actions being undertaken to increase the number of wheelchair-accessible houses across Scotland. They include making

“funding ... available through the Affordable Housing Supply Programme”

and publishing

“guidance for local authorities on the setting of Local Housing Strategy ... targets to support the delivery of ... wheelchair accessible housing across all tenures.”

The Scottish Government also states that it is taking forward reviews of the housing adaptations system and the “Housing for varying needs: a design guide” publication, and has suggested that

“the petitioner may wish to contribute to public consultations which will take place as part of this work.”

Do members have any suggestions that we might consider?

Alexander Stewart: The petitioner makes some valid points. Adaptations have been discussed in the past in the Parliament, and various committees have looked into the current situation and how it can be appraised.

I think it important that we continue with the petition, so I suggest that we write to the Convention of Scottish Local Authorities and the Scottish Federation of Housing Associations to seek information on the progress that is being made to deliver more wheelchair-accessible homes across Scotland, in particular. We can also seek confirmation from the Scottish Government on issues that the petitioner has raised. For example, in the petitioner’s view, there are issues with the current housing adaptations system—as I have said, the system has been looked at by committees in the past—in respect of the management of adaptations, the backlog and any difficulties in that respect. Seeking confirmation

from the Scottish Government would give us an update on the current situation.

The Convener: Are members content to proceed on that basis?

Members indicated agreement.

The Convener: The petition will stay open. We will write as suggested by Mr Stewart and consider the petition again in due course.

Motorhomes (Overnight Parking) (PE1962)

The Convener: PE1962, which was lodged by Lynn and Darren Redfern, is on stopping motorhomes parking overnight outwith formal campsites, caravan parks and aires. The petition calls on the Scottish Parliament to urge the Scottish Government to improve licensing enforcement on motorhomes to ensure that they park only in designated and regulated locations.

Lynn and Darren explain that motorhomes place an unnecessary burden on local communities when they park outwith formal spaces, with the disposal of rubbish, chemical toilets and dirty water. The Scottish Government has responded to the petition highlighting the rural tourism infrastructure fund, which has helped with the provision of facilities and with addressing issues of irresponsible waste disposal. It also highlights newly revised NatureScot guidance for land managers on off-road parking and positive awareness-raising work by the visitor management group.

The Scottish Government states that it believes that the current response to the increasing use of motorhomes is “sufficient”, and points to feedback that

“campervans have been managed better in 2022 than in previous years”.

Therefore, it does not believe that

“introducing a formal requirement to use specific sites”

would address

“the challenges outlined in the petition.”

Do members have any comments or suggestions for action on the petition?

Paul Sweeney: This is not only a rural problem, but a persistent problem in parts of Glasgow, too. For example, I have dealt with constituent correspondence in relation to the parking of motorhomes on Glasgow Green. The petition might give us an opportunity to look at what local authorities do to enforce motorhome parking and whether there are local byelaws or provisions that could be more widely adopted. I have to say that it feels like a matter for local authorities to deal with through byelaws and local levies and parking

restrictions rather than something to be dealt with through statutory measures.

Fergus Ewing: The petitioners are probably not alone in suffering inconvenience from the illegal parking of camper vans in inappropriate places, and there is no doubt that it happens. However, the Scottish Government response might be correct in that I am not sure that the particular prescription advocated by the petitioners will necessarily solve the problem.

It also occurs to me that, as a matter of road traffic law, and perhaps criminal law in relation to illicit parking or local byelaws—I am sorry; I do not know whether you have considered that—the petitioners' reference to aires is very helpful. I discovered when I was tourism minister that aires exist as facilities for caravans, camper vans and so on outwith settlements, with provision of services such as water and sewage facilities. They are serviced sites. They are very prevalent in France, which apparently has a network of aires, but we have not got off the mark with them here. I wonder whether, in an effort to solve the issue another way, we could ask the Scottish Government to consider promoting aires—I know that VisitScotland is keen on that—as something that would qualify automatically under the rural infrastructure fund, which again appears in our deliberations today.

I realise that that is not quite what the petitioners want, and I have some sympathy with them, because this is a big problem in the Highlands, particularly on the single-track roads that serve small communities. Illicit parking in lay-bys is another problem, particularly on the NC500 in the Highlands.

Aires would be the proper long-term solution. It would make everybody happy; holidaymakers could enjoy the countryside as they travel around in their camper vans, if that is what they choose to do, and locals could avoid being inconvenienced by that third-party pleasure.

The Convener: I am grateful for that exposition. It seems like a commendable action that we could take in relation to the Scottish Government.

Is there also a way forward for us on Mr Sweeney's suggestion? Would it involve our writing to the Convention of Scottish Local Authorities and finding out what enforcement takes place? I know from wearing a different hat in relation to showpeople that councils' approaches to this matter can be highly individual and variable in the extreme. I do not know whether there would be a common response, but it might be interesting to find out how those matters are being approached and dealt with.

Does the committee agree to keep the petition open, move forward on those two streams and see what further information comes to us?

Members *indicated agreement.*

The Convener: That brings us to the end of the meeting. Thank you all very much. We will meet again on 7 December.

Meeting closed at 12:10.

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

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