



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 17 March 2015

Session 4

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PUBLIC PETITIONS COMMITTEE
7th Meeting 2015, Session 4

CONVENER

John Pentland (Motherwell and Wishaw) (Lab)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Graeme Dey (Angus South) (SNP)
Jim Eadie (Edinburgh Southern) (SNP) (Committee Substitute)
Ian Hood (Learning Disability Alliance Scotland)
Jamie McGrigor (Highlands and Islands) (Con)
Beth Morrison
Scott Pattinson
Kate Sanger (Challenging Behaviour Foundation)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Petitions Committee

Tuesday 17 March 2015

[The Deputy Convener opened the meeting at 10:01]

Current Petitions

Alzheimer's and Dementia Awareness (PE1480)

The Deputy Convener (David Torrance): Good morning. I welcome everyone to the seventh Public Petitions Committee meeting in 2015, and I remind everyone to switch off mobile phones and electronic devices, as they interfere with the sound system. Apologies have been received from John Pentland and Kenny MacAskill.

The first item of business is consideration of five continued petitions. The first petition is PE1480, by Amanda Kopel, on behalf of the Frank Kopel Alzheimer's Awareness Campaign, on Alzheimer's and dementia awareness. Members have a note by the clerk and the submissions.

The most recent letter from the Cabinet Secretary for Health, Wellbeing and Sport advises that she met the petitioner at the end of January and that the Scottish Government is considering what further action it can take to deliver fairer care. Talks on the issue have been on-going with the Convention of Scottish Local Authorities for some time.

I invite contributions from committee members.

Angus MacDonald (Falkirk East) (SNP): It is encouraging that the Scottish Government has altered its stance from November 2013—when it stated that it had no plans to lower the eligibility criteria—to now considering the matter. I am also pleased to see that the petitioner, Amanda Kopel, has met the cabinet secretary and that the cabinet secretary recognises the concerns that she has raised.

Given that the cabinet secretary has said that she is considering very carefully what further action the Scottish Government could take, it would be helpful to seek further clarification from the Scottish Government about when its work will reach a conclusion.

Jackson Carlaw (West Scotland) (Con): I support that suggestion, although I have to say that I am rather disappointed by the lack of action and progress from the Scottish Government on this matter. We quantified that it is a relatively

limited number of people who are currently under the age to be eligible for care to whom the benefit would need to be extended, and there was general sympathy and support from all parties. When we saw the former cabinet secretary, sympathy and support were also expressed.

I am not really clear why no further action was being considered at that time. I am pleased that the matter is now being reviewed, but—unless someone can flag up to me why—I do not feel that it should necessarily require an extended review. A decision will be taken either that the principle is accepted or that it is not.

Therefore, when writing to the cabinet secretary to find out what further action the Government will now consider, I think that we would welcome early confirmation of that action and we should ask the cabinet secretary to explain what she believes that the issues are that would be weighing any decision by the Government in either direction.

John Wilson (Central Scotland) (Ind): I support Jackson Carlaw in that assertion. The difficulty is that, while we may write to the Scottish Government, the response from the cabinet secretary makes reference to what is being undertaken by COSLA in relation to a financial assessment template.

If we are going to write to the Scottish Government, I suggest that we also write to COSLA to find out when it expects to have the financial assessment template ready for use by local authorities throughout Scotland, and to ask what discussions COSLA has had with the cabinet secretary and her staff about any changes that may be required to ensure that the wishes of the petitioner are met in this case.

Hanzala Malik (Glasgow) (Lab): I concur—I think that all that needs to be said has been said.

Angus MacDonald: I agree with the further comments that have been made. However, if we are writing to COSLA I wonder whether there is any merit in writing to the breakaway group of local authorities, which seems to have formed a separate organisation to COSLA. I am not sure how many authorities have actually signed up to it, but it may be something to consider in the future.

The Deputy Convener: Is the committee happy to take forward the recommendations?

Members *indicated agreement.*

Group B Streptococcus in Pregnancy (PE1505)

The Deputy Convener: The next petition is PE1505, by Jackie Watt, on awareness of Strep B in pregnancy and infants. Members have a note by

the clerk and the submissions. I invite contributions from members.

John Wilson: The petitioner has raised a number of other questions that I think that we should be asking the Scottish Government to consider. The petitioner has challenged the views expressed by the Government and has indicated that, contrary to the response from the Scottish Government and some of the evidence that we have received, the enriched culture medium test is not—as far as she is aware—widely available in England. I think that it would be useful to submit the additional questions that the petitioner has raised to the Scottish Government and to seek its responses to the issues raised.

The only other issue I want to raise is that of patient-centred care. The response from the Scottish Government indicates that it would be up to the clinician to decide whether it would be appropriate for a test to be carried out. I think that we may want to get a message out to the Government that, given that we consider patient-centred care to be at the heart of national health service provision, it is worth reconsidering the wishes of the patient in circumstances where they feel that it may be appropriate for an ECM test to be carried out. It should not be purely at the clinician's whim.

Angus MacDonald: As John Wilson rightly says, the petitioner has raised a number of further points that merit a response from the Scottish Government. She states in her response to the Scottish Government's latest letter that it raises even more questions. We should feed those points back to the Scottish Government to seek its further response.

In addition, it would be helpful if the Scottish Government could provide a timeframe for the publishing of the revised booklet "Ready Steady Baby!". It will contain information about Strep B because the Government has promised to include it in the next edition. It would be good to find out when that is due to be published.

The Deputy Convener: If there are no other contributions, are members happy to take forward the recommendations?

Members indicated agreement.

Private Schools (Charitable Status) (PE1531)

The Deputy Convener: The next petition is PE1531, by Ashley Husband Powton, on removing charitable status from private schools. Members have a note by the clerk and the submissions. I invite contributions from members.

Angus MacDonald: It is clear that as this petition has progressed it has generated quite a bit

of debate and flagged up a number of issues regarding state schools.

It is interesting to note, for example, that local authorities have discretion to apply rates relief to non-profit-making organisations such as schools. That may be a way forward, perhaps creating a level playing field for both state and private schools. I believe that the figures would be in the region of £150 million for state-funded schools and around £9 million for independent schools. One report that I read—I think that it was in the *Sunday Herald*—mentioned a figure of £4 million, but I think that it is probably nearer £9 million for independent schools. State schools clearly deliver a social good, so perhaps they should be entitled to rates relief as well.

Much of the debate has centred on whether private schools deliver a social good. There is an argument to ask the Office of the Scottish Charity Regulator to carry out some research on the contribution of private schools, on the basis that OSCR must substantiate that they are delivering a social good. I suggest that we write to OSCR asking it to undertake that research.

Hanzala Malik: I agree with those sentiments. What needs to be established is the fact that there is a social good. If the state schools are looking for rates relief, it is appropriate that we should ask OSCR to give us some guidance and to carry out some work so that we can be better placed to make a decision.

Jackson Carlaw: I am interested in that observation. My understanding is that OSCR is currently required to investigate whether a social good is delivered and that it already does so. Many independent schools have been found wanting and have had to correct the level of contribution that they are seen to make.

I do not think that it is a case of challenging OSCR. The Government monitors the work that OSCR does; it seems to be content that OSCR is functioning in the way that was intended—that the legislation is actually operating. I am quite happy for OSCR to be invited to produce a report detailing what it has done and where it thinks it has progressed to.

When we took evidence in the first instance, I floated the idea that rates relief might be extended to state schools and I remain in favour of that. It seems to me to be a perfectly equitable thing. I gather that there are some technicalities with the law concerning how it would have to be managed, but I believe that it could be managed.

I also say that I find the correspondence that we are receiving from the petitioner to be intemperate, lacking in respect for the Parliament and for this committee, and to demonstrate a level of immaturity. I regret that—I have not found it

constructive. The letter I have before me from the petitioner this morning is not one that encourages me to think warmly of the approach that has been taken.

Angus MacDonald's suggestion that charitable status should be extended beyond the independent sector was loftily dismissed by the petitioner when evidence was taken on the first occasion. The suggestion that we extend a broader review of the Charities and Trustee Investment (Scotland) Act 2005 is extraordinary. Some 20,000 charities are involved, and the implications in terms of the time cost and the aims and objectives that would underpin it are not clear.

I am happy with Angus MacDonald's suggestion that we ask for some sort of report. I am sure that OSCR has already had to make a report, and that if such a report was made available to the committee it would satisfy us that the terms of the 2005 act and the regulations under it are being rigorously enforced. There is evidence for that in comments in the public media about a number of schools that have had to adjust the support that they give.

John Wilson: Some of the evidence that we have received for discussion today has been quite interesting, particularly the submission from the independent schools. However, we seem to be pulling two things together—the definition of private schools versus the definition of independent schools.

I have done some calculations, and based on the letter from the independent schools it works out that some 22.26 per cent of pupils attending independent schools in Scotland receive some form of grant support or funding support. However, part of that calculation takes in the schools, such as Donaldson's, that provide for pupils with additional support needs. There is quite clearly a need for that type of school provision; local authorities themselves feel that it is more valuable to have specialist support provided for some of those pupils.

10:15

If we write to OSCR and the Scottish Government, could we request that they break down what is meant by independent or private schools in Scotland? Unfortunately, what I consider to be the more charitable elements within the independent school system are lumped together with the rest, which mixes up the message about what we are trying to examine. There are a number of schools that make good provision, and we need to separate out the additional support needs provision and understand that the independent or private school sector is not all the same.

It is not that all schools do not provide valuable services, but there are particular schools in what is called the private or independent sector that are providing valuable services by delivering support to pupils with additional support needs in Scotland. We need to recognise that provision as separate from some of the other arguments that Jackson Carlaw has quite rightly identified in relation to the petitioner's issues regarding private education in Scotland today. We need to make that distinction: there are two elements of the education system included in the definition of the independent schools sector, and I would like to see them separated out.

We need to be clear that there are 600 pupils or students in the sector who are on full means-tested support when they receive education and others who are receiving some form of bursary support or support from the private education sector itself.

Jackson Carlaw: I have a slight confusion about that suggestion. OSCR is required to ensure that any school that has charitable status has demonstrated that, irrespective of its founding principles or definition, it is meeting the test.

I am not sure how interesting it would be to have the number of pupils educated in each sector identified. It would not really mitigate the need for every school to be able to demonstrate that it is fulfilling the obligations in order to be eligible for charitable status. Angus MacDonald's initial request is one that effectively incorporates OSCR's judgment of its work in ensuring that the charitable test is fulfilled by every school.

John Wilson: It depends who sets the test and how that test is applied. The petitioner quite clearly identifies that, in her view, the test is not currently sufficient to determine whether some of the schools in the private or independent sector should be receiving charitable status. I think that there are schools that genuinely would meet society's wider concern about charitable status; some other fee-paying schools that exist in Scotland, however, may be run or operated on a profit basis or a not-for-profit distribution system—

Jackson Carlaw: Is that not the responsibility of OSCR? It is not the *raison d'être* of this committee but of OSCR to ensure that the test is adequately applied.

John Wilson: Under guidance from the Government.

The Deputy Convener: OSCR assesses school by school and not across the sector; it assesses every individual school for charitable status, as it does any individual group that hands in its accounts at the end of the year.

Is the committee happy to take forward Angus MacDonald's recommendations?

Members *indicated agreement.*

Scotland's National Anthem (PE1541)

The Deputy Convener: The next petition is PE1541, by Chris Cromar, calling for "Flower of Scotland" to be officially recognised as Scotland's national anthem. Members have a note by the clerk and the submissions. I invite contributions from members.

Come on, Jackson. [*Laughter.*]

Jackson Carlaw: I was obviously somewhat disappointed not to be here when the committee took evidence on this petition, having a track record of commenting on the number of petitions that we receive encouraging us to adopt a national this, that or the next thing.

My understanding is that a lack of enthusiasm was expressed by the Scottish Government for moving forward at this time. Curiously, the existence of the petition has stimulated a limited national debate on the issue. It seems a bit like Marmite: this particular anthem is either loved or loathed. At this stage, it would be inadvisable for a committee of MSPs to embrace any particular anthem. The issue may arise in due course in some way but, at this time, I would prefer to follow a natural evolutionary route and suggest that the petition be closed.

Angus MacDonald: Consensus is breaking out on this one. Clearly, from the submissions that we have had from a number of contributors, the jury is still out as to which is the best national anthem for Scotland. In all the evidence that we have received, the most salient point is in the letter from the Scottish Government dated 13 February, the final paragraph of which states:

"Scottish Ministers believe that consideration of whether Scotland should officially adopt a national anthem and if so, what that might be, should not be led by the Scottish Government or by any single political party. We therefore have no current plans in this regard."

Given the position of the Scottish Government, and given that there is still a considerable amount of debate outside as to what the national anthem should be, we should close the petition reluctantly and allow that debate to continue.

Hanzala Malik: The petitioner was very passionate in his presentation on considering an anthem but, even on the day, it was suggested that more work perhaps needed to be done. That work does not seem to have happened yet. Hence, in the absence of additional support or of further work to justify which anthem should be adopted, I am also of the view that the petition should be closed. That decision still allows the

petitioner to come back with fresh information at a later date, and I would be quite happy to re-examine the issue at that stage.

The Deputy Convener: Is the committee happy to close the petition?

Members *indicated agreement.*

Dairy Farmers (Human Rights) (PE1542)

The Deputy Convener: The next petition is PE1542, by Evelyn Mundell on behalf of Ben Mundell and Malcolm and Caroline Smith, on human rights for dairy farmers. Members have a note by the clerk and the submissions. I welcome Jamie McGrigor MSP to the meeting; Mr McGrigor has a constituency interest in the petition. I invite contributions from members.

Jamie McGrigor (Highlands and Islands) (Con): As members will know, I have spoken on this long-running petition two or three times before. Thank you for allowing me once again to make a statement in support of my constituents, Mr and Mrs Mundell, and the other affected dairy farmers they represent, several of whom I know.

My constituents are disappointed with the responses received following their appearance at the committee on 13 January. They remain of the view that this is a human rights issue, since the affected dairy farmers in the ring-fenced area were prevented by Government from using their property—the quota they owned—to enable their businesses to survive. All other dairy farmers outwith the ring-fenced areas were able to sell their milk quota.

Many of those in the ring fence were dairy farmers with less good quality land, which meant that they were unable to diversify into alternatives such as arable crops, and many therefore went out of business. Further, individual dairy farmers were not consulted before the ring fence was decided on.

My constituents believe that the Scottish Government has repeatedly failed to address their concerns and recognise that their human rights were infringed. While we are aware that the Rural Affairs, Climate Change and Environment Committee has been considering the current and significant challenges facing the Scottish dairy sector, this is quite a separate issue, and—as they suggest in their response—the petitioners would welcome the Public Petitions Committee continuing the petition and asking further detailed questions of the Scottish Government on this matter. They would also like to present scanned copies of further evidence on the case for the perusal of members of the committee.

Hanzala Malik: I am of a similar opinion. I believe that there is a case to be answered. I see

from the cabinet secretary's response that there seems to be a measure of acceptance on the Government's part, which is helpful. I therefore suggest that we continue the petition and consider the fresh evidence that has been presented to see how it might help the situation.

Angus MacDonald: The committee will be aware that I raised the issue of ring fencing with the cabinet secretary when he gave evidence to the Rural Affairs, Climate Change and Environment Committee during the urgent inquiry into the dairy crisis. He pointed out that the milk quota system is being phased out at a European level and that, therefore, the ring fencing in the southern isles, Kintyre and Orkney will ultimately be less relevant or will simply be an academic matter. However, he raised the point that protection for the island communities in relation to daily production still needs to be considered.

I take on board the petitioners' view that the ring fencing in that part of Scotland has not been helpful, and I acknowledge that they believe that they have a retrospective case with regard to their human rights. However, I feel that the solution might involve going down the legal route rather than the Public Petitions Committee taking any further action. Clearly, if there is challenge to the Scottish Government, that must be handled by the courts, not by a parliamentary committee.

I think that we should either close the petition or wait until we have the dairy industry debate in the chamber at the end of the month so that we can see whether the issue is dealt with at that point.

Hanzala Malik: I am optimistic and I always feel that we should go the extra mile for people. The fact that the petitioners have brought fresh information is helpful. We should not crush people's hopes and aspirations and, therefore, we should allow that evidence to be submitted so that we can consider it. I do not think that it would be helpful to close the petition at this stage. We should go that extra mile and allow that information to come forward. I am keen to see it.

Jackson Carlaw: I note that Angus MacDonald asked questions of the cabinet secretary at another committee and that the cabinet secretary undertook to consider these matters.

There is an expectation that the issue might be addressed in the debate that is to take place, but, as debates in this Parliament often do, the debate could focus on some other aspect that arises and might not result in a satisfactory examination of this particular issue. I think that it would therefore be wise to take the debate into account and for us to decide afterwards whether the cabinet secretary was able to give further expression to his thinking on this matter. If we decide that he was not, we

should write to him at that point to ask about his position.

The Deputy Convener: Do we agree with the suggested action?

Members *indicated agreement.*

The Deputy Convener: I thank Jamie McGrigor for attending, and I suspend the meeting for a few minutes to enable the next petitioner to come to the table.

10:30

Meeting suspended.

10:31

On resuming—

New Petitions

Child Abuse (Mandatory Reporting) (PE1551)

The Deputy Convener: Item 2 is consideration of new petitions. The committee will hear from petitioners on two of the petitions.

The first is PE1551, by Scott Pattinson, on the mandatory reporting of child abuse. Members have a note by the clerk, the Scottish Parliament information centre briefing and the petition.

I welcome Scott Pattinson to the meeting. I invite him to speak to his petition and to explain what it seeks for no more than five minutes. After that, we will move to questions.

Scott Pattinson: I am here to protect and speak out for the most vulnerable and abused innocents who have had their humanity taken away from them by a sickness that has been in this country for far too long. There are Satanic people in society have been and are involved in the most sickening acts of sexual abuse, torture and even murder. That cannot go on. I am here to try to protect victims from institutions that have, in many incidents, utterly failed to protect and care for them in the way that they deserve.

Kerelaw school; Dolphin Square; Larchgrove boys home; Kincora boys home; Nazareth House; Rotherham, where more than 1,000 children were found to have been abused and the council resigned en masse; Fort Augustus abbey school near Loch Ness; and the Nottingham care homes that were involved in the operation daybreak police investigation—those are but a few of the places where abuse has taken place and has not been acted on.

The Deputy Convener: Thank you, Mr Pattinson.

“National Guidance for Child Protection in Scotland 2014” is wide-ranging and relevant child protection guidance. Why is it not sufficient?

Scott Pattinson: In some of the incidents that I mentioned, there has been a history of people just not having been heard. The introduction of mandatory child abuse reporting will enable people in the care services to come forward and not be afraid. It will push people to make the right decisions about the real victims.

The Deputy Convener: The reporting of child abuse is mandatory in places such as Canada, Australia and the US but there have been no convictions for not reporting such abuse. Do you think that the system would work here in the

United Kingdom, and that there would be convictions if child abuse was not reported?

Scott Pattinson: With regard to America, the introduction of mandatory reporting of child abuse has been a success, especially as regards the percentage of people who have been helped.

I just feel that we must bring in mandatory reporting because the time is right especially given the current climate and what the media have reported. In Scotland, in particular, I feel that it would be a great success, because there are scandals surrounding places in Scotland. People in those situations could have been helped but were not.

John Wilson: Your petition talks about making it a criminal offence to fail to report child abuse. Could you give us some indication of which organisations would be encompassed by your proposal? The wording is quite broad. Would it cover everybody in society? If any one of us at the table or in the public gallery were to fail to report child abuse, could we be committing a criminal offence?

Scott Pattinson: I meant the wording of my petition to relate to people who care for the most vulnerable and who have a duty to look after their interests and wellbeing. That is where my main concern lies.

John Wilson: The committee previously examined a petition on child sexual exploitation. You referred to a number of cases of child sexual exploitation that are currently live in the UK. We made recommendations to the Scottish Government on that issue, most of which it has taken on board. Is there anything other than what we have already recommended be done that you think should be done?

Given that we are working under legislation that was introduced only in 2014, would it not be advisable to provide an opportunity for that legislation to bed in, instead of moving to criminalise failure to report abuse? The named person route and the recommendations that have been made to teaching staff, medical staff and others in society mean that they should be more vigilant in relation to any abuse that might take place and more aware of that possibility, so would it not be advisable to let the legislation bed in rather than take further action?

Scott Pattinson: Mandatory reporting could be introduced in conjunction with the existing legislation. A system can be used that will work with my proposals. With a structure and the right people in place, the whole thing could fit together like a jigsaw.

John Wilson: You mentioned the most vulnerable children. The media have identified that

sometimes we do not fully understand when child sexual exploitation or child abuse has taken place. It has been reported that, in some cases, abuse has happened to children who would not, under normal circumstances, have been viewed as vulnerable. Do you want the proposal to encompass every child rather than just those who are identified as most vulnerable?

Scott Pattinson: Primarily, mandatory reporting should focus on the children who are put in care homes or any institution. From my own personal experience, I know that predators out there look for opportunities to embed themselves in those services. That has been the case on many occasions.

Jackson Carlaw: Good morning. Obviously there is a heightened atmosphere surrounding these issues, and almost daily, further information comes into the public domain that undermines public confidence quite considerably.

Since you submitted your petition, the Prime Minister's office has stated that new criminal sanctions for those who have failed to protect children from sexual exploitation will be at the heart of a new package of measures that is to be announced imminently. The terms of reference suggest that those measures appear to include the sorts of issues that you have identified.

Given that that is the case, would you hope for a fairly standard and common analysis and legal basis to be established across the United Kingdom as part of any further extension of measures in the area, rather than a piecemeal approach?

Scott Pattinson: What is proposed at Westminster could be made available for the whole country, but perhaps it would undermine the Scottish Parliament's position—I am not sure about that. We would probably have to act independently, because the situation in England is different from that in Scotland in that abuse seems to be reported more in England than it is up here. A different model would need to be implemented as a result of the difference between the two countries.

Jackson Carlaw: We would certainly have to legislate separately—there is no question about that—but should we perhaps legislate in similar terms so that there is a common understanding of what the offence might be?

Scott Pattinson: Yes, definitely.

The Deputy Convener: I offer my apologies to Jim Eadie for not welcoming him to the committee as a substitute for Kenny MacAskill.

Hanzala Malik: I thank you for your impressive presentation, Mr Pattinson—I like what you say. I would like the proposal to cover all children, not only those who are in one form of institution or

another. I am glad and grateful that your petition allows us to consider the matter of how we protect children in Scotland—you are right that that is important.

I am happy to continue with the petition, convener. We could get advice from the Justice Committee with regard to whether it can throw any light on the issue and whether legislation will be introduced. It might be an idea to ensure that the issues that are raised in the petition are encompassed in any such process rather than being added on at a later stage. That would probably be more appropriate, and would probably satisfy Scott Pattinson with regard to what he is trying to achieve.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, Mr Pattinson, and thank you for your evidence this morning. I seek clarification on a point about the scope of your proposal. Do you propose for the legislation to apply to professionals working in child protection, or would it apply more widely to the general public?

10:45

Scott Pattinson: I feel that the proposal in the petition should be targeted at people who work in care homes and social services. It could also apply to those who work in hospitals, but not as much. Care homes and social services would be the main areas.

Jim Eadie: Have you considered the possibility of adverse unintended consequences arising from your proposal? I wonder whether diverting resources towards the investigation of complaints might, in an environment of limited resources, mean less of a focus on children who are at risk.

Scott Pattinson: Most definitely. You raise a very good point. There is a real danger of people being taken away for the wrong reasons, as has happened in the past. Children have been taken away from their families through misreporting of abuse.

I do not think that I answered your question all that well.

Jim Eadie: You did fine. I just wanted to understand whether you had considered that possibility. If resources are being diverted towards the investigation of what would most likely be an increased number of complaints, there might be not as many resources focused on children who are at risk of abuse.

Scott Pattinson: That is a good point and I take it on board.

Jim Eadie: Thank you. I have no further questions, convener.

The Deputy Convener: The committee will now decide what action it wishes to take on the petition. What are members' views on the possible course of action suggested in the clerk's note?

Jackson Carlaw: Given the prospect of legislation proceeding at Westminster, I think that it would be helpful to write to the Scottish Government to ask whether it plans to have any conversations with Westminster on establishing the terms of reference of that legislation and whether it is minded to move forward similarly in Scotland.

We should also establish whether the Scottish Government thinks that the scope of the proposed legislation is appropriate. I imagine that the Scottish Government would want to examine some of the issues that Jim Eadie and other members have raised in questioning, but in the first instance it would be helpful to know what that legislation is and whether the Scottish Government is familiar with the provisions. The issues that we are discussing have now attracted public interest and attention across the whole United Kingdom, and there is an argument for applying—albeit separately under our respective legislative and legal systems—a rigorous and universal common standard.

The Deputy Convener: Committee members will be aware that a national inquiry is being held on the subject, and I suggest that we write to the Scottish Government to ask what it is doing in this area.

John Wilson: To get a broader perspective, we should write to a number of other organisations to seek their views on the petition. I was thinking in particular of Barnardo's Scotland, given that the charity has previously submitted a petition on child sexual exploitation. It might also be appropriate to write to COSLA. After all, the petitioner highlighted the issue of care homes, and at present COSLA plays a role in care provision.

I also suggest that we write to the Care Inspectorate, asking for its views on the petition and the proposal to institute a criminal offence. We need to be clear about the types of individuals and organisations that might be encompassed within such a change in legislation and find out their views on putting legislation in place for mandatory reporting.

Angus MacDonald: It might also be helpful to seek the views of the National Society for the Prevention of Cruelty to Children, the Child Protection and Safeguarding Consultancy, UNICEF and Shelter.

Jim Eadie: For completeness, and in view of the range of organisations that have been highlighted, I think that we should add Children 1st to that list.

The Deputy Convener: Is the committee happy with those recommendations?

Members *indicated agreement.*

The Deputy Convener: I thank Mr Pattinson for attending and giving evidence today, and I suspend the meeting to allow him to leave the table and the next petitioner to take their seat.

10:51

Meeting suspended.

10:52

On resuming—

Restraint and Seclusion in Schools (National Guidance) (PE1548)

The Deputy Convener: The next new petition is PE1548, by Beth Morrison, on national guidance on restraint and seclusion in schools. Members have a note by the clerk, the SPICe briefing and the petition. I welcome Graeme Dey MSP to the committee and acknowledge the letter from Alison McInnes MSP.

I welcome the petitioner, Beth Morrison, to the meeting. She is accompanied by Ian Hood from the Learning Disability Alliance Scotland, and Kate Sanger from the Challenging Behaviour Foundation. I invite Mrs Morrison to speak to her petition for up to five minutes and to explain what she is looking for, after which we will go to questions.

Beth Morrison: Ladies and gentlemen, I am here today with a number of other families to ask for your help in ensuring the safety of Scotland's most vulnerable children in Scotland's schools.

The use of restrictive practices, including restraint and seclusion, in Scottish schools that care for disabled children is poorly understood and inconsistent, leading to many of our children suffering what we believe is, at best, institutional child abuse and, at worst, criminal assault.

My son Calum suffers from epilepsy and sensory and communication difficulties. As a small 11-year-old—he wears clothes for an eight-year-old—he came home from school with multiple bruises on his arms and legs. He had abrasions on his spine, his upper chest was covered in a petechial haemorrhaging rash and his lips were blue. The school told me that staff had “restrained” him on the floor. I was also told that he had urinated during the restraint. That happened twice in three days. Because of a current police investigation, I am unable to say much more than that.

Families from all over Scotland have told me about their children being restrained at school, causing injuries such as scratches, bruises and abrasions. I have heard of disabled but mobile children who use wheelchairs for extended walks being strapped in by so many straps that the chair was effectively being used as a mobile prison. The straps on one child's wheelchair were so tight that the child could hardly breathe. We also hear of children being manhandled and dragged into what are called "safe spaces" without proper supervision or recording. We believe that that is a deprivation of their liberty and human rights.

We believe that, in many cases, disabled children are being subjected to restraint or seclusion as a punitive measure. Corporal punishment was banned in Scottish schools more than 30 years ago but, in our opinion, failures in guidance and scrutiny have allowed some schools to effectively reintroduce it illicitly for disabled children.

Disabled children have a right to be cared for by school staff who are trained in understanding the function of challenging behaviour. Many children and young people who have complex communication disorders and sensory and learning difficulties might present particular behavioural phenotypes.

All those things affect their behaviour and their ability to express themselves or to communicate their needs. Our children are often unable to say "I'm hungry, thirsty, tired. I'm in pain". Without the training and knowledge that are essential in understanding the function of the behaviour, staff use restraint and seclusion to overpower and control the child using brute force. That is completely unacceptable.

We know that our experience is part of a much wider failure of public policy in Scotland, and that is what we desperately need the Parliament to address.

In schools, there is a lack of national guidance on support for and management of behaviour of children who have special needs, and a lack of appropriate independent regulatory oversight. Some guidance exists for children in residential care. That guidance, which is called "Holding Safely", was not designed with any consideration of or expertise in disability. As such, it fails to take into account the complex support that young people who have special needs require.

"Holding Safely" might provide a starting point for a new national policy but it is not a substitute for it. We need guidance to protect children who often lack language skills and who are not believed when they speak up. Winterbourne View has taught us that sometimes the places that are

meant to protect the most vulnerable can be the most dangerous.

At the moment, it is up to each local authority to develop its own policy on behaviour management and physical intervention. That has led to massive inconsistency in practice. There is also evidence of outdated thinking and, frankly, inhumane practice, where a failure to show any degree of empathy with or understanding of the child is evidenced by institutional treatment that would never be accepted if practised on a typically developed child.

Such ad hoc policies result in poor practice. There is little accountability, and there is no effective mechanism for parents or other professionals to challenge failures in local council schools. The lack of an independent regulator combined with outdated policies and poor training is a dangerous combination and provides an easy pathway for an abusive culture.

We need the Parliament to make the best practice that is apparent in some schools—such schools exist—become the norm in every school where special needs children are educated in Scotland, and to ensure that if abuse and neglect occur, there is a truly independent body that uncovers and deals with them as swiftly as possible.

Things are happening to disabled children in schools that would not be acceptable if those children were not disabled. Throughout Scotland, from Elgin to Edinburgh and from Dundee to Dumfries, we know of children who have been put at risk and are damaged as a result. Please help us to protect Scotland's children.

The Deputy Convener: Thank you.

Do you think that local authorities do enough, especially with training and producing guidelines?

Beth Morrison: Absolutely not. They are not doing enough. The training of staff is really important. Kate Sanger will talk a little bit about training, if the committee does not mind.

Kate Sanger (Challenging Behaviour Foundation): It is apparent that staff lack the training and skills to understand the function of challenging behaviour. Staff are also poorly supported in such cases. When they are faced with challenging behaviour, they do not understand that the child is trying to communicate a need. They often respond with a more physical or confrontational approach, and that leads to injury to the child and to the staff. There needs to be clearer training and support, and a better understanding of why our children challenge. They challenge for a whole load of reasons. Some lack verbal skills, for example. Some have complex communication disorders and understand only

small chunks of language. If they are overloaded with language, they become anxious and may try to push staff away, and staff respond physically. There is a need for more education for staff.

11:00

Ian Hood (Learning Disability Alliance Scotland): One of the important things that we hope for in national guidance is time for reflection. There has been a lot of talk recently about mindfulness. If after an incident has happened there is no time for support staff or teachers to think about what has happened and how it can be dealt with, it can be easy for them to think that it was a wilful act and not simply something that the child could not help. We have evidence that suggests that, if teachers and support staff think that a child's behaviour is wilful, they will believe that the child should be punished and made to control themselves, rather than thinking that the behaviour is a result of their condition. Guidance should be able to influence local policies to make time for mindfulness to develop.

The Deputy Convener: If national guidelines were implemented, how important would it be to you that an independent regulator was also appointed?

Ian Hood: We think that that would be really important. Currently, local policies vary quite a lot, and it is up to local authorities to decide how their policies are checked, so it falls between two stools. Where residential schools have children staying over, the Care Inspectorate has a duty to inspect all aspects of their care. In day schools, Her Majesty's Inspectorate of Education considers behaviour issues, but only in so far as they affect learning or the management of the school, not the management of individuals. Therefore, there is nobody right now who will look at what has happened to some of the children we have come across so far. That is a gap, but it would not take a lot to close it—the remit of either the Care Inspectorate remit or HMIE could be extended. We do not know which would be best to do that; we think that deciding that is a job for somebody who knows a bit more about the situation than we do. However, we want the issue to be looked at by those who really know and understand these matters.

Jackson Carlaw: I congratulate the petitioners on a powerful, articulate and well-rounded presentation.

I refer you back to the petition, because I am interested in the passage that states:

"We met and wrote to the Minister for Children and Young People on some of these problems in 2013."

It goes on to say that you received a response stating:

"I hope that you are assured that your concerns have been taken very seriously."

Unless you wish to contradict me, I would summarise by saying that you are not altogether satisfied as a result of that response that your concerns have been taken seriously. Are you aware of any actions arising as a result of that meeting and subsequent correspondence, or are the lists of specific requests that you have identified in the petition the sort of agenda of issues that you have been recommending but on which, to date, you have not managed to achieve any progress or support from the Scottish Government so the agenda can move forward?

Beth Morrison: You would be right in assuming that, at the time, we were not satisfied with the response from the minister. We have had no feedback apart from that "hope" that we were satisfied—but we were not satisfied. We tried to engage a second time, but we were simply referred to the first reply and told that ministers would not engage any further, which is most unfortunate.

Jackson Carlaw: Who has contributed with you to the development of the guidance that you have produced and would like to see implemented, and what broader coalition of parties do you think now supports it and can evidence the work that you have done?

Ian Hood: We have built up quite a group of people who have advised us. They range from people who teach restrictive practices to people who are experts in childcare practice. We have had discussions with Scotland's Commissioner for Children and Young People, and we have even had some interest and support from a person who supports ChildLine, whose name is familiar although I am not in a position to name them here. We have had a whole range of interest in our proposal, and we have come up with some ideas that draw on existing good practice, but we do not pretend that we know all the answers just now. We know that some things have to be addressed, we know about some of the problems that happen across Scotland, and we think that a lot more can be done.

In fairness to the Scottish Government, we have worked on the issue for a couple of years, and when we met it a couple of years ago, national guidance was not the only thing on the agenda. We have developed the proposal since then. Again, in fairness, we would not say that the Scottish Government has said that it will not do anything. It has identified "Holding Safely", which has been mentioned and which it thinks could be part of useful guidance. However, that guidance does not refer to education law or the deprivation of liberty, and it is highly focused on the practice of

restraint rather than on de-escalation and defusing situations.

Jackson Carlaw: You were a model of fairness when it came to the Scottish Government, Mr Hood.

Have you communicated your agenda of issues to the Scottish Government and, if so, have you had any response, or are you bringing the issues forward publicly to the committee with a view to our exploring them further? I am trying to understand whether the information is new and the Scottish Government has not received it from you in this form.

Beth Morrison: We chose to bring the issue through the Public Petitions Committee to raise the points that we wanted to raise and to ask for national guidance.

John Wilson: Thank you for your presentation, Ms Morrison.

Mr Hood indicated that there may be good practice out there and that you are drawing down good practice. Can you give examples of where good practice is being delivered and where it may not be being delivered?

Beth Morrison: Obviously, I do not want to talk about specific schools, but my son was, thankfully, removed from the school in which he was hurt. He is now very happily and very well supported in a local school, which is excellent and manages perfectly well. It concentrates on positive behaviour support.

Angus Council has a no-restraint policy and focuses on positive behaviour support and meeting the needs of the child, which works much better. There is a lot of evidence out there that positive behaviour support with disabled children works. People need to look for the function of the behaviour.

I must make it clear that, when I talk about behaviour, I am not talking about just behaviour that you or I might think of as challenging or bad behaviour. We are not talking about naughty children; they are the most severely disabled children. As we have said, a lot of them do not have language. To give an example, a child may not be able to ask to go to the toilet. The child might just stand and look at the person expectantly. If the person is not trained and does not understand what the child is trying to say to them and the child cannot say that they need to go to the toilet, it will not be long before that child's needs are not met. The child will start to get agitated. Can you see where I am going? It is about getting to know the children.

There is some really good practice. My son's school is excellent. It meets the child's needs. If the child's needs are met, there is no need for the

child to progress to challenging behaviour. There is a problem when a school has a control and management approach and does not look at the function of challenging behaviour, and its response is just to restrain and control the child. That is not what we want.

John Wilson: For clarification, are the two schools that you referred to in your son's case in the same local authority area?

Beth Morrison: No.

John Wilson: So one local authority—I am trying to generalise—has adopted the positive behaviour support model and another has not done so in its education provision.

Beth Morrison: When Calum was hurt, his school had what it called a positive handling policy, which is not the same as positive behaviour support. Some local authorities have decided to have no policy at all. That is not always great either, of course, because teachers are then left without training, and they often manhandle and restrain children based on their limited personal experience. Claiming to use physical restraint as a last resort then becomes no more than a cheap rhetorical phrase, and that is impossible to monitor.

We want the training to be universal, and that is why we need national guidance. There are too many discrepancies at present. For example, one local authority has training on positive handling that focuses on the restraint of a child while another local authority promotes positive behaviour support, which works much better. They are all left to do their own thing just now, which is not good. We need national guidance.

John Wilson: You referred to positive handling and talked about positive behaviour support, but you said that in your experience some teaching staff are not adequately trained in either method. Do you feel that there is enough training out there for teaching staff to understand the particular needs of children with additional support needs in the education system?

Beth Morrison: Unfortunately, the training varies from local authority to local authority, but there is a lack of training across the board. The training is there and it just needs to be accessed and brought forward. I do not know whether a funding issue is preventing that, but we really must have the training.

Ian Hood: For example, for children on the autistic spectrum, the Scottish Government is introducing a new training strategy across Scotland to try to ensure that there is more consistent teaching for staff at different levels on what autism is and how it affects people. Right now, training is very much a patchwork across the

country. There are moves to address some of that but, for the teachers and support staff that Beth Morrison referred to, that can sometimes mean as little as a four-hour awareness session on teaching and autism—that is all that they get. One thing that we know about children with autism is that each child has different needs.

John Wilson: Does Ms Sanger have any comments, given her expertise in the area?

Kate Sanger: The time has come to give teachers the necessary training and skills. We in Scotland could lead the way in doing that. That would be good because we will be judged by how we treat the most vulnerable in our society. Change is definitely needed and it would be good to see Scotland leading the way, because we are seeing problems up and down the country.

It is not rocket science. If we understand a child's needs and change the environment or give them the right support, we change their behaviour. It could be something as simple as a young man who cannot cope with a busy activity but does not have the voice to say that. He can be taught a sign for taking a break or something simple like that. For a child who is being challenging to escape from situations, giving him communication skills will make a difference in his life.

Beth Morrison has talked to many teachers and has been astounded by their response that they do not even know what positive behaviour support is, which is quite sad.

Jim Eadie: Good morning, and thank you, Ms Morrison, for your excellent presentation.

The current guidance on the use of restraint in residential childcare, "Holding Safely—A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People", includes the statement:

"Restraining a child at the right time, in the right way, for the right reasons, can be a better thing to do than failing to restrain them."

Are there ever circumstances in which restraint is an acceptable response within positive behaviour support, or would you want to make a clear statement about it not being acceptable in that regard?

Kate Sanger: When we do a positive behaviour support plan, it is made up of proactive strategies that involve giving the children as many strategies as possible to support their behaviour and learning. We also have reactive strategies, and restraint would come under the description of a reactive strategy. It is acceptable when there is a danger to the child's life—for instance, if they are going to escape from a building and they could be injured. However, that has to be put in the plan for behaviour support. If it is an emergency situation,

we learn from it and we go back and include it in the plan. The British Institute of Learning Disabilities says that restraint is acceptable when it is to safeguard someone's life or that of other people involved, but it should always be the last resort and it should always be part of a bigger plan.

11:15

Ian Hood: The "Holding Safely" guide was the big step forward for children in residential care. It was highly appreciated by the staff who worked there. The recommendation is that all holds that are to be used should be agreed by the child and their care giver—their next of kin or guardian. Therefore, what happens should not be sprung on children. The benefit of such an approach is missing in the absence of national guidance.

There is no care plan for any of the children at school; there is just a different system. Therefore, there is no fit with the exact circumstances there. Although people might say that the "Holding Safely" guidance can be used, that does not fit with what people need to know in that situation.

Kate Sanger: Dr Brodie Paterson, who was part of the team that produced the "Holding Safely" document, said that it was never designed for children with learning disabilities. A very small part of the document touches on that, but it was never written for children with learning disabilities.

Jim Eadie: That clarification is very helpful in informing our understanding of the issue.

There is national child protection guidance, which was updated in 2014, and there is additional guidance for child protection for disabled children. Have you considered the possibility of either or both of those pieces of guidance being amended? Are you wedded to the idea that we must have separate national guidance?

Kate Sanger: I spoke to Dr Brodie Paterson, who was among those who produced "Holding Safely", as I have said, and he thinks that we have to produce separate policy and guidelines for children with severe learning disabilities or learning difficulties, because they are a different client group with specific needs. Those need to be addressed in a bigger and wider-ranging document.

Jim Eadie: Have you been able to raise those issues directly with the Scottish ministerial working group on child protection and disability? If not, why not?

Beth Morrison: I believe that we tried. We were working with an organisation in our local authority, and it met some time ago, but that was not followed up.

Ian Hood: Our understanding is that there was a proposal to put the matter on the agenda of that working group, as I remember it.

Beth Morrison: Yes—possibly.

Ian Hood: That is how I understand it, but we have not heard any more since then.

Jim Eadie: The committee might wish to follow up with the ministerial working group to find out what consideration it has given to the issues that you have raised.

John Wilson: I have a question about a comment that Mr Hood made about individual care plans for school pupils, which I know about from previous experience. A number of years ago, I had to become involved in the case of a primary 7 child who had autism, and I found out only after investigating the matter that no individual care plan had been put in place for the child. How important are individual care plans for children who attend any educational facility in ensuring that their needs are appropriately met by the school or establishment?

Beth Morrison: They are absolutely essential. When this happened to my son, he had no care plan or individual educational programme. Although we had met representatives of the school on a number of occasions, he had no care plan at that point, and this is an issue that must absolutely be addressed as part of a child's care plan. In fact, I was not even aware that the school could do that a child; my son had been in another school without incident. The only time that he was ever subjected to restraint was in one class over three days, and he has not been affected by it since.

Now that my son is under a different local authority, he has a care plan and an IEP. That is good practice. Unfortunately, that service is not provided across the board, and it should form part of the national guidelines. Local authorities know that best practice dictates that they should provide a care plan, but the reality is that they do not always do so.

Ian Hood: I would be wary of adding another layer of planning in schools. There are co-ordinated support plans for children who need additional social work and health input and individual educational programmes for children who have special needs, and child plans are also being introduced. In some local authorities, 50 per cent of kids with additional support needs have those plans, but in other local authorities the figure is as low as 5 or 10 per cent.

There are a lot of planning structures but for reasons that I do not understand, they are not always used. It might be that the structures, such as the child plans that are just being introduced in some areas, could, if necessary, deal with issues

such as the handling of behaviour, the teaching of children, communicating the need for time out and all sorts of other things. The tools are there but, for different resource reasons, they are probably not being used yet.

John Wilson: I am interested in Ian Hood's response that, in some local authorities, plans are provided for as little as 5 or 10 per cent of children while in other areas the figure might be up to 100 per cent. The issue is about getting consistency throughout the education system. Mrs Morrison's case clearly highlights the fact that in one local authority there was no provision for behavioural planning while, in another, a child can be part of an educational service that is fulfilling their needs.

We have not talked about seclusion so far. That is important in the wider mix with regard to the petition, because it means that someone in the teaching profession, whether it be the teacher, the support staff or the headteacher, decides that the child should be taken out of class and secluded from the rest of the educational learning that is taking place. We must ensure that such issues are highlighted and dealt with and that best practice operates as much as possible throughout Scotland.

The Deputy Convener: Does anyone have any further questions?

Beth Morrison: Would it be possible for Kate Sanger to talk about seclusion for a minute or two?

The Deputy Convener: Okay. On you go, Kate.

Kate Sanger: Seclusion does not teach the child anything; it is just a method of control. A lot of children with learning disabilities have a high rate of health problems. If they cannot communicate that they are in pain, they will use their behaviour to try to escape. It is very sad that children in pain are getting carried along corridors and put in safe spaces—seclusion areas—without even being monitored.

Seclusion is a serious matter. It does not benefit the child in any way; all it does is give the teacher control over the classroom. If proper strategies had been introduced in the first place, they might not have had to remove the child.

Beth Morrison: Sometimes seclusion and restraint are used as punitive measures. However, the British Institute of Learning Disabilities guidelines say that restraint or seclusion must not be used to punish a child. We need to get across to staff the message that they need to teach, not punish. Disability cannot be punished out of a child. My little boy has epilepsy; his brain is broken. I cannot help that, and neither can he. He should not be punished because of his disability.

The key point that we are trying to get across is that the children are not behaving badly just for the sake of it. They have no control; they do not have the cognitive skills to have tantrums and be little ruffians. The issue is their disability, so we must meet their needs.

The Deputy Convener: Graeme Dey, would you like to add anything?

Graeme Dey (Angus South) (SNP): I came here as Mrs Morrison's constituency MSP to support her petition, because what it calls for is simply reasonable and eminently sensible. I am sure that the committee will take that on board when it comes to its conclusions.

The Deputy Convener: As there are no further questions, the committee will now decide what action it wishes to take on the petition. What are members' views on the possible courses of action suggested in the clerk's note?

Jackson Carlaw: This is an interesting petition that, unusually, sets out not only its aims but some specific objectives that, to be fair, the petitioners have said are not necessarily exclusive or finite. We should take it forward. The clerks have produced a list of organisations with whom we should get in touch, including the Scottish Government, the Care Inspectorate, Scotland's Commissioner for Children and Young People, Enable Scotland, the Scottish Children's Services Coalition, the Educational Institute of Scotland and Learning Disability Alliance Scotland. I am supportive of that suggestion.

John Wilson: I would add COSLA to that list. Based on the evidence that we have heard this morning, there is clearly good practice out there, but there is also some less than good practice being carried out by local authorities. It would be useful to hear from COSLA about how it sees the issue progressing, because it is up to local authority education departments to deliver these services.

Jim Eadie: I would also like us to contact Children 1st. Moreover, given my earlier comments, I think that we should make a direct approach to the Scottish ministerial working group on child protection and disability.

The Deputy Convener: Is the committee happy with those recommendations?

Members indicated agreement.

The Deputy Convener: I thank Mrs Morrison, Mr Hood and Ms Sanger for giving evidence. We will suspend for a minute or two to allow them to leave the table.

11:27

Meeting suspended.

11:28

On resuming—

Disabled Parking (Private Property) (PE1559)

The Deputy Convener: The third new petition is PE1559 by George Nelson on disabled parking on private property. Members have before them a note by the clerk. As the petitioner has indicated that he no longer wishes to proceed with the petition, I invite the committee to agree to close it formally.

Members indicated agreement.

The Deputy Convener: At this point, I close the meeting.

Meeting closed at 11:29.

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