



OFFICIAL REPORT
AITHISG OIFIGEIL

Citizen Participation and Public Petitions Committee

Wednesday 7 February 2024

Session 6



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Wednesday 7 February 2024

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CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE
2nd Meeting 2024, Session 6

CONVENER

*Jackson Carlaw (Eastwood) (Con)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

*Foyso Choudhury (Lothian) (Lab)

*Fergus Ewing (Inverness and Nairn) (SNP)

*Maurice Golden (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Brendan Barnett

Sarah Boyack (Lothian) (Lab)

Bill Cook

Alison Dickie

Rob Galbraith (Transport Scotland)

Màiri McAllan (Cabinet Secretary for Transport, Net Zero and Just Transition)

Neil McLennan

Lawrence Shackman (Transport Scotland)

CLERK TO THE COMMITTEE

Jyoti Chandola

LOCATION

The Alexander Fleming Room (CR3)

Scottish Parliament

Citizen Participation and Public Petitions Committee

Wednesday 7 February 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Jackson Carlaw): Good morning and welcome to the second meeting in 2024 of the Citizen Participation and Public Petitions Committee.

The first item on the agenda is one for colleagues, and it is a decision on taking business in private. Do members agree to take in private item 5, which is consideration of the evidence that we are about to hear from the cabinet secretary and others as well as the evidence that we will hear in relation to whistleblowers, and item 6, which is consideration of our work programme?

Members *indicated agreement.*

A9 Dualling Project

09:30

The Convener: Agenda item 2 is our inquiry into the A9 dualling project. This evidence-taking session follows on from the evidence that we took at our previous meeting from the Civil Engineering and Contractors Association and current and former senior leaders at Transport Scotland, one of whom, I see, has a season ticket to our business and has hastened back to tell us something different this time, I hope, not the same thing again.

That said, I am delighted to welcome this morning the Cabinet Secretary for Transport, Net Zero and Just Transition, Màiri McAllan MSP, and from Transport Scotland: Lawrence Shackman, director of major projects; Jo Blewett, head of sustainable transport projects and former A9 programme manager for the development of the statutory processes; and Rob Galbraith, head of project delivery.

I should also say that we have received apologies from Edward Mountain MSP. He has been joining us as a reporter from his own committee but, this morning, he has other committee business and is unable to be with us.

Before I invite the cabinet secretary to say a few words, I should say that I have been looking at the way in which the inquiry has been going, and I think that it would be helpful if there were two phases to our questions, the first on how we got here, and the second on where we are going. I think that Mr Galbraith will remember that, at our previous meeting, we seemed to dot between the two a bit. Given that our focus is very much on where we are going, I want the earlier phase of questioning to be quite brief and to the point; I just want to clarify things that we have heard and see whether we can tie down in our minds where we had got to before.

Members will be invited to come in randomly as they see fit. I am not one of these people who allocate everything in advance—I await being inspired by colleagues and the questions that they ask.

Cabinet secretary, you have given us a very comprehensive submission in advance of this morning, and I am very confident that you will not repeat it in full just in your opening remarks, which I invite you to make.

The Cabinet Secretary for Transport, Net Zero and Just Transition (Màiri McAllan): Thank you very much for inviting me along to the inquiry.

As you have noted, the committee has already received a written submission. Members will also

have heard my statement to Parliament, which I delivered just prior to the Christmas recess and which was very much about what you have just been talking about, convener—a forward look at completion of the A9. The committee has also taken a considerable amount of written evidence from ministers and from current and former chief executives of Transport Scotland, along with a range of stakeholders.

Given the extent of the first-hand evidence that has been collected on historic events, convener, I expect that, today, I can add most value by doing just as you have suggested and looking forward. That said, I absolutely want to be able to assist the committee with its retrospective look, too, to the extent that I am able. As I noted in my submission, I have considered all the previous written statements and have taken advice from my officials on the period leading up to my appointment last year. I hope that you will appreciate that my reflections will be just that—reflections, not first-hand experience.

That said, I am very pleased to have published the refreshed delivery plan for the A9, which was, as I have said, delivered in December not only to foreground certainty of delivery but to balance delivery very carefully against the need to minimise disruption, to take account of market capacity and, indeed, to work within the financial constraints that we face.

My final comment is about the criticality of safety and how important that issue has been for me. I put on record my heartfelt sympathies to everybody who has lost a loved one on the A9 or who has been injured in an accident, which is something that has been pointed out to me as being of great importance. Dualling, as far as I am concerned, is the key safety mechanism, but as we cannot wait for it to happen, interim safety measures are being pursued, too.

I will conclude there, convener. I very much welcome this opportunity to restate the Government's commitment to the A9 and to look back, in so far as I am able to from my own experience. I very much understand the committee's interest in this—and of course, given its nature as the committee with responsibility for public petitions, the public's interest, too.

I look forward to members' questions.

The Convener: Thank you very much, cabinet secretary.

I do not want to lose sight of the fact that we are advancing the interests of a petitioner and a petition, the ambition of which is to have the A9 completed and to ensure that consideration is given to a national memorial. As a result of your statement to Parliament, a programme has now been identified that will ultimately deliver on the

petition's aims, which is why we now want to talk about how that will be achieved and whether there are risks associated with that in the current marketplace.

Looking back, I would just say that the committee was grateful—probably less grateful than we expected, though, given that it all arrived just before Christmas—for the voluminous response that we received to our requests for information. The pile was about a foot thick at the end of the day. Are you aware of all the stuff that we have received, cabinet secretary? Have you been briefed on past experience instead of having read through all of it yourself?

Màiri McAllan: If I remember correctly, convener, I think that upwards of 80 papers were sent to the committee. I have read a selection of them, and I have read summaries of a selection of them. I have also read the written statements from previous ministers.

The Convener: I want to start with a question that I put to Mr Galbraith last week, and he will, no doubt, want to reassure me in the same soporific tones with which he sought to reassure me last time.

First of all, this is not an issue that I have been directly involved with; indeed, as the member for Eastwood, I have to say that it is not the first thing that is of concern to my constituents, and it is not, as it is for some, my particular field of expertise. However, I read through the narrative, and here I come to the point that I tried to explain to Mr Galbraith. What I saw in that narrative was that, even though there was an acceptance of the challenges associated with all of this, there was still a consistency of commitment and policy objective with regard to delivering the A9 by 2025, both privately and publicly, from the moment the project was announced until somewhere around 2018 when—as I found on reading the papers—a vagueness started to come in.

I have never been able to quite understand the genesis of that. It is not clear to me whether it was those involved in the delivery of the project who thought that something was not going to happen and that they needed to start thinking about different funding streams and operational approaches—none of this was shared with the public, by the way; it was all happening internally—or whether ministers themselves were leading all of this.

Last week, Grahame Barn said that he thought that the target became unachievable

“because the political will to provide the funding required to do the job just was not there when required.”—[*Official Report, Citizen Participation and Public Petitions Committee*, 24 January 2024; c 4.]

I want to try to understand this. Given that the Parliament and the public only became aware much later that we were not achieving the target, I would like to know what happened. How did it become apparent to ministers that the challenges that had been identified might mean that there would be a delay, and who then tried to drive things forward by looking at whether there were different ways of doing it? Did it come from the top down or the bottom up?

Màiri McAllan: I think that that is a very fair observation. I will seek to answer all your questions, but please do come back to me if I miss any of them.

I would just start by saying that there was always an understanding that the A9 was a complex project. Indeed, I said as much in my statement to Parliament. It is actually 11 complex projects, and it is evident right from the early papers that Alex Neil received that it is complex in the statutory processes that have to be gone through, in its design, in the procurement approach, and then, of course, in the way that it is funded.

Convener, you mentioned 2017-18 as being the point at which, in your view, it was accepted that the target date of 2025 was not doable. For the record, I would refute that; I would say that it was not until late 2022 that ministers were finally advised that there was no practical route to completion by 2025. I accept that, as time goes on, there is a diminishing likelihood of completion by 2025. That is plain, as that would require ever more capital up front and ever more disruption on the route.

The advice from 2017 that you are thinking about and referring to is the advice that ministers received on moving to a new private finance model and the advice that developing such a model in and of itself would take so much time that we would be pushing beyond 2025. There was always an understanding that an entirely capital-funded approach, with increasing levels of disruption, remained possible, although I accept with a diminishing likelihood.

The Convener: On that point—and this is what I do not quite understand—was it officials who thought, “This is financially not going to happen. We need to float the idea of a different funding model, which might lead to delays” and then that was communicated upward, or did ministers ask officials whether there was the funding for the project and, if not, whether a different funding model needed to be looked at? It is not clear to me from the papers which way round the discussion began.

Màiri McAllan: Well, it is a combination. Ministers rely on advice from officials on the

appropriateness of a certain path forward and the available options, and it is then for Cabinet to agree that funding be brought forward for whatever that might be.

If I could identify one key issue that pertains very closely to what you are asking about, it would be the reclassification in 2014 of the non-profit-distributing model—that is, the private finance model. As a result of that decision by the Office for National Statistics in 2014, the financing model that we had previously thought would form part of the funding package was no longer available to us. It was not until 2019, when the Scottish Futures Trust advised that the mutual investment model was a suitable replacement, that that private finance option became open to us.

Officials would advise us on that sort of thing. They did a huge amount of work to prepare for a MIM, but the fact is that when the original private finance approach fell out of the realm of possibility in 2014, it had an impact on the timetable. I would sit that alongside a slight delay in the statutory processes as the two reasons that I believe the project has been delayed.

Fergus Ewing (Inverness and Nairn) (SNP): Good morning, cabinet secretary and witnesses. In his evidence, Alex Neil said that he believed that there was more than sufficient capital to deliver the project. He also set out a detailed statement about when each of the sections of the A9 was to be dualled. Why was that not adhered to? It was breached right from the start.

Màiri McAllan: Again, I am straying slightly into the territory of interpreting what Alex Neil thought. We have to remember that his comments, quite understandably, were made within the four corners of the time that he was involved with the project. That was very early in its development. The advice that he received was, “Yes, minister, this is how we are taking it forward; this is how we propose to do it.” However, that was heavily caveated by saying, “There are a great many things to be worked out here.”

Some of the other ministers’ comments on this, including Nicola Sturgeon’s, are, I hope, helpful to the committee. Ms Sturgeon pointed out that Mr Neil was correct to say that, for his purposes at that time, funding had been identified, and her view was that that funding was for a one-to-two-year period during a long project. That is not uncommon for major projects; at the very beginning of such a complex project you will seldom have certainty over delivery and funding right through to the end. That was Mr Neil’s impression of that one-to-two-year period, rather than the whole thing.

09:45

Fergus Ewing: I hear what you say, but I am just not convinced. There was a complete failure to adhere to the very clear schedule of works and programming. It set out in which year every section would be done, and that was completely abandoned.

Màiri McAllan: I do not deny that there are delays. The principal reason for that is the two things that I pointed out to the convener: first, the ONS reclassification of the non-profit-distributing model in 2014 and a one to two-year delay on statutory processes.

Fergus Ewing: I was interested in the emphasis that you have given to the ONS decision. I do not recall there being any ministerial statement about that at the time. Why not?

Màiri McAllan: I could not say for certain what the parliamentary choreography was around that, I am afraid. I was not there. Nor, frankly, am I in a position to say why that was or was not done.

Fergus Ewing: I appreciate that you were not responsible. I was part of the Government for a while, so I had a collective responsibility and I have never sought to shrug away from that. However, I never had a portfolio responsibility.

Why did it take five years from the critical watershed decision of the ONS, on which no statement was made to Parliament about how significant that was, even though you now say that that was the absolute critical moment? Why did it then take until 2019 for there to be a private finance plan? That was five years during which most of the work, or a very substantial proportion of it, according to Alex Neil's plan, was supposed to have been done.

Màiri McAllan: There are two sides to that question, and I will try to take them both. I might briefly pass to officials to explain some of the work that was done on developing an alternative private financing model.

You are right, five years is a long time. As I said, Scottish Futures Trust was involved. MIM was developed by the Welsh Government and has been adapted for use in Scotland. I do not just identify the ONS reclassification as the key issue; I also see that there were delays in statutory processes. I am happy to come on to why I think that that may have saved us some time in the end, by meaning that we had only one public inquiry, albeit I would prefer that those processes been quicker.

The new point that I want to make is that there was not a vacuum of work during that time. Work was progressing. The statutory processes work has been progressing to the point where we now have 92 per cent ministerial decisions in hand for

those. We brought forward work on the Kincaig to Dalraddy route, which was completed in 2017. The additional section of Luncarty to the Pass of Birnam began in 2019 and was completed in 2021. Of course, work was on-going in the background to develop a new private finance model.

I do not know whether any of the team want to say something about that five-year period and why such work takes so long.

Rob Galbraith (Transport Scotland): I can maybe add a little bit to the detail of the work that was going on in that period. I am afraid that that work was taken forward with Scottish Futures Trust rather than Transport Scotland, because it is looking at a replacement for the non-profit-distributing model as a private finance-style of contract suitable for use across sectors—it is not sector specific to roads or accommodation or anything. That is why SFT was tasked with that piece of work and was responsible for taking it forward. It was only in 2019, when ministers endorsed SFT's recommendations, that a new replacement for the non-profit-distributing model was available for Transport Scotland to begin considering as a potential vehicle for its contracting approach.

Fergus Ewing: Was SFT given a deadline when it was commissioned, and did it adhere to that deadline? When did it put forward the recommendations?

Rob Galbraith: You would have to direct those questions to SFT, I am afraid. It is not something that I can comment on.

Fergus Ewing: I think that we need to get at this because there was five years where—

Rob Galbraith: Just one comment—

Fergus Ewing: —all this work was supposed to have gone on and we have only seen two of the sections. Those are welcome, of course, but there is a complete absence of an explanation, cabinet secretary, about what went wrong. Can I just ask one final question?

The Convener: To be fair to Mr Galbraith, he was halfway through his response, Mr Ewing, so I will allow him to finish.

Fergus Ewing: Was he? I am sorry. I did not realise that.

Rob Galbraith: One point that I am keen to finish is that the bulk of the work, in actual fact, was planned to take place between 2019 and 2025 under the original plan. It would not have been in progress by 2019; most of it would only just have been starting.

Fergus Ewing: It did not go ahead then either, did it? Has there been any review of the failure to

adhere to the plan? Has there been any internal review by the Scottish Government—or anybody else, for that matter—as to why the timetable slipped and why there has been a failure to implement the very clear pledges that the Scottish National Party made repeatedly to the electorate at every election?

Màiri McAllan: A formal review has not been done within Government. I am very clear—and I hope that I have set it out clearly today—what my view, which is shared by my officials, is of the two principal causes of delay. The inquiry will add to that work as well.

Since becoming the cabinet secretary in 2023, my focus has been on getting the optimum delivery plan sorted, moving to that NEC4 contract as amended, and progressing interim safety measures in the meantime. Has there been a formal review inside Government? No. We have quite a well-established view of what the two principal causes of delay are.

Fergus Ewing: Has there been any review? Has Transport Scotland not done a review of any sort? Has there been none whatsoever, despite the fact that this was the flagship pledge, and it has completely slipped? No review at all, is that right, Mr Shackman?

Màiri McAllan: There is review all the time.

Lawrence Shackman (Transport Scotland): Yes. The fundamental thing, when we are looking at the procurement options and considering MIM against design and build, is to make sure that we get value for money right across the public purse and that there are opportunities for different contractors across the industry. Using capital money or revenue financing is a fine balancing act and it was not a particularly quick thing to resolve. I was not there and I was not part of the process at that time, but I can assume that, for a number of years, a lot of thought was given to whether we could use revenue financing or whether we should be using capital financing, what the budgets were like at that particular time and what the best balance was for the public purse, bearing in mind the considerable cost of the dualling programme.

Fergus Ewing: I understand all that, but with respect, that was not what I asked. I asked whether there was any review of any sort into the failure to deliver on our pledges in Government. Was there any review or not?

Màiri McAllan: With all respect, I think that I have answered that question. I said that there has not been a formal internal review, but we review on an on-going basis what we think the reasons for delay are, as they emerge, and I have identified the two key ones that we attribute the delay to.

Fergus Ewing: I will park it there, but I do not think—

The Convener: I take it, Mr Ewing, that you might not be happy with the answer, but we have an answer.

I will come to Mr Golden, but something arose there that left me slightly confused. Prior to the change of rules in 2014, was the Government relying on a private finance contribution to the project? I understood that it was a fully capital-funded project at that point.

Màiri McAllan: Again, I might bring my officials in to ensure that I am accurate on this. It would be fair to say that there was always an expectation that there would be a combination of capital and private financing for the project. Indeed, the Scottish public finance manual requires the Government to consider private financing for projects. Of course, the non-profit-distributing model had been used in a number of major projects that the Government had taken forward. The reclassification in 2014 was quite a turning point, I would say.

The Convener: I am happy to leave it at that. I turn to Maurice Golden.

Maurice Golden (North East Scotland) (Con): I will follow up on Mr Ewing's line of questioning. Transport Scotland officials have told the committee that it became clear only in late 2022 that the 2025 completion date would be missed, but the committee has heard that it was common knowledge among experts that the date would be missed several years before that. Cabinet secretary, are you concerned about the apparent discrepancy between the views of officials and those of external engineering experts?

Màiri McAllan: Thank you for the question. I do not want to point to the experts that you are referring to, so I will answer the question in the generality. Ministers welcome the advice that we rely on from our officials, and I have always been very satisfied with the advice and support I have had from Transport Scotland. That is always better when it is complemented by views from people from industry or those who work on these matters on the ground. From my perspective, we take advice and information in the round.

I mentioned before that there was always an understanding that an all-capital, increasingly disruptive approach could be taken until late 2022, when that was no longer a possibility. All the while, we were doing work to consider a better combination of actions. I think that some people in the industry would accept that there was an opportunity to do it very quickly and very disruptively. Grahame Barn, when he was in front of the committee, mentioned how quickly he thought that it could be done. He talked about how

Inverness could potentially be cut off, which nobody would want, but physically it still could be done. That is what I mean by a diminishing likelihood.

There are different views. Ministers take them all on board, but I would not want to diminish the quality of advice that we get from Transport Scotland, which I very much value.

Maurice Golden: Okay.

Do you consider the road order processes used to authorise major road projects to be fit for purpose?

Màiri McAllan: Sorry, Mr Golden, can you elaborate on that slightly? Is this the statutory—

The Convener: We will stick to what has happened before. I know that Mr Torrance was keen to raise that particular question.

Maurice Golden: Okay.

The Convener: Mr Choudhury, do you have a final question in relation to how we got here, before we switch to where we go from here?

Foyso Choudhury (Lothian) (Lab): Yes. Good morning, cabinet secretary. Following on from the question that my colleague Maurice Golden asked, at what point were Scottish ministers first aware that the completion date could potentially be missed?

Màiri McAllan: I will try to clarify this. Late 2022 was the point at which a submission came to ministers advising that there was now no possible route through to completion by 2025. That would have been received by Ms Gilruth and Mr Matheson, and Ms Gilruth updated Parliament after the Christmas recess in respect of the timetable and the Tomatin to Moy procurement problems that we had faced. Late 2022 was the point at which the advice arrived that said that 2025 was no longer doable. However, I recognise that there was a diminishing likelihood of it in the months leading up to that, and I think that that would have been reflected in advice as well.

Foyso Choudhury: I have just one more question.

The Convener: Is it on how we got here?

Foyso Choudhury: Yes.

At the previous session, Transport Scotland advised the committee that it was 92 per cent through the statutory process back in 2011. When the original timetable for the project was set out, the estimated time required to complete the statutory process was six years. We are now at double that time. What engagement have ministers had with Transport Scotland during that time?

Màiri McAllan: That identifies a really key point, as far as I am concerned. As I said at the beginning, the statutory process taking a little longer than had initially been anticipated when planning is certainly, in my view, one of the reasons for the delay.

I would caveat that by saying, again, that this is a project of great complexity. When Roy Brannen was in front of you, he discussed the number of sites of special scientific interest, the national park—all the things that make it a complex project. Although the statutory processes took too long, in my view they are a very important part of democratising infrastructure development and engagement with the public. I was going to say that we have been lucky in the sense that we have had only one public inquiry, but I would not put it down to luck. I would put it down to the quite robust and deep engagement that was had with communities. That may have meant that it took a bit longer, but we may also have saved time as it meant that we fewer public inquiries. I do not know. All I am saying is that I think that deep engagement is the right approach.

The Convener: Thank you. Let us switch to where we go from here and how we manage things going forward.

David Torrance (Kirkcaldy) (SNP): Good morning to the cabinet secretary and our other witnesses. Cabinet secretary, can you outline the current governance structure for the A9 dualling programme? What is your role in that?

Màiri McAllan: Yes—absolutely. I will speak about my role and my view of officials. If they have anything to add to what I say, they can do so.

It is probably worth pointing out that a slightly different approach has been taken since Ms Hyslop and I took over the running of the transport brief. Previously, the transport minister took direct responsibility for the bulk of the portfolio responsibility as it stood, and the cabinet secretary had an oversight role. I now have explicit responsibility for parts of that, and there is an ever-so-slightly slimmer junior ministerial role. I think that that is working well. It provides a better connection between the minister and the Cabinet, and it helps to relieve a little bit of the pressure on the junior minister, which is a significant role.

10:00

Ms Hyslop and I work together on that. On the explicit responsibilities, I have responsibility for major projects investment, and she has responsibility for major projects delivery. Those two things together mean that we both work on the A9. We have done so to date, and we will do going forward.

On governance structures, we regularly meet the director of major projects and his team to receive updates on our priorities in respect of the A9 and on a range of other major projects, such as the Rest and Be Thankful project. I also meet Transport Scotland directors twice weekly for operational updates.

A regular rhythm of advice is received. Ms Hyslop and I very much share responsibility and, of course, I report to the Cabinet. The Deputy First Minister has a role in all of that, as well, owing to her finance responsibilities.

Would you be interested to know about internal officials governance?

David Torrance: Yes, please.

Lawrence Shackman: We have a programme board for the A9, which typically meets every six weeks or so. There are four directors on that board, including the chief executive officer of Transport Scotland. We discuss the whole programme. As members might expect, there are project meetings for individual projects. There will be monthly meetings on the Tomatin to Moy stretch as it progresses, as there will be for all the other projects. The idea is that each of the projects should come together and report regularly to the programme board.

We will continue to review the frequency of the meetings, attendance at the board, how it reports back to the cabinet secretary and the Minister for Transport, how it addresses engagement across the corridor with stakeholders and members of the public, the risk profiles, and all the things that members would expect a programme board to review in a project of such a scale.

David Torrance: Cabinet secretary, a colleague touched on this issue earlier. Do you consider the road order process that is used to authorise major road projects to be fit for purpose? If not, do you have any plans to update that process?

Màiri McAllan: I apologise to the committee. I want to clarify that, when Mr Golden asked that question before, he meant the statutory processes. I know that Mr Barn spoke about his view that that had slowed down the process. I understand that view. Mr Barn's objective is to get projects moving and moving well, and I appreciate his perspective.

I go back to the point that statutory processes are laborious—there is no doubt about that—but, as we all know from representing our constituents' interests when major infrastructure projects are happening on their doorstep, they are really important in ensuring that the right processes are gone through, that thorough consultation happens, and that people are really engaged in the development. That pertains to roads just as it does

to a whole suite of other infrastructure projects, not least energy projects. The issue is being grappled with just now, and it will increasingly be grappled with as we seek to upgrade the grid.

I have been clear that I think that the statutory processes took a little longer in the case of the A9 than we expected. They are a very important part of democratising infrastructure development, and I would not like to suggest that there should be any shortcuts around them. I say again that, to date, we have had only one public inquiry in a major and complex project. In some ways, that is a success of the deep engagement that there has been. I do not know whether there are any technical reviews.

Lawrence Shackman: I know that a review of the statutory process is just starting. A representative from our major projects directorate is taking part in that review. It is in its early stages, but there are moves to look at the process and see how it can be refined or improved.

David Torrance: Cabinet secretary, why has a hybrid approach to A9 dualling been adopted? How does the total cost compare with the cost of a capital-funded approach?

Màiri McAllan: I will definitely go to Rob Galbraith on some of the close details on costs, because it is very easy for me to use the wrong figures when I do not have them in front of me.

On why a hybrid approach was adopted, I mentioned earlier that it was always expected that a combination of funding techniques—if I may use that horribly untechnical term—would be adopted because that allows the Government to best use the resources that it has to achieve its objectives. It recognises that capital can be in short supply—that has been the case increasingly. All members who have had cabinet secretaries in front of them to discuss the budget will have heard us talking ad nauseam about the restraints and constraints on capital budgets that are increasingly being felt.

The hybrid approach allowed us to spread the financial burden between the Government's capital budget and revenue budget. The size and scale of the A9 also lends itself to a combination of funding techniques. For example, we can make progress in the plan that we have set out on a capital basis with the first three southern sections, and the northern and remaining sections well suit being bundled into MIM baskets.

I will hand over to Rob Galbraith for some of the cost details. However, I will be absolutely up front that capital is, in the long run, the less expensive way of completing major projects, but capital is not as readily available as a combination of capital and revenue.

Rob Galbraith: I will pick up on costs in a bit more detail.

When we are comparing procurement options, we look at costs in two ways. We look at the cash that will be spent over time. That is what we call an outturn cost. Within that, we look at what the effects of future inflation are expected to be. That is useful to look at, but, in my view, it is not and it should not be an ultimate decision maker because we also have to think about what the value is in the present-day cost of the decision that we are making when we discount the effects of inflation. That is a decision in relation to the current value of money. When we talk about a current value of money comparison, we see that the difference between a fully MIM option that we were looking at and a capital-based design-and-build option was around 14 per cent. For the hybrid option, the difference was about 10 per cent. The hybrid option was 10 per cent more costly in equivalent present value of money terms.

When we compare outturn cash figures, we see that the figures are quite different because of the effects of inflation. That is driven by the timing of when money is spent. When money is spent on a private finance contract, it is spent for a long period of time into the future, so it attracts more inflation. However, that inflation attaches to lower sums of money compared with having to spend the money on capital money outlay in the next few years. That comparison is critical to understand, and it drives the difference in the cost comparator.

Màiri McAllan: I will briefly add to that for the committee's awareness, although it may already be aware of this. I hope that the committee will be comforted to know that MIM has managed out some of the worst excesses of private sector profiteering that were apparent in historical private finance initiative deals. The way that it works has been designed to not allow for that.

David Torrance: How confident are you that the programme for dualling the A9 will come within the £3.7 billion budget? Is there any robustness in the figures that could back that up?

Màiri McAllan: The advice that I have is that we are looking at a total scheme cost estimate, which is a defined way of measuring, of £3.7 billion. I am just checking my notes. When that is adjusted for inflation, that is the equivalent of £2.45 billion, which is well within the original estimate of £3 billion at 2008 prices. That relates to what Rob Galbraith explained about the way that we compare spend. The advice that I have is that, comparing apples with apples in respect of the 2008 estimate, the £3.7 billion in spend nowadays should be within the original budget.

That gives me some comfort. I do not want to misquote Mr Barn, but I think that he was asked about how realistic the funding proposals are and he said that they are not unrealistic, which I will

take to mean realistic. I will check that—I have the transcript of what he said here.

The Convener: A couple of questions arise from what I have heard. On the £3.7 billion, there is a funding trail in the pile of documents that we have received. At one point, figures as high as £6.25 billion were identified in relation to the project. Can you explain why you are confident about the figure of £3.7 billion? Is that a comprehensive figure, or did the allusion to £6.25 billion in papers that we received include other considerations? Have those disappeared, or do they continue to sit alongside the £3.7 billion?

Màiri McAllan: That is a perfectly understandable question, which I have asked myself from time to time when I have been reading all my papers. I will hand over to Rob Galbraith to ensure that I am absolutely correct, but those are different ways of expressing costs. The £3.7 billion is the total scheme cost estimate. As I have said, we compiled that figure so that it could be directly comparable to the 2008 figure, which was also a total scheme cost estimate. The higher numbers—the £4.6 billion and others—are the outturn costs, which take account of inflation and other issues that can bear down on costs.

Before I put anything on the record that is not accurate, I will hand over to Rob Galbraith to try to explain that.

Rob Galbraith: I think that we touched on that the last time I was with the committee. The £3.7 billion is in April 2023 prices—it is essentially a present-day price. It does not include forward inflation from this date or costs for the operation and maintenance of the constructed costs. The £4.6 billion and the £6.25 billion are in papers in which we discussed procurement options for the remaining parts of the programme. One thing to note is that they do not include costs that have already been spent, because that is not part of the decision making on future spend that will be incurred.

What we try to do in those cost estimates is compare taking a capital-funded solution and delivering that versus delivering a MIM private finance solution. There is a 30-year operation and maintenance period for the private finance solution. To get a like-for-like comparison, we have to put 30 years of operation and maintenance into the capital-funded design-and-build solution. That includes operation and maintenance costs that are not part of a total scheme cost estimate and future inflation costs that are not part of an April 2023 pricing cost. The numbers represent outturn, but they represent outturn for a different scope and not even for the full amount of the programme.

The Convener: Thank you—it is important that that has been stated.

I will bring in Mr Ewing. Quite a large part of our evidence about the future of the programme has been about not so much whether people want to do it or even whether the money might be there to do it but whether, in fact, there will be troops on the ground who can deliver it.

Fergus Ewing: I will come on to that in a moment, convener.

The first area that I want to ask about is the outline plan for completion of the A9 dualling project by the envisaged date of 2035. That is subject to one important caveat, which raises serious questions in my mind about whether the plan will be delivered. That is that the use of mutual investment model contracts is

“subject to ... further decision making in late 2025”,

based on

“an updated assessment of market conditions.”

That means that a decision could be taken not to use MIM.

What criteria will be applied in 2025 as to whether MIM will be used? If MIM is not used, what is the contingency plan?

Màiri McAllan: I will take the last part first. If the market conditions that prevail in 2025 are not suitable and mean that we cannot go forward with a MIM contract, we have contingency that the 2035 date could still be met via capital funding, provided that capital was available. I do not know what will prevail in 2025, but I know that, if I am in post, I will be determinedly pushing for capital to be available should MIM not prevail. However, my preference is that MIM will be available.

It is absolutely right that a Government creates staging posts for consideration of prevailing market conditions at the time. That is how we discharge our duty of prudent public spending. It would not be correct for me to make that decision now. The Bank of England has raised interest rates 14 times in the past two years, and they are at an all-time high. Now would be a particularly bad time to enter into borrowing at the current cost, so we very deliberately created the opportunity in 2025 to allow us to assess the market conditions, which are—fingers crossed—predicted to improve. We are in a particularly sticky spot just now, but I have to robustly defend the Government taking the chance to assess the conditions at the time and then make the decision.

10:15

The Convener: I am not sure that they are at an all-time high; they are at a relative high.

Màiri McAllan: Thank you, convener—you are quite right.

The Convener: I am not so young that I cannot remember it being considerably higher than that.

Màiri McAllan: I am probably not old enough to remember.

Fergus Ewing: Just standing back for a moment, the capital budget that is available to the Scottish Government each year is of the order of between £4,000 million to £5,000 million. It is reasonable to assume that that will continue to be the case. By 2035, which is 10 years, my maths suggest that there is a total of £40,000 million to £50,000 million available in the capital budget. The Highlands wants £3,700 million, which is less than 10 per cent of that total.

Why is the Scottish Government not making a clear cast-iron commitment or guarantee that, if MIM proves to be too expensive, for the reasons that the cabinet secretary has set out, a sum equivalent to less than one 10th of the total capital will be available for the Highlands, particularly since—this is just a matter of fact—there has been hardly any spending on roads projects in the Highlands since devolution? All the money has gone elsewhere. We have had a couple of roundabouts and a couple of small sections of dual carriageway.

Surely the Government recognises that it is the Highlands’ turn. If the Government cannot make a commitment that if MIM is too expensive traditional capital spend will be used, does that not suggest that the Highlands do not even merit a 10th of the total capital spend between now and 2035, a proposition that will simply not go down very well at all in my constituency or in the Highlands as a whole?

Màiri McAllan: Mr Ewing’s advocacy on these points is very effective and it is absolutely heard loud and clear. From my perspective, I cannot make decisions based on regional competition; I have to make decisions based on what is right, what presents value for money and what is best for the people of Scotland. I should say that I consider that the dualling of the A9 is one of the most important pursuits in respect of what is right for the people of Scotland, and that is why I have been determinedly trying to work on this optimum delivery plan.

On certainty, Cabinet has agreed to my plan. It has understood the point about 2025 and MIM decision making and our view that 2035 remains possible should capital be made available in the case that MIM is not suitable. The Cabinet has collectively agreed to manage the financial pressures that that will create, and that delivers a degree of certainty that we have not had to date.

Mr Ewing is right to point to the capital budget for the Government. When Roy Brannen was here, he pointed out that we have about 40 per cent of capital spend, the vast majority of which is in transport. I will give you this year's draft settlement as an example. First, it is being eroded but that does not speak to where we have come from; that is just me speaking about where we are going. I always have to balance objectives. This year, I plan to invest over £1 billion in roads, which is up 26.2 per cent. That includes a year's worth of progression against the A9 optimum delivery plan; critical work on the A83 Rest and Be Thankful; £47 million to protect the integrity of the M8 Woodside viaduct and other projects. I appreciate that those major projects are not directly applicable to the committee's inquiry, but they demonstrate that, every year, there are priorities to balance. However, I end by saying that the A9 dualling is a key priority.

Fergus Ewing: I will move on to a different point that Grahame Barn raised in some detail in his evidence. Unlike in the past, over the next 10 years, an enormous amount of civil engineering work is planned to be undertaken in Scotland, and in the Highlands in particular. We are looking at £40 billion on grid upgrades, £1 billion for Scottish Water and £3.5 billion for Network Rail to electrify the rail network. There is substantial civil engineering work involving Aventus Energy in Invergordon in renewables, and then there are the pumped storage contracts that SSE and others plan.

The reason why I raise that is that Grahame Barn pointed out that that means that there will be a big choice of work for civil engineers and, arguably, some of the other works that I have mentioned may be more profitable than roads contracts, where the profit margins typically have at best been 3 per cent, although that has never been achieved in the past several years according to CECA.

What is the Government's view? Is there a real risk that even if we assume that the money is available, there will not be the companies, the people and the expertise to carry it out, because they will be too busy doing other more profitable work, which we all hope will be able to be done as well?

Màiri McAllan: I noted Mr Barn's comments on that. I think that we would all welcome what he set out in respect of that very busy pipeline of work in Scotland in the next 10 to 20 years. I absolutely welcome it, and the Government does, too.

That speaks firstly to why the upgrade of the A9 is so important. As well as the safety points that I made at the start, there is also the issue that the A9 is a key economic route connecting Scotland. It is an arterial route—the spine of Scotland—and it

will be critical to facilitating the economic opportunities that you have spoken about.

The delivery plan that we have set out now provides a degree of certainty on the direction of travel. I know from my engagement with industry on this issue and other matters that having a clear articulation of the Government's direction of travel is one of the most useful things in creating certainty in the market. The move to the NEC4 contract as amended will be welcomed by industry. I think that Mr Barn welcomed it, and I hope that its use will do as Mr Ewing says and make matters attractive and hopefully speedy.

Finally, we already have close engagement with industry, and that will continue as the market becomes busier and busier, as Mr Ewing rightly pointed out will be the case.

Fergus Ewing: I have one final question. Inverness is 168 miles from Glasgow, where Transport Scotland's big office is located. There is no Transport Scotland office in Inverness or the Highlands. Almost all the capital money will be spent on the A9 or the A96 over the next 10 years. Why is there not a Transport Scotland office based in Inverness, and will there be one? Will staff be relocated there? Is the absence of such a presence not a bit of a sign that there is still not an absolute commitment to delivery of the project? Staff have to travel up the road and stay in a hotel or drive up the road and back. I have met some of the staff—

The Convener: I think that the question has been asked. I am conscious of time.

Màiri McAllan: There are two points. First, Transport Scotland and ministerial presence in Inverness, and anywhere where we have major developments, is important and I always encourage that. We have a suite of engagements planned from the start of the new year as we complete the delivery programme.

I do not currently have any plans to relocate Transport Scotland's office from Glasgow to Inverness. We will have Transport Scotland officials who live in Inverness and surrounding areas, but I am not planning to relocate offices. However, I believe that the presence of ministers and staff in the areas in which we are working is vital, and I will continue to encourage that.

Maurice Golden: Transport Scotland would be more than welcome in Dundee, if you are looking at other locations, cabinet secretary. [*Laughter.*]

The Convener: I think that we should stick to our inquiry.

Maurice Golden: Yes—apologies.

Cabinet secretary, you said that the A9 is a key priority, but clearly meeting climate change targets

is also a key priority. My assessment is that Scotland is under severe pressure in meeting the 2030 net zero target and that the transport sector will be a key priority in terms of emissions reductions. Is there any conflict between project completion and meeting our climate targets, particularly in the context of the 2030 target?

Màiri McAllan: That is a really good point and one that I considered closely. One of the things about transport and net zero being in the same portfolio is that I have the same budget to try to balance between these issues.

My view with the A9 is that it is a long-standing commitment. It has a safety imperative. It has the opportunity for economic regeneration—actually, it is more than that; it is economic prosperity. With my climate and environment responsibilities, I will always seek to find the finest possible balance between those competing interests. We will need roads in a net zero Scotland. Yes, I hope that they will be driven on by low-emission electric and hydrogen vehicles, but we will need roads. They will need to be safe, and they will help to ensure the economic prosperity of the country.

Maurice Golden: You mentioned economic regeneration. We have rightly focused on the actual road, but I wonder whether the relevant road infrastructure will be fit for purpose. You mentioned electric charging points. There is the issue of whether service stations might link to third sector and local community groups rather than multinationals. Can you explain the wider vision for the road?

Màiri McAllan: It is certainly my intention that there will be ample opportunity for recharging along the route. That sits closely alongside the work that I am doing in another part of the portfolio on the roll-out of electric vehicle chargers and our ambitions to go from around the 2,400 mark—that might not be the right figure—up to 6,000. There is a lot of interest in the availability of service stations and other rest opportunities along the A9 and I understand that. I know myself when I am driving it that I would welcome the opportunity to stop safely. There are also issues for women and other vulnerability issues in being able to do so.

The provision of service stations and so on is not directly Transport Scotland's responsibility. It is funded to deliver its statutory obligations, and the delivery of service stations is not one of them. However, that issue is raised with Ms Hyslop and me a lot, and it is certainly my intention to do what we can to encourage the development of such facilities along the route, because I acknowledge their importance.

Maurice Golden: I have a brief follow-up on that. I would like the A9 to showcase Scotland, Perthshire and the Highlands. For me, that would

mean not going into a service station that could be located anywhere in Scotland; indeed, anywhere in the world. There are fantastic examples of communities getting involved in community cafes by the roadside in a service station environment. Is there any way that you can make that happen if you share that vision?

Màiri McAllan: I probably cannot do that single-handedly, but I can certainly note that, alongside the considerable points that have been made to Fiona Hyslop and me about the need for rest opportunities. I will do my best to advocate for that.

Maurice Golden: Thank you.

The Convener: Finally, cabinet secretary, I note that, in the 2007 to 2011 session of Parliament, I was the convener of a hybrid bill committee that was set up to take forward the Queensferry crossing project. It identified the route and the difficulties that there were going to be in various villages during the process. As was pointed out, that was because of the need for an act of Parliament, which drove the requirement for parliamentary scrutiny, but it seemed that the cross-party nature of a parliamentary committee looking at and agreeing the project that Government ministers were then invited to deliver overcame some particularly difficult issues to progress.

We are where we are in the different processes that are in place. I think that we all recognise from the paperwork that we have read and everything else that, in the Pass of Birnam to Tay crossing section, the issue around Dunkeld is particularly difficult to grapple with. You have talked about there having been only one public inquiry so far. Are you building into the thinking in relation to the project that there could yet be difficult areas that have to be resolved, which could lead to a challenge with timing?

10:30

Màiri McAllan: On your first point, I have been considering the best way to make sure that there is strong parliamentary engagement on the next steps. I looked at the committee that you convened in respect of the Queensferry crossing. As you say, that came from the need for an act of Parliament. I will come back to the committee with views on how we ensure parliamentary engagement. It might not be this committee, although I will let you know. I envisage that it would probably be the Net Zero, Energy and Transport Committee or similar. I will come back when we have more certainty on that, but I definitely want Parliament to be more fully engaged in the next steps.

In respect of the Pass of Birnam to Tay crossing statutory processes, I will ask officials about timing. The problem is that the timing of these matters is out of our hands, as I am sure that you appreciate. If an inquiry is decided on, we cannot control the length of that although, because we have had the co-development process and because the proposed route takes into account a number of suggestions from the community, I hope that that will lessen the likelihood of objections. I cannot eliminate the possibility and nor should I, and nor can I control the timing should an inquiry go ahead.

Rob Galbraith: I will comment on the way that the programme has been structured. The Pass of Birnam to Dunkeld project is the only project that still requires a ministerial decision. Other projects are required to complete other elements of the statutory processes but, based on progress so far, we are confident on those.

We have looked at the sequencing of work, and the programme that we have outlined means that there is considerable float—several years of float—on the timing of when we would construct Pass of Birnam to Dunkeld. If it takes longer to complete statutory processes than we currently anticipate, the section can be built in parallel with other work, because it will be sufficiently removed at that time. Prior projects will have been completed and so that will not present a safety risk. We still have plenty of time to complete it within the 2035 deadline.

The Convener: Thank you for that, and thank you, minister, for the comments on scrutiny. To hark back to the exchange with Mr Ewing on the capital projects that will potentially be vital for development in the north of Scotland, this is a national infrastructure project that is of importance to the country and to all parties combined.

Foyso Choudhury: I have just a small question for the cabinet secretary. Given the time that has been taken and the dates that have been missed, do you have concerns about the project sticking with the current times that have been given?

Màiri McAllan: A lot has changed in recent times. We have an updated business case, we have 92 per cent of ministerial decisions for statutory processes in hand and we have a new NEC4 contract in use, which was developed in concert with industry. We have the option to utilise a new funding model that is available to us, and we now have a plan that has carefully considered the best sequencing and is about rolling construction through to 2035. Therefore, there is reason for confidence.

I have to caveat that by saying that this is a complex project; it is 11 complex projects. Having

certainty in an uncertain world is not always easy. However, I can guarantee that if issues arise—they will arise because that is the nature of major projects—we will work as quickly as we possibly can to resolve them against our delivery timetable.

The Convener: Thank you, cabinet secretary. Before I conclude, is there anything further that you or your colleagues feel that we have not touched on that you had come along expecting to reveal to us today?

Màiri McAllan: I was very open minded, convener, about what we might cover, so I will not add anything. I just thank you all very much.

The Convener: In which case, thank you for your engagement and the engagement of your colleagues.

10:34

Meeting suspended.

10:41

On resuming—

Continued Petitions

Child Protection (Public Bodies) (PE1979)

The Convener: Welcome back to the committee's second meeting in 2024. Our second evidence session is on PE1979, to establish an independent inquiry and an independent national whistleblowing officer to investigate concerns about the alleged mishandling of child safeguarding inquiries by public bodies.

The petition calls on the Parliament to urge the Scottish Government to launch an independent inquiry to examine concerns that allegations about child protection, child abuse, safeguarding and children's rights have been mishandled by public bodies, including local authorities and the General Teaching Council Scotland, and that there are gaps in the Scottish child abuse inquiry, which we have discussed. The petition also calls for the establishment of an independent national whistleblowing officer for education and children's services in Scotland to handle such inquiries in future.

The petition was lodged by Neil McLennan, Christine Scott, Alison Dickie and Bill Cook, three of whom are with us this morning.

We last considered the petition at our meeting on 4 October 2023. At that stage, we decided that we would like to hold a round-table discussion on the issues raised and to welcome the petitioners to join us, if they were available. Unfortunately, Christine Scott is unable to be with us today, but I welcome Brendan Barnett, who joins us in Christine's place.

Neil McLennan is a former teacher who has written on the topic of safeguarding gaps. Alison Dickie is a teacher and former Edinburgh councillor. As vice convener of the council's education, children and families committee, she raised the concerns of whistleblowers who came to her for support. Bill Cook is also a former Edinburgh councillor. The petitioners' submission to the committee describes him as the political lead on the introduction of Edinburgh's new whistleblower system in 2014.

Before we begin the discussion on the issues raised by the petition, I understand that, as participants, you have prepared brief statements and that you would like to share them with the committee today.

Bill Cook: We thank the committee for giving us the opportunity to speak today. My three fellow petitioners are all education professionals. They share decades of experience of teaching children.

Two have contributed to the development of education policy. Three of us have been elected to public office and Brendan Barnett is substituting as a senior criminal justice social worker.

We all share serious concerns about the alleged failure of public institutions to properly investigate allegations relating to safeguarding. In bringing our concerns to the committee today, we do not want to take away from the amazing work of individuals right across Scotland who each day help to protect and educate our children. Neither do we want to detract from the good work that is being done to improve safeguarding. We are concerned about when things go wrong and what recourse there is for the ordinary citizen.

10:45

Committee members will be aware that supporting submissions include distressing and deeply worrying disclosures. One parent refers to illegality and maladministration. Another refers to a culture of coercive control. Yet another refers to significant negligence and incompetence. Another parent laments, "We have nowhere to go".

There are also worrying misapprehensions evident in the institutional responses to the petition. Some appear not to even recognise or acknowledge failings. We would be happy to expand on that in our discussion.

The root of a victim or whistleblower's plight is the power imbalance that exists between themselves as individuals and the institutions or public body that they find themselves at odds with or exploited by. That is a systemic imbalance. Ranged against a lone victim or whistleblower are the huge obstacles of a public body's lack of openness and transparency accompanied by essentially unlimited legal and financial resources to defend against allegations.

I will conclude now with the Children and Young People's Commissioner Scotland's response to our petition. The commissioner observed that

"International human rights law states that children are entitled to higher standards of protection"

and that

"There is a clear positive obligation on the State to ensure that child protection, safeguarding and whistleblowing investigations ... are sufficiently thorough, independent and robust."

That is a standard to which our country should aspire.

Alison Dickie: I was Edinburgh's vice convener of education, children and families for about five years. In that time and beyond, many whistleblowers came to me in desperation, although not all were related to child protection. Some I supported for a long time, others simply

shared allegations, which I raised in appropriate ways. Some answers and findings reassured, while others gave rise to more questions and common concerns emerged.

It is difficult to communicate these sensitive matters in a public setting, but it is important to help members understand why action is needed. What follows is a high-level summary of past and present allegations: serious and organised child abuse in Edinburgh and beyond, supported by public funds and named professionals; the covering up of a pattern of behaviour among male teachers that was related to physical abuse; social workers withholding information from records and placing children at significant risk of physical, sexual and emotional abuse; questionable non-disclosure agreements and timings of civil settlements for abuse victims; children wearing layers of clothing to meet social workers and not all perpetrators of abuse in care being held accountable; public body interference in investigations and intent to pervert the course of justice; years in foster care without permanency assessment; inaccurate reports; cover-ups of mishandled child protection in schools; misuse of public money by a deceased officer and serial abuser; mismanagement of sex offenders back into the community; safeguarding gaps in the Swift system and access to children's records; and viewing neurodivergent families through an inappropriate child protection lens, resulting in the unlawful removal of children, who were thus made even more vulnerable, and allegations of abuse in care followed.

I worked with others across parties to raise concerns, but it was the bravery of the Sean Bell whistleblower that led to the Tanner inquiry, the whistleblowing review and the opportunity to raise and air some of the allegations more widely. However, narrow terms of reference restricted the much-needed investigation and whistleblowers believed it to be a whitewash.

I resigned from my party and brief in January 2022, mainly because I needed to speak and vote more freely. I was concerned at the lack of robust scrutiny of child protection matters and the overreliance on officer information—fantastic as many of those officers are—and the findings of a restricted inquiry.

Although some of the allegations were made within the past 10 years and could be regarded as historic, the systems and many of the personnel are not. All unresolved allegations impact the confidence that we can have that we are ensuring the highest standards of protection for our children.

Brendan Barnett: It is a sad reflection that, after so many child protection scandals where local authorities and other agencies have failed to

protect children, such as Rochdale Borough Council and Edinburgh Academy, concerns continue to be raised about the fitness of certain local authorities and police services to fulfil their safeguarding duties. Just as concerning is the failure of regulatory bodies such as the Scottish Social Services Council and the GTCS to properly monitor professional standards and investigate malpractice within local authorities. Those are just some of the reasons for today's petition.

More specifically, and with regard to local authorities, a number of us have witnessed a major Scottish local authority prioritise the protection of its reputation and the targeting of whistleblowers over the protection of children. It is our view that the Tanner inquiry into the culture of that local authority was constrained by the narrowness of its terms of reference. From the outset, concerns were expressed about the perceived independence of key players and the inquiry in general. It is of note that the inquiry's recommendations have still not been fully implemented.

Since the Tanner inquiry, concerns have continued to be raised about that local authority's failure to protect children. Whistleblowers have raised on-going concerns about the following: the insecure storage of and untraceable access to confidential information regarding vulnerable children; erratic risk management planning for the release of sex offenders into the community; the failure of criminal justice social work managers to ensure that social workers complete key duties in relation to risk management and child protection and to ensure that all relevant information is gathered and shared with partner agencies; the failure to hold managers in the children and families department to account on who protected and/or supported perpetrators. Some of those individuals have been allowed to leave their posts without being held to account for their actions and their roles in possible cover-ups.

Those concerns are compounded by other Scotland-wide failings, such as: parents having no established referral pathway when raising concerns, because they are not covered by the Public Interest Disclosure Act 1998; the failure of regulatory bodies to investigate serious concerns raised by parents and whistleblowers; the lack of transparency and accountability in regulatory bodies such as the SSSC; the opaque nature of the relationships between local authorities and regulatory bodies.

To conclude, there is an illusion of protection for whistleblowers under the Public Interest Disclosure Act 1998 and by qualified and debatable support from organisations such as Safecall. The reality is that whistleblowers are targeted, victimised and harassed by their

employers. That has a severe impact on their physical, mental and financial wellbeing. Their isolation is compounded, and children put at risk by the fact that there is no independent body whistleblowers can turn to for advice or support. Many of the whistleblowers supporting the petition have found uncomfortable parallels with the Post Office scandal. Whistleblowers' concerns have been ignored by senior local management, local authority managers, the Tanner inquiry, elected representatives, regulatory bodies, Scottish Government departments and their own trade unions.

Neil McLennan: I thank the clerks for facilitating online access.

I will start with some background. In early 2021 I wrote an article on the difficulties that were facing people who were raising education issues on topics such as the curriculum and national guidance. As a consequence of reading the article, people contacted me with their concerns. A common theme that emerged was that children—especially the most vulnerable—were being poorly treated and not safeguarded, and when issues were raised they were being mishandled. Those cases and my professional experience and knowledge as a former council education officer highlighted a policy gap in relation to safeguarding of children.

I alerted the GTCS about my concerns and the Children and Young People's Commissioner Scotland and the Scottish Government later highlighted the gap to the GTCS. To date, the gap remains. The gap is quite simply that local authorities mishandle protection and safeguarding reports and the GTCS will not look at reports unless the employer refers them to the GTCS.

I engaged in further research, in which 15 technical freedom of information questions showed that over a three-year period the GTCS filtered out 196 referrals that had been made to it regarding teacher conduct. The referrals were not investigated at all by the GTCS.

Further research showed that, no matter the civility of the referral or the evidence accompanying it, referrals still get responses from the GTCS saying that they are "frivolous" if the matter was not first passed to the employer, which is most often the local authority. The GTCS told Government officials, in response to parliamentary questions, that it looked to change the word "frivolous" in the next policy review, but the term is still being used despite a recent policy review.

Additionally, it should be noted that the GTCS does and has changed FOI responses in its public FOI log and has done so without informing either the public or the initial FOI requester of the changes to the specifics.

The GTCS refused to tell Willie Rennie MSP how many of the 196 cases were child protection and safeguarding related. That matter was in Parliament in 2012. Further research, again using FOI, revealed that 47 of the 196 referrals were safeguarding and child protection related.

The GTCS claims that the police were aware of cases and when the police were not aware of cases it alerted them to the case. The question was asked how many cases the police were alerted to: the answer was that one case was passed to the police by the GTCS.

I have heard about and seen the obstacles that professionals, parents and the public have in raising evidenced concerns in good faith. The obstacles include senior officials of a Scottish local authority threatening a university, saying that they would consider withdrawing public funds because of FOI questions relating to child protection policies. That exemplifies how serious issues can be dealt with by public bodies. People who ask too many questions face intimidation and corruption, using public funds. Employees face their careers and their reputations being crushed because of the managerial and financial power of the large organisations. Parents and the public are gaslit, dismissed and/or intimidated.

The policy gap that has been evidenced undoubtedly has implications in respect of protection of children. That, coupled with the inherent challenges that the committee has already recognised in relation to whistleblowers, presents a real and ongoing risk to protection of children in Scotland.

I will be happy to expand on those points in the round-table discussion, and I thank the committee for the opportunity to share further information.

The Convener: Thank you, Mr McLennan. Your sound improved two-thirds of the way through but, concentrating hard, I was able to hear the early part, as well.

I thank you very much for your four statements, although I should say that they have taken up quite a bit of the time that we have available this morning. They have detailed some areas that we might wish to explore, which is now on the record for us to study.

Alison Dickie and Neil McLennan went through a series of concerns about identified mishandling of child safeguarding issues. Without giving details that might lead to identification of individuals, are there examples that you could illustrate more comprehensively without betraying any confidences?

Alison Dickie: That is very difficult to do in a public setting. We had originally thought that the meeting was going to be private; we had raised

concerns about the matter. We have tried to give you top-level information to give you an idea of the range and scope of allegations that are still unresolved for whistleblowers and the people who are at the heart of the cases. The purpose was to show you the seriousness of the unresolved matters, because I do not think that that has come through to the committee yet.

We can explore some of the processes. It is often hard to know who is investigating. The concerns are Scotland-wide, but let us take Edinburgh as an example. We eventually got an inquiry in which all the concerns might have been investigated in depth to help to resolve them, but the terms of reference were restricted, so that did not happen.

Whistleblowers and people at the heart of cases feel that they are punted around left, right and centre, that nothing ever happens and that their cases are not resolved. People say to them that it is somebody else's responsibility. It is hard not to go into the details of a case, so I will not say more. However, there are cases all over the place that never get properly, thoroughly and independently investigated.

11:00

Bill Cook: We are constrained, but much of the particular case that I have in mind is in the public domain. A young person made an allegation some years ago, but they were ignored and there was no further investigation, at that point. Some years later, that person was contacted because another person had been subjected to abuse. There was a police inquiry at that point. Ultimately the individual who was the predator, was imprisoned, in 2006.

In 2017 there was a serious case review that identified that that particular individual could have been identified 20 years earlier. The case review said that there should be a further investigation, because other things had come out during the course of the review. The chief executive at the time instructed a further investigation. That investigation did not take place. In 2020 there was another whistleblowing disclosure, and the situation was revisited. At that point it was found that some of the allegations and issues that been identified three or four years earlier were still present. That illustrates that such things take a long while. In that example no action was taken, even though problems had been identified fairly recently.

The Convener: That illustrates what Alison Dickie said about lack of direction.

David Torrance: Why would the petitioners like to see an inquiry being set up before the conclusion of the Scottish child abuse inquiry?

Bill Cook: There is perhaps a misapprehension. We are suggesting that a whistleblowing system should be put in place. We believe that there are gaps in what the current inquiry is looking at. We can discuss that further.

On the unresolved issues, we are simply saying that we believe that there should be investigations and inquiries into those matters. We are not calling for a public inquiry to be set up; we just feel that there are things out there that need to be investigated thoroughly.

Alison Dickie: Members can get the sense that there are unresolved issues not just in Edinburgh, but across Scotland. The point that we have tried to make from the outset is that for people to have confidence in current child protection services, there cannot be all those issues sitting out there unresolved. They need to be thoroughly investigated: there should be a distinct investigation of those unresolved cases. We are not judging; we are just saying that they should be investigated. It could be said that lessons have been learned, but you cannot learn lessons unless you know the conclusion of a case.

We have never suggested that the matter should be added to the Scottish child abuse inquiry, because we would not want in any way to lengthen any such process for children in care. We are asking that the gaps be addressed distinctly. We have talked already about issues being raised in education and related to children's regulated activities. There are gaps and they need to be addressed.

We are just about to implement children's rights; it is clear that children should have the highest level of protection. There should not be a defensive culture, as has been felt to be the case throughout. A new campaign started yesterday that asks, "What if you're right?" However, it does not feel as if that is the culture across Scotland. We want to build on that, so we are asking for more robust scrutiny, an investigation and a national whistleblowing officer for children's services.

The Convener: Mr McLennan, if you would like to contribute, raise a hand. The clerks will see that and let me know that you are trying to come in.

Neil McLennan: This example is in the public domain. Christine Grahame MSP raised very serious concerns, very passionately, about issues that had happened in Scottish Borders Council, which were investigated by Andrew Webster KC. That is a finalised case, but we are seeing replication of such cases in other areas. Some Scottish local authorities are clear that they have a challenge in investigating very serious matters. There can be potential conflicts of interests and they might need to pass the issue to expert teams

in childcare for investigation. The national health service recognised the issue and put in place an independent national whistleblowing officer. I firmly believe that there should be one in education and children's services, as well.

With regard to the Scottish child abuse inquiry and Mr Torrance's question, there is a specific focus in that inquiry that would not capture the range of unresolved allegations. As was said, the vast majority of people get on very well in education but, sadly, when it goes wrong it can go terribly wrong. There are such cases within education and children's services. Christine Grahame MSP has in the past raised concerns about very serious allegations involving youth football, which clearly would not be covered by the Scottish child abuse inquiry as it currently stands. Religious bodies also might not necessarily be covered, so the gap needs to be closed.

As Alison Dickie rightly said, before we start putting together systemic changes in how we protect our children, we need to thoroughly and properly investigate unresolved allegations in order to fully understand where things have gone wrong so that we can put them right for the future. It is very important that unresolved allegations, historical and current, require robust independent scrutiny. The current system does not allow that independent scrutiny.

David Torrance: What concerns do the petitioners have about the current procedures, statutory duties and national child protection guidance?

Bill Cook: The problem with the national guidelines is that they are not statutory. The phenomenon of people not adhering to guidelines was identified in the Government's child protection improvement plan, in which there was a direct reference to the issue of reliance on guidelines. It is recognised that sometimes guidelines are not followed. That is the problem. We can commend the guidelines and say that they are excellent and that a lot of good work has been done on them, but what happens when the guidelines are not implemented?

Reference has been made to the Tanner inquiry, which identified and stated something to the effect that in Edinburgh there is not a safe culture for whistleblowing and problems exist. That is despite the fact that there are national guidelines. There is plenty of evidence out there that guidelines are guidelines, and might not be implemented.

Neil McLennan: I have a couple of points to add. It is absolutely right that there are guidelines, but they are not statutory requirements, and that presents a challenge. Serious concerns have been raised about the guidelines. There is lots of good

in them, but a policy should be something that a practitioner can lift and easily use. However, they have been described variously as contradictory and confusing.

There is a range of issues with them. For example, it has been highlighted to the Scottish Government that the Scottish Fire and Rescue Service appears more regularly in the national child protection guidelines than the General Teaching Council Scotland appears, which is odd. That is one example, but there are lots of areas in them that are of concern. The Children and Young People's Commissioner Scotland—the national expert body for safeguarding children and children's rights—has raised a range of issues with the Government about the child protection guidelines. To my knowledge, not all of that has been progressed in policy reviews.

I will go back to Alison Dickie's point, which is important. We should look again at the child protection guidelines and rethink and amend them. However, to Alison's point, until we have conducted a thorough and independent inquiry into unresolved historical and present allegations, there is little point in moving guidelines without detailed knowledge of what has gone wrong in the cases that have gone before. The Andrew Webster KC inquiry clearly details breakdowns throughout the process of a child protection issue being raised, and there are multiple examples of that across the country. Until they can be tabled, there is little point in trying to manoeuvre things to cover cracks. It needs a belt and braces review.

Brendan Barnett: I come at the guidelines from a criminal justice perspective. There are national guidelines, multi-agency public protection arrangements guidelines and local authority guidelines for the risk management of high-risk sex offenders and violent offenders. Local authorities have guidance for their social workers, and there are national guidelines through the multi-agency public protection arrangements.

I used to chair case conferences that were very similar to the set-up in here. If we had a serious sex offender who was due for release, I would have a social worker before me and I would ask, "What are the plans, what are his risks and how are we going to cover those risks? Do we need to make any arrangements, where are the victims and where are we going to house him?". What was really disturbing was the way that the national and local guidelines on risk management—which were about due diligence and having an investigatory approach to information—were not followed.

I will draw a parallel. I was watching the Grenfell disaster inquiry. What struck me was the number of times that an agency said, "We always assumed the other agency had shown due

diligence. Therefore, we didn't have to, because we trusted the other agency". Doing my job, I regularly found that social workers said, "We trust the prison's assessment and we trust the children and families department's assessment", and they had not done their own assessment. Each agency would say the same about the other. There was a failure to follow national and local guidelines. When I took the issue to the local authority and then to the SSSC, the SSSC refused to investigate. The risky behaviour that goes on is astounding. I just wished to make that point about national guidelines.

Alison Dickie: You asked about the national child protection guidance that has not long been updated. My experience has been, and I have always believed, that child protection is a constant improvement journey. That is exactly what the Scottish Government has recognised and is promoting out there. However, that has not been the experience. There continues to be the defence that everything is in place and is fine.

11:15

I will go back to the convener's original point. As I have said, I will try not to go into cases. Some issues are about agencies sharing information between them. In one particular case that I can think of, I do not think that key information was shared, which would have absolutely helped that situation. I know that that has been addressed a wee bit in forward improvements.

There is a lack of scrutiny. Members and councillors have busy lives, so they have to listen to whistleblowers—I could have said, "I don't want to listen to you". You come at it from a different perspective when you are scrutinising officers' reports, because you are more informed.

I have sat on multi-agency groups on public protection, and it feels as though there is not much discussion at those forums. There has probably been a lot of discussion before those meetings, but I would have liked to have seen more questions and scrutiny in those environments.

Another issue is that some cases are considered to be too old or historical, and we hear, "We're not resourcing historic. Wouldn't you rather focus on the current?", which misses the key point that the past is connected to current child protection.

Another issue is that information is too limited to identify criminality, yet, to me, some of it is quite stark. It is then directed back to the public body or the social worker—the source of the allegation—and, of course, the whistleblower does not want to go there. We have the Safecall system, but the inquiry has highlighted the flaws in that.

You can see that there a lot of different things that jar and lead to people in all sorts of corners all over Scotland shouting, "Please listen to us and let us all work together for more robust scrutiny".

The Convener: I want to move on, because I am conscious of time.

Maurice Golden: Witnesses have mentioned guidelines not being adhered to. I am particularly interested in the local authority perspective. Do you think that that is a result of resource constraints or culture—or both? Do you have an assessment of how local authorities across Scotland are adhering to guidance? Are there examples of best practice or worst practice? Is it a similar picture across the country? Do you have that information?

Brendan Barnett: I cannot speak Scotland-wide. In my post in a major local authority in Scotland, I had access to reports from all over Scotland of offenders moving to my city, for instance. I would ask for information, and I would find the same erratic compilation of information. My job was to ask, "What are the gaps in the information? Please go and find it".

On risk management in relation to information, the Probation Service in England has a much better system. For example, in the tragic case of the two teenage killers in Warrington, which we have heard about this week, all the information and assessments on them, including the psychological assessments, will be sent to the Probation Service. It will have a full file of information. In 20 years' time, when somebody makes a risk assessment as to how and when those individuals might be released, they will have a huge amount of information.

That does not happen in Scotland. After 20 years, somebody in my position gets a court report and has to ask where all the other information is. I have often had to refer to press reports to get the details of offences, because, in Scotland, the procurator fiscal's office does not send out files of information out—that is too costly. We have to go out seeking reports and asking the police for information. It is not a comprehensive system.

I am sure that there is some excellent work in every authority, but there is also some dreadful work.

Alison Dickie: Without a doubt, resources are an issue. It is an issue in social work, children's services and education. We also know that culture is an issue, because the Tanner inquiry pulled that out, in particular.

We are saying, "Dig deeper". Let us not be naïve about what is out there. Our children need the deepest of investigations. From the nutshell that I

gave you, you can see why I cannot say that everything is okay.

The Convener: Mr Ewing, I noticed that you were following that exchange with interest. Would you like to come in?

Fergus Ewing: I thought that Mr Barnett's comments were apposite and that we could perhaps learn from the cited example of the experience in England.

I want to ask about the establishment of an independent national whistleblowing officer. First, how would that help to address the concerns? Secondly, would a new public body be required to fulfil that function, or could that be made an explicit function of the Children and Young People's Commissioner Scotland?

Bill Cook: Giving the commissioner that function might be a way forward. The thing about whistleblowing and public inquiries is that we see public inquiries taking place 10, 20 and 30 years after the events. We need an intervention that can change things at the time and in a way that gives support to and perhaps champions the whistleblower or the person who is being victimised.

I hope that that answers your point.

Fergus Ewing: That makes a lot of sense. I am attracted by the idea that it be made an explicit part of the commissioner's functions, perhaps even on a statutory basis, as that would avoid our having to create a new public body.

Let us assume that that happens, and that it helps things to be done more quickly, as opposed to what is happening in the Edinburgh Academy case, in which we are looking at events that took place decades ago. What happens if the commissioner or whistleblowing officer says this and that should happen but the local authorities, for example, do not agree? Where would the matter go from there? Would it go to ministers or to the press? These may be sensitive matters. How would a dispute between the whistleblowing officer and the relevant public authority be handled or resolved?

Bill Cook: That is an excellent point, and I am not sure that I have the answer to that.

Brendan Barnett: I think that there would be a role for the professional regulatory bodies in that circumstance. I will tell you what my problem was. I raised issues with my employers, as I did not want to draw them into disrepute. I wanted to tell them that we had a problem that was a risk to the public. My job is risk management and my manager told me, "Don't ask so many questions". Can you imagine my telling you that?

I then raised that with the SSSC. I said: "There are problems—they're not following the risk management guidelines. It's a professional issue. You need to address this". The SSSC would not address the issue. Therefore, it is not only an issue with the local authority; it is about the professional standards of the individuals within those authorities.

Neil McLennan: You made two very sound points, Mr Ewing, and I want to pick up on both of them. We are talking about checks and balances here. Local authorities marking their own homework in the very serious issue of child protection is a major risk. If we take the police service as an example, Police Scotland might have another force investigate an issue. However, even that approach has been questioned—even though that is presented as being independent, it is still a case of the police investigating the police.

The NHS has grappled with the issue and put in place an independent national whistleblowing officer, which avoids the issues that we face in relation to local authorities. I have outlined the concerns about local authorities.

GTCS has clearly stated to Parliament that it is not on the front line of child protection. It has a specific role in legislation on regulation and registration, which is separate. An INWO— independent national whistleblower officer—would give that umbrella assurance and stops some of the cracks in the system.

I very much understand the attraction of adding responsibilities to the remit of the Children and Young People's Commissioner Scotland, and Parliament may wish to discuss that. I will raise a couple of points in that regard.

First, commissioners have a very specific locus and the INWO role may detract from the locus that they have, so perhaps it would need to be separate.

Secondly—this hits on your point—one of the challenges that the Children and Young People's Commissioner Scotland has is its enacting legislation. One part of the legislation states that the commissioner can report on and make a commendation to a public body, and they can instruct them to respond, but the next part says that the public body can simply write back to the commissioner to say why it is not carrying out its recommendation. Ultimately, although the commissioner is given teeth, its teeth are then taken away.

People saw the need for the NHS to have an INWO. We have highlighted gaps in education and children's services. When, I hope, we come to setting up an INWO in that area, the legislation must be framed in such a way that the officer has the ability to progress things rather than being

hamstrung by it. The part of the children's commissioner's legislation to which I referred really hamstring them. There are examples of the commissioner writing to public bodies in which they have simply ignored the commissioner, because the legislation allows them to ignore the recommendations of the body that has oversight of safeguarding of children in Scotland.

The Convener: Mr Ewing, I am conscious that we are into our last five or six minutes for this item.

Fergus Ewing: I am very concerned about the general issue of public bodies marking their own homework. When any complaint is dealt with, whether it is a complaint about staff or management, there is a tendency to circle the wagons, and nothing very much ever happens. That concern is real, and the answers from our witnesses have been very helpful.

I postulate that one solution to resolve the question of what happens if the whistleblower's recommendation is ignored could be, if it is a criminal matter, to refer the case to, for example, a children's panel. If it were not a criminal matter and therefore outwith the remit of the children's panel, could there be a procedure to refer a matter to the Scottish Government's children's minister? That, albeit not a perfect remedy or disposal, would at least provide a route to take. I am just thinking out loud here; I have no expertise in this area at all. Would either of those possibilities, or other possibilities, be something that you might want to consider and come back to us on, given the current time constraints?

The Convener: Yes, it would be helpful if the witnesses could reflect on that, and maybe on the earlier answer as well. We would be very happy to receive any further submission, given that there was some uncertainty beforehand.

Mr Choudhury would like to come in, and I am keen to give him the opportunity to do so.

Foyso Choudhury: I seek clarification on an issue that my colleague Mr Ewing has raised. How would a national independent whistleblowing officer bridge the gap in current safeguarding provision? I know that a lot has been said about that, but do you have anything further to add?

Bill Cook: One of the advantages in having such a system is that it raises the standard. Earlier, reference was made to the wagons circling. Having an independent body adds another element to how authorities or institutions might operate, given the fact that they might be subject to independent scrutiny. If a whistleblowing system officer had the investigative powers and the links that have been alluded to, that might change behaviours. That is part of this.

11:30

Brendan Barnett: A whistleblowing office would also act as a focal point for people who have raised concerns about unsafe practice. All of us—and all the whistleblowers whom I have ever met—have all been isolated and roamed around. I have gone down this pathway to try to address the issues, but there is no guidance or support for anyone.

I keep making reference to other issues. However, the Post Office workers formed their own group, which enabled them to move forward. Whistleblowers cannot do that. They are all very isolated and they do not know who else is a whistleblower. If an office is established, that would be able to give guidance and support, and to set out the procedure as to how to investigate serious issues.

Alison Dickie: It is about bridging the gap between marking your own homework and the need for independence.

I go back to Mr Ewing's question about the Children and Young People's Commissioner Scotland. There are many people with unresolved issues. That is a huge resource issue. Therefore, although it would be ideal for the commissioner to take on the role, they would need far greater resourcing in order to take forward a whistleblowing function. There would also need to be changes to the legislation to direct public bodies to act.

My final point is that, even if we are putting it back to the Scottish Government, people could say that that is the Government marking its own homework. We need to think about all those things and find an independent route that targets the gaps and ensures that we mop up all the unresolved concerns.

The Convener: Thank you. We have packed a lot of information into this past hour, which I will want to have some time to reflect on when we get the *Official Report*. Some of the issues that have cropped up have maybe prompted thoughts of additional information that you might like to contribute to us, and we will be very happy to receive that in advance of our next consideration of the petition.

We have a fairly packed agenda this morning. I am sure that we could probably have packed more information into an extended discussion. I thank all of you very much for taking the time to join us here in Parliament this morning. We will keep the petition open, and we will have an opportunity to reflect on the evidence that we have heard and to decide on next steps. We look forward to hearing from you further as appropriate.

I suspend briefly before we move to the next item.

11:32

Meeting suspended.

11:32

On resuming—

Train Fares (PE1930)

The Convener: We are back. Our next continued petition is PE1930, which was lodged by George Eckton. It calls on the 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 recognise the vital role of the existing ticket office estate in delivering on this aim.

We last considered the petition quite some time ago: 17 May 2023. At that point, we agreed to write to the Scottish Government and ScotRail. The response from ScotRail notes that, although it has no current plans to upgrade the retail infrastructure to support the use of bank cards for tap-on-tap-off rail journeys—which is how you get around the London Underground—it is actively pursuing a pilot scheme for a mobile phone app to achieve a similar outcome. That is the modern way of getting around the London underground—as long as you have a signal.

Transport Scotland responded to tell us that it anticipated the national smart ticketing advisory board to be operational by the end of 2023, and I understand from the clerks that the board commenced operation in November. The Scottish Government has also confirmed it has no plans to remove paper rail tickets, noting that paper tickets now include a QR code that can be scanned to validate the ticket.

The Government's response also makes reference to the much-anticipated fair fares review, which had been expected by the end of 2023 but has yet to be published. Members may be aware that the Minister for Transport indicated on 18 January 2024 that the review would likely be published at the beginning of this month.

We have also received two submissions from the petitioner sharing his disappointment at the lack of detail or urgency in addressing the issues raised by the petition. Mr Eckton also wanted to draw our attention to the recent research that found that train station ticket machines can charge more than double the price of booking the ticket online. It is worth noting that that research did not include stations located in Scotland. That comes as a relief—certainly to me.

Do members have any comments or suggestions as to how we might proceed?

David Torrance: I wonder whether the committee would consider keeping the petition open and writing to the Minister for Transport once the fair fares review has been published, to seek details on any recommendations relate to the ask of the petition.

The Convener: That is the very obvious course of action, given that the publication of the review is imminent. Are members content to do that?

Members indicated agreement.

Peat (Ban on Extraction and Use in Horticulture) (PE1945)

The Convener: PE1945, on banning the extraction and use of peat for horticulture and all growing media by 2023, has been lodged by Elizabeth Otway and calls on the Parliament to urge the Scottish Government to place a legal ban on the extraction of peat, peat imports, exports and sales in order to protect peatlands both in Scotland and worldwide.

Since we last considered the petition on 3 May 2023, the Scottish Government has published its analysis of responses to its consultation on ending the sale of peat in Scotland. The analysis, an extract of which is available in today's papers, concludes that among individual hobby gardeners, there is broad support for introducing a ban on the sale of peat in Scotland. Among organisations, however, support was more limited, with several negative impacts anticipated. The most common year suggested for introducing a ban on the sale of peat for retail horticulture was 2023, with organisations preferring a later date of 2028 to 2030.

On the use of peat for cultural purposes, the Scottish Government's written response to the committee states that it is mindful of the needs of crofters and islanders and is working to determine the impact on those groups as a result of ending the sale of peat. The submission states that outcomes from the consultation, stakeholder engagement and impact assessments will form robust evidence that will guide Scottish ministers as to the scope of any sales ban.

Do colleagues have any suggestions or comments?

David Torrance: I wonder whether the committee would consider writing to the Scottish Government for an update on whether its delivery plan and timetable for phasing out a sale of horticultural peat will be published and whether it intends to look beyond the sale of peat and consider banning the extraction of peat, but with

an exemption for crofters and traditional and cultural use.

The Convener: Are there any other suggestions? Are we content to proceed on that basis?

Fergus Ewing: I just want to emphasise the latter part of that suggestion and say that we interfere with crofters' traditional extraction of peat at our peril.

The Convener: Yes, all types of crofters, humble or otherwise.

Fergus Ewing: Well, there would be civil unrest if the crofters were denied the right to extract peat from their own land. I think that that would be unthinkable to many of us.

The Convener: Does the committee agree on the proposed course of action?

Members indicated agreement.

Homeless Temporary Accommodation (Scottish Government Funding) (PE1946)

The Convener: PE1946, which proposes that the Scottish Government pay all charges for homeless temporary accommodation, has been lodged by Sean Anthony Clerkin. The petition calls on the Parliament to urge the Scottish Government to use general taxation to pay all charges for homeless temporary accommodation, including writing off the £33.3 million debt owed by homeless people for temporary accommodation to local authorities.

We last considered this petition on 3 May 2023, and in its recent response to the committee, the Scottish Government outlined its planned work on two relevant recommendations from the temporary accommodation task and finish group's report. On recommendation 14, which calls for a benchmarking process for temporary accommodation and greater transparency in charges, the Scottish Government has stated that it will engage with the Convention of Scottish Local Authorities as necessary.

As for recommendation 15, which calls for a review of the guidance to local authorities on setting charges for temporary accommodation by clearly defining the terms "reasonable charge" and "affordable", the housing affordability working group has been developing a shared understanding of housing affordability with a critical review of the main working definitions and their different uses in policy and practice that could help clarify the relevant guidance.

The petitioner points out that there was a 27 per cent increase in households living in temporary accommodation between March 2020 and March 2023. He also notes that local authorities in

Edinburgh, Glasgow and Argyll and Bute have declared housing emergencies, and he calls on the committee to pressurise the Scottish Government to act.

Do members have any comments or suggestions for action?

David Torrance: I wonder whether the committee would consider writing to COSLA to seek its views on the action called for in the petition and to ask for information about its work on recommendation 14 from the temporary accommodation task and finish group report. In particular, the committee could ask about the engagement that COSLA has had so far with the Scottish Government on this work.

The Convener: We could also write to the Scottish Government to ask how it intends to address the concerns about those existing households with a debt arising from temporary accommodation charges that have already been accrued. In particular, the committee would, I think, be interested to know how on-going household debt from temporary accommodation aligns with the Government's priority to reduce the number of households in temporary accommodation by 2026.

Are colleagues content with both those proposals?

Foysoil Choudhury: Should we ask the councils, too? After all, I think that they, too, are under pressure. When we did the round table with local communities, we found that—

The Convener: I just wonder whether, if we are already writing to COSLA, we are potentially accommodating that approach through that body.

Do members agree with the proposed course of action?

Members indicated agreement.

Property Factors (PE2006)

The Convener: PE2006 is on reviewing and simplifying the legislation in relation to dismissal of property factors. I am delighted to see that we have been joined by our parliamentary colleague Sarah Boyack, who will speak to this petition—we will hear from you in just a moment, Ms Boyack.

The petition, which has been lodged by Ewan Miller, calls on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act 2011 in order to cover dismissal of property factors, or to bring forward other regulations that would achieve the same aim. Such actions could include giving the First-tier Tribunal for Scotland powers to resolve disputes relating to the dismissal of property factors.

When we last considered this petition on 3 May 2023, we agreed to write to the Scottish Government and other relevant stakeholders, and we have received responses from the Minister for Victims and Community Safety, the Property Managers Association Scotland and the charity Under One Roof. Those responses, which are set out in the papers that colleagues received ahead of today's meeting, note the instruments that are already available to home owners to challenge property factors via the First-tier Tribunal, which I referred to a moment ago, and the courts process more widely. In a response in June 2023, the minister also committed to providing an update on progress towards the publication of the voluntary code of practice for landowning maintenance companies by early this year.

We have also received submissions from the petitioner and Shelagh Young, highlighting their own experiences of the difficulties and challenges involved in trying to remove their property factors—I suspect, too, that many of us as MSPs have been contacted by constituents with individual and specific issues—and they have also expressed concern that the gravity of the situation facing home owners across the country is perhaps not being fully understood.

Before I ask members to comment, I wonder whether Sarah Boyack would like to assist the committee in its consideration.

Sarah Boyack (Lothian) (Lab): Yes, I would, and thank you very much, convener, for the opportunity to address the committee this morning.

I am increasingly receiving casework from constituents on a range of issues arising with property factors. The main issue is that factors are seen as unaccountable, with high and rising costs, high quotes for repairs, insufficient information to assess value for money, poor communication, lack of engagement or interest in engaging with residents, historic debts being passed to current owners and people finding it very difficult to challenge costs or standards of work, to suggest improvements or to remove factors altogether.

Constituents feel powerless against factors that have been appointed by developers. There is a lack of a clear tendering process for the initial appointment, as referenced by the petitioner in highlighting the appointment of the factor by the developer. There is a lack of transparent information about services and costs before people commit to buying a new build, which means that they buy a property without knowing exactly what they are committing to financially. Reliance on title deeds is problematic, too, because they are not clear with regard to voting rights, processes and procedures.

Constituents have reported to me poor communication when responding to queries, unwillingness to engage on improving services or processes, errors in invoices and staff unclear about what they should be doing. There is also a big worry about future costs, including the costs of repairing unadopted roads, and people are worried about costs rising while their income is reducing and there being no help available if their income falls.

Using the code of practice to challenge factors is seen as incredibly cumbersome and as working against individual owners, who face a huge amount of organisation if they have to reach out to their neighbours. The First-tier Tribunal is also incredibly daunting to owners, as they might well be up against the factors and their legal teams.

11:45

I have asked written and oral questions on the steps that the Scottish Government will take to ensure that the system works for property owners. Moreover, in a working paper that was published last November, the Competition and Markets Authority referenced the imbalance of power between factors and home owners. The issues that constituents are raising with me come down to the power that factors have and the power that home owners have.

During the committee's previous consideration of the petition, Mr Ewing made points in defence of the role of factors, and I want to make it clear that it is always better to have a factor in place than not. If there is no factor in place, buildings can fail or fall into a state of repair and basic health and safety approaches can end up not being followed. That is in no one's interest, but there has to be more transparency in the system from factors being appointed to having the capacity to change them.

A constituent of mine has calculated how much their factor earns. They pay £45 a quarter in factor management fees in a development with more than 250 properties. In other words, in a development not that far from this Parliament, a factor is receiving over £11,000 a quarter, or nearly £50,000 a year for managing the property—and that does not include the cost of any works that need to be done, which owners themselves pay for.

To conclude, convener, I think that the Parliament has a duty to ensure that our constituents are protected through legislation. The Scottish Government has been slow to act on this matter, and I encourage the committee to use this petition in order to think of ways of ensuring a fair power balance between factors and home owners.

Thank you again for the opportunity to address the committee.

The Convener: Not at all. Thank you very much, Ms Boyack.

You have touched on issues that, as a constituency MSP, I can say have been raised by constituents of mine, too. I would say that there are good and less good factors, and there is good and bad practice. Obviously, constituents tend to contact us when faced with an issue, but I think that the issues that you have raised and touched on are becoming increasingly part of my own casework profile.

I note that we are still waiting for the Scottish Government's publication, but having heard those remarks and reflected, do colleagues have any comments or suggestions as to how we might proceed?

David Torrance: I wonder whether the committee would consider writing to the Minister for Victims and Community Safety, highlighting the petitioner's submissions and seeking an update on the work to finalise and publish the voluntary code of practice for landowning maintenance companies.

The Convener: I am content that we do that. Are there any other thoughts about things that we might consider?

Maurice Golden: Once we have received the response, it might be worth while hearing from the minister on this. After all, the proposed code of practice is voluntary, which, clearly, means that it will not be mandatory for factors. Again, we have not seen the publication, but it might be worth hearing from the minister and perhaps other stakeholders on this point.

The Convener: Yes. Mr Choudhury, do you agree?

Foysoyl Choudhury: Yes.

The Convener: Last time round, Mr Ewing, you expressed concerns, not I think in relation to the petition but with regard to the unforeseen consequences of actions that might be taken.

Fergus Ewing: I was pleased to hear Sarah Boyack say that, generally speaking, it is beneficial to have a factor rather than none. If you have no factor, common repairs, whether in a tenement or, for that matter, an estate where there is substantial common property to be maintained, can get neglected, and that will lead to huge problems. My experience of factors over 20 years in legal practice was that they had a bit of a thankless task, and the remuneration was generally modest in relation to the amount of work to be undertaken, the sheer amount of time spent on speaking to people and so on.

I have seen mostly good practice but, as I have said, members have received complaints, as indeed I have. However, I do think that many of the problems are not going to be solved by legal reform, because they are more practical difficulties. I might be a bit rusty, because it has been 20 years since I last practised, but as I understand it, if anyone is charging extortionate fees—which I think Sarah Boyack was suggesting in the example that she gave—there are existing legal remedies to challenge any grossly exorbitant fees for the provision of services. If services are worth, say, £1,000, you cannot charge £1 million for them, and people can, I believe, find a remedy through the sheriff court.

I am just not convinced that we are necessarily going to progress this issue through legislation, but I do support Mr Torrance's recommendation that we find out whether the minister can make any further recommendations and that we see how the voluntary code of practice is getting on.

The Convener: Shall we write to the Government as our first step and then reserve the possibility of pursuing the matter? What I think that Ms Boyack was suggesting—and I am not sure that I disagree—is that, depending on what the code of practice says, there might need to be a little bit more direction to try to make things happen. The key thing is that we do not find ourselves embracing something that is then widely ignored.

Are we agreed?

Members indicated agreement.

Mental Health Accident and Emergency for Children (PE2008)

The Convener: Our last on-going petition is PE2008, which was lodged by Kirsty Solman. It calls on the Scottish Parliament to urge the Scottish Government to provide funding to create a separate accident and emergency for children and young people presenting with mental health issues.

Following the previous consideration of the petition, the committee put points raised by the petitioner to the Scottish Government. The submission from the Scottish Government outlines a number of workstreams including work with Police Scotland and the Scottish Ambulance Service to improve unscheduled care pathways.

The minister's response notes that attendance at a children's hospital instead of general A and E may be advised where that is available and appropriate. In response to the petitioner's concerns about the efficacy of phone assessments, it states that a patient-centred approach is adopted when considering the

suitability of digital technology and that that is included in the national guidance for clinicians. The minister's response recognises that the child and adolescent mental health services target of all boards achieving a 90 per cent standard by March 2023 was not achieved and points to on-going work with health boards to develop CAMHS out-of-hours service provision.

The petitioner has responded to the minister raising questions about the impact of significant staff cuts on the planned work with Police Scotland and the Scottish Ambulance Service. She has asked how many psychiatric teams there are, as her experience involved waiting for several hours because the team was not based in the hospital. The petitioner shares that many families have reached out to her to say that their child could not get help through the mental health hubs because they were under 12. She asks for clarity on what services are available for children under the age of 12.

Do members have any comments or suggestions for action?

Foyso Choudhury: We should write to the Scottish Government to seek—sorry, I have lost my place.

The Convener: We should write the Minister for Social Care and Mental Wellbeing and Sport.

Foyso Choudhury: That is right. We should ask about the age of people using the services. How many people have attempted to access support through the mental health hubs and how many were under 12 years of age?

The Convener: Okay. We might like to know the number of psychiatric teams in Scotland, and it would be useful to have that broken down by health board. We should also ask whether the Scottish Government recognises that increased training will be required with partner agencies such as Police Scotland and the Scottish Ambulance Service to improve the unscheduled care pathways and, if so, what resources and funding will need to be put in place. Are we content with those suggestions?

Members *indicated agreement.*

The Convener: Thank you very much. We will keep the petition open, and we will investigate further and return to it when we have those responses from the minister.

New Petitions

11:53

The Convener: Item 4 is the consideration of new petitions. As always, I say to those who might be tuning in to hear their petition being considered for the first time that, in advance of that first consideration, we go to the Scottish Parliament's independent research service, SPICe—the Scottish Parliament information centre—and to the Scottish Government for an initial consideration. We do that because, were we not to do so, those would be the first two things that we would recommend doing and that would just simply add delay to our consideration.

Trespassers (PE2060)

The Convener: PE2060, which is to review existing legislation and legal remedies against trespassers, has been lodged by Daithi Broad. The petition calls on the Scottish Parliament to urge the Scottish Government to review and revise existing legislation to offer better protection against trespassers. The SPICe briefing outlines the circumstances in which the public have the right to roam, noting that exceptions to that include domestic houses and gardens.

The briefing also notes that many people incorrectly—I was quite surprised by the briefing, I have to say—believe that the law of trespass does not exist in Scotland. Police Scotland has highlighted difficulties in applying the law in practice. Notably, the police have no jurisdiction, as trespass to land is a civil matter and they cannot assist in the removal of trespassers. Police Scotland's comments on trespass state that the best and safest course of action is to obtain a court order, which, if breached, may then turn into a criminal matter.

The Scottish Government's response to the petition also outlined information about the current law on trespassing. In response to the petition's ask regarding responsibility for injuries on the land, the Scottish Government stated that the duty of care is the same regardless of whether an individual has permission to be on the occupier's land, but factors such as the foreseeability of unauthorised entry and any steps taken to prevent unauthorised entry and to warn of dangers may be of relevance in determining whether reasonable care has been taken in the particular circumstances. The response also notes that the evidential burden to prove trespass would depend on whether the individual was pursuing a criminal or civil law case.

For my own part, having read the briefing, I think that it is saying that there is little that you could

risk doing, particularly in the current climate in which it seems to me that your interests are secondary to those of the people who want to trespass on your property. That is basically how it reads to me. Although we pretend otherwise, the reality is that that is how it will be if you seek to do anything. It is also very difficult, because the briefing does not define what “force” is; I imagine that, if you were to escort somebody off, “force” would now include even laying hands upon somebody, however gently that was done. I found the briefing quite dispiriting. Do colleagues have any suggestions on what we might do?

David Torrance: I wonder whether the committee would consider keeping the petition open and writing to the Scottish Government to ask whether it intends to carry out work relating to the issues that are raised in the petition and on whether it will undertake work to raise awareness about public rights to access different types of land and the law of trespass in Scotland.

The Convener: I would like to ask the Scottish Government whether it thinks that the current law of trespass in Scotland is worth the paper that it is written on. [*Laughter.*] I say that in all seriousness, because I was not quite sure what somebody’s remedy is under it. We will keep that petition open, and I can say to our petitioner that the briefing seems to recognise some of the issues raised.

Prostate Cancer (Screening Programme) (PE2062)

The Convener: PE2062, on introducing a national screening programme for prostate cancer, has been lodged by Bill Alexander. It clearly has a topical flair to it, because it calls on the Scottish Parliament to urge the Scottish Government to introduce a national screening programme for prostate cancer. The SPICe briefing states that there is no one test used to diagnose prostate cancer. The most common tests include a prostate-specific antigen blood test, a physical examination of the prostate and a biopsy. The briefing points out that PSA blood tests can sometimes miss cancer in some patients and can just as easily falsely diagnose others. A heightened PSA is not the same thing as prostate cancer. However, advancements in magnetic resonance imaging technology and biopsy techniques could facilitate the development of a national screening programme.

The Scottish Government response notes that the United Kingdom National Screening Committee considered whether to recommend population screening in November 2020 and, frankly, concluded that it could not happen based on the available evidence. However, the screening committee will review that recommendation in the next 12 months. The response highlights a large

prostate screening study called TRANSFORM—I think that that is a large study rather than a study of large prostates; I assume that it is that way round—which will look at potential innovative screening methods with hundreds of thousands of men due to be recruited for the study. I comment on all of this as somebody who has had a heightened PSA test, an MRI and biopsy myself for the matters at hand. Do members have any comments or suggestions for action?

David Torrance: Given the evidence before the committee, I wonder whether the committee would consider closing the petition under rule 15.7 of standing orders on the basis that, based on the evidence currently available, the UK National Screening Committee concluded that it would not recommend a prostate screening programme. Considering that the screening committee will review its recommendation in 12 months’ time, I wonder whether the petitioner would consider bringing the petition back then if he is not happy with the review.

The Convener: What does that mean?

David Torrance: The UK National Screening Committee is going to—

The Convener: We are writing to it to find out what it is doing, are we?

David Torrance: No, I was considering closing the petition because the screening committee is going to review its decision in 12 months’ time.

12:00

The Convener: Do we know when that 12 months is from? November. In fact, we could have to wait until November this year.

Fergus Ewing: I can certainly see Mr Torrance’s argument, because the reply that we have from the Scottish Government is quite complete in the sense that, as I read it, it is saying there are no real ways in which a definitive test can be issued at the moment. That is the challenge. It is not that there is not a desire perhaps to have a test if a test worked, but a test does not work. My reading of it is that the UKNSC is due to review the recommendation in the next 12 months. That sounds to me as if the review is to start in 12 months and it might take quite a lot longer. I wonder whether there would be any harm in the meantime in signifying our general concern and interest because prostate cancer is such a widespread cancer. I suggest that we do not close the petition at this stage, but it may be that we would close it after a further response.

We could write to the UK National Screening Committee to ask whether it will consider the findings of the TRANSFORM study; how frequently its decision not to recommend

population screening for prostate cancer will be reviewed; and how it decides the frequency with which it reviews recommendations. I stress the urgency here because there are so many men who will be affected by this in their lifetime—I think that I read somewhere that it is eight out of 10, which is an incredibly high proportion—and the screening tests that are available for so many conditions and diseases have been one of the tremendous advances in society over the past 20 years and have saved lives in so many cases. The lack of a valid method for the prostate seems to be a matter of real urgency.

The Convener: Would you be content for us to go with Mr Ewing's recommendations?

David Torrance: Yes.

The Convener: Are we content to pursue it on that basis?

Members *indicated agreement.*

The Convener: That takes us to the end of our public business this morning. I look forward to welcoming those who follow our proceedings back at our next meeting. Thank you.

12:02

Meeting continued in private until 12:04.

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