The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC PETITIONS COMMITTEE

Tuesday 3 June 2014

Session 4

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PUBLIC PETITIONS COMMITTEE
11th Meeting 2014, Session 4

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Chic Brodie (South Scotland) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West Scotland) (Con)
*Angus MacDonald (Falkirk East) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*John Wilson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Neil Findlay (Lothian) (Lab)
Detective Chief Superintendent Gary Flannigan (Police Scotland)
Patrick Harvie (Glasgow) (Green)
Elaine Holmes
Alan McCloskey (Victim Support Scotland)
Alan McCreadie (Law Society of Scotland)
Stephen McGowan (Crown Office and Procurator Fiscal Service)
Olive McIlroy
John Scott (Ayr) (Con)
Marion Scott (Sunday Mail)
Sandra White (Glasgow Kelvin) (SNP)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Public Petitions Committee

Tuesday 3 June 2014

[The Convener *opened the meeting at 10:03*]

Current Petition

Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

The Convener (David Stewart): Good morning, ladies and gentlemen, and welcome to today's meeting of the Public Petitions Committee. As always, I ask everyone to switch off their mobile phones and any other electronic equipment, as it interferes with our sound system.

Agenda item 1 is consideration of a current petition. PE1501, by Stuart Graham, is on public inquiries into self-inflicted and accidental deaths following suspicious death investigations. The committee previously agreed to take evidence from a number of parties on this petition, and I therefore welcome to the meeting all the panel members. We had a late substitute, for which I am very grateful.

I welcome Stephen McGowan, deputy director of serious case work, Crown Office and Procurator Fiscal Service; Alan McCreadie, deputy director of law reform, Law Society of Scotland; Detective Chief Superintendent Gary Flannigan, Police Scotland; and Alan McCloskey, director of operations, Victim Support Scotland. Members have a note by the clerk, and paper PPC/S4/14/11/1 refers.

As there will be no opening statement, I will kick off with some questions, and then my colleagues will ask some additional questions. At this point, I should say that I am very grateful to the witnesses for giving up their time to let us to take a further look at the very delicate area covered in the petition.

My first question is for Alan McCloskey, but obviously I welcome the views of other panel members. In your view, Mr McCloskey, do bereaved family members have enough involvement in suspicious death investigations?

Alan McCloskey (Victim Support Scotland): There is a very strong case for ensuring that families are proactively involved in the process from the very start and that they have access to as much information about what is happening as needs be. If they are involved, they feel empowered. At the moment, there is a gap in that respect, and that is one of the aspects of the petition that we are keen to see factored in to how things are taken forward.

The Convener: Thank you for that. Would other panel members like to respond?

Stephen McGowan (Crown Office and Procurator Fiscal Service): We try to involve families as best we can at all stages of our investigations into deaths. Typically, when we receive a report of a death, we contact the family either by phone or by letter; thereafter, our involvement with families basically depends on the family themselves and how much they want to know.

There are limits to what we can tell families and we know about that in terms of giving statements. However, once we have come to the end of our investigation, reached a conclusion and have information about the cause of and circumstances surrounding the death, we offer the family a meeting at which we explain our conclusions and the evidence, including any contradictions that there might be in the principal evidence. We are also able to offer them access to post-mortem, medical, toxicology and other expert reports.

We try to involve families at every stage, but we are always open to feedback on how we can improve our service to people and the amount of information that we know families want.

Alan McCreadie (Law Society of Scotland): Thank you again, convener, for affording the Law Society of Scotland the opportunity to contribute to the committee's deliberations on this petition.

With regard to the gap that Alan McCloskey referred to, the Law Society respectfully suggests that, for the small number of families of the deceased who are still dissatisfied after the outcome of the Crown Office's deliberations, there be another stage in the process: a preliminary hearing before the sheriff in whose jurisdiction the death occurred to determine whether there should be a further inquiry.

Detective Chief Superintendent Gary Flannigan (Police Scotland): Notwithstanding Stephen McGowan's comments about involvement, I think that it is worth pointing out that quite a significant number of families are involved in the investigative process and that the police usually seek to speak to family numbers as part of their broader investigation to look at background and so on.

Anne McTaggart (Glasgow) (Lab): I have a quick question, convener. With regard to Mr McCreadie's comment about having another step in the process, why is what he has suggested not happening at the moment?

Alan McCreadie: I have no information about the existing arrangements—I was simply making a

suggestion with regard to the small number of families to whom it would apply. I am sorry that I cannot answer your question all that well, but I do not want to venture an explanation as to why that is not happening at present. All that the Law Society is doing is making a respectful suggestion for the small number of families who still feel disaffected after they learn the Crown Office's position. Perhaps Stephen McGowan might be able to answer the question.

Stephen McGowan: At the moment, there is no mechanism for a hearing before the sheriff. There is the Lord Advocate's investigation, which is carried out by the procurator fiscal; for most deaths, that investigation is, in practice, undertaken by the specialist Scottish fatalities investigation unit. Once we have reached a conclusion about the cause of death and the surrounding circumstances and once we have had that conversation with the family, consideration will be given to whether there should be a fatal accident inquiry under the terms of the current legislation. In some cases, there might be a petition to the court for a fatal accident inquiry.

If there is to be no such inquiry, the remedy open to the family is to take a judicial review of the Lord Advocate's decision to the Court of Session. I would suggest that, because there is the remedy of judicial review to challenge the Lord Advocate's decision, there is no gap of the kind that was mentioned earlier.

It may assist the committee to consider some of the cases that we are currently dealing with, from between October 2013 and 30 April 2014. There are 256 cases in which the death may well have been a suicidal death. We have done further work on behalf of and at the request of the families in relation to about 10 of those cases, in order to clarify matters. In the remainder of the cases, there have been no requests to do further work and no disagreements. In relation to the 10 cases, I do not think that there has been a disagreement as to the cause of death; there have been further things that families have wished to have clarified, we have agreed that it is appropriate to clarify them and we have instructed further investigations.

Chic Brodie (South Scotland) (SNP): I will pick up on one of the last points that Mr McGowan made, about there being no mechanism. We have the petition in front of us, so there must be some rationale and some questioning behind what is happening.

The paper that has been produced by the clerks says:

"An FAI may also be held, on a discretionary basis"—

presumably at the Lord Advocate's discretion. By what process does he arrive at a discretionary judgment? Are there no rules or guidelines?

Stephen McGowan: We do have guidance. The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 sets out the test. The test under that act is whether it is

"expedient in the public interest"

to carry out such an inquiry. Further detail is provided in article 2 of the European convention on human rights. Broadly speaking, the convention sets out an obligation to have an independent inquiry by the state into the cause of the death in a way that involves the family in the decision making and in sharing the decision making. That is the obligation.

Chic Brodie: Do you believe that that obligation is being met in all cases?

Stephen McGowan: Yes, I do. That obligation has been tested in Scotland within the last few years, in a case called Emms. The court held that the obligation was being fulfilled in Scotland by the Lord Advocate in carrying out his role and by the fatal accident inquiry system, and that there was no gap in the legislation concerned.

The Convener: What options are there for family members who are not satisfied with investigations carried out by the police or by the Crown Office and Procurator Fiscal Service?

Detective Chief Superintendent Flannigan: As far as the police are concerned, there is the complaints against police—CAP—process. Initially, we would seek to deal with the matter locally, if it was raised locally. Then, we would escalate it up through the complaints procedure in order to address it. We would not do that in isolation. Because of the nature of what we were dealing with, there would definitely be a role for the Scottish fatalities investigation unit, which would be made aware that families were unhappy with the level of information. I say from experience that that is highly unusual in those circumstances, although it is not unheard of. We would work hand in glove with the Crown in order to make it aware that there was an issue. Ultimately, the decisions rest with the Crown.

Stephen McGowan: I emphasise that disagreements about such matters are very rare. In any case in which the family takes issue with anything that we have told them, there is likely to be a meeting. At that meeting, there would be a lengthy exposition of the facts as they are known. We would provide as much information as possible and we would hope to reach a conclusion that everyone would agree with.

It is worth pointing out that, unfortunately, there are some deaths for which we do not get all the

answers, because the answers are not there to be found, no matter how thorough the investigation. If we end up in a position in which the family disagrees with some aspect of our conclusion, the remedy—if we had declined to hold a fatal accident inquiry because we did not think that it was in the public interest to do so, as we did not think that there was any systemic issue or anything that had to be ventilated in the public domain—would be a petition to the Court of Session to overturn that decision, in effect, and to ask for it to be reviewed.

10:15

The Convener: Do any of the other witnesses wish to answer my question?

Alan McCloskey: I have a more general comment—outwith the committee's interest in the petition—that relates to the Victims and Witnesses (Scotland) Act 2014. Much of the work that was done last year at the various stages of the bill process was aimed at ensuring that the voice of victims was at the very centre.

At the start of stage 1, victims were asked to come along and present evidence on their experience of the criminal justice system, not so much on being a victim of crime as on being passed from pillar to post—in their words—between one agency and another. There are some parallels with the need to ensure that victims and their families are at the heart of the death inquiry process and do not have to retell their story or fight for justice, which should be a given.

The 2014 act gives victims a right to complain and to get information, and the committee could consider whether some aspects or principles of the act could be adopted in the death inquiry process.

The Convener: That is a very good point. You may recall that, in the previous parliamentary session, I had a particular interest in creating the post of a victims commissioner for Scotland. I spent a lot of time working with the victims commissioner for England and Wales, and it was interesting to compare and contrast the approach in Scotland and the model down south. We have a lot to be proud of in Scotland, but I felt that there was an additional element in the system in England.

Although the victims commissioner was an excellent model, I realise that that ship has now sailed. Nevertheless, I wanted to put on record that there are some interesting aspects of England's approach that we can consider.

Mr McGowan said that victims could go to the Court of Session if they were dissatisfied. How much would that cost? I know that that is a difficult question, but is that a realistic option for ordinary working-class victims who have had a problem? My understanding is that the Court of Session is a very expensive place to get to.

Stephen McGowan: I cannot answer directly on what the cost is. Taking a case to the sheriff is also likely to have a cost and would, given the unusual nature of the challenges, probably involve a similar level of costs if we wanted lawyers to be involved.

I have one other point on why cases should go to the Court of Session rather than to the sheriff. Investigations into deaths are now done by both the police and the procurator fiscal, and involve specialists. The Scottish fatalities investigation unit will deal with an investigation of a death if there are any suspicious circumstances; I am sure that Gary Flannigan can tell you about the way in which the major investigation teams in the police work.

Specialists carry out the investigation and make the decision. If there was to be a right to go before the sheriff, there would be a danger that, as such cases are so rare, the sheriff would not have seen one before. The specialist skills used in the investigation and the decision making by the procurator fiscal might present a challenge to a non-specialist.

Given the small number of such cases, I suggest that the Court of Session is still the appropriate place to hear them because it can build a body of expertise. It is unlikely that the sheriff court would have that same body of expertise just because of the limited number of cases of that nature.

Chic Brodie: The point about expertise is very interesting. We are looking for objectivity, and sometimes we do not want people with too much expertise. People should make judgments on the evidence that is presented before them. I am not sure what the difference is, and why we would want to go down the expensive Court of Session route, even though there are only a few cases, just because we want legal decisions to be made only by those who have expertise.

Stephen McGowan: I am referring to the expertise in the decision making and in ensuring that investigations are full and thorough. The decision making will always be objective and will take place on the basis of evidence that is before the court, but gathering that evidence and ensuring that all the avenues have been completely seen is a job that is done by specialists, and it informs the decision making.

The decisions are always made objectively by whoever makes them, but it is useful for that person to know about the background and detail of the investigations, the points that commonly arise

in such cases and whether particular avenues of investigation have proved fruitful in other cases. That bears out the need for expertise.

The Convener: I will ask a final question before I bring in my colleagues. Has engagement with bereaved families improved since the launch of the Scottish fatalities investigation unit and the establishment of Police Scotland in April 2013?

Stephen McGowan: I would say that it definitely has. As I said, all that the Scottish fatalities investigation unit deals with is death investigations and families in relation to deaths, so it is able to respond better, more quickly and more easily to families. Families are assisted by specialist victim information and advice officers, who for the most part deal with only deaths cases and are therefore much better placed to respond, to learn the lessons and to take on board the feedback that we always get about how we can improve our service in future.

The specialist approach that we now offer, which we were not in a position to offer three or four years ago or prior to that, is a big boon and it will develop as time goes on.

Alan McCreadie: I am afraid that I cannot comment on how well the system is working. I reiterate that the Law Society's position is that, where there is still dissatisfaction, we would respectfully suggest that the matter should not go to the Court of Session, because of the resultant costs.

By way of an aside, members may be aware of the Courts Reform (Scotland) Bill, which is before the Justice Committee. It seeks to impose a time limit within which a judicial review can be brought and also a test, and it provides that a judicial review is simply a review of the Lord Advocate's decision without looking at the merits of the decision.

I am not in a position to comment on how well the current system is working but—as I have previously stated this morning—if there is an issue, the Law Society's suggested remedy would be a preliminary hearing before the sheriff.

The Convener: Thank you. That is very helpful.

Detective Chief Superintendent Flannigan: The establishment of Police Scotland has introduced a level of scrutiny and consistency that did not previously exist. Stephen McGowan touched on the importance of specialism. That is not necessarily only about information sharing but about ensuring that the investigation is thorough and professional from the outset, to ensure that we are in a better place to give the families the type of information that they require. I am very confident that we are in an improved position as a result of the level of scrutiny and the availability of specialist resources across Scotland.

Obviously, when we look at the death of a loved one we are dealing with an individual event for each family member. Can we say that we are handling those situations better? I think that the tie-up and the partnership between the Crown and ourselves and the level of scrutiny and dialogue that now takes place is probably a strong indicator that things are better for the families.

Alan McCloskey: There are two slightly different issues. We support families who have been bereaved through murder who are going through a murder trial, but there is no referral mechanism for fatal accident inquiries. As Stephen McGowan said, the victim information and advice service will support families by providing information and advice about a fatal accident inquiry, but there is no referral mechanism. That is one of the gaps that I referred to for families whose loved one has been affected by self-inflicted or accidental death. There is a difference between the processes in that regard.

Anne McTaggart: Are there any plans or suggestions for improving the position of bereaved family members? The petitioner is not seeking to extend the FAIs, but is seeking a simplified procedure whereby families can challenge an investigation into a death and the outcome of that investigation. What plans do you have to simplify the process for families?

Stephen McGowan: We are always willing to take on board feedback. Alan McCloskey mentioned a referral mechanism to Victim Support, which is one area that we will need to work on. We do not have a specific plan to improve the simplicity of decision making in relation to people who challenge decisions, but we are working to ensure that we bring families into that decision-making process as often as possible and give them as much in-depth information as possible.

We are considering the information that we give to victims. I am not talking about rights that are codified in the same way as they are in the criminal system. However, in effect we offer the same service and the same information. A lack of knowledge has been revealed on the part of families regarding what they are entitled to with respect to our policies and what we will take to them. We are considering all that again with a view to refreshing the information that we give.

I am not so sure that the hearing before the sheriff would be simple. If there has been a lengthy investigation into a death, a legal test would have to be met in order for the sheriff to be able to consider the matter. We do not know what that test would be, as there is no mechanism for

that at the moment. The evidence that we had obtained would also have to be considered.

The hearing would almost be a mini-FAI in itself, and it could last for more than a day or so. I do not envisage it being a simple hearing. A number of mentions have been made this morning of a preliminary hearing before a sheriff, but I am not quite so sure that the process would be as simple as is envisaged.

Anne McTaggart: A few suggestions have been made about how we could get round that. Some of those suggestions involve the work that the Justice Committee is doing.

It would be remiss of me not to mention the work of my Glasgow colleague Patricia Ferguson on a possible member's bill. One aim of the proposed inquiries into deaths (Scotland) bill would be to make the process of investigating deaths quicker and more transparent; appropriate cases would be referred to specialist sheriff courts and the families of the deceased person would be given a more central role in the process. The proposed bill covers other areas, too, but what are your views on that aspect of it?

Stephen McGowan: The provisions of that proposed member's bill are not necessary in the form in which they have been presented. In my view, we can achieve the same ends by looking into our processes. The bill is not necessary in order to provide victims with the service that we need to give them.

Jackson Carlaw (West Scotland) (Con): I move to the heart of the petitioner's request, which is that a new category of mandatory public inquiry be established where the family of the deceased would wish such an inquiry to be held, in what we have established to be a small number of instances.

I understand that you come to the matter with a certain perspective, but I wonder whether you could set that aside and, in the first instance, give us the benefit of your views on the advantages and disadvantages of what has been requested. Could you then cut to the chase and tell us your own attitude to the proposition as it has been put? We would like to understand, for the benefit of our consideration, what you see—with all your experience—as the advantages and disadvantages of the request, before we find out what your own attitudes might be. I would be interested to hear from all and any of you—you can jump in in any order.

Stephen McGowan: The only advantage is that there would be a public hearing for scrutinising the decision in the particular instance concerned. As I said, that public hearing is already available in the form of a judicial review.

There would be a number of disadvantages. First, there is the potential for suspicion to fall upon people when there is in fact no reasonable suspicion. There might be suspicions on the part of third parties but, objectively, there is no suspicion. There would be a public hearing, and there might be a suspicion that a person had committed a crime, without them necessarily having the ability to defend themselves.

There would be potential for family members not to agree with one another. We are talking about families as if they speak with one voice, but as the committee will appreciate families are diverse. In our experience, although families sometimes speak with the same voice, they can also take diametrically opposite views.

10:30

The purpose of the current deaths investigation and fatal accident inquiry system is to ensure that if there has been a crime, it cannot be concealed and there is a proper investigation of it, and that where there are risks to public health, safety and welfare, they are looked at so that they cannot be repeated. That is what we look at when we consider holding a fatal accident inquiry.

I think that there will be some difficulty around how a sheriff would make that decision without having an inquiry. That would mean that the family would have the right to have an inquiry, as opposed to the Lord Advocate holding an inquiry in the public interest, which is done when the Lord Advocate feels that a risk to public health, safety and welfare needs to be taken into account and prevented from being repeated. In effect, we would have a situation in which the family, to achieve their aim, would have an inquiry rather than just a preliminary hearing. The family would have a right to have an inquiry in every case, which would be a different position altogether.

Jackson Carlaw: From your perspective, there would be one limited benefit and perhaps not so much in mitigation beyond that. Mr McCreadie?

Alan McCreadie: In citing an advantage, I can do no more than refer to the Law Society of Scotland's submission:

"If only a small number of families are dissatisfied, then the creation of a statutory right to request an FAI might result in a very small number of additional hearings per annum throughout Scotland; such a hearing would provide closure to those families with unanswered questions; it should have a minimal economic impact"

—particularly if it goes to the sheriff as opposed to the Court of Session—and it should

"reinforce public confidence in Scotland's system for investigation of apparently self-inflicted deaths."

Jackson Carlaw: Was your suggestion, in terms of the preliminary hearing before the sheriff, intended as an alternative or as a preliminary to the suggestion in the petition?

Alan McCreadie: I think that it was seen more as a remedy to the situation in which a family is dissatisfied—an additional independent safeguard, put in place by law, to let the sheriff consider the issue objectively and decide where it should go if a family is dissatisfied.

Jackson Carlaw: You produce that as a remedy—would I be leading you if I suggested that your own attitude to the petition is that it would be the wrong approach?

Alan McCreadie: Having looked at the petition, my understanding is that something is missing from the process. The suggested answer to that—

Jackson Carlaw: —would be the remedy that you have come forward with?

Alan McCreadie: It is simply a suggestion, Mr Carlaw, that the Parliament could perhaps consider.

Jackson Carlaw: And Mr McGowan's view is that the number of instances would be sufficiently minimal to mean that the experience might not be there, which was the point that Mr Brodie touched on.

Detective Chief Superintendent Flannigan: I should make the point that the investigation of death has the highest priority. Anne McTaggart mentioned simplifying and expediting the process. That is not always possible but it should be noted that the investigation, from a police perspective, is given the greatest priority. The outcome is sometimes more difficult to determine and that can sometimes be a difficulty for the family.

When we are dealing with complex issues where suspicion may still exist, it clearly makes it very difficult for us to share information. I do not envisage, from my own experience, that we will find ourselves in a situation where we would be able to do that, for the reasons that Stephen McGowan has alluded to. We would not know from the criminal investigation what the actual outcome might be.

As regards assisting you to assess the advantages or disadvantages, we are talking about a very small number of cases and I cannot offer anything beyond what my colleagues have said about how it might work. We have to look at each case on a case-by-case basis. We have to be careful and we have to examine the points that each family make to work out whether it is possible to assist them and whether their complaint or their difficulty lies in the manner in which they have been dealt with—which can be remedied—or whether it lies in them being unhappy with the outcome or the perceived outcome. I am not sure that I can assist you any further.

Alan McCloskey: In simple terms, the petition calls for more information to be provided to families and for families to be at the centre of the process. We would absolutely support that, as it has to be an advantage to the system. In terms of disadvantages, Stephen McGowan is right to say that there are issues relating to family dynamics that need to be factored in, and needs must be assessed in decision making, but families should get as much information as possible and must be involved in the process if it is to be truly effective.

Chic Brodie: Alan McCloskey mentioned the dynamics of family situations, which are at the centre of the issue, more so than the process. I am sure that we all share that view. However, I am even more confused than I was earlier about the role of the hearings in front of a sheriff. Mr McCreadie said that those hearings are held objectively, and I asked about the role of the Court of Session being more objective. Can you help me? Clarify, please, the difference between information going through the sheriff court and a case that is promulgated further up the line to the Court of Session.

Alan McCreadie: As I outlined, the judicial review remedy that is in place at present would simply look at the decision that has been made and at whether it is a proper decision, as opposed to looking at the merits of that decision. How or in what way the sheriff would determine a case is not something that could be considered further, but it would be held locally and it would certainly have a minimal economic impact on the public purse if it went to a sheriff instead of to the Court of Session in Edinburgh.

I take on board what Stephen McGowan said about expertise, where the judges in the Court of Session may be considering more of those cases, but there is definitely an issue of perception. Whether it is in the Court of Session or before a sheriff, the fact that a decision is being taken out of Crown Office and considered elsewhere should increase public confidence for the very small number of dissatisfied families.

Angus MacDonald (Falkirk East) (SNP): We may have covered the issue briefly, but let us say that there is a situation in which family members do not agree that a public inquiry should be held. How might such a situation be dealt with? Gary Flannigan said that a number of meetings would be held with families, but how would such a situation be handled?

Stephen McGowan: The family's view on whether there should be a public inquiry will weigh heavily in the decision that we make on whether

there ought to be a fatal accident inquiry, so it would be a significant part of our decision making. In the case of any given death, there may be issues that are of such importance to the wider public that, despite the family's desire that there not be a public inquiry, we might feel that there ought to be, because there are issues that need to be ventilated. At the same time, if those issues could be dealt with in another way and the family were keen not to have a public inquiry, we would take that on board. The family's view weighs heavily in our consideration of whether it is in the public interest, but there may be wider public interest considerations that mean that we would have to have a public inquiry anyway, despite the family not wanting one.

Chic Brodie: We may have covered this point, but I am slightly confused about some of the information that we have heard. How could the provisions relating to fatal accident inquiries be adapted? The Scottish Government has stated that it plans to legislate to reform FAIs. How could FAIs be adapted to provide a suitable and acceptable form of public inquiry?

Stephen McGowan: The question is difficult to answer. The Government has made various proposals. The member's bill that has been consulted on has also been mentioned.

From my perspective, not too much is wrong with the current system, which is fit for purpose in relation to most cases. It is difficult to say what could be done to make it better.

Chic Brodie: The easy answer could be that nothing needs to be done.

Stephen McGowan: For the most part, little needs to be done to the system. I would not like to pin my colours to the mast and say what changes I would make.

Alan McCreadie: As I said, for the small number of cases in which there are still issues, some form of hearing, before an FAI, to determine whether the case should go ahead is suggested.

Detective Chief Superintendent Flannigan: I am bound to agree that it is difficult to see that we would make a radical change when the number of such cases is few.

Chic Brodie: I did not ask about a radical change; I just asked about areas for adaptation, which does not have to be radical.

Detective Chief Superintendent Flannigan: I apologise. I do not see obvious opportunities.

Alan McCloskey: The primary issue is the gap in support. I mentioned that there is no protocol between the Crown Office and us on fatal accident inquiries. Families who are affected do not get access to support, so they are left to deal with the information and the process by themselves. That cannot be right.

David Torrance (Kirkcaldy) (SNP): Would a different system—possibly one that is more closely related to the system of coroners' inquests in England—be desirable or meet the petitioner's aims and concerns?

Stephen McGowan: I am not sure that it would. Under the coroner system in England and Wales, there is a public hearing in relation to every death. Our experience is that the majority of families want to move on with life and do not want to have a public hearing, particularly when the death may have been at the person's own hand and resulted from self-inflicted injuries, because such cases often involve sensitive matters such as mental health, sexuality, family dynamics and infidelity. All such issues could be behind such a death. In my experience, most families would not think it desirable to have that played out in the public eye.

The English coronial system would give us no great advantage. We have all its advantages at the moment, but without the downside of putting families through additional distress and potential trauma by going through a public hearing, which most families would not want.

Alan McCreadie: Given the low number of apparently self-inflicted deaths that proceed to FAIs, there might be merit in considering the position in other jurisdictions. I appreciate that, in England and Wales, a coroner conducts an inquest in every case. That might not be appropriate for this jurisdiction. It might be useful to compare and contrast with other jurisdictions the number of inquiries that are held following a self-inflicted death.

Detective Chief Superintendent Flannigan: In our letter to the committee, we highlighted that no system is perfect. The literature that was provided gave the example of the tragic events at Hillsborough, which epitomise the point that no system is perfect. We will always need to look at whether we can learn lessons from individual circumstances. Police Scotland feels comfortable with the current arrangements, but we recognise that we must continue to provide victims and families with the best possible service.

Alan McCloskey: I agree with Alan McCreadie about looking at the measures that are put in place in other jurisdictions. That is something for the committee to consider.

One definite advantage of the English coroner system is that it very much puts families at the centre of the process, allowing their questions and concerns to be addressed. That is an important benefit of that system.

10:45

John Wilson (Central Scotland) (SNP): Good morning. I want to follow up Mr McGowan's comment about public inquiries. He expressed quite clearly the issues relating to the protection of families—hence the reason for not adopting a coroner's court type of system. Who decides whether an FAI is held? In Mr McGowan's evidence, he gave an example in which the procurator fiscal or the Lord Advocate may decide to go ahead with a public FAI against the family's wishes because they think that it is in the public interest to do so. Who set that public interest test and who carries it forward?

Stephen McGowan: The responsibility for that decision sits with the Lord Advocate, and the decision is made by Crown counsel on behalf of the Lord Advocate. We are talking about discretionary FAIs; there will be a mandatory FAI where there has been a death in custody or a death at work—the legislation mandates that ordinarily such FAIs will happen. However, decisions about discretionary FAIs are decisions of the Lord Advocate.

John Wilson: That is the issue that the petitioner has raised. I know that there are areas in which there is no discretion on whether an FAI should be held. We are discussing self-inflicted or accidental deaths and whether the evidence that is provided to families is sufficient for them to come to the same conclusion that the procurator fiscal or the Lord Advocate has come to in determining not to proceed to a full public FAI. Can we seek assurances that steps will be taken to ensure that families are fully consulted on the Lord Advocate's decisions and that, as long as the situation does not proceed to a criminal case, information and evidence will be made available to families so that they can fully understand and be part of the decision not to proceed to an FAI?

Stephen McGowan: The families will be fully consulted on that. Ultimately, the legislation says that the decision rests with the Lord Advocate, but the families will be fully consulted.

On the sharing of evidence that has been gathered in an investigation, we are happy to share with nearest relatives the post-mortem reports, medical reports, toxicology reports and collision investigation reports, if that is appropriate, along with photographs. We will also give them a summary of the evidence as we understand it and point to any discrepancies in the evidence.

John Wilson: Will there be any movement by the Lord Advocate on the issues that Mr McCloskey has raised about the lack of referrals to Victim Support Scotland of families who have lost a relative to a self-inflicted or accidental death, so that they can get support and advice? In many respects, it is about not just support, but advice and how to take forward any issues of concern that families may have. I suggest that the Lord Advocate's office take on board the points that Mr McCloskey has raised.

Stephen McGowan: The simple answer to that is yes, we will take the matter forward.

Detective Chief Superintendent Flannigan: I want to pick up on a point that Mr Wilson made earlier so that I may reassure the committee. I have been involved in investigating deaths for 30 years and have attended, with representatives of the Procurator Fiscal Service and other officers, a number of meetings with families at which findings have been gone over and explained. Such meetings have been held more often over the past decade. I have personal experience of that approach, and I reassure members that it takes place.

The Convener: As there are no further questions from the committee, we will go to the summation stage. The witnesses should stay with us for a couple of minutes. The committee will decide what the next steps should be. That is a matter for the whole committee.

The committee will be aware that there are a number of options. One option is that we invite comments from the petitioner and the Scottish Government on the evidence that we have heard and consider the petition again once responses are received. As always, I check with the committee whether there are contrary views or alternatives.

Chic Brodie: We should carry forward the petition. The Lord Advocate could be asked for his direct view, although, were we to refer the petition to the Justice Committee, that committee would clearly do that. The petition is worth while. It is expedient that we forward it to the Justice Committee.

The Convener: We are all agreed that we should continue the petition. We can either invite comments from the petitioner, the Scottish Government and others and consider the petition again, or we can refer the petition to the Justice Committee, as it would be best placed to consider the legislation on FAIs that is to be introduced later in the parliamentary session. The second option is a matter for this committee to decide.

Jackson Carlaw: I would have thought that, for completeness, it would be appropriate for us to allow the petitioner and the Scottish Government to comment on a summation of the evidence that we have heard today and then to consider the petition again. We could at that point forward to the Justice Committee something a little bit more rounded than what we could forward at this early stage.

The Convener: That makes sense.

Anne McTaggart: What is the timescale? Does anyone know when the Justice Committee is aiming to look at the legislation?

The Convener: We do not have that information, but the committee clerks liaise very closely with one another. We can report back at a future meeting.

Anne McTaggart: One would not want to miss the Justice Committee's consideration of the matter.

The Convener: We will take that point on board.

John Wilson: I am minded to continue the petition while we get responses from the Scottish Government and the petitioner—and anyone else who wishes to comment; based on today's evidence, others may wish to comment. I think that, ultimately, we will refer the petition to the Justice Committee, but not at present.

David Torrance: I am happy to continue the petition and wait on the comments from the petitioner and the Scottish Government.

Angus MacDonald: I am content to continue the petition and await comments from the petitioner and the Scottish Government.

The Convener: Thank you very much. As the witnesses have heard, we are very interested in the petition. We will continue it, seek the views of the petitioner and the Scottish Government and look at it again. We will keep the witnesses up to date with developments.

I thank all four witnesses for giving up their time to be here and for giving us such expert advice and guidance. I suspend the meeting to allow a changeover of witnesses.

10:52

Meeting suspended.

10:57

On resuming—

New Petition

Polypropylene Mesh Medical Devices (PE1517)

The Convener: Agenda item 2 is consideration of a new petition, PE1517, by Elaine Holmes and Olive McIlroy, on behalf of the Scottish mesh survivors hear our voice campaign, on mesh medical devices. Members have a note from the clerk, the Scottish Parliament information centre briefing, the petition and the related submissions. Neil Findlay MSP and John Scott MSP, who both have an interest in the issue, are in attendance. I welcome both members to the meeting.

The committee is aware that a number of cases have been lodged at the Court of Session. The committee cannot become involved in individual cases, so no reference should be made to named clinicians and no statements should be made that would identify any individual clinician or national health service staff member. In accordance with the Parliament's rules, I will be forced to stop any member or witness who brings such details into the arena.

I thank the petitioners and the *Sunday Mail* for all their work on the petition. I am sure that all members have followed this very sensitive case, particularly through the pages of the *Sunday Mail*. It is another good example of how a petition is formatted, submitted and addressed by this committee.

I welcome the petitioners, Elaine Holmes and Olive McIlroy, as well as Marion Scott, from the *Sunday Mail*. I invite Ms Holmes to make a short presentation of around five minutes to set the context of the petition. I will then ask Neil Findlay and John Scott to make very brief statements, after which I will kick off the questions and other committee members will follow.

Elaine Holmes: We start by thanking Alex Neil, the Cabinet Secretary for Health and Wellbeing, for recognising the seriousness of the situation and the failures in the system. We are grateful to him for instigating a working group of mesh victims and health professionals. The group is working to produce a new patient information and consent booklet. That will include all known risks associated with polypropylene transvaginal mesh implants. That is something that we did not have but which should be available in every hospital in Scotland before a single procedure more is undertaken.

11:00

We would like to stress that none of what we are asking for will benefit any of us here today. We cannot change what happened to us, but it is not too late to make the changes that we believe will protect others from future injury, saving them and their families from pain, frustration, helplessness and possible disability.

While other countries are now taking action—the USA by reclassifying mesh for some procedures as high risk and Canada by issuing warnings to hospitals and doctors—we are failing to bring in the measures that are needed to protect the unsuspecting others sitting in hospital waiting rooms right now.

We have been told that regulation and safety are issues for the European Commission. However, given that our First Minister shows political willingness to intercede over fishing quotas, we ask that he show political willingness to intercede over something that has such a detrimental effect on human life.

The Medicines and Healthcare products Regulatory Agency has confirmed that we already have the powers that are needed to make a difference in Scotland, and too many Scottish women are being hurt on a daily basis for us to wait on the slow-moving wheels of Westminster. The rest of the United Kingdom can follow suit, but let us lead the way.

Almost two months ago, a US court found the mesh implant of choice in Scotland—Ethicon's Gynecare TVT obturator system—to be defective. If it is defective in the USA, it would likely be found defective here if a UK court were to examine the same evidence. However, because there is no implant register here, Alex Neil, the Cabinet Secretary for Health and Wellbeing, has had to admit that there are no available records to allow health boards to write to each woman who was given the defective implant, either to warn her or to check on her health.

We were not told that as many as one in five mesh implants can go wrong. When you consider that 11,000 women in Scotland have had the procedure, one in five suddenly becomes an alarming statistic. Further, as complications often take years to develop, we fear that we may just be the tip of the iceberg.

Women are still being told that their pain is not mesh-related because they have tape, not mesh. They are still being reassured the mesh that is inside them is safe and that it is different from the problematic mesh that is reported in the media. However, both claims are untrue. Our implants are all made from the same plastic polypropylene mesh. All transvaginal mesh is high risk and must be reclassified.

Using polypropylene mesh for a transvaginal procedure is a contraindication. Ethicon's own website states:

"As with all foreign substances, GYNECARE INTERCEED should not be placed in a contaminated surgical site."

Surgeons consider the vagina to be a clean-contaminated surgical site, and polypropylene mesh is a foreign substance.

Until each and every woman who is injured through mesh implants has been properly diagnosed and treated, and all complications have been judiciously recorded, we do not believe that the MHRA or NHS Scotland can continue to state that the procedures are safe or that the benefits outweigh the risks.

The present system has failed because it is voluntary. Although official figures show that 328 women endured multiple surgeries—with some having as many as 12 operations to repair damage that was caused by mesh—only 12 doctor-reported incidents have been received from Scotland by the MHRA. Why did those doctors not report the complications in 328 women? Because they did not have to.

I personally know of three women who have died following mesh surgery, but just one had reference to the procedure on her death certificate. Why?

There is confusion over numbers, missing data and underreporting and we ask that you hear our voice and support us in suspending these procedures, pending an independent and thorough investigation. This is an emerging global scandal that affects hundreds of thousands of women.

We might not be able to answer all your questions and we do not know how much the changes will cost in monetary terms but, in human terms, please, just look at all the women behind us.

We will leave our dossier with you for further information.

The Convener: Thank you for making that statement. I know that this is a sensitive and difficult area for you, but your statement was helpful to the committee. I also thank your supporters in the gallery for coming along today.

I invite Neil Findlay to make a short statement.

Neil Findlay (Lothian) (Lab): Thanks for allowing me to contribute to the committee's consideration of this petition, which was presented so well by Elaine Holmes.

The women who are before the committee today are here as representatives of hundreds of Scottish women—and, indeed, hundreds of

thousands of women across the world—who have received a polypropylene mesh implant. They either have experienced serious complications or have concerns that they might do so in future.

I became aware of this issue shortly after being appointed to the shadow Cabinet. It was then that I met the petitioners who are here today, and other mesh victims. Like today, on the day they met me, many of them did not walk into the room where we had our meeting. Some limped or shuffled. Some had to be helped into the room. Some had walking sticks or crutches and others had wheelchairs. They all believe that they have sustained injuries because of the medical procedure that they underwent. They described to me the horrific consequences for their health of the mesh implant that they believed, and had been told, was a cure for their condition.

Since then, the more I have looked into the issue, the more anxious I have become. We must be clear that this is not just a Scottish problem but a growing international healthcare issue and, potentially, a massive global scandal. That international context and the weight of evidence worry me greatly.

The day I first met Olive McIlroy and Elaine Holmes, I went with them to a meeting with the cabinet secretary and Government officials. At that meeting, they were reassured about concerns over informed consent and were told that a new process would be put in place. They were told that an information leaflet would be provided and that women would be made aware of alternatives when they were assessed, and that there would be action to address the underreporting of adverse incidents.

We left that meeting with optimism, thinking that things would be moved on quickly. However, here we are, nine months later, with little or limited progress. Indeed, five years after a complaint was upheld by the Scottish Public Services Ombudsman about a patient not being given information about the risks that are attached to the procedure, we are still not in a position to systematically provide women with the opportunity to give informed consent to the procedure. That is of grave concern to those involved, obviously, but also to our NHS more broadly, which I believe might have left itself wide open, in a legal sense, on this issue.

At that meeting with the cabinet secretary, he suggested that evidence relating to adverse incidents was weak, with only six adverse incidents being reported. To that, the six women around the table said, “Well, that must be us six.” However, since then, through parliamentary questions, I have been advised that around 100 women have had mesh fully or partially removed. Then, through freedom of information requests to the NHS boards, we established that more than 300 people have had complications. That statistical inconsistency rings alarm bells for me. I think that the reality is that no one knows how many women are affected by this issue, and we might just be scratching the surface.

That is mainly explained by the fact that doctors are not compelled to report adverse incidents. I believe that they should be so compelled and that the petition is right in calling for that. The Government needs to take action on that immediately, and on the need to set up the register.

The Convener: Mr Findlay, we are a bit short of time. Are you near the end of your statement?

Neil Findlay: I will be very quick.

We have a product that continues to be used in hospitals and continues to damage Scottish women, as more and more receive the treatment. The evidence from abroad is compelling, and I believe that we should suspend the use of the product, pending an inquiry into the scale of the problem and the safety of the product. We should also introduce the rest of the changes that the women propose.

If there is no Government inquiry, this committee or the Health and Sport Committee should conduct one immediately.

I urge you to support the aims of the petition. I thank the campaigners, and I thank the *Sunday Mail* for its support.

Today, you have seen determined women who have been willing to talk about a personal matter that has had a devastating impact on their lives. Some of the women have been left in wheelchairs, and some have lost organs. Many have lost their jobs, and some have lost their marriages. This Parliament is here to represent the issues that concern communities and our people, and I trust that the committee will take the petition seriously.

John Scott (Ayr) (Con): Thank you for the opportunity to speak. I thank Elaine Holmes for her moving presentation.

I identify absolutely with what Mr Findlay and the petitioner said. I will make a few specific points. I am particularly concerned about the scale of the problem. If 11,000 women in Scotland have had the procedure and one in five of them is affected by the issue, that is a large number of women who are affected, and there might be more. That leads to my next point, which is that there is concern about underreporting. Regrettably, some women who have the problem might not even be aware of it.

I am concerned about the treatment pathway for women who are identified as having the problem.

It is far from clear what that pathway should be. I am concerned about the lack of standard guidelines. To the best of my knowledge, there are no standard guidelines across our health boards. Finally, I am concerned about the risk to future pregnancies of affected women. That is perhaps the greatest concern.

I thank the committee for the opportunity to say those few words.

The Convener: I thank Neil Findlay and John Scott for coming along.

I will start the questions, after which I will bring in my colleagues. Elaine Holmes mentioned the Medicines and Healthcare products Regulatory Agency. How effective is it as a watchdog?

Elaine Holmes: The agency is not an effective watchdog. It does not take our concerns seriously. We have written to it a number of times and telephoned it, but we get standard copy-and-paste replies. The agency does not listen to us.

The agency says that it can take complaints only if someone has their full device details; otherwise, people are put on a trending database. As most of us do not know what is implanted inside us, it is impossible to give the details. More often than not, the device details are not recorded in people's medical notes; sometimes, they are in theatre notes, but sometimes, your guess is as good as mine. Even the agency does not know the full scale of the problem, because few of us have our full device details.

Olive McIlroy: I agree with Elaine Holmes. The agency's work is subject to European Union medical directives and most of it depends on the evaluation of reported incidents. As reporting is not mandatory, the incidents are not getting to where they have to be to be evaluated. The agency is not getting reports because nothing is mandatory—it is all voluntary. The devices were not even tested on humans from the start.

Marion Scott (Sunday Mail): In almost 40 years in front-line journalism, I can honestly say that I have never come across such a horrendous scandal. These women's lives have been decimated by what has happened to them. The effects are felt not just by the women but by their families. To see young women stuck in wheelchairs following what they were told was a simple operation is beyond belief. These women are struggling, but they have bravely come forward to tell their stories.

I am saddened that many of the women were told that they were the only ones who were suffering, when that was not the case. Often, the same doctors told each woman that she was the only one. It is a great sadness that many of the women feel very let down by the people who were supposed to help them. Why the doctors did not report what was happening is a great mystery.

The Convener: You make some good points. The evidence from Professor Joyce talks about the precautionary principle. He argues that patients need to give informed consent before they have the operation. Has that been the case in medical practice?

Marion Scott: No, not at all. I have spoken to hundreds of women and the vast majority of them were never properly told exactly what the device would do. They were just given a pat on the head and told, "This will sort you out." They were not told what the side effects could be or about alternative operations, which is shameful. The sad fact is that for every alternative operation, six mesh operations can be done. That is why they have been done.

11:15

The Convener: All three witnesses will be aware that the European Union has a very important role here through the CE mark—the European conformity mark. As you will know, given all the research that the *Sunday Mail* has done on the issue over the years, medical products must comply with the CE mark. If there is a complaint from a devolved authority or, in our case, the UK authority, about a medical product, the CE mark can be withdrawn. Have you looked at that course of action in its generality?

Marion Scott: That should be looked at, and it is perhaps something that we could take further. However, I know that a licence is needed to use the mesh product. I have here in my hand a polypropylene mesh that is used to tie up newspapers, but it is the same substance as the mesh that is put inside women. The only difference is that the medical mesh holes are bigger so that the body tissue grows through them. You can therefore imagine the damage that is done when trying to remove the mesh.

Licences are given to use mesh in one part of the body, but it is not necessary to ask for a new licence to use mesh in another part of the body. However, mesh that is okay for one part of the body is not necessarily okay for use in another part. Members know of the damage that has been caused to women's bodies by mesh.

The Convener: I have a final point before bringing in my colleagues, who I am sure will have lots of questions. Neil Findlay referred to international comparisons, and I read the other day that in the US the mesh implant is seen as a high-risk procedure. What are your thoughts on that?

Marion Scott: I think that America has done exactly the right thing. It is something that Scotland can do today that is very much needed. Scotland needs to lead the way. America has done exactly the right thing and we should be doing it today before another unsuspecting woman ends up like all the ladies who are here today and all those who are too ill to come—there are many of them.

Elaine Holmes: America is proposing to reclassify mesh for pelvic organ prolapse but not mesh for transvaginal stress urinary incontinence, although the exact same material is implanted through the exact same clean-contaminated surgical field. In addition, the mesh used for stress urinary incontinence is heavier, which makes its use more problematic, so that mesh should also be included in any measures.

The Convener: I am conscious of the time, but we will try to keep this debate going for as long as possible because it is a very important one. Can you describe to the committee in a straightforward manner what the alternatives to mesh are?

Elaine Holmes: There are lots of alternatives. First, if your situation is not seriously problematic, you can choose to do nothing. However, if you have stress urinary incontinence, you could consider pelvic-floor exercises, physiotherapy or incontinence pads. There are all sorts of things that you could do. The non-mesh surgical options are Burch culposuspension or fascial sling, whereby your own tissue is used. That was how procedures were carried out for years before the revelation that mesh was came into play. Those operations have a similar success rate to mesh operations, but when a Burch culposuspension stops working after a number of years, you are back to square 1 and have a leaky bladder. If you have mesh and it stops working—well, we are the proof of what can happen. It can erode through your organs or your urethra. You have that information in front of you.

The Convener: Thank you for explaining that to the committee. It is very helpful. I now bring in my colleagues, starting with Jackson Carlaw.

Jackson Carlaw: I declare that I have met Elaine Holmes previously and encouraged her on her petition. I thank both witnesses for your evidence and how you have given it.

I want to try to get a few things on the record. What is the age range of the women who are most likely to be affected by the mesh treatment?

Elaine Holmes: We have women in their late 20s right through to women who are 70-plus.

Jackson Carlaw: So the range is very comprehensive.

Elaine Holmes: Yes.

Jackson Carlaw: Of course, the harrowing aspect of all this is the largely irreversible nature of the introduction of mesh, because of what Marion Scott described, including the fact that tissue grows through the mesh, and the consequences of that. The Government's hesitation—or at least people in the health service's hesitation—is, however, due to the fact that it has been applied successfully to a number of women. I am interested to hear your response to that.

A variety of products are on the market, albeit that they are underpinned by the same principle. Has the product been at fault or has the clinical procedure been at fault? How do you react to the comments that, for some people, the treatment has proved to be successful? Why has that been?

Elaine Holmes: On paper, the benefits may appear to outweigh the risks, given that only 12 reports have been given to the MHRA from Scotland and 11,000 women have had the operation. However, there is no database and there is no mandatory reporting, and hundreds of us—almost 400—are litigating, and that is just the tip of the iceberg. Many of us have had multiple procedures and each one of those procedures is an adverse incident that should be reported. If they were reported, we would be looking at a very different scenario. The benefits would not outweigh the risks.

I am sorry; I cannot remember the second part of your question.

Jackson Carlaw: In essence, your argument is that if the procedure is allowed to carry on indefinitely, around the world a huge cohort of people who have had an adverse reaction will emerge, if the problem were properly reported. Therefore, it may be not the procedure but the product: it is the principle that underpins the treatment that is at fault.

Olive McIlroy: Once of the devices, TVTO, is the preferred device in Scotland, but a US court of law recently found it to be defective.

Any mesh product is defective. The MHRA thinks that the benefits outweigh the risks, but the benefits do not outweigh the risks when people are becoming disabled. It is not a negligible thing.

Jackson Carlaw: I understand. I am just trying to get the issues on our record.

I understand that your clear desire is that the product and this form of treatment no longer be used, and that alternatives be found. However, you have actively engaged with the Government and Cabinet Secretary for Health and Wellbeing with a view—short of that desire becoming a reality—to having proper advice made available to women, so that they understand exactly what risks they might be taking. Where are you in those

discussions? At what point will you be satisfied that the knowledge is being communicated?

Elaine Holmes: We are working towards a new patient information booklet for stress urinary incontinence. Our aim is to make sure that women realise that they are having mesh applied. Often it is referred to as a tape, but the product is made from polypropylene mesh—that has to be clear in the information that women are given. They have to be told that it is a permanent device, they have to be made aware of all known risks, and they have to be made aware that if complications occur, multiple surgeries may be necessary to solve the problem. Women have to be made aware.

Jackson Carlaw: When will that advice be at a point at which it could be communicated?

Elaine Holmes: We hope that we are not too far from having the document in use throughout Scotland, but there are a few points that we have not yet agreed on.

Chic Brodie: Good morning, and thank you for your opening statement. We know that as a consequence of your meeting the health secretary, he has taken up certain actions with MHRA and the EU, and new consent forms will be available next month and people will be able to record complaints.

Let me focus, if I may, on general practitioners. How aware were they of the implications?

Elaine Holmes: They were not aware of them.

Chic Brodie: There was no channelling of information to GPs.

Elaine Holmes: That is right. Even the two communications that were put out by Sir Harry Burns and those that have been put out latterly by—I believe—the deputy chief medical officer, were directed to health boards. We need direct communication specifically to GPs, because they are often the first port of call.

Chic Brodie: So, as far as you are concerned there has been no feedback to Government, to the MHRA and the EU.

Elaine Holmes: That is right.

Chic Brodie: Guidance has been mentioned. Are you aware of any recent change in the guidance or in the recommendations of the MHRA or the European Commission?

Elaine Holmes: I do not really understand your question.

Chic Brodie: Michael Matheson, the Minister for Public Health, said that

"if there is any change to the guidance or a recommendation is made by the MHRA or the European Commission,"—[*Official Report*, 13 May 2014; c 30815.]

regarding the devices, the Scottish Government would act accordingly. Given your comments about the international implications, are you aware of any change to the guidance or recommendations?

Elaine Holmes: No. There has been no change. The Cabinet Secretary for Health and Wellbeing has written to the European Commission and to the MHRA asking them urgently to reconsider the issue and to look into what is happening in America.

Olive McIlroy: I think that the European Commission has recognised that there are serious problems with medical implants. I have read some information on that and its plan is that, in the future, every patient with an implant will have a bar code or an implant card, so that problems with implants will be recorded. Everything is currently voluntary. Nothing is mandatory.

The problem is the classification of the devices and the fact that, if an adverse incident happens but the authorities do not know about it, they do not know that there is a problem. They eventually find out only when hundreds or thousands of patients come forward with complications. By that time, the horse has bolted from the stable and we are in a situation such as we are in now.

Chic Brodie: We cannot go into specifics, but can you briefly take me through the kind of conversation that one might have with a GP about the products?

Olive McIlroy: When I went to my GP, I was initially tested for possible causes of my symptoms, but my GP was not aware of mesh medical device complications. I kept repeating, "It's my mesh", but she just said, "Oh, no. We have done this, that and the other." She had no knowledge of the complications. I was eventually referred to a consultant.

Chic Brodie: Prior to diagnosis of your problem, were you taken through the range of options? How much focus was there on the particular product?

Olive McIlroy: Do you mean from the consultant?

Chic Brodie: I mean from the GP or the consultant.

Olive McIlroy: I consulted my GP only when I started having problems. I was referred to a consultant. GPs are unaware of mesh complications, so there is a point to be made about their education. My GP did not know anything about mesh medical device complications. Eventually, after the tests had been

exhausted—most had come back inconclusive—I was referred to a consultant.

If a patient presents to a GP with mesh medical device complications or complains of symptoms that are on the British Society of Urogynaecology list of reportable complications, that should be reported to the MHRA and the patient should automatically be referred to a consultant, rather than a GP trying for months and months to find out what the problem is.

11:30

Chic Brodie: I appreciate that. Again, we have to talk in generalities; we cannot talk about specific situations. I am trying to determine whether there is a preponderance of advice that the product is the answer, as opposed to any other possible devices. Is there a preponderance of advice that the treatment is the solution to the medical problem?

Olive McIlroy: As I have said, GPs cannot really give advice if they do not in the first place know the information that they need in order to give advice. They are still totally in the dark, even after getting letters from the deputy chief medical officer. There is still a lot of confusion about mesh medical implants.

Chic Brodie: As you have pointed out, there is no post-recording of situations.

Olive McIlroy: No. There are no registers. Everything is voluntary; there are no mandatory regulations.

Chic Brodie: Do you know whether that applies to recording internationally, as well?

Olive McIlroy: I am not sure. I would guess that there is nothing mandatory internationally.

Chic Brodie: Does Marion Scott know about that from her investigations?

Marion Scott: I think that some countries are busy looking at the whole issue. Irrespective of doctors not recognising things, I know from speaking to many women here and many women who cannot be here that many of them were dismissed and told that they must be imagining things and that it was all in their heads. Some of them were even sent to psychologists and psychiatrists when they were suffering horrific physical pain.

When the mesh cuts through organs, it cuts like cheesewire. Members can imagine the physical pain that the women have been through. Because of the long delay before the GP says that maybe the mesh implant is causing the problem, the tissue will already have grown through the mesh, so trying to get it out is really problematic. Only a couple of doctors in Scotland are used to taking it out. That is completely and utterly inadequate in the light of the scale of the problem.

Anne McTaggart: I declare an interest in that I am dealing with constituency casework on the issue.

I thank the women for their presentation, the women who are here to support, and Marion Scott for the hard work that she has done in bringing the issue to the front of people's minds.

We have gone round the issue of adverse incidents not being registered. How far back does use of the procedure go?

Elaine Holmes: I think that use of the procedure started in the late 1990s. I think that the tension-free vaginal tape procedure, which is for stress urinary incontinence, started in 1998 and that TVTO started in 2003. Treatment for pelvic organ prolapse started somewhere in between, although I am not quite sure when.

Anne McTaggart: To date, 11,000 women have been through the procedure.

Elaine Holmes: It is approximately 11,000. There are no accurate data.

Olive McIlroy: That is the number in the past seven years.

Elaine Holmes: No records are available before that.

Anne McTaggart: I have been dealing with the matter through my casework and have tried to get questions answered. I have been a member of this committee for around two years, I think. I am not sure whether the witnesses are aware that the committee has a non-political make-up, so we do not talk about political parties; rather, we take each petition as it comes. The petition is one of the most horrifying that I have come across.

I am unsure why we have not done anything. I have heard the issue being raised in the chamber. The details that we are getting now were flagged up nine months ago, so I am unsure why, and am surprised that, nothing has been done about it.

Chic Brodie: Something has been done.

Anne McTaggart: I am not saying that nothing has been done about it, but surely not enough has been done. We are asking for the procedure to be stopped and for the issue to be fully investigated. I am not sure why we are not doing that.

The Convener: Obviously, after this the committee will talk about next steps. I am sure that we will want to write to the Scottish Government, for example. Do you have any further questions for the witnesses, Ms McTaggart?

Anne McTaggart: No—not just now.

John Wilson: I thank the witnesses for their evidence today and for the written evidence that we have received, including the weighty document from the *Sunday Mail* that we received as we sat down to consider the petition.

You have raised a number of concerns. You indicated that you have had meetings with the Cabinet Secretary for Health and Wellbeing and health officials. What assurances, if any, did you receive from the cabinet secretary and officials about the request to suspend use of the operation until the matter is fully investigated?

Elaine Holmes: None.

Olive McIlroy: In fact, the cabinet secretary has refused to suspend use of the operation.

Elaine Holmes: The cabinet secretary said that there is a fear of being sued by the mesh manufactures.

John Wilson: So the cabinet secretary and officials have refused to suspend, even though we do not have any proper procedures or an advice booklet available for women for whom the operation has been recommended.

Elaine Holmes: Yes.

John Wilson: They have refused to suspend the procedure until such a document is produced and until clear guidelines are issued to all practitioners in relation to advising patients of the options and the dangers—or, I should say, the potential side-effects.

Elaine Holmes: Yes.

John Wilson: There is no indication from the cabinet secretary or from the health officials that they would be prepared to consider suspension of the operations.

Elaine Holmes: No.

John Wilson: My next question goes back to Anne McTaggart's question. In the background information to your petition, you say that more than 10,700 women have had the operation. That figure is based on freedom of information requests. There are no accurate data from prior to 2007, because the figures were not recorded. Do you think that the figure is accurate, or is it way out? Could we be looking at double that number?

Olive McIlroy: It is probably more than double that number.

Elaine Holmes: It is difficult to know, because there are no accurate data that would allow for reporting and follow-up, and in order keep track of who is suffering. In the car industry, if there is a problem, a recall is issued, but that cannot be done with mesh, because they have no clue.

Olive McIlroy: There is no precautionary principle when it comes to medical devices. In the airline industry, if something goes wrong, aircraft are grounded right away, but that does not happen with medical devices. There is no precautionary principle at which the line is drawn and matters are investigated—they just keep putting in the medical devices while they are waiting to find out what the problem is.

Elaine Holmes: And they tell us that the benefits outweigh the risks.

John Wilson: As other members have mentioned, we might just be scratching the tip of the iceberg in relation to the cases that are coming forward.

Elaine Holmes: Absolutely.

Olive McIlroy: I believe that you are.

John Wilson: Is the demand for information through the survivors network increasing daily?

Elaine Holmes: Yes.

Marion Scott: The women are struggling to do it on their own. The only support network they have is one another.

Elaine Holmes: We are not medically or legally trained. We can only offer support.

Olive McIlroy: About the only good thing that has come out of the mesh medical devices is the new friendships that have evolved through people finding each other. Initially, everybody sat thinking that they were the only one.

Elaine Holmes: We thought that we were unique.

Olive McIlroy: That is what consultants told people.

Elaine Holmes: The same consultants.

Olive McIlroy: The consultants were telling several people, "This is very rare."

John Wilson: Is that evidence that you have picked up from the survivors helpline?

Elaine Holmes: Yes.

John Wilson: Are the same names appearing?

Elaine Holmes: Yes.

Marion Scott: Yes—the same names appear consistently. So, there are an awful lot of very rare and unique people.

John Wilson: Thank you. That leads me to a couple of recommendations, which we will deal with later.

The Convener: As I said, we are over time, but I decided that we should extend the time, because this is important.

Do members who have not contributed wish to say anything at this stage?

Jackson Carlaw: I just have one supplementary. I deliberately left it to the end, because I thought that it was important to hear the factual evidence first.

These are very personal stories. Would the two petitioners share with the committee how their lives have changed?

Elaine Holmes: I can walk from my front door to the driveway—that is as far as I can walk. I now rely on a wheelchair. I have had severe left-side nerve damage. My life is not what I envisaged for myself, my husband or my family. We have learned to live with it. We have good days and bad days. As Olive McIlroy said, we have gained support from one another.

Olive McIlroy: Basically, the life that I had was a healthy, active, employed life. I do not have that life any more, now that I am disabled. I have chronic pain. In the morning, I get up, I brush my teeth and I feel pain. When it comes to sitting and walking, I am like Elaine. I am determined not to be in a wheelchair, but it would make my life so much easier if I was. I have constant symptoms. There is no off switch for the symptoms. It is the same for all the girls we speak to.

Jackson Carlaw: Thank you.

The Convener: Thank you very much for that and thank you again for providing such sensitive, personal information, which will serve to advise the committee when it looks forward to the next steps.

Do any other committee members have any final points?

Mr Findlay has a final point to make. I ask you to keep it brief, as we are very short of time.

Neil Findlay: Yes, I will keep it very short.

I have a general question for committee members. Would any of you have this operation, knowing what you now know, or—given that it is a very male-dominated committee—would you allow your wife, your partner, your daughter or any female relative to have it? If the answer is no, members know what the committee has to do. It must act on behalf of these women, who have been so brave today.

The Convener: Thank you very much, Mr Findlay.

As you have probably gathered from the previous petition, we are now at the summation stage, so we have stopped asking questions.

Olive McIlroy: Can I make a short concluding statement?

The Convener: If you make it very short.

Olive McIlroy: On behalf of everyone at Scottish mesh survivors, I thank you all for listening to us and for considering our petition.

I thank our families, all those who signed our petition and politicians from all parties for their support. I pay special thanks to Marion Scott and the *Sunday Mail* for the hear our voice campaign. I thank the mesh-injured girls and all those who made it along today to support us. Special thoughts go to the girls who are not well enough to attend.

The eyes of mesh-injured women across the world are watching what is happening here today in the Scottish Parliament. They are all relying on Scotland to take the initiative and lead the way to prevent even more victims from being harmed by mesh implants.

What we are asking for is so very little when we compare it to the human cost as well as the financial burden of doing nothing at all. Our suggestions will ensure that proper early-warning systems are put in place, and we believe that those simple measures can easily be adapted to protect anyone who undergoes any implant procedure.

Please make the changes to prevent scandals such as the one that we have told you about from happening in the future, so that no more lives will be needlessly destroyed. Please study our dossier—the evidence is overwhelming. Please hear our voice. Thank you. [*Applause*.]

The Convener: Thank you very much for making that statement. I know that you found it personally very difficult. Although, technically, no applause is allowed in the gallery, on this occasion I will allow it.

We are now at summation, so we have stopped asking questions, but I ask the petitioners to stay where they are.

My personal view is that this is one of the most significant petitions that we have had in the three years over which I have convened the committee. I again thank the *Sunday Mail* for all the work that it has done to highlight the issue. I am sure that I speak for other committee members when I say that we clearly need to continue the petition. I, for one, certainly want to get the views of the Scottish Government, the MHRA and NHS National Services Scotland.

It is also important for us to write to the European Commission because, as I said earlier, it has a regulatory role. If the committee agrees, we have a provisional date to meet the European Parliament's Committee on Petitions in October. That has not been confirmed yet, but if the committee is so minded, we might be able to visit

one of the directorates general that have responsibility for the issue. That is my view; it is for committee members to consider the next steps.

I have set out some parameters, so we will start by hearing the views of the deputy convener, Chic Brodie, on the committee's next steps.

11:45

Chic Brodie: I thank the petitioners for their presentation. The committee does not make final decisions; it recommends further action.

On a personal level, I have no doubt that the evidence that you have given supports the action that you are asking be taken. To that end, I suggest that we write to the Scottish Government, continue the petition and invite the cabinet secretary to come to the committee to explain the Government's actions. Regrettably, the power is not yet in our hands—we have to discuss the issue with the EU—but I am once again disappointed that products in which we can have no or little confidence seem to be entering the marketplace. That point might be for another day, but we should invite the cabinet secretary to come and discuss the petition with us.

The Convener: Mr Brodie's recommendation is that we continue the petition and write to a variety of organisations.

John Wilson: I have a few more recommendations to make. I suggest that we write to the Royal College of Surgeons and the British Medical Association to seek their views on the procedures. I also suggest that we write to four health boards in Scotland—I have randomly chosen NHS Lothian, NHS Greater Glasgow and Clyde, NHS Ayrshire and Arran and NHS Fife—to ask for their views on the issues that the petition has raised and the evidence that we have heard today.

When we write to the Scottish Government, we should ask what advice is being provided to general practitioners on the issues that have been raised by the petition. The first point of call for many women after the operation is their GP, because they do not get a direct referral back to the consultant. Based on the evidence that we have heard, GPs need to be made aware of the issues that are being raised and the complications that come about. Women should not feel that they are being left on their own to deal with their situation.

We could also ask the Scottish Government what procedures will be put in place to ensure that there is appropriate recording of complications, either at GP level or at hospital surgeon level.

Last but not least, we should reinforce the call for the suspension of all such procedures until such time as we have assurances and other measures in place that mean that people can give informed consent for such procedures, in the light of the issues that the petitioners have raised.

The Convener: Thank you, Mr Wilson. That is a very comprehensive list of additional recommendations. I certainly endorse it.

Jackson Carlaw: With this petition, I feel that there is a weight of responsibility on the committee. Some petitions that we receive are not time critical, but this one could be time critical because, although it might deal with an issue that the Health and Sport Committee might have been expected to consider, that committee has its own busy and detailed agenda. We have heard evidence and, in a way, I feel that we are compelled to act on that evidence.

Therefore, to pick up on a point that Chic Brodie made and to give the process a bit more urgency, although we are to seek the views of others, I would like us to flag up with the cabinet secretary that we would like to discuss the issues with him at the earliest opportunity. Although, in some cases, that might happen at the end of the process, in this instance it might be only an interim step in the process of action that the committee might want to recommend.

The Convener: Thank you, Mr Carlaw. My thoughts were that the committee would invite Mr Matheson and Mr Neil to attend our meeting two weeks from today, which will be our final meeting before the recess. Alternatively, we have a meeting scheduled in August. The clerk will certainly make that clear to the ministers' offices. In fairness, the ministers have always been reasonable about turning up when we have made such a request, so I am not expecting any problems.

Anne McTaggart: I agree with the recommendations, but I also want the committee to have some background information on the use of the procedures elsewhere in the UK. We could ask the Scottish Parliament information centre for that.

The Convener: We will certainly speak to SPICe. I thank Anne McTaggart for that point.

Are there any final points?

Chic Brodie: As usual, Mr Wilson made comprehensive recommendations. I differ, however, on the idea of approaching four health boards. We should not be selective about it; we should approach all the health boards so that all are involved in what should be a timeous exercise. We need to get someone here before recess so that we can make a clear action plan.

The Convener: I agree with Mr Brodie on that. There is one further meeting and it is my view that

the ministers should appear before the committee in two weeks' time. We will certainly keep the witnesses from whom we have heard today up to date.

As the petitioners have heard, we think that their petition is very important, and we have taken it very seriously. We have tried to cover every single option that we can. If Mr Neil or Mr Matheson is at the meeting in two weeks' time, you are free to come to the gallery on that occasion.

I thank everyone for coming along—our witnesses and all the supporters in the public gallery. The petition deals with a sensitive issue. The committee feels that it is an extremely serious one and we will do everything that we can to pursue the aims of the petition.

11:51

Meeting suspended.

11:56

On resuming—

Current Petitions

Youth Football (PE1319)

The Convener: Agenda item 3 is consideration of current petitions. PE1319, by William Smith and Scott Robertson, is on improving youth football in Scotland. Members have a note by the clerk and the submissions from the Scottish Youth Football Association and Scotland's Commissioner for Children and Young People.

In light of the evidence that we heard at the previous meeting, the committee is invited to consider what action it wishes to take on the petition. As members will be aware, one option is to invite Scotland's Commissioner for Children and Young People, Tam Baillie, to review the current registration process from a rights perspective and report back to the committee with his findings. What is the committee's view on that recommendation?

Chic Brodie: That is fine, although I would like us to invite the Scottish Schools Football Association to give evidence at the same time.

Angus MacDonald: I welcome the submission from Tam Baillie and his belief that a review of the current registration process from a rights perspective would be beneficial. I agree with the suggestion that we invite him to review the current registration process.

The Convener: I wonder whether we can make a link between the two. I would be keen to go ahead with involving the commissioner, but we could get the information that Chic Brodie is asking for and ensure that it goes to the commissioner so that he is fully aware of all the information.

Angus MacDonald: That makes sense.

The Convener: Are members happy with that recommendation?

Members *indicated agreement.*

The Convener: We will invite Scotland's Commissioner for Children and Young People to review the current registration process.

Chronic Pain Services (PE1460)

The Convener: PE1460, by Susan Archibald, on behalf of the Scottish Parliament cross-party group on chronic pain, is on the improvement of services and resources to tackle chronic pain. Members have a note by the clerk.

A lot of work has been done by the Scottish Government on the issue. I hope that the

committee's work has made a bit of a difference. I do not see what further work we can do in relation to the petition. Susan Archibald has done excellent work, and I thank her and the cross-party group for their work.

Unless members have any other suggestions, I suggest that we close the petition under rule 15.7, on the basis that a chamber debate on chronic pain took place on 29 May and that a consultation on the future provision of specialist chronic pain services was held, following which the establishment of a new specialised residential chronic pain management service has been taken forward.

Jackson Carlaw: I would prefer to leave the petition open until the Government has confirmed the absolute establishment of that new centre. I believe that the Cabinet Secretary for Health and Wellbeing hopes to be able to do that before the recess, and I have every confidence that he will. However, for the sake of completeness, and given the investment by so many people in Susan Archibald's petition, we could get to that point and then draw a formal line under the petition, knowing that we had made that final achievement on their behalf.

The Convener: I am relaxed about that.

John Wilson: Can I put on record the interest that Jackson Carlaw and I have in the issue, as co-conveners of the cross-party group on chronic pain? I suggest that we support Jackson Carlaw's suggestion that we hold on to the petition. I agree with him: the cabinet secretary and the Minister for Public Health are about to make a decision, and I would prefer to hold on to the petition until that decision is made public.

The Convener: Do other committee members agree?

Members *indicated agreement.*

Single Room Hospitals (Isolation) (PE1482)

12:00

The Convener: PE1482, by John Womersley, is on isolation in single-room hospitals. Members have a note by the clerk. Alex Fergusson MSP has a constituency interest. I do not think that he is able to attend this meeting, but I mark his interest in the petition for the record.

Members will be aware that there are two main options for action: we could write to the Scottish Government to request that a cost benefit analysis be undertaken of having 100 per cent single rooms, as opposed to 50 per cent, over the course of a hospital's lifetime; or we could defer consideration of the petition until the Scottish Government's review of the research of single-bedded accommodation is complete and the results have been published.

I ask for members' views on either option. Indeed, if members have other options, I would be interested to hear them.

Chic Brodie: As we are aware of hospitals being built with single rooms, we should consider more than a cost benefit analysis of operational costs. It would be instructive to examine the capital costs that are involved in building 100 per cent single rooms as opposed to 50 per cent. We should certainly have that information from the south of Scotland.

In my book, the more important issue is the research into the sociability of single rooms as opposed to shared accommodation—in some cases, 50 per cent shared accommodation—but we should still ask for the capital costs.

The Convener: I think that there was some information about the capital costs in annex A of the SPICe briefing. Perhaps Mr Brodie would like to check whether that is sufficient for his purposes.

Jackson Carlaw: It has rather satisfied mine, I have to say.

I am not altogether sure what we do with the petition. The Scottish Government's policy is clear. The Cabinet Secretary for Health and Wellbeing has indicated that he will undertake a review. If we are going to continue the petition, it would be interesting to invite the Scottish Government to provide some feedback on the attitudes of patients who have experienced single-room hospital accommodation. My understanding is that feedback has been favourable, that some of the questioning that underpinned previous surveys of opinion was predicated on some rather pejorative suggestions as to what patients might be likely to experience and that, in fact, the reality has proved to be quite different.

We have given the petition a good airing. The Government's undertaking that there will be a review in due course to ensure that it learns lessons from the petition is as much as the committee can reasonably expect. I am slightly less persuaded about drilling further into the cost benefit analysis. It is an issue of policy and it is for the Government to determine what it believes to be in the best interests of the health of patients. I am not sure that it is relevant whether the light bulbs cost more in those circumstances.

The Convener: To be clear, Mr Carlaw, you are suggesting that we take option 2, which is to defer consideration until the Scottish Government's review is completed.

Jackson Carlaw: My view is that we should close the petition on the basis that the

Government has guaranteed that the review will take place at some point, which is a sensible and pragmatic course of action.

Chic Brodie: I disagree wholly with that because of sociability, which I mentioned. My concern is that the Scottish Government's review relates to research on single-bedded accommodation in hospitals. I trust that it will not only discuss whether such accommodation is good or bad but consider the alternatives. Having some multibedded areas in hospitals has a good social and, indeed, healing effect, so I would keep the petition open. The costs are important.

The Convener: We have two options: to close the petition or to keep it open until the Scottish Government's review is complete. What do other members think?

John Wilson: I am happy to keep the petition open at present while we seek answers to the additional questions that have been raised.

David Torrance: I am happy to keep the petition open.

Anne McTaggart: How long do we have to wait for the other information to arrive?

The Convener: We will keep a close watch and see when the review is complete, which will be announced by the Scottish Government. The other information is factual, so I would expect to get it in the next four weeks. The review is taking place over the course of a year.

Anne McTaggart: Do we keep the petition open for that length of time?

The Convener: That is the length of the review, so that is what we would be suggesting in order to keep a watching brief on it.

Anne McTaggart: And in the meantime the other piece of information will be sought.

The Convener: Yes, that is correct.

Anne McTaggart: Have we kept other petitions open for that length of time?

The Convener: Yes.

Anne McTaggart: I think that we have to complete that work.

The Convener: Okay—thank you for that.

Angus MacDonald: The petitioner requested in his email of 26 May that we write to the Scottish Government to ask that a proper cost benefit analysis is done. I think that we should honour that request, and we should certainly keep the petition open.

The Convener: Okay. The majority position is that we continue the petition until the review is finished and seek the piece of information that the petitioner has asked for. We will report that back at a future meeting.

Chic Brodie: I do not for the life of me understand why it would take a year to do research on single-bedded and multibedded accommodation. The tail is wagging the dog in some of these situations, and we really need to ask questions about when we expect such things to be completed.

The Convener: We are expecting Alex Neil to appear before the committee soon to discuss another petition. If members want to ask him further questions, that is totally in order as far as I am concerned.

Jackson Carlaw: I am sure that the cabinet secretary's response, which would be entirely reasonable, would be that he would like some people to experience single-bedded accommodation in order to comment on it. That might take some little while.

Chic Brodie: I am not sure whether or not that is an offer.

The Convener: We could continue the discussion for some time, but I will draw a line under it now. We will continue the petition until the review is complete, and we will ask for the information that the petitioner is requesting.

Whistleblowing in Local Government (PE1488)

The Convener: PE1488, by Pete Gregson on behalf of the kids not suits campaign group, is on whistleblowing in local government. Members have a note by the clerk and the submissions. Again, the petition is comprehensive. I will ask members for their views on the next steps.

It is clear that there is an issue in that the petition is largely about policies that are a matter for locally elected representatives. Obviously Audit Scotland and the Accounts Commission are responsible for auditing those policies, but to date they have not identified any weakness in relation to whistleblowing, which would require to be flagged up in the annual report for a local authority. We have had a lot of information about that from local authorities.

If members are happy with the way forward, we can close the petition. If they are not, they can suggest another course of action.

Jackson Carlaw: I am happy to support that recommendation.

The Convener: On the understanding that silence is assent, we will close the petition on the basis of the points that I have just made.

Supermarkets (High Streets) (PE1497)

The Convener: PE1497, by Ellie Harrison on behalf of the say no to Tesco campaign, is on supermarket expansion on local high streets. Members have a note by the clerk and the submissions.

We are joined by Patrick Harvie MSP and Sandra White MSP, who have made some useful points and recommendations. I ask both of them to make a brief comment before the committee enters its deliberations.

Patrick Harvie (Glasgow) (Green): Thank you, convener. I appreciate the opportunity to say a few words before the committee considers the petition.

I am here to urge the committee to take the petition seriously. I think that very few people would want to do away with supermarkets, and very few would deny that, when they came on to the high street, supermarkets added something genuinely new to the retail environment and the sector.

However, we have reached the point at which the scale of the domination by a handful of multinationals is getting absurd. I remember the Scottish Parliament discussing some of these concerns about 10 years ago. At that point, the big four controlled somewhere between two thirds and three quarters of the retail sector in this country; their share is now getting close to 90 per cent, and it is still expanding.

The petition raises some specifically local issues, but all members will recognise that this is happening in every community. Many dense urban communities and rural communities find that competition in retail is now simply a choice between one supermarket and another instead of the rich diversity that they used to enjoy.

Your priorities might be those that local government and national Government talk about such as diversity, vibrancy in town centres and competition, or they might be about having shorter supply chains and greater trust and resilience in local economies. Because of the nature of their logistics, supermarkets will always be bad at the latter, and we will continue to see problems with the long, complex supply chains that gave rise to the recent meat scandal. Whether we are making the sustainability argument or the competition argument, we should recognise that the objectives that local and national Government is setting such as rich retail diversity and vibrancy in town centres are not being met.

I hope that the committee will give very careful consideration to the various options, whether they be use classes or some other mechanism, such as giving local authorities the ability to consider the cumulative total of floor space that an applicant has rather than simply the individual premises for which permission is being applied or for which permission might not be needed. Whatever the mechanism, we have to recognise that the public policy objectives that Governments have been talking about for a long time are not being met and are, in fact, being undermined by the continued dominance of supermarkets.

We could be here in another 10 years' time with four companies controlling 95 per cent-plus of the retail sector in this country. That is not competition, and it is not sustainable. Whatever side of the argument you fall on, it is time to recognise that objectives for the common good are not being met.

Sandra White (Glasgow Kelvin) (SNP): I thank the committee for giving me the opportunity to speak to the petition, and I also want to thank the Justice Committee for finishing a wee bit earlier today to enable me to come.

Ellie Harrison's petition might have originated from an issue in the Great Western Road area of my Kelvin constituency, but, as Patrick Harvie has said, this issue affects other areas. In recent years, small local shops have closed down. There are parts of Maryhill Road in my constituency and Patricia Ferguson's constituency where all the small shops have closed down, and all we have now in the area are big supermarkets. Local shops do not just employ local people but use local produce and add to the diversity of areas such as Kelvin. In the areas of Kelvinbridge, Finnieston and Yorkhill, small shops are closing down because Tesco and others have opened up.

We also need to address the issue of land banking by the big supermarkets. After they buy up land, they can let it sit vacant for 12 or 20 years before they make a planning application for it.

This serious issue is not just a local one: it is an issue all over Scotland, not just in my constituency. It is great to see a diversity of local shops when you walk around an area; indeed, that is what brings people into an area. People can go to huge supermarkets such as Tesco anywhere. Of course, I am talking not just about Tesco—there are others—but those places all look the same, and they all sell the same produce. If a high street has a diversity of shops that sell a diversity of goods, it can only be good for local areas.

I know that we are looking at planning issues in the national planning framework 3, and perhaps the Local Government and Regeneration Committee could look at the petition, too. I leave it to your expert selves to decide what to do with the petition, but I plead with you to have a look at it. This problem is happening not just in one area, but throughout Scotland.

The Convener: Thank you very much. As members will know, Sandra White has written to us with some helpful suggestions. She has suggested that we ask the Scottish Government about the use of retail impact assessments for shops of under 2,500m^2 and for its views on the suggestion from the Federation of Small Businesses that the town centre master-planning toolkit takes into consideration the issues raised by the petition. Are members happy with those suggestions?

12:15

Chic Brodie: When I met Professor Leigh Sparks, who is professor of retail studies at the University of Stirling and is now head of Scotland's Towns Partnership, he enlightened me on the fact that out-of-town supermarkets of 100,000ft^2 have now realised that there is a vast need to reduce to something like 60,000ft^2.

The petition is about supermarket expansion on our local high streets. I appreciate Sandra White's request about RIAs, but we cannot talk in such terms just about supermarkets opening such shops. We would be talking about all shops that are under 2,500m^2.

I repeat that I have no truck with supermarkets. There is no level playing field. However, high street shops are also suffering from internet shopping.

I understand that there are local issues; I have them in my area, too. However, if we are to restore the vitality and viability of town centres, it is difficult for us to say that we will have some shops but not others. We must recognise that out-of-town supermarkets are seriously on the wane. Just looking at their results provides enough sustenance for that argument.

Jackson Carlaw: I have said previously that I am unpersuaded by the evidence. I do not regard supermarkets as an evil empire. The petition asks for a restriction on supermarkets owning smaller convenience store-sized units, many of which are abandoned former Woolworths stores and other stores that have lain derelict in many town centres for years and which nobody has expressed any interest whatever in operating.

I have repeatedly gone to Sandra White's constituency; indeed, I am attracted to the corridor that has been mentioned of Great Western Road and Byres Road, where the shopping diversity is remarkable. I went to school round about there. The shops that are there today are very different from the shops that were there then, but I would expect that. The nature of retail is that units progressively change. What is fashionable and desirable is completely different now and will be again in the future.

Having said that, I am happy to support Sandra White's suggestion that we write to the Scottish Government to seek information on the proposals that have been made. I am interested in the feedback from that.

The Convener: Do members agree to that suggestion?

Members *indicated agreement.*

The Convener: I thank Patrick Harvie and Sandra White—an honorary member of the committee—for attending.

National Bird (PE1500)

The Convener: PE1500, by Stuart Housden OBE on behalf of RSPB Scotland, is on declaring the golden eagle Scotland's national bird. Members have a note by the clerk and the submissions.

There are a couple of options to consider. One is to ask RSPB Scotland to undertake a public consultation to enable it to demonstrate widespread support for the concept of a national bird and for the choice of the golden eagle over other bird species. We could also suggest that the Scottish Government undertakes research on the benefits of assigning further national symbols.

The petition was significant because it was our 1500th petition. I know that some members have strong views on it, and I would welcome hearing the committee's views.

Jackson Carlaw: I hesitate to contribute, convener, but I return to the minister's comprehensive response after our earlier consideration of the petition. I am also interested in his thoughts on the subsequent submissions that we have received.

The responses from the conveners of other committees were mixed; indeed, some must be described as indifferent. One response that expressed enthusiasm used the word "I" rather than giving the committee's view. I was not altogether clear whether the convener's personal view or the committee's view was being given.

The minister articulated well the concerns about the value of national symbols and the process for adopting them. I am interested in knowing whether the Government feels that, in light of everything else that has been said, a case has been made or an appropriate process has been identified.

The Convener: Can I have members' views on Jackson Carlaw's suggestion that we write to the Scottish Government with the evidence that we have?

Chic Brodie: That is fair. There was concern about the national tree, but we hardly see people

rushing around saying, “Hurray! The pine is the national tree of Scotland!” Although it is good to have that symbol, I suspect that, Mr Carlaw permitting, the golden eagle would follow the same route.

The Convener: Do members agree with the suggested course of action, which is that we write to the Scottish Government with all the evidence that we have received and that we therefore continue the petition to a future date?

Members *indicated agreement.*

Emergency and Non-emergency Services Call Centres (PE1510)

Inverness Fire Service Control Room (PE1511)

The Convener: The final two petitions, PE1510 by Jody Curtis on emergency service and non-emergency service call centres and PE1511 by Laura Ross on Inverness fire service control room, will be taken together. Members have a note by the clerk and submissions. I think that I mentioned before that, subsequent to the petition being lodged, Laura Ross came to speak to me about the generality of the issue.

There are a number of options to consider. We have written to the Justice Committee about the issue. Given that its sub-committee is looking at some of the workings of the emergency services and is therefore covering some of the areas that are highlighted in the petitions, it seems sensible to refer both petitions to the Justice Committee to allow it to look at them in more detail. Clearly, these issues are very important, but the point is that the Justice Committee has its sub-committee. Are members agreed?

Members *indicated agreement.*

The Convener: I am conscious of the time, so I ask whether members agree to defer agenda item 4, on the inquiry into tackling child sexual exploitation in Scotland, to our meeting in two weeks’ time. I am keen that we do not lose this work to the recess, but I have a couple of issues to raise and I do not think that we can do them justice in the time available. I am sure that members agree that it was right to keep the discussion of the mesh petition going a bit longer than we actually had time for.

Chic Brodie: I agree with you on that, convener. You say that you have a couple of questions, but I certainly have many questions about the Government’s response, and our discussion about the inquiry might require a meaningful amount of time.

The Convener: That is a good point. I will ask the clerk to ensure that we schedule a decent chunk of time in our meeting in two weeks’ time to let us discuss the matter further.

As there is nothing further to discuss, I close the meeting.

Meeting closed at 12:22.

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