

**Scottish Parliament**  
**Public Petitions Committee**

*Tuesday 24 April 2001*

*(Morning)*

[THE CONVENER *opened the meeting at 10:03*]

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**The Convener (Mr John McAllion):** I welcome everyone to the sixth meeting this year of the Public Petitions Committee. I hope that everybody had a good Easter break, in Scotland. We have a busy agenda this morning, so I shall not make any further opening remarks.

I have not received any apologies from members of the committee. I note that Paul Martin, Cathie Craigie, David Mundell and Alasdair Morgan are with us this morning; they each have an interest in petitions that are before us.

**Interests**

**The Convener:** I welcome our new member, John Farquhar Munro. I am sure that you will enjoy your time on the committee, John.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** Thank you.

**The Convener:** The Public Petitions Committee is not like other committees of the Parliament and there are certainly no whips operating in here, so you should find it congenial.

We must start by asking our new member to make a declaration of interests.

**John Farquhar Munro:** I do not think that I have anything of particular significance to declare, apart from the fact that I am a Highland crofter—crofting sometimes gets a little support from the Scottish Executive. The other thing that might be of interest at some time in the committee's proceedings is that I am a fellow of the Institute of Logistics and Transport. Any other interests are quite insignificant.

**The Convener:** I take this opportunity to thank George Lyon, who was John Farquhar Munro's predecessor on the committee, for his contribution. He was on the committee only briefly, but made an impact in the short time that he was a member. I am sure that John Farquhar Munro will make an equally important impact in the months and years ahead.

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**New Petitions**

**The Convener:** First, we have a batch of petitions, PE352 and PE355, which are both from Mr Duncan Shields. Mr Shields is present this morning and I invite him to make a presentation to the committee.

It is normal practice to allow petitioners three minutes to make their presentation. However, because you are speaking to two petitions, it has been agreed that you will be allowed five minutes. After four and a half minutes, I shall indicate that you have 30 seconds to go; you should then begin to wind up.

**Mr Duncan Shields:** The Shipman inquiry is only the tip of the iceberg in showing the almost total lack of regulation of doctors' conduct. Doctors make mistakes and errors of judgment and have been shown to act subversively if there is financial gain to be made. Lawyers exploit that lack of accountability by using doctors' reports regularly in the Scottish courts to bias cases heavily in favour of their clients. That can massively undermine the basic human rights of many individuals who bear the brunt of the injustice that flows from a system that is seriously flawed and which causes widespread psychological trauma for children and parents who are separated from one another as a result of that lack of accountability. Because of the pressures that result from such actions, some people may not even survive the loss of the basic human right of contact with their family.

Could anyone possibly believe that, in his capacity as a doctor, Harold Shipman was capable of passing accurate judgment on parenting skills or a child's welfare? However, he was only one of many doctors who use their surgeries as mini-courtrooms, producing character assessments outwith a court of law and remaining virtually untouchable, while the GMC has nothing in place to ensure impartiality, as required by the European Court of Human Rights. There is an inherent bias in such cases when a lawyer requests a doctor's report for the client. Such a request is unlikely to produce a report opposing that lawyer's client, who is providing the fee for that report via the legal aid fund.

There is now a total lack of trust by the general public in a system that gives free rein to professionals—as if that title is all that is required to assure good moral and ethical judgment. The Shipman inquiry showed that the system is seriously flawed in coming to that conclusion. For an individual to face such injustice while emotionally weakened by separation and other serious contributing factors, such as illness, and while there is no accountability, leaves the legal process open to widespread misuse. The system allows unwarranted restrictions to be placed on

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family contact and uses potentially flawed reports to the detriment of a child's emotional development. Family Mediation Scotland is fully aware of the damage that is regularly done to children's development as a result of those unaccountable influences.

The process, which is blighted by a lack of grievance procedures and disciplinary action, may later be shown to be flawed and to have undermined decisions regarding a child's welfare. In many cases, those decisions are taken by professionals who may have little or no knowledge of a family

background on which to form their opinions and who influence such cases heavily from the outset. That also leads to the degrading spectacle of judges and sheriffs treating individuals inhumanely in court, by withdrawing or severely limiting contact with a child. In many cases, that judgment is based on statements that have been produced by a doctor who is unaccountable. Those statements may totally contradict the views that have been expressed by the children involved, which shows lack of sensitivity to a highly emotive issue. The introduction of children's commissioners may assist in the process, by ensuring that the rights of the children are being taken into account.

A doctor, funded by legal aid, can slander an individual in court, but no legal aid is available for the individual to challenge any such report. Nor is there any grievance procedure to deal with that through the General Medical Council, as was shown in the Shipman inquiry. Through that lack of accountability, such defamation can destroy a person's life.

Harold Shipman is likely to have been responsible for more than just taking human life. He was able to influence major decisions on child welfare for many years, probably to the detriment of many children who faced loss of contact with their parent as a result of his subversive influence. Something that the inquiry did not fully document, but which is likely to have happened during the many years in which that doctor practised, is how social services and the courts can be heavily influenced by a doctor's report in child welfare hearings. It is essential for the Scottish Parliament to examine all cases in which a child has been separated from a parent or a sibling because of a doctor's report. In the light of the Shipman inquiry, which clearly showed how massive injustice can prevail, all such cases should be reconsidered. The reports are not accountable. No child should be separated from a parent as a result of decisions that were made under the influence of doctors' controversial reports to courts.

An inquiry is being conducted into legal aid. Part of that inquiry should be an examination of the massive funding that the Scottish Legal Aid Board

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gives to the top 20 lawyers—I have the figures with me for 1997 and 1998. The amount of that funding that is generated by the payments that are made to doctors for reports should be determined. Such funding allows the long-term harassment of an individual who is at the receiving end of injustice, which can stretch over many years. That harassment is made possible almost entirely because of the influential and controversial doctors' reports.

There should also be an examination of what, if any, procedures the GMC has in place to deal with doctors' role in this area. That body does not appear to have proper grievance procedures to deal with the Shipman case, never mind the use of such doctors' reports in courts.

My second petition, PE355, calls on the Scottish Parliament to examine the regulations and procedures regarding local councillors who heavily influence

council departments and allocate funding to those departments, then use reports from those departments in court cases involving clients of legal firms in which they are partners. I know of such a case. Such reports can heavily influence decisions that might undermine an individual's human rights and jeopardise the welfare of a child as a result of that conflict of interest. Family Mediation Scotland views such a situation as potentially detrimental to a child's welfare. Such reports include those that are produced by social services, education departments and housing departments.

I apologise for rushing through my statement, but I was conscious of the time.

**The Convener:** That was an excellent presentation. We will deal with the petitions separately.

Petition PE352 asks the Parliament to examine, in the light of the Shipman inquiry, the use or misuse of doctors' reports by lawyers in court actions. We consulted the Scottish Executive justice department about the petition. It argued that any doctor's report that is submitted in court is open to challenge and that, unless agreement is reached, the doctor can be cross-examined on the report and alternative reports can be brought forward. Why is that safeguard not sufficient?

**Mr Shields:** I have been through the GMC's grievance procedure and I have found that it seldom takes action to provide a judicial review of any doctor's report.

The legal argument is that a doctor's report is one of the major factors in determining issues relating to a child's welfare. Even when I produced evidence in court to show that the court's decision, based on the doctor's report, went against the interests of my children, my words fell on deaf ears. I can speak only from personal experience,

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but the doctor's report was taken as evidence at all times during the complaints procedure that I followed.

I went through that process before the Harold Shipman inquiry. I am concerned by the fact that, in the many cases that the GMC has dealt with—including the deaths of children in the Bristol royal infirmary—it has seemed impossible to get the GMC to challenge any doctor's report.

**The Convener:** Is it possible to challenge the report during the court procedure?

**Mr Shields:** That was done but it made no difference to the decisions that were made, despite the fact that contrary evidence was put forward.

**The Convener:** Could you have brought a report by your doctor before the

court?

**Mr Shields:** The difficulty is that, in a custody situation, both partners share the same practitioner. The doctor decides to make a report in favour of one or the other partner. That situation, too, can compromise a child's welfare.

**Dorothy-Grace Elder (Glasgow) (SNP):** Were you referring to hospital doctors as well as general practitioners? Obviously, a hospital doctor may have seen the child on only one occasion.

10:15

**Mr Shields:** I am talking mainly about the local GP who has some knowledge of the family background, although I do not know whether treating a family's colds means that the doctor is in a position to make assessments of a family's character. Harold Shipman, for example, had influence over similar situations in relation to many families. The inquiry, however, examined only the people who were killed; it did not consider the reports that he might have made. The GMC should have procedures in place to deal with that problem.

**Dorothy-Grace Elder:** Given that the GP will probably not have seen the child very often—because the child has not been around for long—what is the alternative to having GPs produce reports?

**Mr Shields:** There should be procedures in place to deal with situations when it is found out that a doctor's report has adversely affected a decision and had a negative impact on a child's welfare. The GMC should review its procedures, as the report can massively affect the outcome of the court case. I have found my experience of such a situation to be one of the most difficult and trying times of my life. I find it hard to believe that one person's report could affect my life so dramatically.

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**John Scott (Ayr) (Con):** You suggested that the legal system is open to abuse. Have you specific instances other than your personal circumstances?

**Mr Shields:** Family Mediation Scotland is quite clear about the fact that substantial damage to children's welfare is done by this unaccountable system. As is proved by the present rules and regulations, the doctor is unaccountable. Many children are suffering psychologically because of such decisions and Family Mediation Scotland is picking up the pieces. I have spoken to the organisation at length and I understand that it suggested many years ago that there should be a long-term review of such decisions to determine the effects on the later life of the child.

**John Scott:** Who would be in a position to conduct such a review, if not the general practitioner? Ultimately, whose advice does one take in such matters?

**Mr Shields:** I am putting to the committee only the fact that a problem exists,

as is clearly shown by the Shipman inquiry. I hoped that the committee would be able to make suggestions about possible alternatives. I would need time to think about alternatives.

**The Convener:** We will move on to deal with petition PE355. I understand that you allege that there is a potential for conflict of interest when councillors are also practising lawyers. You believe that such councillors might be able to influence council departments in favour of their clients. You want the Scottish Parliament to examine the regulations that control that. Is that the basic situation?

**Mr Shields:** Yes.

**Rhoda Grant (Highlands and Islands) (Lab):** If a councillor had some other input to a case, and was able to use that influence to change things, would not he or she have to declare that interest and step back from any decision making?

**Mr Shields:** They may do—but if it took place in the City of London, I am sure that people would see that as insider dealing. If someone is in a powerful position to influence departments, and then uses those departments' reports to gain influence on court decisions, some aspects of that situation could be considered as conflicts of interest. An example of that would be if someone runs a legal firm and also has a heavy influence on decisions on council reports in another area—especially an area that is connected with a child's welfare. I have spoken to Family Mediation Scotland about that and it is concerned about anyone having such undue influence. It has encountered injustice as a result of such conflict of interest.

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**John Scott:** Are there specific cases where that has happened?

**Mr Shields:** Family Mediation Scotland did not give me details of any specific case, but it is concerned about anything to do with people having undue influence on decision making on a child's welfare—especially if the child is very young.

**The Convener:** Thank you. We will now consider how to deal with your petition PE352. You are welcome to stay to listen to the discussion.

Members will note that it was originally suggested that we agree to copy the Scottish Executive justice department's comments to the petitioner and to take no further action. However, the case that has been made by the Executive—that there are safeguards in court proceedings in terms of doctors' being questioned and alternative medical evidence being presented—does not seem to address the petitioner's concerns. I suggest that, before we take the matter any further, we send the Executive's response to Family Mediation Scotland and ask for its comments.

**Helen Eadie (Dunfermline East) (Lab):** Absolutely, yes.

**Dorothy-Grace Elder:** Could we pass the Executive's response to the Justice 1 Committee or the Justice 2 Committee at the same time? The response is very bland and it does not tackle the point about the GMC.

**The Convener:** At this stage, we would be passing on the response purely for information. We will pursue the issue with Family Mediation Scotland. After we hear its response, we can decide what to do.

**Dorothy-Grace Elder:** Okay.

**Helen Eadie:** I agree with the convener. I suggest that we also send the response to Children in Scotland, which has a considerable reputation in policy matters that affect children; I am sure that it would want to give its views. The convener was spot on in saying that the Executive's response does not address the petitioner's concerns.

**The Convener:** Do members agree that we should send information to all the places that have been suggested and wait for the responses before considering the petition further?

**Members** *indicated agreement.*