Transcripts of all Meetings (19/12/2000—18/03/2003) Discussions concerning Public Petition PE 306

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John Scott: Perhaps we should also pass the petition to the Rural Affairs Committee.

Ms Sandra White (Glasgow) (SNP): It is not necessarily rural areas that are affected.

John Scott: It is definitely rural areas.

Helen Eadie: We should also pass the environmental advice from the Scottish Executive to the Transport and the Environment Committee. That committee can then decide whether it wants to act on the petition.

The Convener: At this stage, we are just gathering information from the Executive. When we receive that information, we can make a final decision on how to dispose of the petition. The suggestion is that we pass the petition to the Transport and the Environment Committee, for its information. Are members against passing it to the Rural Affairs Committee as well?

Helen Eadie: I think so.

Pauline McNeill (Glasgow Kelvin) (Lab): It is clearly an environmental issue, but we should wait until we receive a response from the Executive. The Transport and the Environment Committee is very busy, and we should warn it that we might ask it to take up the issue. We still have time to think about what we might do when we have received the Executive's response.

John Scott: I reiterate my position, that we should pass the petition subsequently to the Rural Affairs Committee. It is very much a rural issue.

The Convener: We will reconsider the petition when we receive the Executive's response.

John Scott: The number of SSSI designations should also be debated in the Parliament, to make public the way in which designations are arrived at, what benefit they provide to the community and their cost. At the moment, designations are made in a not entirely open way, and there is some disenchantment with the imposition of SSSIs and SACs throughout Scotland.

Col 820 **The Convener:** The time to make such a decision is when we receive the Executive's response. In the meantime, we will ask the Executive for its advice from SNH and its response to that advice. We will then consider the matter further before we dispose of the petition. We will also pass the petition to the Transport and the Environment Committee, for its information only. Is that agreed?

Members *indicated agreement.*

The Convener: The next petition is from Mr Thomas Minogue. It calls for the Scottish Parliament to request that all members of the judiciary

declare their membership of organisations such as the freemasons, and that a register of such interests be made available on request. Mr Minogue is here to address the committee.

Mr Thomas Minogue: First, I ask for brief clarification. Can the convener assure me that the members of the committee have no personal interest in the subject matter of my petition? It would be ironic if a petition concerning the undisclosed membership of secret societies of public officials was considered by undisclosed members of secret societies who hold public office. Are there any freemasons on the Public Petitions Committee?

The Convener: I assure you that I am not a freemason. It is for members to declare whether they are members of any organisation, and only if there might be a conflict of interests. Before we consider the petition, it is up to members to declare whether they are members of an organisation such as the freemasons. I am certainly not a member of the freemasons, and I do not think that any other committee member is.

Mr Minogue: You take responsibility for establishing that fact, as convener of the committee.

The Convener: I advise members of the committee that, before they participate in any discussion of the petition, they should declare any interests that they have. However, I cannot insist on that—I do not have that power.

Mr Minogue: It is on record that I have asked for that clarification.

At an early stage of my business life, in 1980, I was waiting for the Scottish Development Agency to finish building my factory in Cowdenbeath when a rush job came in. With the help of Dunfermline District Council, I managed to find temporary fabrication space in a taxi garage in Cowdenbeath. My landlord needed the money, as his wife was fighting a case in the European Court in Strasbourg. The landlord's wife had objected to her son, Jeffrey, being belted at school. The

Col 821 popular view was that the woman, Mrs Cousan, was a crank, that the European convention on human rights was a crackpot's charter and that the education system could not operate without the established tradition—

The Convener: I am sorry to interrupt you, Mr Minogue, but I must ask you to focus on the substance of the petition rather than on the individual case, which is not for the committee.

Mr Minogue: What I am saying has a bearing on the substance of the petition. That is why I am saying it. I would not say it otherwise.

The Convener: Please keep your remarks on the individual case brief.

Mr Minogue: I am keeping them as brief as I can. I am giving you my reasons for coming here, which I think are relevant.

The Convener: Okay.

Mr Minogue: To my shame, I shared the popular view that, as I had been belted since I was five, it was okay. Mrs Cousan won the case, and who today would send their five-year-old to school to be belted at the whim of a 20-stone teacher? I learned three lessons: that the European convention on human rights is a good thing; that I should question the established tradition; and that people's convictions can change the law. I make that point as an analogy.

When I considered my position in coming to court, I immediately realised that, as a non-freemason, I could not accept being tried by a freemason sheriff. Someone who promises to prefer a brother, who can communicate in court by secret means with other freemasons and who may not, under pain of death, reveal the secrets of fellow masons, all of which is reinforced by rituals involving blindfolds, nooses, daggers and other devices, was not going to judge me fairly if there were masons involved in the prosecution.

Freemasonry is so infamous that there have been two House of Commons select committee investigations into it, and registers of freemason judges and policemen have been established in England. I consider that a freemason judge must discriminate against me if he is true to his mason's oath. How do I find out whether a judge in Scotland is a freemason? I would have to ask him. It has taken me many hours and many thousands of pounds to find out that the sheriff who will hear my case is not a freemason. I say that that is wrong. A register for litigants should exist. The anachronism of undisclosed freemasonry, along with royal patronage and the Act of Settlement, should be consigned to the dustbin with the tawse. It has no place in Scotland in the 21st century and will be challenged by European law.

The Convener: Thank you, Mr Minogue. I am
Col 822 sorry for interrupting you, but I have to follow procedure.

Mr Minogue: I thought that it was relevant to give you my reasons for coming here.

The Convener: Of course. Before I invite members to ask questions, I should say that, since your petition arrived, we have received a very detailed letter, which arrived by fax yesterday, from Mr C Martin McGibbon, the grand secretary of the Grand Lodge of Ancient, Free and Accepted Masons of Scotland. It arrived too late to be circulated to members of the committee, but it will be circulated once we have considered the petition.

Mr Minogue: He has not written to me.

The Convener: A copy will also be provided to you, as the petitioner, after the meeting.

Pauline McNeill: Are you clear that you would want a register of

freemasons to apply only to the judiciary, or do you suggest that we apply it to other public bodies?

Mr Minogue: I have dealt with the case as it has come to me. Obviously, I have other views on the matter; I do not think that anybody in public life should be in the freemasons at all—registered or otherwise. My petition is about the specific circumstances that I have to face in coming to trial in a criminal court before a judge. I have confined my arguments to those circumstances and that is what my position is.

Pauline McNeill: What organisations would you suggest we include in any changes that we might recommend?

Mr Minogue: I am not an expert on organisations associated with freemasonry, but there is the Royal Company of Archers and there are all sorts of degrees of freemasonry, including the women's organisation, the Eastern Star. Those are the organisations that I think we should know about. They are secret societies whose members swear oaths promising to prefer brothers. I cannot see the logic of those organisations having any place in the judiciary, which is supposed to be based on openness and common humanity. It is an anachronism and cannot be right.

Pauline McNeill: Would that include Orange lodges?

Mr Minogue: I am dealing with masonic organisations. I do not know about the Orange Order and I have not mentioned that. I do not perceive the Orange Order to be such a force to be reckoned with in Scottish society as I do the freemasons. It is a different kettle of fish.

The Convener: Can I just explain that the letter is from the Grand Lodge of Antient, Free and Accepted Masons of Scotland; it was not from the

Col 823 Orange Lodge.

Mr Minogue: I knew that.

The Convener: Could you clarify the answer that you gave to Pauline McNeill? You want to include not just High Court judges, but sheriffs and so on.

Mr Minogue: All members of the judiciary who have a bearing on sentences or responsibility for the trial.

The Convener: Justices of the peace too?

Mr Minogue: Yes.

Helen Eadie: Good afternoon, Mr Minogue. I am pleased to meet you because although you are not a member of my constituency, your company is in my constituency.

Mr Minogue: You have refused to help me on that basis.

Helen Eadie: I had to refer you to Scott Barrie who is in the next-door constituency.

The documentation that you have presented us with says that you allege that the Lord Chancellor of England, Lord Irvine, in evidence to the Home Affairs Select Committee on Freemasonry in Public Life, has made it clear that a litigant in England and Wales has a right to know whether the judge before whom they appear is a freemason.

14:30

Mr Minogue: That is correct.

Helen Eadie: Can you expand on why you say that you allege? Is there nothing that substantiates that allegation?

Mr Minogue: The allegation of freemasonry?

Helen Eadie: No, the fact that the Lord Chancellor has given that evidence to the Home Affairs Committee. I presume that you are quoting from the report?

Mr Minogue: Yes. The Lord Chancellor said:

"All that is really necessary—I shall be very interested to hear what the chairman says—is for the public to have a proper opportunity to know whether the judge before whom they appear on whatever day is or is not a mason. However the register is made public—the detail has not been worked out yet—it will have to achieve that purpose."

A register has been set up in England on a voluntary basis. It has been very successful with the judiciary, but very unsuccessful with the police.

John Scott: Do you have evidence that membership of the freemasons in some sense precludes members of the judiciary or the police from arriving at fair and just decisions?

Col 824 **Mr Minogue:** That is a difficult thing to prove. There is common perception and circumstantial evidence. Unless I gain entry to a masonic lodge and find a judge plotting with a policeman, I cannot provide the evidence. One would have to be very naive not to have noticed freemasonry in most walks of life. In the industry that I am involved in it is commonly seen, although it is always anecdotal and never proven.

However, the evidence of the Select Committee on Home Affairs included examples of bias by judges. The register is not being created for no reason—there is a need to monitor the situation. There is a question of definition. We need a register of judges who are masons in order to judge whether they are biased.

John Scott: The basis of your petition is unsubstantiated allegations.

Mr Minogue: Absolutely.

John Scott: You must have reasons for bringing the petition to the committee. If you have no examples, we are left with allegations.

Mr Minogue: You are quite right. No judge in the country has been convicted of freemasonic bias.

John Scott: I am a member of various organisations, but I hope that that does not prevent me from being able to judge each case on its merits and from having a fair and honest opinion.

Mr Minogue: Secret societies are different, backed up as they are by oaths, rituals and ceremonies. This is not the boy scouts. I did a word search on my computer and it threw up one case: Contrada v Italy in the European Court of Human Rights. Contrada was the assistant to the anti-Mafia commissioner in Sicily. He was kept in jail for two years and seven months because he was a freemason, was colluding with the main men in the Mafia in Sicily and was tipping them off about police raids. This ain't the boy scouts. This is not an organisation like a golf club; this is a sinister organisation. What harm can openness do? Will it damage a judge if he reveals that he is in the freemasons? If I am wrong, I am wrong.

The Convener: Are you calling for a voluntary declaration?

Mr Minogue: Whether it is voluntary or compulsory is a matter for discussion. In England, it is voluntary. That has worked in relation to judges, but 64 per cent of police officers have not returned their forms. Those are figures from the Home Office.

The Convener: I understood that, in England, existing judges and magistrates are asked to volunteer the information, but that any new
Col 825 appointees would be required to make a declaration.

Mr Minogue: That is correct. Any new member of any council in England has to make a declaration, whether he is the bin man or the chief executive.

The Convener: Would you settle for such a provision in Scotland?

Mr Minogue: Absolutely. If there is a problem, the measure would breed that problem out. If people are joining the freemasons to gain some sort of benefit, they will do so only if they can be surreptitious. If membership is in the open, no one has anything to worry about.

The Convener: Open, transparent and accountable, as the Scottish Parliament was meant to be.

Mr Minogue: Absolutely. I wrote to the Nolan committee about this

matter. I was told that the answer, as laid out in the seven principles of public life, was openness. Unlike when I asked this committee to make a declaration, the Nolan committee said that members of the committee with personal interests should declare them in a case such as the one that we are discussing.

The Convener: I thought that I made a declaration.

Mr Minogue: I beg your pardon. I am trying to say that membership of the freemasons should be an interest that must be registered. Scottish judges have nine categories of interests that must be registered, such as money, heritable property and shares. English judges have a tenth category: miscellaneous.

The Convener: Ultimately, this petition could be referred to the Standards Committee, which deals with the "Register of Members' Interests".

I thank Mr Minogue for answering our questions.

As I said at the beginning, a detailed letter arrived from Mr C Martin McGibbon, the secretary of the Grand Lodge of Antient, Free and Accepted Masons of Scotland. It contains too much information for us to take in at such short notice. I suggest that we follow the recommendations that were originally set out in the briefing paper about Mr Minogue's petition, which is that we seek comments from the Lord Advocate on the current legal situation in Scotland regarding declarations of interests and whether organisations such as the freemasons are included in such declarations. We should consider the Lord Advocate's response along with the more detailed letter from Mr McGibbon before we decide what to do with the petition.

Pauline McNeill: We should consider whether we think that it is appropriate that, before the

Col 826 committee has had a chance to hear from the petitioner, any party should write to us expressing a view. This committee should decide whether they want to hear from another party—in this case, I think that we do. I have a problem with someone seeing the petition on the agenda and writing to us before the matter has been raised in the committee. We have to take control of that.

The point that the petitioner makes—that people who sit in judgment should declare all their interests, including membership of secret societies—is sound. I support the suggestion in the briefing paper that we write to the Lord Advocate and copy the correspondence to the Justice and Home Affairs Committee. At that point, it is for this committee to decide who else to contact.

The Convener: On Pauline McNeill's point about people responding to a petition that they have seen on the web or wherever, I should point out that anyone can write to the committee. The question is whether we accept their letter as pertinent to the petition that is under consideration. I believe that, if we receive a letter, it should be circulated to the

committee so that members may come to their own conclusions as to whether the letter should be taken on board. I would not be happy to say that people should not be allowed to write to us to make a point about any petition.

Pauline McNeill: I am not saying that people should not have the right to write to the committee, but we should be fair to petitioners when they have not yet uttered a word in support of the petition that they have made the effort to submit to us. We should respect petitioners and allow them to make their points before a letter that responds to those points—I have not read the letter but I assume that it does that—is put into the public domain.

I am just commenting on the stage at which such responses should be made available. It is not fair to the petitioner to allow responses at that early stage. If that is allowed, people will get wise to what is happening. When they see a petition to which they object, they will get their letters in before the petitioner has appeared. I do not object to responses, but a process should be put in place. If a petitioner goes to the bother of approaching the Parliament with a petition, he or she should be heard first. That is the correct order.

The Convener: I agree with that. The response has not been made available. It was not circulated to committee members and the public have not seen it.

Pauline McNeill: I am happy with that.

The Convener: The response will not be seen until the committee reaches a final decision.

Col 827 **Helen Eadie:** I agree whole-heartedly. Mr Minogue was given his three minutes. He might have wanted to address some of the points that were in the letter, but he did not have a chance to read it. The only way of getting round that would be to invite Mr Minogue to return and make another submission. That would cause concern. Like other members, I have no problem with anyone wanting to inform me of the issues. You make the best decision when you have the best information. I think that we would all sign up to the notion that we should have full and fair consideration of all the material that we are given.

I support the recommendations that have been proposed to the committee, which the convener outlined. When we are given information for our next meeting, please could we have some references to the decisions that have been taken in London for England and Wales? That would inform us better about what the Lord Chancellor said to the Home Affairs Committee in Westminster and what the conclusion of its report was. We have a summary of that, but it would be good to see the report for ourselves.

The Convener: We should get that information to committee members. In any case, we will not consider how to dispose of the petition until we have the Lord Advocate's response. Then we will consider the letter from the freemasons. Mr Minogue will have the opportunity to come to

that future meeting and hear how the committee disposes of the petition. I thank him for attending.

Mr Minogue: Thank you.

The Convener: We will keep in touch.

The next petition is PE324, from Ms Kay Reid. It concerns the right of appeal on fatal accident inquiries and has 5,443 signatures. Is Ms Reid here to speak to the committee?

Ms Kay Reid: I am here.

The Convener: I am not wearing my glasses, so I could not see you. I know that speaking to the committee can be an ordeal. Just relax and take your time. You have three minutes to make your case. Committee members will then ask questions arising from that.

Ms Reid: I am quite nervous about making my statement to the committee, so I hope that you will forgive me for reading out what I want to say. I do not want to forget any of the main points that I want to make.

I thank the Public Petitions Committee for the opportunity to make this short speech. I intend to outline my concerns about the death of my 19-year-old son Dwayne on 9 June this year. I will stress the difficulties that I have experienced in obtaining information about the circumstances surrounding his death.

Col 828 Only a fatal accident inquiry can begin to answer the serious and outstanding questions that I have in mind. I hope that the Lord Advocate will reconsider his decision to refuse an inquiry following a referral by the procurator fiscal. That is one issue, but a wider issue is also involved. There is a need for a right of appeal when an inquiry is turned down. I should not have to beg those in authority for answers to my questions about the loss of my child. I should have the right to an explanation and access to all the relevant information.

Those rights would not bring Dwayne back, but at least I would be able to feel that I had done all that I could to find out why he died. Why did a 19-year-old boy die when three doctors had diagnosed only an ear infection? Why no X-ray? Why no scan? I realise that they cannot be done for every ear infection, but Dwayne had been bleeding from his ear and was in terrible pain. The pain became even worse after he was prescribed antibiotics for more than a week.

I want to play my part in ensuring that no other family suffers the grief and pain that we are experiencing. That has been made so much worse by the lack of answers. I hope that the committee will help me to get those answers from the health service and the justice system. I hope that this committee can help get a right of appeal, which would make the criminal justice system more accountable to the public. There are all sorts of rights of appeal in the legal system, but none in this area of law. There is neither a right of appeal nor a requirement for reasons for a

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disputed responses that I have received from the Ambulance Service. We may have to write to the service again. Could we encourage them to enter a dialogue with the petitioners?

The Convener: As I understand it, it is the Grampian Primary Care NHS Trust—

Rhoda Grant: No. It is the Scottish Ambulance Service that will deal with the ambulance service there.

The Convener: Our previous correspondence has been with the trust.

Dr Ewing: Mary Scanlon, Margaret Ewing and local councillors are all on the side of the people

Col 956 who are unhappy.

The Convener: It was the Scottish Ambulance Service that had a meeting with Forres community council, but our correspondence has been with the trust. We could take the matter up with the trust again.

Rhoda Grant: As I understand it, it is the Scottish Ambulance Service that is dealing with this. I have been in touch with the service about it. There appears to be an impasse. There is very little local dialogue and people remain unhappy with what is happening. I know that we have devolved responsibility, but perhaps we could give the people involved a nudge.

The Convener: We can pass the response from the petitioners to the Grampian Primary Care NHS Trust and to the Scottish Ambulance Service. We can say that it is the view of the committee that those bodies should negotiate directly with the petitioners and seriously take on board the comments that they are making. Is that agreed?

Members *indicated agreement.*

The Convener: The next petition, PE306, is from Mr Thomas Minogue. The petition calls on the Parliament to request that all members of the judiciary declare their membership of organisations such as the freemasons, and that a register of such interests be made available on request.

At our previous meeting, we agreed to seek the comments of the Lord Advocate on the current legal situation in Scotland with regard to declarations of interest and on whether organisations such as the freemasons are included in such declarations. We also agreed to seek information on the current situation in England and Wales on the issues contained in the petition. The committee agreed to defer consideration of a letter on the petition from the freemasons until it had considered the Lord Advocate's response.

We have now had a response not from the Lord Advocate, but from the office of the Minister for Justice, Jim Wallace, who is responsible for this area. Members will see that the Scottish ministers have considered

whether any action would be appropriate in Scotland but took the view that there was no need for any steps to be taken. The Minister for Justice states that, apart from the petitioner's representation, he is not aware of any court users being concerned about the matter.

11:00

We know that the situation is different in England and Wales, where there was sufficient concern for the Home Affairs Select Committee to hold an inquiry into freemasonry in public life and

Col 957 for the Lord Chancellor of England, Lord Irvine, to recommend that all new applicants for the judiciary should have to say whether they are members of the freemasons and that all judges should be asked to contribute to a voluntary register. That information is not available to the public, but is kept in the Lord Chancellor's office.

I am concerned that there are only four members present today as I am aware that other members of the committee have taken an interest in the petition. I think that we should postpone consideration of the issue until we have more members present.

Dr Ewing: I agree with the quote that the petition contains from Lord Irvine about the ethical obligations of a judge. It says:

"If the judge knew that someone appearing before him was a Freemason, then he would have an obligation to reveal that to the parties and ask the parties if that caused them any disquiet about him continuing to sit".

I agree with the suggestion to postpone consideration of the response until there are more of us present.

The Convener: The area is quite controversial. The letter from the Grand Lodge of Antient, Free and Accepted Masons of Scotland says that its members are genuinely angry about what they see as their organisation's being singled out and picked on. We have to give careful consideration to the issue.

Dr Ewing: Are there other secret organisations?

The Convener: I am not a member of any secret organisation, so I do not know. The campaign for socialism is quite an open organisation.

I believe that there are other secret organisations—the Catholic organisation, the Knights of St Columba, may well be.

Are we agreed to postpone consideration of the petition until our next meeting?

Members *indicated agreement.*

The Convener: Petition PE316 is from Hector MacLean and called on

the Scottish Parliament to provide the funding and support necessary to design a national berry strategy to raise home-based consumption of raspberries within Scotland.

We agreed to seek comments from the Scottish Executive and also to pass the petition to the Rural Development Committee for its information. We have received a response from the Executive, which says that, while projects of this type should be encouraged, there is no conclusive evidence that berries provide specific benefits over and above other forms of fruit and vegetables, although the Executive is now funding research into the matter, which is currently under way at the

Col 958 Rowett Research Institute in Aberdeen.

After discussion with the berry group, the Executive has decided to consider proposals for a pilot project for potential Government funding. Initially, the group did not take up the Executive's offer, but I understand that both parties are in discussion on the matter and that the group plans to submit a proposal for a pilot project shortly. The results of the berry project pilot will be reviewed inter alia in the context of the health department's national coronary heart disease plan.

It appears that the Executive is aware of the berry group's objectives and is providing advice on how the matter may be dealt with. It is suggested that the Public Petitions Committee should pass the Executive response to the petitioners and take no further action other than recommending that it continues its discussions with the Scottish Executive.

Dr Ewing: By coincidence, in my travels I met a consultant in the field of nutrition who told me about the Finnish view that massive consumption of raspberries was beneficial to the health of the nation. Ever since then, I must confess, I have been enormously indulging in raspberry consumption.

The Convener: When the petitioners spoke to us, they mentioned the experience of Finland. It is good to see that the Executive is funding research into the matter and is supporting the pilot project.

Dorothy-Grace Elder: I am glad that the Executive is taking the matter seriously. It is widely believed that red fruit and vegetables are anti-carcinogenic, although there is no proof yet.

One of the major problems for the berry industry is the closure of the jam factories that used to be in the berry areas. In Glasgow, of course, the Scottish Co-operative Wholesale Society had a massive jam factory that is no longer there and the Robertson's factories have closed down. Those closures meant that the berries were not going into jam production in Scotland. I suggest, therefore, that it might be possible to refer the petition to the Enterprise and whatever committee—what is the code for jobs? Is it Enterprise?

The Convener: Seemingly, these days.

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education public-private partnership project and therefore cannot be retained as the petitioner suggests.

The council also believes that its proposals are consistent with the European convention on human rights and points out that, when the petitioner petitioned Parliament, the council also received an objection from the petitioner. A sub-committee considered the objection and agreed, as the council's letter says, to

"refer the application to the Scottish ministers, prior to determination, because of the fact that the interests of the Council were involved and were the subject of objection."

Col 991 As the council's letter says, the Scottish Executive wrote back to indicate

"that planning permission was deemed to have been granted by Scottish Ministers"

and that the decision was made by the Executive in the knowledge of Mr Murray's concerns. As Mr Murray stated in a message to the council, he was contacting MSPs.

Mr Murray has referred the issue to the Commissioner for Local Administration in Scotland. It is not in the committee's remit to question the decisions of other public bodies. Given that we have passed a copy of the petition to the Transport and the Environment Committee, which is considering it as part of its inquiry into general planning issues, and given that the petitioner has referred the issues to the Commissioner for Local Administration in Scotland—which we think is the correct route through which he should pursue the matter—does the committee agree that we should simply pass a copy of the City of Edinburgh Council's response to the petitioner and take no further action? I do not think that there is anything else we can do. Are members agreed?

Members *indicated agreement*.

The Convener: The next petition is PE306, from Mr Thomas Minogue, which asked the Parliament to request that all members of the judiciary declare membership of organisations such as the freemasons and that a register of such interests be made available on request.

At our meeting on 19 December 2000, we agreed to seek comments from the Lord Advocate and to seek information on the current situation in England and Wales. We received a response from the Deputy First Minister and Minister for Justice, Jim Wallace, and a letter from the Grand Lodge of Antient, Free and Accepted Masons of Scotland, which we considered briefly at our meeting on 27 February 2000. However, because several committee members were absent that day, it was agreed to defer substantive consideration until this meeting.

Since our brief discussion at that meeting, we have received a further letter from the grand lodge, which stresses that the freemasons are not a secret organisation and that they take exception to being

misrepresented as such. The grand lodge makes clear in its latest letter that, although it is represented in the petition as religiously exclusive, it takes pride in having members from all religious faiths. It believes, therefore, that the petition is a misrepresentation.

We can do two things with the petition. We can accept the reply from Jim Wallace's private secretary, which says:

Col 992 "The current situation in Scotland is that no applicant for a Judicial position is asked to declare whether he or she is a Freemason."

That contrasts with the situation in England and Wales, where

"the Lord Chancellor instructed that all new applicants for posts in the Judiciary must indicate whether they are Freemasons"

and where serving members have also been asked to declare, voluntarily, their links with freemasonry. The letter continues:

"There is, however, no register of membership and the information held by the Lord Chancellor's Department is not open to public inspection. Scottish Ministers considered whether any action would be appropriate for Scotland but we concluded that there was no need for any steps to be taken".

The letter further states:

"Aside from the representations which you have had from Mr Minogue, the Minister has not been made aware of any concerns by Court users about this matter"

and concludes that the minister sees

"no need at present for an initiative in this general area."

We can simply accept what the minister says—that he does not see a need for any action and that he is not aware of representations on the issue from any other court users—and agree to pass a copy of the response to the petitioner and take no further action.

Alternatively, if we are of the view that further action should be taken, we can agree to pass a copy of the petition and of the Scottish Executive's response to the relevant justice committee. I open the matter to discussion.

Helen Eadie: We should pass the petition to the relevant justice committee for further consideration. Putting the petition to one side and accepting the response from Jim Wallace's private secretary will not serve Scotland's best interests. We should pay regard to the fact that England has gone down one route—whether or not we ultimately agree to go down that route. We should ask for the views of the relevant justice committee and allow further debate, because the issue is controversial.

11:15

John Scott: I would be happy with that.

Dr Ewing: I agree with Helen Eadie.

The Convener: We will pass a copy of the petition and the Scottish Executive's response—as well as the correspondence with the grand lodge—to the relevant justice committee and ask it to consider the matter further and report back to us.

Is that agreed?

Col 993 **Members** *indicated agreement*.

The Convener: Petition PE330, from Mr Rob Gibson on behalf of the Andrew de Moray Project, called on the Scottish Parliament to give

"greater publicity, interpretation and investment"

to sites and buildings of national importance, particularly those

"associated with Andrew de Moray, William Wallace and King Robert Bruce and the Wars of Independence."

We agreed to request comments from the Scottish Executive and we have now received a response, which includes information on Historic Scotland and road signage. It is obvious that Historic Scotland does a great deal of interpretation, investment and publicity for the various sites that are in its care. Although it does less for those sites that it does not take direct care of, it enters into annual management agreements with, for example, Ormond Castle, which is referred to in the petition.

The Executive has also provided information on how applications for tourist signposting on the trunk road and motorway network are assessed in accordance with the criteria that are contained in a national policy.

It is suggested that Historic Scotland already provides extensive publicity, interpretation and investment to the sites and buildings of national importance that are in its care. On the points that were raised about signposting, it is suggested that the petitioners should approach the Scottish Executive, relevant local authorities and area tourist boards with proposals. It is suggested that the committee should agree to pass a copy of the response to the petitioners and to take no further action.

Helen Eadie: I agree with that.

The Convener: Is no one opposed to that?

Dorothy-Grace Elder: Would you consider adding something on the clarity of directional signs on motorways—not only for historic sites but for getting anywhere in Scotland? The signs are most confusing. The

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Hugh Dignon: I do not believe that that case would have fallen into that category.

Ms MacDonald: I ask because the Lockerbie trial was about law and about having to marry different legal systems. However, it was also about politics, and we should not close our eyes to that.

The ICC will be able to use crime against humanity as grounds for prosecution. Is that a catch-all provision, or is it specific? I would have thought that the Lockerbie incident might well have been a crime against humanity.

Hugh Dignon: A crime against humanity is defined in the Rome statute and that definition is replicated in the bill. Specific elements of a crime against humanity are defined, and terrorism does not generally fall within that definition.

The Convener: I thank the witnesses, whose evidence has been useful.

I suggest that we have a short break for coffee before we deal with the next agenda item. During the break, members will have a chance to examine some diagrams on our inquiry into the Crown Office and Procurator Fiscal Service. We will resume at 11:20.

11:11

Meeting adjourned.

Col 116 11:26

On resuming—

Petition

The Convener: Item 2 is petition PE306. We are approximately 30 minutes behind schedule, so it would be useful if we could speed things up a wee bit.

Members have in front of them a note on the petition from the clerk. The petition concerns a request that all members of the judiciary declare whether they are freemasons. Members have quite a bit of material from the Public Petitions Committee: the petition, which is from Thomas Minogue; a letter from Jim Wallace's office; and correspondence from the Grand Lodge of Scotland. I hope members have had a chance to read the papers. You will notice at the back the suggestions from the clerks. It is open to members to suggest an option that is not in the paper. Are there any comments or questions on the petition?

Scott Barrie: The petition raises an interesting point but I am not sure where we want to go with it. We should take further action but we should not launch into a huge inquiry. One of the recommendations from the clerk is that we seek further information from court users

groups and the Sheriffs Association. We could write to the Minister for Justice, who has already written to the clerk of the Public Petitions Committee. The final paragraph of the minister's letter says:

"It is of course essential that all who appear before the Courts feel confident that the Sheriff or Judge will act with complete impartiality as required of them by the Judicial oath."

It might be useful to ask Jim Wallace why we are not following the route that the Lord Chancellor is taking in England and Wales of compiling a register. It is not a public register, and it is not much better than what we have, but it might be useful to ask why we are doing something slightly different.

Ms MacDonald: I thought that the Minister for Justice had said why he thinks we do not need such a register. I hope that nobody will be offended, but the Lord Chancellor's response was a result of questions about the quality of justice and the sentences that have been handed down in English courts. I do not think that that has happened in Scotland. If the Lord Chancellor's department had decided seriously to do something about the issue, the register would have been available for public, scrutiny or there would have been an open declaration and so on. The register is irrelevant if the Lord Chancellor is the only person who knows that someone is a mason—he

Col 117 might be one himself.

The Convener: To clarify, the letter from Jim Wallace's office simply states that it is felt that there is no need for steps to be taken at present, although no reasons are given.

11:30

Christine Grahame: I will try to make my questions short, although as you know I am very long-winded. First, as the independent judicial appointments system is about to be put in place, the issue might be raised when sheriffs are being interviewed.

Secondly, it might be useful—although it might be an absolute waste of time, a red herring and impractical—to find out how often sheriffs declare an interest and how often they withdraw from proceedings because they feel that they have an interest. It could be made plain that if a sheriff feels that it would be improper for him to continue with a case, he should make the appropriate declaration in court. It may be that he then withdraws and another sheriff takes over. It would be interesting to know how often that happens. That might come about because the sheriff knows a person who is involved in a case but was not initially aware of the fact. I am not sure whether that is ever recorded. That point could be raised with the minister.

To summarise, I would like to know, first—with regard to the appointments system—whether the issue could be raised at interview, and, secondly, if this is monitored, how often sheriffs have to make a declaration or withdraw from cases because of conflicts of interest, even

if they are conflicts of interest only in their own view.

Ms MacDonald: If we want to cut to the chase, we could just ask sheriffs whether they feel that the existing convention and requirement of having to withdraw from a case if there is a conflict of interest encompasses membership of a masonic order or of any other society or club.

The Convener: We should ask another body whether there is a problem before we go on a fishing trip to everybody else. I think we agree about that. That relates to the options that are set out in the paper. We could write to the court users organisations—the Scottish Consumer Council—or, as Margo MacDonald suggests, to the Sheriffs Association. Shall we write to both those organisations?

Christine Grahame: Yes.

The Convener: That means seeking more information, but the point is that we want to get a handle on whether anyone thinks that the matter raised is a particular problem. Do members still wish to write to the minister at this stage?

Col 118 **Christine Grahame:** It would be quite useful to write to the minister. Then again, perhaps—

Ms MacDonald: I would wait until we have heard from the court users organisations and from the sheriffs. We could then decide whether we need to go back to the minister, or whether we should go back to Mr Minogue. It may well be that the answers to the questions that we ask will satisfy Mr Minogue.

The Convener: Is it agreed that, in the first instance, we will seek more information from the Scottish Consumer Council and the Sheriffs Association? To add to a point made by Christine Grahame, I think that, if we embarked on any further inquiry, it would be right for our questions to relate to general issues about what sheriffs are asked to declare and not specifically to this issue. If we felt that further questions needed to be asked, we would ask them.

Is that course of action agreed?

Members *indicated agreement*.

Col 119

Crown Office and Procurator Fiscal Service

The Convener: While the witnesses are being found, I will recap the stage that we have reached on this issue. At our meeting of 28 March, the committee agreed to take evidence from the Crown Agent on the structure and organisation of the Crown Office and Procurator Fiscal Service. I am aware that not all members were present for that, but I think that there was general agreement that, given that this will be a big inquiry, we would like to understand at an early stage how the various offices operate. We can have a discussion after questions about anything else that members would like to do to assist in the gathering of

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Liz Curran: The designation of the SIP is for five years—until March 2004. We are clear about the nature of the work on which we have embarked. It is very long-term work. We will probably have worked out a baseline position by 2004, when we will be able to recommend a future strategy.

Ms MacDonald: You will need to produce something more quickly than that.

The Convener: Thank you for attending. Your evidence has been very valuable to the committee.

Because it is so hot, I propose that we take a short break before dealing with petition PE306.

11:56

Meeting adjourned.

Col 265 12:03

On resuming—

The Convener: Now that we are quorate, I will reconvene the meeting.

Petition

The Convener: The second item on the agenda is consideration of petition PE306, from Mr Thomas Minogue. We have considered the petition before, but we needed more information, which we have now received. The purpose of today's discussion is to decide whether we need to take any further action or whether we wish simply to note the petition. The clerks have prepared a note that suggests some options. First, we can note the response and agree to take no further action. Secondly, we can write to the Minister for Justice to ask him to consider whether the judiciary should be required to declare interests in the same way that members of public bodies are required to. Thirdly, we can write to the Minister for Justice to recommend further consideration of voluntary or compulsory declaration of membership of the freemasons as part of any judicial appointment reform.

Christine Grahame: I am attracted to the second option as I do not particularly want to focus on freemasonry. MSPs and our assistants are required to declare whether they are members of any organisations or have any interests, pecuniary or otherwise. It might be worth while exploring with the minister why members of the judiciary should not be required to declare that as well.

Scott Barrie: I agree with Christine Grahame. As I have said before, the issue is broader than freemasonry; it involves other organisations that might or might not have a secret basis. The paranoia over the secrecy within the freemasons sometimes puts people on edge, but it might be pertinent for people to place on public record their membership of certain other organisations. There might not be anything sinister

about their involvement in such an organisation, but it should be out in the open, just as there has been greater accountability of people in many other areas of public life.

Ms MacDonald: In the United States, someone was up in front of a congressional hearing because they had indicated support for one side or other in the Israeli-Palestinian conflict. People will join groups called "Friends of" this, that or the next thing, so there is a wider issue to address.

The Convener: It should also be noted that there is a slight difference of opinion in the correspondence that we have received from the Sheriffs Association and the Scottish Consumer

Col 266 Council. It is important to make it clear that the committee is not suggesting that there is a problem as far as sheriffs in particular are concerned. However, as the Scottish Consumer Council points out, the public have a certain perception of the matter. Whether that perception is justified or not is another question, but it is important to address the public perception problem. As Christine Grahame has rightly pointed out, the new Parliament operates in a spirit of accountability and openness, which includes declaring interests—although some might think that we declare too much. We should not drop the issue and I support Christine's suggestion that we should choose the second option.

Scott Barrie: We could be accused of being less than open ourselves. At the same time that we have a new and more open judicial appointments procedure, we seem to be closing the door on another aspect of openness. That is contrary to what is happening south of the border. It is interesting that, despite the much-vaunted opening-up of the public appointments procedure, the Minister for Justice does not consider this to be an issue, given what he has told us before and what the Sheriffs Association has said in its correspondence. The issue is worth further exploration.

The Convener: If we choose the second option and write to the minister about the petition, is it worth adding the suggestion that, although we will have to examine the whole area of the judiciary, that is not necessarily the only area of the system that we would ask the minister to address?

Christine Grahame: I am sorry—I did not follow that.

The Convener: Perhaps we should ask the minister why he is making a special case of sheriffs over everyone else in public life attached to the criminal justice system or judiciary.

Ms MacDonald: The question is why the judiciary is being singled out.

Christine Grahame: We need to be true to the petition, which after all is what we are considering. We have moved far enough away from it by extending its scope beyond freemasonry. The register of interests is the important point. I would like to keep the focus more narrow and

concentrate on the judiciary, so that we can pin the minister down more. We could ally that with Scott Barrie's point about having a more open appointments system. If we are to have such a system, what is the problem with a register of interests? I had to declare an unpaid interest as a member of the Royal Zoological Society of Scotland, which it was not a problem for me to do. If a sheriff is a member of that society, I see no reason why he should not declare it. As we know,

Col 267 everything in public life comes down to the perception of openness and any perception of impropriety lays foundations for the suspicion that there might be something to hide.

Ms MacDonald: In our discussions about the international criminal court, we established that that will be a non-starter unless everyone trusts the absolute objectivity of the judiciary. Membership of, or support for, the most innocuous organisations in one country might be seen as very significant in another country.

The Convener: Okay. It is of course in order for us to take the petition as the foundation for any issue that we want to pursue and there is nothing to preclude our adding anything to it. However, most members seem to agree that we should address the subject matter in the petition and choose option 2. Is that agreed?

Members *indicated agreement*.

The Convener: Are members agreed that the letter to the Minister for Justice should emphasise that we are writing to him in the spirit of openness and accountability and because he is specifically considering the issue of judicial reform, and not because any problem has been identified in the judiciary?

Members *indicated agreement*.

Christine Grahame: What is the position with the Public Petitions Committee? Do we simply deal with the matter or do we report back to that committee? The convener and I were both members of that committee.

The Convener: As you and I are previous members of the Public Petitions Committee, it is only right that we should not let a petition just disappear. We should advise that committee what we are doing as a matter of course anyway.

Col 268 **Item in Private**

The Convener: Agenda item 3 is to agree to discuss a revised draft stage 1 report on the International Criminal Court (Scotland) Bill in private at our next meeting. Is that agreed?

Members *indicated agreement*.

The Convener: We will move into private session for agenda item 4.

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those cases. The possibility of being personally cross-examined by the alleged attacker might also deter women from reporting a rape or a sexual assault. The provisions that will stop cross-examination by the accused must be implemented.

The Convener: As there are no further questions, I thank Sandy Brindley for her evidence and for representing the Scottish Rape Crisis Network and Scottish Women's Aid

Col 449

Petition

The Convener: Item 5 is on petition PE306, which we have dealt with before. The note from the clerk—paper J2/01/24/2—sets out the committee's previous consideration of the petition and summarises the response that we received from the Minister for Justice. Members have now received all the information that we requested.

The subject of the petition is whether the members of the judiciary should be required to declare membership of the freemasons. We also have unsolicited correspondence from the Grand Master of the Orange Lodge. The note suggests three options on where we should go with the petition. We could do nothing, we could take up the suggestion made in Jim Wallace's letter of raising the matter with him at a later date, or we could take any further action that the committee wishes to take.

I invite members to make comments or suggestions.

Mrs Ewing: I suggest that we take up the second option.

12:30

The Convener: For the record, the second option would be to note the minister's response and to make a commitment to revisit the possibility of declarations of interest by the judiciary as part of consideration of the new judicial appointments procedures that are due to be introduced. The committee has discussed the possibility of examining the issue of judicial appointments. We must decide whether we want to do that.

I am happy to take the second option because I think that we should pursue the issue. I am not suggesting that members of the judiciary are not impartial when they administer justice, but I believe that the public perception that there is a problem in relation to the freemasons must be dealt with. However, if a declaration that one is not involved with the freemasons is required, why stop with judges? Members of a jury or anybody else who is involved in the administration of justice might also have to make a declaration. Any decision that was made would have to be consistent.

Are we agreed to follow the second option?

Members *indicated agreement.*

Col 450

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Scottish Parliament
Justice 2 Committee
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30 October 2002

Scottish Parliament

Justice 2 Committee

Wednesday 30 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:48*]

Item in Private

Col 1987 **The Convener (Pauline McNeill):** I welcome members to the 38th meeting of the Justice 2 Committee. As usual, I remind everyone to turn off mobile phones and anything else that is likely to disrupt the meeting.

The first item on the agenda is to ask members whether they agree to take item 6—the consideration of potential advisers on petition PE336, which deals with asbestos sufferers—in private. Is that agreed?

Members *indicated agreement*.

Col 1988 **Petitions**

Judiciary (Freemasons) (PE306)

The Convener: We have three interesting petitions before us this morning. The first is petition PE306, from Thomas Minogue, which members have already seen. When we previously considered the petition, which is about freemasonry and the judiciary, we agreed to consider it again. We have received further information from Mr Minogue about the judiciary and membership of the Speculative Society. Members will note that we have written to the Minister for Justice, whose response is that he sees no need for a change in the current requirements. I invite members to make comments and suggestions on how to deal with the petition.

Scott Barrie (Dunfermline West) (Lab): I know that we have already written to the minister and received a response from him. However, the committee was not totally satisfied with the response. Without entering into constant correspondence back and forward, I would favour the committee writing to the minister again urging the consideration of declarations of interest by the judiciary, perhaps as part of the new judicial appointments procedure. That would be one way of getting round the problem, as the procedure would be open and might satisfy some of the issues that have been raised, both in the past and today.

George Lyon (Argyll and Bute) (LD): I support Scott Barrie's proposal.

The petition deals with the serious issue of declarations of interest. Members of Parliament are now required to declare their interests, so I think that we should pursue the matter with the minister and say quite clearly that the practices that have been adopted by the Scottish Parliament should be spread to the judiciary as well.

Bill Aitken (Glasgow) (Con): On the basis that I would not join any club that would have me as a member, I declare that I am certainly not masonic. It was Groucho Marx, not Karl Marx, who said that.

The situation is somewhat exaggerated. Anyone who takes judicial office has to take the judicial oath, which inter alia requires that individual to do right to all manner of people without fear, favour or prejudice. I would have thought that the judicial oath was a sufficient safeguard. As I say, I have no particularly strong views on the matter, but I wonder where such declarations would cease. Many people are clubbable and join organisations and societies. At what point would one have to cease declaring membership of clubs? For example, I am a member of the Partick Thistle supporters club. How far do we take declarations?

Col 1989 That is the sort of difficulty that would arise.

We certainly wish to be as open as possible. We all applaud the way in which the judicial appointments system has become much more transparent, open and subject to scrutiny. However, I have some doubts about whether it is worth pursuing the matters raised in Mr Minogue's petition to what might sometimes seem to be infinite proportions.

Stewart Stevenson (Banff and Buchan) (SNP): It is useful to bear in mind what MSPs are enjoined to do: to declare an interest when it touches on the matter under consideration or might be thought to do so. That latter point is the most important. It is up to all of us who hold public office, of whatever kind, to be absolutely scrupulous and open. Judges should generally follow the same dictum. However, I am reminded of the phrase, "Quis custodiet ipsos custodes," or, "Who will guard the guards?" If I misquote the Latin, I apologise. In other words, there is a point at which we must trust people whom we have put into office to act according to their own code. We should not pursue the matter ruthlessly, but we should certainly take the steps that Scott Barrie proposed, as they would add to transparency and confidence in the system.

The Convener: I agree with Scott Barrie, George Lyon and Stewart Stevenson. It is not suggested that the judges' oath is not enough, but there is a public perception about members of societies that have a secretive reputation, whether that society is the freemasons or another organisation. If we ask the minister to reconsider the matter, we should be clear that we are talking about any group or society in which there could be deemed to be a perception of secrecy where there could be a declaration. If the committee agrees that we should to write to Jim Wallace, we should refer to all organisations that may fall into that category. Does any member dissent from that?

Bill Aitken: There might be a difficulty in defining excessive secrecy, but I will not fall out with any member over the matter.

The Convener: We have not been given a satisfactory explanation of why we are not taking the route that I think England has already taken. There has not been a strong enough answer as to why, in the interests of transparency in the judiciary—which Stewart Stevenson mentioned—there should not at least be a declaration from judges. It remains to be seen whether Bill Aitken is correct in saying that the new system is transparent enough. We have not had an opportunity to consider that matter in detail, but the committee may wish to take it up in the future.

How should we proceed with the petition? Is the majority view that we should write to Jim Wallace

Col 1990 to say that we are not satisfied that the matter should be closed and that we believe that there should be a review of the declarations that the judiciary makes in relation to the freemasons and any other organisation that may fall into the category under discussion? Bill Aitken's comments about difficulties of definition may be mentioned. We could say that we do not wish simply to end the matter there and that we wish further scrutiny of what is required. Do members agree with that course of action?

Members *indicated agreement*.

Parental Alienation Syndrome (Sibling Contact) (PE438)

The Convener: Petition PE438, from George McAuley, on behalf of the UK Men's Movement, calls for procedures to enable children to establish a right of contact with siblings. Again, there is correspondence for members to study, including correspondence from the Public Petitions Committee.

Members will note from the Executive's correspondence in particular that the Children (Scotland) Act 1995 makes provision for siblings or any other person with an interest to gain access to a child through the courts. The question that members must consider is whether that provision is easy enough to operate in order to achieve the desired result of sisters and brothers being able make contact with each other if they live in different families.

Scott Barrie: I do not doubt the difficulties that siblings and half-siblings have in trying to maintain contact if they live in different households and if legal orders, such as residence orders, are in force. However, I understood that the Children (Scotland) Act 1995 sought to make such situations easier to resolve. Any person can make an application under section 11 of the act, not just a parent. A sibling can apply. In Scotland, siblings have instructed legal proceedings. I am not suggesting that that is the route that we ought to go down, as such matters are better resolved without seeking access through the courts. However, in complex and difficult situations, a young person does not have to be 12 to be able to instruct a solicitor. They can be younger than that. I know

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Members *indicated agreement*.

Col 2525

Petitions

The Convener: Item 4 is consideration of petitions. Members have a note from the clerk on each of the three petitions that we have before us. We have seen all the petitions before, but this is the first opportunity that the committee has had to pay a bit more attention to them.

Judiciary (Freemasons) (PE306)

The Convener: The first petition is PE306, from Thomas Minogue. It calls for a system to be set up that requires members of the judiciary to declare whether they are freemasons. The committee agreed to ask the Minister for Justice to consider establishing a system that would require members of the judiciary to declare membership of any group or society in which there is deemed to be a perception of secrecy. The minister reiterated his position that he is not convinced of the need to introduce such measures.

I draw the committee's attention to further correspondence that has been received from the petitioner. Members should note that the minister will be giving evidence to the committee on 4 March on the Judicial Appointments Board for Scotland. I invite the committee to consider the options and decide what action to take.

Scott Barrie: In his recent letter to the committee, the petitioner states that he is aware of

"specific examples of cases where difficulties have arisen".

We should ask him for details of those, at least as a starting point. We will have an opportunity to revisit the issue when the minister comes before the committee to talk about the Judicial Appointments Board next month.

The Convener: With regard to the Speculative Society of Edinburgh, which Mr Minogue mentions in his letter, the letter from Jim Wallace's private secretary says:

"The Minister had enquiries made about this body for another purpose a little time ago. He is satisfied that it is simply a debating society with membership drawn from the Judiciary and other professions. He does not believe that the decisions of Scotland's Sheriffs and Judges are in any way influenced by their membership of this organisation."

That has always been my position and I believe that it is the position of the committee. I want to place on record the fact that no member of this committee has suggested that judges are influenced by their membership of societies. We have questioned the effects of the perception of membership of any secret society and whether it might be a good thing in the interests of transparency to get the matter out of the way by having judges make a declaration. I believe that

Col 2526 such a course of action has been taken in England and Wales but that the minister has decided not to pursue that path. However, it is for the committee to decide whether to end the matter at this point or take it further.

I am not happy simply to leave matters as they are. I cannot see what would be wrong with asking sheriffs and judges to declare that they are or are not members of a secret society.

Mr Morrison: Do we have a list of such societies?

The Convener: We do not have anything other than the correspondence that you have before you. If we wanted to take the matter further, that is the kind of research that we might want to be done.

Mr Morrison: If we are going to ask sheriffs and judges to make any sort of declaration, we have to be sure that we know what we are talking about. What type of societies would we want to ask about? Sporting societies? Cultural societies? Do we have a list of the relevant societies?

The Convener: You would have seen it if we did. There is no list.

Mr Hamilton: No one is suggesting that the organisations are illegal or improper. We have no evidence that the matter is a problem. Mr Minogue tells us that he is aware of

"specific examples of cases where difficulties have arisen over the question of Sheriff/judicial membership of the Freemasons."

It is therefore up to him to write to the Executive to make those cases known and to copy the committee into that correspondence. In the absence of that, I do not think that the committee should go on a fishing expedition to see what we can discover.

MSPs have declared that they are members of the freemasons, but their membership does not matter in relation to their position as elected public officials. That is why we have the register of members' interests and so on. We have to be aware of the different role of judges in that regard. They are public figures, but they are not elected. In the absence of evidence that the judges and sheriffs are freemasons or that that has influenced their decisions, I am not sure of the basis on which the committee would wander into this matter. Further, coming up with a list of organisations is fraught with difficulties. What would be the rationale for one organisation being in and one being out? Like the minister, I do not think that the Speculative Society of Edinburgh is anything more than a dining club and a debating society. I have never been at one of its meetings, but I am sure that there is nothing sinister about it. A degree of paranoia is creeping into this matter and we should be careful about that.

Col 2527 10:15

Stewart Stevenson: We must divide this into two parts. First, does judges' membership of undisclosed societies, clubs and organisations have a real and identifiable effect on the decisions for which they are responsible? I have not seen a shred of evidence to suggest that that is the case. However, the petitioner suggests that he has such evidence. I will wait and see what that is.

Secondly, where it might be thought that, or a perception might arise that, one is influenced by an external club, organisation or society, there is a duty to disclose such affiliations so that such an impression may be discharged. This bears on the way in which we as members of the Parliament are required to operate, and it is reasonable to expect that people in positions of authority and public life should operate similarly.

I do not believe that there is a problem, because no one has shown me that there is a problem—but the fact that some people think there is a problem results from less disclosure than might be useful. I do not use the word "appropriate" because, ultimately, the judgment must be that of the sheriff or judge. If we cannot trust the people whom we place in these very important positions of authority, the whole structure of our society and the systems that surround it breaks down. It will never be possible to audit everything in this regard; it will never be possible to identify all of the influences that play upon people. It is simply a matter of encouraging judges to be as open as possible. I use the word "encouraging", not the word "legislating", because I do not believe that that can be done.

Bill Aitken: We must be fairly careful with this issue. There is no evidence of a significant problem. Judicial appointments are governed by one very important factor—that the holder of that office is required to take the judicial oath, whereby he or she will undertake to do right unto all manner of people without fear, favour or prejudice. That is a very solemn and important oath, and there is no evidence that any holder of judicial office has failed to adhere to its terms.

In the absence of any further evidence, this matter should end here. If evidence had been available, it would have been forthcoming by now. Also, any judge—at whatever level—who had knowledge of an individual through shared membership of an association would decline jurisdiction over any case or action to which that person was a party. When I sat on the bench, on two occasions an accused person who was known to me came before the court. I declined to deal with the case.

Stewart Stevenson: Strange friends, Bill.

Bill Aitken: Perhaps I should not say whether they were accused or witnesses. Clearly, it was

Col 2528 important to decline jurisdiction in that case and to make it clear to all parties that I was doing so because I was aware of certain circumstances pertaining to the individual. I do not think there is a problem; we could pore over the entrails of this matter for a long and weary time without finding any difficulty. We should not take this any

further.

The Convener: I am trying to summarise what members said. No one other than Scott Barrie and me wants to take the matter any further. Is that okay, Stewart?

Stewart Stevenson: To clarify, the petitioner referred to "specific examples", and I firmly believe that he should be given the opportunity to tell us about those. However, I am sceptical about what he will say.

The Convener: I heard what members said about that evidence, and I agree with most of what Stewart Stevenson said. However, I do not wish to personalise this to one person's experience. If the committee were to take this further it would do so because it thought that it would be good to explore whether there should be a general declaration for judges and sheriffs because of their positions of authority. I hold that the opinion that that would be good. However, I am unhappy to proceed on the evidence of one or two particular examples, and I am not necessarily influenced by one person's anecdotal evidence.

Although I feel that it is good to proceed, I do not feel so strongly about it that I would push committee members to change their minds. If the committee were to proceed, it would be best to get more independent advice. I accept Duncan Hamilton's and Alasdair Morrison's point that we need a more scientific basis on which to proceed, which would give us some kind of broad-based evidence on which to continue.

Mr Morrison: With all due respect convener, this is not a scientific process. The committee has a letter from an individual from Dunfermline who anecdotally says that he is aware of what he describes as "difficulties that have arisen". I assume that there is a process through which he can raise those difficulties.

Where will it end for the committee if it takes evidence from one individual who claims to have identified difficulties about others' alleged or perceived membership of an organisation? I share Bill Aitken's view that until we have something concrete on which to work, we will be engaged in a futile exercise. Mr Minogue is welcome to send a written submission to the committee—as many witnesses do—and it would be eminently sensible if he did so. I would be happy to read it. The committee regularly declines invitations from individuals and organisations that want to give evidence. However, I am in your hands as regards Mr Minogue.

Col 2529 **The Convener:** You used the phrase "with all due respect" as though you were disagreeing with me, but I agree that if we proceed it will not be because of the petitioner's evidence. I want to proceed because the committee has another way of establishing whether it would be generally good or bad to have such a declaration. The petitioner's one or two cases will not persuade me, so to that degree I agree with your point. However, your point is different from that of Stewart Stevenson and Scott Barrie, who would like to hear from the petitioner. I do not know whether that takes us any further forward.

Mr Hamilton: Did Mr Minogue speak to the Public Petitions Committee when he submitted his petition?

The Convener: We will get that clarified for you.

Mr Hamilton: This is becoming circular. The committee has no evidence but would like to find out whether the suggestion is good. However, the only evidence would come from someone whom the committee thinks does not have much evidence and who has not provided the committee with any evidence. The Executive, which is ultimately responsible for the administration of justice, says that there is no problem. It also says that it has no evidence from Mr Minogue or anyone else, and the committee has no evidence. The Executive says that it does not know whether there is anything for the committee to look for, or how to go about looking for it. This is a waste of time.

Stewart Stevenson: I propose that we take no further action, but we should write to Mr Minogue advising him that, if he has concrete evidence that he wishes to put to the committee in writing, we will consider it with a view to reopening the issue.

Mr Morrison: I am happy with that.

The Convener: There is no dissent from that. On 4 March, the Minister for Justice will be coming to talk to us about judicial appointments. We can think about whether we want to raise the issue with the minister on that day.

Parental Alienation Syndrome (Sibling Contact) (PE438)

The Convener: Petition PE438, from George McAuley, on behalf of the UK Men's Movement, calls for procedures to enable children to establish a right of contact with siblings. The committee sought views from various organisations on the adequacy of existing legislation, and the responses are included among the committee papers. What action, if any, do members wish to take?

Bill Aitken: Once again, despite the various representations that have been made, there

Col 2530 appears to be a lack of evidence, apart from that of an anecdotal nature. That said, we all have a degree of sympathy with the terms of the petition. The problem is how we take it further, because the course of action is not at all clear. Existing legislation, which requires the child's views, opinions and wishes to be taken firmly into consideration, is in some respects a little inadequate. Some fairly heartbreaking cases have already been brought before us; we want to do something, but I am not sure of the way forward.

The Convener: That has always been my instinct. We have previously discussed the Children (Scotland) Act 1995, which is meant to deal with contact with siblings, parents, grandparents and all interested parties in a child's life. I have always wondered whether the act should be strengthened: duties might be put in place to ensure that a child has

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understand.

Col 2581

Judicial Appointments

The Convener: Item 5 on the agenda is on judicial appointments. Members have a note from the clerk on the matter and will recall that, in our forward planning, we wanted to discuss the subject and perhaps carry out an inquiry, but because of our busy agenda, we were not able to do so. We are now picking up the subject. The Minister for Justice is here to speak to us. I ask him to make his opening statement—over to you, minister.

Mr Wallace: I am pleased to have the opportunity to talk about the matter and I welcome the committee's interest in exploring it. I believe that the formation of the independent Judicial Appointments Board for Scotland to advise the First Minister and me on the appointment of Scotland's judges, sheriffs principal and sheriffs was one of the Executive's early successes. I had long held the view that the time was right to change the arrangements for appointing people to those key public judicial offices. I am pleased to say that there was ministerial agreement on the importance of early action on that and that the decision to create the board was made within two years of the Parliament's establishment.

I saw an independent board as being able to deliver three main objectives: first, there would be a system that ensures the appointment to the bench of the best candidates; secondly, there would be a system that is truly independent of undue influence from the Executive; and thirdly, there would be a system that society at large sees as fair and independent.

After setting the objectives, our next consideration was to choose the make-up of the membership to deliver on those objectives. My view was that there should be substantial involvement of people from outside the legal profession, and that the chairman of the board should be a lay person. As a result, the board has five lay members, including chairman Sir Neil McIntosh, who has a distinguished record of public service in a number of fields. Five members have legal backgrounds, including representation from the judiciary and both branches of the legal profession. An important consideration is that the legally qualified members of the board must be satisfied about the legal ability of any candidate.

Before the board was established, voices were raised against the proposal that there should be a lay chairman and it was argued that legal representation should comprise the majority. Those concerns have proved to be totally unfounded; board members have worked well together and the diversity of their backgrounds has been a strength, rather than a weakness. Those

Col 2582 are not my views; they are the chairman's. I am sure that he would readily corroborate that if members chose to take evidence from him directly. I always believed that the combination of legal and lay membership was the right approach if Parliament and the public were to be persuaded that the board properly represented the community. That

is why we held fast against opposition to our suggestion about the composition of the board. I believe that the results have proved us to have been right.

The board is wholly independent. My department provides secretarial support, but beyond that the board meets without any input from officials or ministers. The sole exception is when the board asks for an official to attend to provide advice on a particular piece of business. The committee can have confidence that the board makes decisions in its own way. All vacancies for posts are advertised publicly by the board, which then considers applications and draws up a shortlist for interview. Referee reports are called for and shortlisted candidates have the opportunity to make a presentation as part of the interview process.

Although I stress the board's independence, ministers have issued guidance on matters such as openness and fairness of proceedings and—this is important—the board has been asked to widen the search for possible candidates. The aim is to ensure that the judiciary is as representative as possible of the community that it serves. I know that the board takes those responsibilities seriously, but it is perhaps a little early to look for positive results on them. However, the board is attending to those matters and I look forward to the results that it will produce in due course.

The board has got off to a good start, beginning from scratch and with a clean sheet in a sensitive and important area of public life. The board's approach to the task has been commendable and its determination to produce a fair and open system of appointments has been apparent from the outset.

As politicians, we can have confidence in the new institution and in the recommendations that it will deliver. The board was set up administratively in the first instance, but we have given a commitment to put it on a statutory basis. That will happen after there has been a bit more experience of operating administratively, so that there exists the ability, and there has been the time, to get the statutory provisions right. In the meantime, I am sure that the chairman and members of the board would agree that operating under a non-statutory framework has not hampered their work in any way.

I was also invited to comment on the disclosure by the judiciary of membership of the freemasons

Col 2583 or other societies. My views on that were conveyed in my private secretary's letter to the committee on 27 November; they have not changed much, if at all. As I see it, all judges and sheriffs take a solemn oath on taking office that they will do right towards all manner of people without fear or without favour. I believe that members of our judiciary take those responsibilities seriously, and would not be deflected from their course because someone who appeared before them was or was not a member of any particular club or society.

I do not feel able to say much more on the subject today because, as the committee might be aware, a case is currently before the High Court

relating to membership of the Speculative Society of Edinburgh. That case also touches on freemasonry. Their lordships have heard all the arguments and have retired to consider their decision. We should wait to see what the judges have to say before revisiting the subject. However, I would be happy to answer the committee's questions on anything that I have said.

The Convener: Have you noticed any changes in the appointment system since the new board came into being? For instance, can you tell at this stage whether we are going to get judges and sheriffs from the variety of backgrounds that you wished?

Mr Wallace: No. As I said, it is early. So far, the board has made only three recommendations that have been carried through—two judges and one sheriff principal. When one is dealing with judges and sheriff principals, the pool is still quite small because of time lags. For judges, we are looking at a pool of people who were called to the bar in the late 1970s and perhaps early 1980s. As one who was called at that time, I know that those people are fairly standard examples of what judges have been. It will take some time for changes to happen.

Within the past few days, the First Minister has received recommendations from the board for the next batch of shrieval appointments. I cannot comment on that at the moment. As you are aware, statute requires the First Minister to consult the Lord President and to make recommendations to Her Majesty the Queen. I hope that the announcement of those appointments will be made in the course of this month, once the procedures have been gone through. It is too early, and it would be improper, to speculate when the statutory procedures have still to be carried out.

The hope and expectation must be that with shrieval appointments now, and with appointments for part-time sheriffs in the future—that is the board's next piece of work—the people who are eligible for consideration will come from a much

Col 2584 wider pool than is perhaps the case at the moment for the more senior judicial appointments.

The Convener: What is the difference in the new system that will effect that change? What precisely will bring about that change?

Mr Wallace: Part of it is the old but important adage that not only should justice be done, it should be seen to be done. There was a perception under the old system that it was—one might say literally—very much an old-boys' system. The fact is that we have got away from that. Now, people are examined on a range of qualities. The board takes references and it interviews. The legal members of the board have to be satisfied—this is an absolute requirement—that appointments reflect merit and legal ability. That must be the overriding requirement. However, a range of other qualities make a good judge.

If the process can be carried out, in particular by bringing on to the board people who have some expertise in personnel, people who might

otherwise never have thought of applying can be drawn in. I hope that there will be confidence that it is worth people applying, because the system is open and fair. In that way, a wider pool of people will be encouraged—

11:30

The Convener: That is what I am trying to get at. What would a future applicant think was fair about the system? Is the board expected to have objective criteria and does it have to publish them? Is there more transparency and how is that judged? You talked about merit. Presumably, people would argue that appointments were made on merit under the old system.

Mr Wallace: Absolutely.

The Convener: I am trying to get to the nub of the issue. Why would you have any more confidence that the present panel of people will bring about change? In what way is the system more objective?

Mr Wallace: There was no panel of people before, and no system—there were conversations and soundings.

The Convener: I understand that, but I am trying to get you to say what it is about the panel that will bring about change. It has been suggested to me that nothing has changed. Representations have been made to me that the system is still an old-boys' network and that, although there is the perception of a panel, nobody knows how decisions are made.

Mr Wallace: I am not sure on what basis anyone could have made that allegation. The
Col 2585 system is fundamentally different.

The Convener: You used the word "perception", and I am using the same word.

Mr Wallace: I am not sure how, on the basis of three appointments, anyone could say that nothing has changed. We may have to wait and see the shrieval appointments. There might then be more evidence on which to base such a judgment. It is difficult to say that nothing much has changed. The system is light years away from what went before. Other than the First Minister consulting the Lord President and making a recommendation to the Queen, which must take place under the Scotland Act 1998, there is no direct Executive involvement in the work of the board.

The Convener: I will conclude on this point. You made the fair point that there have been only three appointments, but I am sure that other members will ask you questions on that. I would like you to summarise for the committee what it is about the system that has the potential to bring in people from different backgrounds—for example, more women and more ethnic minorities. What is it about the system, other than perception, that will afford the change to bring about that change?

There must be something else.

Mr Wallace: There are two key points. First, the board has been asked to consider how it could encourage a wider pool of applicants from which to select. Although these are early days, I hope that the board will examine the experience in other countries. Much has been done in Ontario, using a similar system, to spread the net. I hope that the board will be proactive in devising ways through its own procedures to widen the range of people who might be appointed.

Secondly, the fact that the board exists, and that it will be seen to be operating in a fair, impartial and open manner, will encourage people who perhaps never thought that they stood an earthly chance of being considered to put forward their names. There will be confidence in the system. Perhaps in the past people who had the ability—ability is an absolute requirement—felt that they would never be considered. The system will encourage people to come forward, in particular people from a wider range of backgrounds than has been the case up until now.

Bill Aitken: Obviously, we agree that it is too early to make a definitive judgment on the success or otherwise of the new system. While some of us might have thought that the old system worked perfectly well, there was unanimous parliamentary agreement that the new system would be a much more transparent way of dealing with matters and, as such, it has to be applauded.

The net is being spread quite wide. However, to use Stewart Stevenson's fishing terms, its mesh

Col 2586 size is fairly big, and those who are in a position to apply for judicial appointments are there by virtue of the fact that they have to be members of the Faculty of Advocates or, with respect to appointments as sheriffs, that they have been serving solicitors for a prescribed number of years. Inevitably, the successful candidates will emerge from a fairly narrow section of society. It is not really an old-boys'—or young-girls' for that matter—network. Rather, the field will be narrow because of people's occupations and experience.

I have a further point relating to conflict of interest, with reference to the legal members of the board, four of whom could seek a judicial appointment. I take it that, if that were to happen—if a sheriff principal applied to become a High Court judge or if a sheriff applied to be a sheriff principal—those members would not sit on the board.

Mr Wallace: It would be wholly inappropriate for them to sit on the board under those circumstances. I can give an assurance that they would not be eligible to sit on the board in that situation.

Appointments will, of course, be made from people who are in the legal profession. For some time, the higher judicial appointments will reflect the composition of entrants to the profession some 20 years previously. It is encouraging that the pattern of entrants to the profession—both advocates and solicitors—has changed considerably over that time. In fact, at one time recently more women than men were being admitted

as solicitors. It is a matter of time before the pool might become more mixed—although I would rather not get too carried away with meshes and nets and so on.

Bill Aitken: Basically, we are all shooting at the same goal—we want to get the best people to do the job.

Mr Wallace: Absolutely. That must be the most important thing.

Bill Aitken: And that is irrespective of gender, race or whatever. I presume that you are satisfied that the new board will achieve that.

Mr Wallace: I am indeed. Ability is the most important criterion, which is why I said that the legal members of the board would assess the level of legal qualification and merit.

Mr Duncan Hamilton (Highlands and Islands) (SNP): The establishment of the Judicial Appointments Board for Scotland represents a huge, and very welcome, change to the system. I would be interested to hear about the interrelationship between the new board and the Executive. As the minister said, the board makes recommendations to the First Minister under the

Col 2587 Scotland Act 1998. Can the Deputy First Minister envisage any circumstances in which the First Minister would refuse to accept the board's recommendations?

Mr Wallace: The circumstances would be very exceptional. The Scotland Act 1998 is constructed in such a way that we have no choice in the matter. The First Minister is required, first, to consult the Lord President of the Court of Session and, secondly, to make the recommendations to the Queen. If we had tried to import anything to make the recommendations of the board binding on the First Minister, that would have fallen foul of the 1998 act. The board's role is advisory, but such exceptional circumstances have not applied to the three appointments that have been made to date.

Mr Hamilton: Looking at things the other way round, I presume that you would think it unacceptable for any Executive to prescribe a policy base for appointment. It would be inappropriate for the Executive to say to the Judicial Appointments Board that it wanted to impose quotas or set targets.

Mr Wallace: I think that that would be inappropriate, although I would draw a distinction between that and encouraging the board to find ways to attract a wider range of people and to get better representation. It might be difficult to have strict quotas.

There may be circumstances affecting particular judicial appointments. We may be told that the bench requires someone with particular expertise in commercial law, for example. I do not think that it would necessarily be unreasonable for the Executive to flag up that requirement if the Lord President felt that that was an area in which the bench needed strengthening. It would be for the board to make its

recommendations, but I would hope that that would be seen as a sensible approach.

Mr Hamilton: That is interesting. That means that the board is not simply considering the individual merits of the candidates; it also has the capacity to look at the broad spectrum of those who are on the bench.

Mr Wallace: No—that is not what I said. If the Lord President said that what he and the bench needed to fill a vacancy and to strengthen the bench was someone with expertise in the field of commercial law—this is a purely hypothetical example—I do not think that it would be unreasonable for the board to bear that in mind when it was advertising and pursuing the relevant procedures.

Mr Hamilton: I turn to the petition on freemasonry that the committee has been dealing with. You said that there is a limit to what you can

Col 2588 say on something that is still a matter for the courts, but I have issues to raise on the subject. We received—as, I assume, you did—evidence from Mr Minogue and Mr Burns, containing five examples of alleged malpractice and in which freemasonry is alleged to have had an impact. Some of the examples strike me as fairly weak, and I can see a degree of paranoia. One example, however, which is worth pursuing is the question of a potential breach of the European convention on human rights. Have you had time to reflect on that?

Mr Wallace: I am aware of the substantial material that was sent by Mr Minogue, the petitioner, which arrived with officials in the justice department yesterday. I have not had an opportunity to read it, and my officials have not had an opportunity to analyse it. I am therefore not quite sure about what the ECHR point was.

Mr Hamilton: It related to a social security case and to the failure of the tribunal concerned to consider whether freemasonry constituted a breach of the principle of a fair trial. It was found that that question ought to have been considered. The failure to consider the matter, rather than any substantive statement, constituted a breach of the ECHR. The minister may not have had the chance to look at the material, but I presume that he will have a chance at a later stage. That might be useful to the committee when it replies to the petition.

Mr Wallace: I will take a note of that and somebody can deal with the matter. That would be far more helpful to the committee than my hazarding an opinion now.

Mr Hamilton: Apart from those examples, there is a general principle on which I would be interested to hear the minister's view. The committee's paper on judicial appointments states:

"The system in England and Wales also requires that all new applicants for posts in the judiciary must indicate whether they are Freemasons. Serving members have also been asked to declare, on a voluntary basis, their links with freemasonry. However, there is no 'register' of

membership and the information held in the Lord Chancellors Department is not open to public inspection."

Quite separately from the question whether there is merit in any of the allegations, will the minister say whether, as a matter of policy, he is content that the absence of a similar requirement in Scotland is satisfactory?

Mr Wallace: The Judicial Appointments Board advertises appointments. The board is aware of the issues around freemasonry and the judiciary, and I understand that it took the view that it would not ask that question and that a declaration would not be required. Judges and sheriffs all have to take an oath

Col 2589 "to act without fear or favour".

I do not believe that there is any substantial body of evidence on this subject. In raising the issue and making his presentation in a proactive way, I think that Mr Minogue is almost unique. I am not aware of any other evidence of widespread concern—I do not think that the committee has had any other evidence. Mr Robbie the Pict has, of course, raised an issue around the Speculative Society before the High Court. We await with interest what that court says.

11:45

Mr Hamilton: Are you sending out the message today that there is no fundamental problem with the way in which the system is perceived and that you are not aware that membership of freemasonry, the Speculative Society or anything else is substantially prejudicial?

Mr Wallace: What I am saying is that we must consider the judgment of the High Court when it is given. However, I do not believe that any huge body of opinion alleges that the judges act in breach of their judicial oath.

Stewart Stevenson: Given the advisory nature of the Judicial Appointments Board, and given the fact that the social, sexual and general mix of those who currently hold such appointments reflects society as a whole only to a limited extent, are there circumstances under which ministers would be prepared to reject the advisory board's recommendations? For example, if ministers felt that insufficient progress was being made over time—it would have to be over a relatively substantial period of time because of the nature of the filtration of candidates who are suitable for appointment—might ministers be prepared to reject the recommendations because of the lack of progress?

Mr Wallace: At present, that question is too hypothetical. It is too early to answer that. In his question, Stewart Stevenson accepted that progress would need to be made over a considerable period of time. If, after a considerable period, the constitution of the bench was not much different from what it was in 1999, there might be a case for a future Administration to reconsider the situation to see whether the objectives

and aspirations behind the setting up of the Judicial Appointments Board had been met. I very much hope that such a situation will not arise, but that is not to say that, if some future Administration felt that nothing had changed, it would not want to review the efficacy of what had been put in place.

Stewart Stevenson: Have you therefore indicated to the board that failure to follow the broad objectives of changing the composition of the judiciary over time might lead to ministers

Col 2590 rejecting a recommendation?

Mr Wallace: I have certainly not couched any objectives in terms of a threat that says, "Get this right or else." As I said in my opening remarks, we have asked the board to aim to ensure that our judiciary is as representative as possible of the community that it serves. Indeed, in March 2001, I delivered a speech on our proposals for the board, in which I stated:

"The Judicial Appointments Board will be expected to have regard to how representative the Bench is of Scottish society and how to encourage applications from under-represented groups. It is not my role to specify exactly how the Board should undertake its remit, but it will be expected to seek out more qualified women and members of ethnic minorities to serve on the Bench. However, having stressed the importance of diversity let me be quite clear that the over-riding consideration is that all appointments to the Bench must be made on merit."

That is the context in which any guidance has been given. We have not operated on the basis that we will take action if the board does not get it right within five years.

Stewart Stevenson: If the board had a couple of candidates who were of equal merit from the point of view of their ability to do the job but did not make appointments that would help to shift the balance in favour of those parts of society—such as women—that are currently under-represented, might there be an occasion on which a future minister could reject the board's recommendation?

Mr Wallace: It would not be appropriate for me to say what a future Administration might do. It may well be that if, for example, there were five vacancies, the board might find 10 people whom it believed to be suitably qualified. In such a situation, there would be an element of ministerial discretion in the choice that was made. The important point is that all the candidates would have been passed and deemed to be eligible by the board.

Mr Hamilton: I am still slightly confused. On the one hand, the Judicial Appointments Board is an independent body, which the minister said must be seen to be fair and independent and must be seen to get the best candidates. On the other hand, the board is to consider what is the right composition of the bench—whatever that is, but I presume that it is the best composition. There is a nod in the direction of the result that

the Executive would like to see, but there is to be no sanction if that result does not come through. It strikes me that either the board is an independent body that makes decisions using an entirely transparent process—it seeks, in the same way as any other company or organisation, to find the best candidates with the required competencies—or it is driven by other motives, such as the wish to have the best mix. I am still confused as to where exactly that balance lies.

Col 2591 **Mr Wallace:** As I said in my answer to the convener and in the extract that I quoted from the speech, the board is to have regard to how it might encourage applications from under-represented groups. As I said to the convener, I believe that there are people who have the ability and the legal qualifications to be appointed on merit but who may not have felt encouraged to apply and who in some way may have felt discouraged from applying. I do not think that the two things are in any way inconsistent. It is for the board to work out how it will do this, but the board is specifically to seek out more qualified people, particularly women and people from ethnic minority communities. The board will not dilute the quality or merit of appointees but will try to ensure that those who have the merit and ability are brought into consideration for appointment.

Mr Hamilton: I understand that, but do you accept that even to make that statement and to direct that that be a factor—I think that you said that the board "should" look towards those kinds of areas—is to impinge on the independence of that body?

Mr Wallace: No. At the end of the day, it is up to the board to make recommendations on the basis of the references that it takes up and of its interviewing and evaluating of the candidates that appear before it. The board's independence is not compromised by encouraging it to ensure that those from whom we must choose are from a wider trawl—to return to Stewart Stevenson's fishing metaphor—than has been the case up to now.

I draw members' attention to the part of the board's web page that sets out the board's principles. It says:

"The Board is committed to the principles of appointment on merit and to the well-informed choice of individuals who, through their abilities, experience and qualities, match the requirements of the post. Successful candidates will be those who appear to be best qualified, regardless of gender, ethnic background, marital status, sexual orientation, political affiliation, religion or disability, except where the disability prevents the fulfilment of the physical requirements of the office and reasonable adjustment cannot be made."

The approach is to try to ensure that people do not feel inhibited from coming forward. That is the negative way of putting it. In fact, such people should feel positively encouraged to come forward if they believe that they are of the necessary calibre, which is undoubtedly a sine qua non for appointment. I fear, and am almost certain, that we may hitherto have excluded potential applicants because the bench was not seen as

something that was for them.

The Convener: For the minister's benefit, let me clarify where we are with the petition on membership of freemasonry. The committee has
Col 2592 decided that it does not wish to proceed any further with the petition but we have invited the petitioner to provide evidence of where he thinks there is a problem. That is why we still have a weighty document that, in fairness, we have not had a proper chance to consider.

Mr Wallace: In some respects, we are in the committee's hands. I understand that the document was submitted to the committee and copied to my department yesterday. As I said to Duncan Hamilton, there are issues on which I would not want to give an off-the-cuff view. I am prepared to give a considered response if the committee asks me to. I do not know what the time scale is for the decision in the Robbie the Pict case, but that might be of relevance.

The Convener: I wanted to place on record the fact that we have still to consider the information further. We might come back to you on that matter.

Did you say earlier that the decision not to ask judges and sheriffs to declare membership of the freemasons or of a similar organisation was a decision of the Judicial Appointments Board?

Mr Wallace: In relation to new applicants, yes. It put out the advert.

The Convener: Do you think that any harm would be caused by requiring judges and sheriffs to declare membership of organisations such as the freemasons? Is it your view that it would harm the process or that it simply would not add anything to it?

Mr Wallace: I am not sure that it would harm the process but, again, that would be a matter on which it would be worth finding out what the High Court thinks. The case was quite fully argued before the High Court and I think that it would be premature to jump to conclusions ahead of hearing the conclusions of the High Court. There might be a problem about where the line should be drawn. What is a relevant organisation and what is not?

The Convener: As you point out, at the moment, the new board is operating on a non-statutory basis but there is the possibility of primary legislation to enshrine it in law. Presumably, there should be some appraisal done of the decisions of the board before primary legislation is introduced. What do you see happening in that regard?

Mr Wallace: We would want there to be an evaluation when the board has been allowed to perform for a reasonable time period and has made more recommendations on appointments. Of course, that will be a matter for the Administration that is formed after the election. However, the indication is that although the
Col 2593 board's non-statutory basis is not hampering it, it would be better in the

longer term if it were put on a statutory footing. I expect that, as with any legislation, there will be an opportunity for consultation, which will undoubtedly involve an evaluation of the system in terms of the recommendations and the process that is followed.

The Convener: Are you saying that, at some point in the future—say, in 25 years' time—there will be some evaluation?

Mr Wallace: I would not wish to set a time scale.

The Convener: I am not trying to work out a time scale; I am trying to understand the process. Would primary legislation follow such an evaluation?

Mr Wallace: Ultimately, I would expect the board to be put on a statutory footing.

The Convener: But there are no immediate plans for that.

Mr Wallace: There are no such plans. It would be improper of me to have such plans and would result in another BBC story about how we have coalition deals done and dusted already.

The Convener: I do not think that any parliamentary committee would be happy with being faced with legislation before a proper evaluation process had been conducted.

Col 2594 **Mr Wallace:** I agree with you. The workings of our Parliament would ensure that a proper evaluation process was conducted.

Mr Alasdair Morrison (Western Isles) (Lab): When we last discussed the issue of freemasonry, I asked a question that I want to ask again. Do we have a list of the types of organisations that we should be concerned about? Freemasonry has been referred to a lot, but people have also used phrases such as "that type of organisation". Do we have such a list? Are the organisations cultural, sporting and linguistic groups and so on?

Mr Wallace: I do not have such a list.

The Convener: Thanks for discussing the judicial appointments system with us. We have all learned something this morning. It is up to the committee to take the matter further.

For the record, I state that, after this meeting, we will talk to the minister informally about the petition on asbestos that has been referred to us.

Meeting closed at 12:00.

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and property rights in respect of Scotland's fish stocks. Do members want to refer that petition back to the Public Petitions Committee?

Members *indicated agreement*.

Judiciary (Freemasons) (PE306)

The Convener: Petition PE306 is on freemasonry and the judiciary. The committee decided that it did not want to take further action, but invited the petitioner to provide more information, which has now been provided. What is the committee's view on whether the petition should be referred back to the Public Petitions Committee?

Mr Hamilton: I am content that the issue has been exhausted.

Bill Aitken: I concur.

The Convener: Unless any other member is otherwise minded, I do not propose to refer the petition back to the Public Petitions Committee.

There is one question that I need to put to the committee on this issue, which is whether the committee is minded to publish Mr Minogue's evidence, given that we invited him to submit it. I have been advised that our legal department has some concerns about the contents of that evidence. The petitioner is pressing for his evidence to be made available on the web, but, having read through the evidence, the committee might want to take a view on that.

Stewart Stevenson: On whose shoulders would the liability lie in law if we were to publish the evidence in its entirety?

Gillian Baxendine: My understanding is that a number of issues arise, one of which is possible defamation. The Parliament is protected in relation to that. Nevertheless, it would be for the committee to decide that it was happy to publish. There is a separate issue to do with the Data Protection Act 1998. My understanding is that the Parliament will be liable if it publishes something that breaches that act, and that there would need to be some editing of the submission to comply with that act.

Stewart Stevenson: I therefore propose that, based on the legal opinion, the evidence be edited or those parts that relate to potential breach of the Data Protection Act 1998 be excised, but that otherwise it be published. If the petitioner, having been apprised of the legal opinion that there may be defamation, persists in wishing to publish the
Col 2624 evidence, it is for him to consider the consequences. I propose that we publish.

Gillian Baxendine: To be clear, my understanding is that if the evidence is published as a parliamentary proceeding, the protection extends to the petitioner as well.

Stewart Stevenson: In that case, I recommend non-publication.

Mr Hamilton: We have to be careful about this. My take on it is that to publish half the paper would be to stoke the fire still further. I suspect that we should simply say that if the petitioner wishes to publish the evidence, distribute it or put it on his own web page, so be it, but it is not something with which the Parliament should be associated.

The Convener: I am sympathetic to the principle of the petition, but the committee decided that it was not, and that is the status of the petition at the moment. We invited the petitioner to produce information. I have an open mind on that, but the evidence that has been produced is not the kind of information that I was looking for. I was quite surprised to read some of it.

Mr Hamilton: The point is that if we make an active choice to extend parliamentary privilege to something that we are sceptical about, we do a disservice.

The Convener: So the committee is agreed that we will not publish the evidence.

In closing our last meeting, I wish to put on record my thanks to all members of the committee. I have enjoyed my time here. I know that you have all worked really hard and have really thought about all the pieces of legislation that have been before us. It has been a small committee. It has been a bit hairy at times, in terms of getting everybody here. I know that tremendous pressures have been placed on members, because we have met twice a week at times—we have done so more than any other committee—but it has worked well.

It goes without saying that I speak for all the committee in thanking the staff and the clerks.

Stewart Stevenson: Hear, hear.

The Convener: They have managed to do the impossible sometimes in deciphering all the decisions that we have made. I thank them very much. Perhaps when the meeting closes we will discuss when we can show our appreciation to them over a drink. I wish them all the best of luck for the future. They have all done a great job.

Bill Aitken: Before we close the meeting, it would be appropriate to associate myself with your comments. This has been a tremendously good committee. We have frequently disagreed—that is political life—but no one could doubt the

Col 2625 commitment of individual committee members to apprising themselves thoroughly about what they are doing. Every member of the committee has made significant input into every matter that has come before the committee. It has been a personal pleasure for me to work with you all.

In conclusion, some word of praise inevitably is due to you, convener, for the way in which you have conducted proceedings. You have done